

CHAPTER 40-50

PROCUREMENT RULES AND REGULATIONS

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Chapter Authority: 2 CMC § 2122(j).

Chapter History: Amdts Adopted 48 Com. Reg. 53531 (Feb. 15, 2026); Amdts Proposed 47 Com. Reg. 52906 (Sept. 15, 2025); Amdts Adopted 45 Com. Reg. 49604 (Mar. 28, 2023); Amdts Proposed 45 Com. Reg. 49396 (Jan. 28, 2023); Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26691 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26436 (Mar. 15, 2007); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Amdts Adopted 17 Com. Reg. 13748 (Oct. 15, 1995); Amdts Proposed 17 Com. Reg. 13261 (Apr. 15, 1995); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

In August 2007, CPA added § 40-50-410 to this chapter establishing a residency preference.

Part 001 - General Provisions

§ 40-50-001 Authority

The regulations in this chapter are promulgated under the authority of 2 CMC § 2122(j).

Modified, 1 CMC § 3806(d).

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-005 Purposes

The underlying purposes and policies of this chapter are:

- (a) To provide for increased public confidence in the procedures followed in Authority procurement;

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- (b) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Authority;
- (c) To provide increased economy in Authority procurement activities and to maximize to the fullest extent practicable the purchasing value of Authority funds;
- (d) To foster effective broad-based competition within the free enterprise system; and
- (e) To provide safeguards for the maintenance of a procurement system of quality and integrity.

Modified, 1 CMC § 3806(g).

Commission Comment: The Commission replaced “insure” with “ensure” in subsection (b).

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-010 Requirement of Good Faith

This chapter requires all parties involved in the negotiation, bidding, performance, or administration of Authority contracts to act in good faith.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission inserted a comma after the word “performance” pursuant to 1 CMC § 3806(g).

§ 40-50-015 Application of Regulations

This chapter applies to every expenditure of Authority funds which are not subject to federal procurement requirements. These provisions shall be construed and applied in a manner consistent with all Federal Law and Regulations, including, but not limited to 49 C.F.R. 18.36 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments requirements relating to grant funds for Airport Improvement Projects, whether funded in whole or in part by AIP Grant Funds or formula grants. This chapter does not apply to contracts between the Authority and the government or its political subdivisions or other governments. Nothing in this chapter shall be construed to prevent Authority from complying with the terms and conditions of any grant, cooperative agreement, or memoranda of understanding. Pursuant to 2 CMC § 2132(c), this chapter shall not apply to the procurement of professional, advisory, or technical services.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

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Commission Comment: The Commission inserted a comma after the word “agreement” pursuant to 1 CMC § 3806(g).

§ 40-50-020 Severability

If any provision of this chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-025 Validity of Contract

No Authority contract covered by this chapter shall be valid unless it complies with this chapter.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-030 Remedy Against Employee

Any procurement action of an employee of Authority in violation of this chapter is an action outside the scope of his or her employment. The Authority will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-035 Definitions

As used in this chapter, unless the context otherwise requires, the following meanings apply:

- (a) “Appeal Committee” means the special committee of the Board authorized to hear appeals.
- (b) “Attorney” means the legal counsel of the Authority.
- (c) “Authority” means the Commonwealth Ports Authority or “CPA” to also mean the Commonwealth Ports Authority as may be referred to in this chapter.
- (d) “Board” means the Board of Directors of the Authority.

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- (e) “Construction” means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.
- (f) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (g) “Contracting officer” means the Chairman of CPA’s Board of Directors or the person designated in such acting capacity as authorized by the Board or the Chairman to execute and supervise the administration of all contracts and who shall have authority to review and approve any change orders to contracts so long as such change orders do not require any reprogramming of funds or exceed the authorized budget for such a contract.
- (h) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter, and a fee, if any.
- (i) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.
- (j) “Employee” means an individual receiving a salary from the Authority. Consultants, independent contractors, and part-time workers shall not be considered employees.
- (k) “Executive Director” means the Executive Director of the Authority, or his designee.
- (l) “Firm-fixed-price Contract” means any contract which provides for a price which is not subject to and which does not authorize any subsequent adjustment as a result of the contractor’s cost-experience in performing the contract. This type of contract places, and shall be construed as such, upon the contractor the maximum risk for loss and the contractor shall bear full responsibility for all costs, foreseen or unforeseen, or any resulting profit or loss as a result of the performance of the contract.
- (m) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of personal property, and sale or other disposal of personal property.
- (n) “Government” means the Commonwealth of the Northern Mariana Islands government which includes the executive, legislative, and judicial branches.
- (o) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

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(p) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.

(q) “Procurement” means buying, purchasing, renting, leasing, or acquiring construction, goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. It also includes procurement of professional, advisory, or technical services.

(r) “Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.

(s) “Responsible” in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(t) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(u) “Requirements Contract” means a contract which provides for the filling of all actual purchase requirements of designated Authority activities for supplies or services during a specified period, with deliveries or performance to be scheduled with the contractor and which the contractor is obligated to deliver and provide in return for a fixed amount or rate to be paid by the Authority.

(v) “Services” means the furnishing of time, labor or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans and incidental documents. It does not include professional, advisory, or technical services.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-040 Public Access to Procurement Information

Procurement information, whenever practical, shall be a matter of public record and shall be available for public inspection pursuant to the CNMI Open Government Act at 1 CMC § 9901 et seq. Procurement information may be kept confidential when necessary to insure proper bidding procedures or to protect private; confidential; financial or technical data; trade secrets; or other proprietary information submitted by a proposing party or bidder or any other applicable exemption under the Open Government Act. This decision shall be made only by the Executive Director or the Authority designated Procurement Officer or authorized designee.

Further, any contractor, vendor, or proposer submitting information, whether technical or proprietary as to price, shall so indicate to the Authority through the Executive Director in any submission and explain the nature of the information and why it must be designated as private or confidential/exempt under the Open Government Act. Any request for public records of exempt or private materials shall also require reasonable notice to any contractor, vendor, or proposer to be allowed to respond or undertake measures to protect such information.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission corrected the citation to the Open Government Act to “1 CMC § 9901 et seq.” The Commission inserted a comma after the word “vendor” pursuant to 1 CMC § 3806(g).

Part 100 - Procurement Organization

§ 40-50-101 Executive Director and Procurement Officer

The Executive Director and/or the designated Authority Procurement Officer or authorized designee shall enforce this chapter. The Authority Procurement Office and the position of an Authority Procurement Officer are hereby established within the Authority Comptroller’s Office/Accounting Section for the purpose of oversight and administration of the provisions of this chapter. Ultimately, the Executive Director shall have the responsibility for compliance with this chapter and its application or enforcement.

Modified, 1 CMC § 3806(g).

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-105 Duties of the Executive Director and designated Authority Procurement Officer

The duties and responsibilities of the Executive Director include, but are not limited to, the following:

- (a) Oversee that this chapter is observed in all Authority procurement. The Executive Director shall provide for full and open competition for goods and services under this chapter through use of the competitive procedure that is best suited to the circumstances of the contract action. However, the Executive Director may appoint and designate a Procurement Officer to carry out the provisions of this chapter and all related duties and responsibilities of procurement. The Procurement Officer shall be within the Comptroller’s Office/Accounting for purposes of administration and oversight since procurement requires coordination with the Comptroller as to expenditures and certification of funds available for all procurement;

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(b) Conduct bidding, procurement, negotiation, or administration of Authority contracts including, but not limited to, receiving requests for procurement/proposals/bids from Authority managers or personnel; determining availability of funds for procurement in consultation with the Comptroller; preparing and issuing publications soliciting proposals, qualification statements, or other bids; assembling the record of submissions; preparing the criteria for review of proposals; developing the relevant procurement forms; and establishing a uniform set of Standard Operating Procedures for procurement within the Authority;

(1) The Executive Director may direct the establishment of Standard Operating Procedures for Procurement which shall contain the developed and approved forms and procedures consistent with this chapter;

(2) The Executive Director may direct the Comptroller to establish additional procedures and fiscal controls for procurement in order to ensure oversight and accountability in the procurement process including Purchase Orders; Purchase Requisition or Voucher Forms; Requests to Initiate Requests for Proposals or Invitations for Bids; Petty Cash Authorization; and other appropriate forms.

(c) Provide advanced planning for the centralized purchase of Authority supplies;

(d) Exercise general supervision and control over all inventories of supplies belonging to the Authority including, but not limited to, developing procedures and forms for cost controls and accounting; and

(e) Establish and maintain programs for the inspection, testing and acceptance of supplies.

(f) Sell, auction, trade, transfer, convey, release or otherwise dispose of surplus or abandoned property found on Authority property or left on Authority premises; or any other property belonging to and no longer needed by the Authority as certified by the manager or supervisor with oversight or control over such property in the following manner:

(1) The Executive Director shall, in consultation with the Ports Police Chief and other section managers, establish a procedure for handling abandoned property including the appropriate notice forms. The Authority has jurisdiction and control over its premises as to all property or vehicles brought into the premises;

(2) As to abandoned personal vehicles, the Executive Director shall issue citations to vehicles parked on Authority premises in excess of authorized periods. After a period of thirty (30) days without claim or notice to the Authority or payment of any due fines or fees, any vehicle found thereafter shall be deemed abandoned. The Ports Police Chief shall place on the vehicle a "Notice of Determination of Abandonment and Intent to Sell or Dispose of Vehicle" which shall give notice to the owner of such determination and intent to sell or dispose of the abandoned vehicle within sixty (60) calendar days. Further, the Ports Police Chief shall verify ownership with the CNMI Bureau of Motor Vehicles and give the same notice to BMV and undertake due diligence to give notice to the vehicle owner.

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(3) After a period of sixty (60) calendar days without any claim or notice of right, the Executive Director may sell the vehicle at auction and shall publish a Notice of Auction giving the public notice of auction of the vehicle, “as is/where is” and without any warranties nor guarantees as to condition or ownership, for a sum certain. The auction shall be held and the abandoned vehicle disposed of accordingly.

(4) As to any salvaged property of the Authority, the Executive Director may conduct a public auction to sell any property and such funds shall be accounted for and received by the Comptroller. Alternately and at its discretion, the Authority through the Executive Director may retain such abandoned property including vehicles for its use if doing so is deemed in the best interest of the Authority or the Authority Executive Director may donate such property to any government agency, public school, or private non-profit organization and set conditions for such donation without any liability of the Authority and so long as any such donated property contains no hazardous materials.

(g) Exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;

(h) Receive, review, hear, and decide on all protests or disputes as to any matters under this chapter.

Modified, 1 CMC § 3806(g).

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission replaced “used” with “use” in subsection (g) to correct a manifest error. The Commission inserted commas after the words “negotiation” in subsection (b) and “school” in subsection (f)(4) pursuant to 1 CMC § 3806(g).

§ 40-50-110 Contract Review and Oversight

(a) The Executive Director has responsibility for contract review and oversight of all Authority contracts. The primary responsibility for ensuring compliance in contracting rests with the Executive Director. The Executive Director shall review all contracts for construction, the procurement and sale of goods and services, and leases, to ensure such agreements are in compliance with this chapter, are furthers the best interest of the Authority, and does not constitute a waste or abuse of Authority funds. The Executive Director must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts. The Executive Director shall be responsible for developing standard contract administration procedures to be used by officials with expenditure authority, maintaining a central depository of contractor evaluations, and making the evaluations available to other CNMI Government agencies upon request.

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(b) All contracts must first be reviewed by the Procurement Officer who shall certify compliance with this chapter and any applicable federal statutory or regulatory provisions or requirements; that the proposed contract is for a public purpose; and that the contract does not constitute a waste or abuse of Authority funds regardless of source. All contract documents, such as attachments and exhibits, must be complete to be incorporated into the contract by reference. The Procurement Officer shall report any defects within any contract or the procurement process to the Executive Director, who shall not execute such contract until the Procurement Officer certifies that such defects have been corrected.

(c) The designated Authority attorney shall certify the form and legality of every applicable contract. In the situation where the Authority attorney finds legal deficiencies with a contract or the procurement process, he/she shall return the contract to the Procurement Officer noting the deficiencies and the corrective action required.

(d) It is the responsibility of the Executive Director or Procurement Officer to ensure that the contractor does not incur any expenses under the contract until all necessary Authority signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the Executive Director or Procurement Officer.

(e) No contract is effective against the Authority until all of the officials whose signatures appear on the contract form have signed the contract. The Executive Director, unless so required by the Board of Directors as to any particular contract, is a designated contracting officer for the Authority and has the legal capacity to sign for on behalf of the Authority under this chapter.

(f) Nothing in this chapter shall be construed to limit or prevent the Authority's duty and power, pursuant to 2 CMC § 2122(i), to enter into agreements with the government, its departments and agencies for the rendering and purchase of services, nor shall this chapter be construed to limit or prevent the Authority's duty and power, pursuant to 2 CMC § 2122(e) and (g), to lease out its real property.

(g) The Authority Comptroller shall certify every contract as to availability of funds and such certification shall also be construed to mean that the expenditure of funds for such contract or procurement is authorized pursuant to the budget for that fiscal year or pursuant to any reprogramming authorization by the Board of Directors. The Comptroller shall not sign any contract or procurement request which is not authorized by the Budget or exceeds fiscal authorization unless reprogramming or authorization is first obtained.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-115 Acceptance of Gratuities [Repealed.]

[Repealed.]

History: Repealed 42 Com. Reg. 44069 (Sept. 28, 2020); Repeal Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 200 - Source Selection and Contract Formation

§ 40-50-201 Methods of Source Selection

As to every procurement or procurement under this chapter funded by the Authority or from CNMI Government or Local Delegation Appropriations, the Authority may require each vendor, proposer, bidder, contractor, consultant, sub-contractor, and agent to have a valid CNMI Business License and valid CNMI Taxpayer Identification Number except as exempted by any applicable Federal Law or Regulation. Projects or procurement funded by federal funds may be governed or processed under separate regulations or procedures. Further, all Authority contracts shall be awarded pursuant to an Invitation for Bids, except as provided in:

- (a) § 40-50-210 (Small Purchases);
- (b) § 40-50-215 (Sole Source Procurement);
- (c) § 40-50-220 (Emergency Procurement); and
- (d) § 40-50-225 (Requests for Proposals).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-202 Architect-Engineer Design and Construction Management Services

- (a) Architect-Engineer and Construction Management Services shall be procured as provided in this section except when authorized as a sole-source procurement.
- (b) The Executive Director and Procurement Officer shall consult with the Authority Engineering Department or Section and maintain files of current statements of qualifications of architect-engineer or construction-management firms. The Authority shall solicit and publicly announce all requirements for architect-engineer or construction-management services for Authority projects based on the project requirements and needs.

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The Authority shall set forth the requirements for such firms and establish an evaluation plan for qualifications.

(c) The Authority shall select the top three qualified firms determined to be the most highly qualified to perform the services required. The criteria for selecting consultants under this section may include, but are not limited to, the general reputation of the firm; the firm's A/E design; the firm's construction-management experience within the CNMI, the Pacific region, or in the industry; the firm's level of proficiency or experience related to Authority projects funded in whole or in part by Federal funds or the Federal Aviation Administration; the firm's level of proficiency in performing A/E or construction-management services promptly particularly as to Airport Improvement Project (AIP) grants and in performing whatever services are being sought or required; the firm's existing quantity of workload; the firm's professional integrity and experience, including its history with requesting change orders, requiring field changes, redesign of projects, and omissions or oversight requiring design work; the resume or qualifications of the firm's personnel, including professional qualifications and licenses; and any Consultant Performance Reports on file under NMIAC § 40-50-202(f)(1). Fee proposals shall not be considered in the selection of the most highly qualified firms but the Authority may establish a costing of the project as a means of measuring its fiscal projections.

(d) After selection of the top three qualified firms as determined by the Authority, the Authority shall engage in discussions regarding the contract requirements and technical approach. The Authority, through the Executive Director or his designated representative, shall negotiate a contract with the highest qualified architect-engineer or construction-management firm at a price determined to be fair and reasonable to the Authority. In determining what is a fair and reasonable price, the Executive Director shall consider factors relevant to the contemplated project, such as experience, technical qualifications, qualifications and experience of its personnel, past projects for the Authority, and other projects within the CNMI. If a fair and reasonable price cannot be negotiated and agreed upon with the highest qualified firm, then the Executive Director shall proceed to the next firm in order of competence and qualification and continue negotiations until a fair and reasonable price is agreed upon.

(e) For specialized or highly-technical projects or services deemed as such by the Authority, the Authority may procure services without requiring qualification statements. Specialized or highly-technical projects or services are those which are not regularly available within the CNMI which require specialized skills or expertise.

(f) Evaluating Results.

(1) Within 90 days of the end of the contract, the Executive Director or the Procurement Officer, in concert with the Authority's Engineering department, may complete a post-evaluation "Consultant Performance Report." The Consultant Performance Report shall be kept as a record for 36 months. The Consultant Performance Report shall, at a minimum, include the following:

(i) Whether the contracted project or service was completed as specified in the contract;

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- (ii) The reasons for and the amount of any cost overruns or delays in the completion of the project or service;
 - (iii) Whether the consultant fulfilled all the requirements of the contract, and if not, the requirements of the contract that the consultant failed to fulfill;
 - (iv) Factors outside the control of the consultant that caused difficulties in the consultant's performance of the contract; and
 - (v) The results of the contract, including a discussion regarding how the contract aids the goals of the Authority.
- (2) Consultant Performance Reports may be considered by the Evaluation Committee when evaluating qualification statements for consulting services.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Commission Comment: [Historical comments removed.]

§ 40-50-203 [RESERVED]

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

§ 40-50-204 [RESERVED]

History: 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

§ 40-50-205 Invitation for Bids

(a) The purchase of all services, goods, supplies and materials and all construction work, when the expenditure exceeds \$25,000, shall be by contract let to the lowest responsive and responsible bidder. An Invitation for Bid may be solicited by the Executive Director or his authorized designee when the Authority determines that the best interests of the Authority are served by and/or any relevant Federal Law or regulation require an Invitation for Bid.

(b) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:

- (1) An invitation for bids number or "CPA Project No." designation
- (2) Date of issuance;
- (3) Name, address, and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour, and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place, and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions;
- (10) Any bonding requirements;

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- (11) A valid CNMI Business License and Taxpayer Identification Number unless exempted by the Authority or applicable Federal law or regulation; and
- (12) A reasonable administrative fee for costs/handling for an IFB such as for scanning, duplication, or preparation depending on the nature or complexity of the IFB, the sum of which shall be set forth in the IFB solicitation.
- (13) Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall adequately set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill the Authority's minimum requirements;
- (14) The bid solicitation shall accurately reflect the Authority requirement. It shall adequately state what is to be done or what is to be delivered to the Authority in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Bids which fail this provision shall be deemed non-responsive.

(c) Public Notice.

- (1) The Executive Director or Procurement Officer or authorized designee shall publicize all invitation for bids in order to increase competition and broaden industry participation. A bidding period of at least thirty (30) calendar days shall be provided unless the Executive Director or authorize designee certifies that a shorter time period is reasonable and necessary. However, the bidding period notice shall never be less than fourteen (14) calendar days. Further, the Executive Director or authorized designee may extend the bidding period for up to an additional ninety (90) calendar days considering the degree of urgency; the complexity of the contract requirements; the anticipated need for and extent for subcontracting; the geographical distribution of bidders; and the normal transmittal time for invitations and bids. Bid solicitation provisions that require bidders to notify the Authority of the bidder's intent to bid must provide bidders at least fourteen (14) calendar days from the date of the bid solicitation publication to submit such notice and such "intent to bid" requirements must be included in the public notice.
- (2) The Procurement Officer or authorized designee shall publish the invitation for bids in two newspapers of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.

(d) Bid Receipt.

- (1) All bids shall be submitted to the Authority Administration Section, Office of the Executive Director of the Authority at the Francisco C. Ada Terminal, Saipan International Airport unless otherwise designated by the Executive Director. Bids submitted under this chapter shall be sealed so that bid documents are entirely within an enclosed envelope or cylinder (as to designs); without any rubber band or other objects attaching documents; preferably sealed with tape and untampered in any way. The Bids shall be marked outside with conspicuous marking indicating the CPA Project No. and indicating that it is an Invitation for Bid Submission: Confidential directed to the attention of the Executive Director. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office.
- (2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Executive

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Director or Procurement Officer or authorized designee. No information contained in the bid shall be disclosed prior to the bid opening. The Executive Director or Procurement Officer or authorized designee shall cause the opened bid to be placed into the sealed receptacle.

(e) **Bid Opening.** The bid opening shall be conducted by the Executive Director or Procurement Officer or authorized designee at the Conference Room of the Authority at the Saipan International Airport or some other designated location. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, together with the name of each bidder shall be recorded on a “Bidder’s Submission List.” The Bidder’s Submission List shall be open to public inspection. However, the individual bid packets may only be subject to public inspection after the Authority Executive Director has accepted the lowest bid pursuant to these regulations. In the event that the Executive Director determines that he needs further time to resolve any concerns or requires assistance of counsel to accept a bid, all bid packets shall remain sealed and exempt from public inspection. After acceptance of the lowest bid by the Executive Director, each bid submitted shall be open to public inspection pursuant to the Open Government Act subject to any applicable exemptions. The Executive Director or Procurement Officer or authorized designee shall prepare a written summary of the bid opening as soon as possible.

(f) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended. A bid may only be considered by the Authority if the bidder accepts all material terms and conditions of the invitation, and any future award based upon the bid, if accepted by the Authority, would result in a binding contract with terms and conditions which follow and do not vary from the requirements of the invitation.

(g) **Bid Rejection.**

(1) A bid may be rejected for any of the following reasons:

- (i) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;
- (ii) Imposition of conditions or restrictions in the bid which modify or alter requirements of the invitation or limit the bidder’s liability to the Authority;
- (iii) Unreasonableness as to price;
- (iv) A bid from a non-responsive or non-responsible bidder;
- (v) States a price but qualifies it as subject to a price in effect at time of delivery;
- (vi) Protects against future changes in conditions, such as increased costs; or
- (vii) Limits the rights of the Authority.

(2) **The Authority’s Right to Reject or Cancel Bids:** The Authority, through the Executive Director or authorized designee, may reject any and all bids or cancel the IFB and re-advertise at its discretion. The Authority may cancel or reject bids for reasons deemed by the Executive Director to be in the best interest of the Authority, including but not limited to, a change of requirements for the IFB; any material confusion, ambiguity or

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vagueness in the IFB which were not apparent at publication; any change in the funding availability for a solicitation; a change or modification in the scope of the IFB; or the Authority wishes to impose additional requirements for bidders which are necessary and material for the IFB. If, after rejecting bids for materials and supplies, the Authority, through the Executive Director or authorized designee, determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Authority may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(h) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Executive Director or authorized designee in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be allowed. Whenever a bid mistake is suspected by the Authority, the Authority shall request confirmation of the bid, prior to award, from the bidder. In such an instance, if the bidder alleges an error, the Authority shall only permit correction of the bid or withdrawal of the bid in accordance with subsection (1) or (2).

(1) **Correction of bids.** Correction of bids shall only be permitted when:

(i) An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(ii) The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.

(2) **Withdrawal of Bids.** Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.

(3) **Cancellation of Awards.** The Cancellation of awards or contracts shall only be permitted when:

(i) Evidence as to the existence of the mistake is not discovered until after the award;

(ii) There exists no clear and convincing evidence to support the bid intended; and

(iii) Performance of the contract at the award price would be unconscionable.

(i) **Award.**

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders shall also be promptly notified. The Authority shall provide the lowest responsive and responsive bidder an "Intent to Award" letter. Upon receipt of the "Intent to Award" letter, the bidder shall sign the contract. The signed contract shall then be routed for CPA signatures, and once all required signatures and supporting documents are obtained, CPA shall issue a "Notice to Proceed" letter and the executed contract to the contractor. The "Notice to Proceed" letter shall provide notice to the contractor to begin the work contracted for and will state the date on which the contract time begins. The "Notice to Proceed" letter serves as the official

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award of the project. No acceptance of an offer shall occur nor shall any contract be formed until a contract is written and has been approved by all required personnel of the Authority under this chapter.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 Com. Reg. 32150 (Dec. 29, 2011). The amendments amended this section and entitled it “Invitation for Bids” where it was previously entitled “Competitive Sealed Bidding.” The Commission deleted the comma (,) in the phrase “examining, the bid document” in subsection (h)(1)(i) to correct a manifest error. The Commission inserted commas after the words “address” in subsection (b)(3), “hour” in subsection (b)(5), and “place” in subsection (b)(8) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase “shall marked” in subsection (d)(1) to “shall be marked” pursuant to 1 CMC § 3806(g).

§ 40-50-210 Small Purchases

(a) Any procurement not exceeding \$25,000.00 may be made in accordance with these small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(b) The Executive Director or Procurement Officer or authorized designee shall obtain written price quotations and detailed proposals of the product description or services to be rendered. Any Authority section Manager or Supervisor may initiate a Small Purchase procurement by coordinating such a request through the Procurement Officer, who shall aid in preparing the request for quotations and a description of the goods or services required.

(c) Purchase Orders or Purchase Requisition requests may be utilized for small purchases below \$25,000.00 and may be administered by the Comptroller’s Office through the Procurement Officer. For any procurement valued from \$2,500.01 to \$25,000.00, the Executive Director or Procurement Officer shall submit a request for a written quotation or written price from at least three potential on or off-island vendors. A request for a written quotation must be in writing.

(d) The Executive Director or Procurement Officer or authorized designee is authorized to process open purchase orders for a procurement valued from \$2,500.00 and below with authorized signers listed on the purchase order.

History: Adopted 48 Com. Reg. 53531 (Feb. 15, 2026); Proposed 47 Com. Reg. 52906 (Sept. 15, 2025); Adopted 45 Com. Reg. 49604 (Mar. 28, 2023); Proposed 45 Com. Reg. 49396 (Jan. 28, 2023); Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-215 Sole Source Procurement

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(a) A contract may be awarded for a supply, service, or construction item without competition when the Contracting Officer determines in writing that there is only one source for the required supply, service or construction item. This section shall be construed to include the purpose of obtaining professional services in highly specialized or technical expertise in aviation and admiralty; compliance with federal regulations; rate-setting consulting services; and whenever so required by any federal granting agencies or grant requirements.

(b) The written determination shall state the unique capabilities required and why they are required and the consideration given to alternative sources. The written determination shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the availability of funding for such services as certified by the Comptroller; and a written copy of any applicable federal grant or regulation under which the services are authorized or required.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-220 Emergency Procurement

In case of any major public calamity, or whenever it is in the interest of aviation or shipping safety, or necessary to keep the ports operable by the Authority or to protect any property as well as the protection of the environment or the people of the CNMI, the Executive Director in the exercise of his duties, may determine that the public interest and necessity demand the immediate expenditure of funds to keep the ports facilities open to traffic or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provision requiring contracts, bids or notices so that the provisions of this chapter shall be suspended and waived on account of such emergency or calamity.

In such emergency conditions, the Executive Director shall issue a summary finding or report of such calamity as soon as practical to the Comptroller and the Board advising of the emergency or calamity. Such “Emergency Notice and Emergency Expenditure of Funds” shall set forth the description of the emergency; the services or goods needed to address the emergency situation; the estimated cost for such goods or services; and the plan of action to be carried out. The Comptroller, whenever practical and preferably within five days or sooner, shall sign and concur with the Executive Director as to such emergency and undertake measures for the fiscal reprogramming and justification of expenditure for. Following the resolution of the emergency the Executive Director shall file his report with the Board within five days providing the further details relating to the emergency; the actions taken; the expenditures; and any recommendations. The Board may issue continuing authorizations for the expenditure of funds described in this section, placing therein the conditions which will give rise to such special expenditures.

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History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-225 Request for Proposals

(a) Conditions for use. The purchase of all services, goods, supplies and materials and all construction work, when the expenditure or procurement by the Authority exceeds \$25,000.00 may be made through a Request for Proposal as set forth in this section when the Executive Director, in the exercise of his/her discretion, determines in writing that the use of an Invitation for Bid is either not practical or not advantageous to the Authority, a contract or procurement may be obtained through a Request for Proposals. However, nothing shall limit or restrict the Authority, through the Executive Director or an authorized designee, from soliciting a Request for Proposals for any procurement for a service or contract for less than \$25,000 should it be in the best interest of the Authority, on discretion of the Executive Director, to do so.

(b) Request for proposals. Proposals shall be solicited through a Request for Proposals or “RFP”.

(c) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.

(d) Receipt of sealed proposals. Proposals shall be submitted in sealed envelopes and unopened so as to avoid disclosure of contents to competing proposers during the process of negotiation. Proposals shall be restricted to the members of the Evaluation Committee and shall not be disclosed nor discussed to anyone outside of the Evaluation Committee until after the completion of the evaluation and ranking of proposals. Proposals may be prepared and opened for public inspection after contract award.

(e) Proposal Rejection.

(1) A proposal may be rejected for any of the following reasons:

(i) Failure to conform to essential requirements of the request for proposals such as specifications or time of delivery;

(ii) A proposal from a non-responsive or non-responsible proposer;

(iii) States a price but qualifies it as subject to a price in effect at time of delivery;

(iv) Protects against future changes in conditions, such as increased costs; or

(v) Limits the rights of the Authority.

(2) The Authority’s Right to Reject or Cancel Proposals: The Authority, through the Executive Director or authorized designee, may reject any and all proposals or cancel the RFP and/or re-advertise at its discretion. The Authority may cancel or reject proposals for reasons deemed by the Executive Director to be in the best interest of the Authority, including but not limited to, a change of requirements for the RFP; any material confusion, ambiguity, or vagueness in the RFP which was not apparent at publication; any change in the funding availability for a solicitation; a change or modification in the scope of the RFP; or the Authority wishes to impose additional requirements for proposers which are necessary and material for the RFP. If, after rejecting proposals, the Authority, through the Executive Director or authorized designee, determines that, in its opinion, the goods or

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services may be obtained at a lower price in the open market, the Authority may authorize such purchases without further observance of the provisions requiring contracts, proposals, or notices.

(f) Evaluation factors.

(1) The request for proposals shall state the relative importance of price; project requirements; quantity of materials; scope of services; experience required; insurance requirements; sufficiency of workers or materials needed; the timeline for project completion; the deliverables required; and other evaluation factors relevant and necessary to describe the project requirements.

(2) Before conducting an evaluation of proposals pursuant to an RFP, the Authority through the Procurement Officer shall develop, and the Executive Director shall approve, an evaluation plan which at a minimum shall include:

(i) A statement of the evaluation factors and any significant subfactors and their importance;

(ii) A description of the evaluation process; the point system to be used as to the criteria for evaluation; the methodology; and the techniques to be used; and

(iii) Documentation requirements.

(g) Discussion with responsible proposers and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. The Executive Director may initiate such discussions or any proposing party may request such discussions. However, such discussions may only occur after advance written notice to all proposers as to the nature of the discussion and issues to be clarified and the date and time for such discussion(s). There shall be no separate discussions nor communications between the Executive Director with any proposer at any time. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers. The Executive Director may, after such discussions, invite "Best and Final Offers" from each proposer to be submitted on a certain date. Alternately, the Executive Director may stay with the existing proposals and consider them. The Executive Director may only receive best and final offers from each proposer where, after discussions, there is clarification of the request for proposals and resolution of any ambiguities or vagaries in the request by the Authority for such proposals.

(h) Evaluation Committee: The Executive Director or his designee shall convene an Evaluation Committee which may be comprised of representatives from the following Authority sections/divisions in order to have as representative and wide range of perspectives and experience: Accounting Section; Administration Section; Engineering Section; Ports Police; Aircraft Rescue & Firefighting (ARFF); Operations Section; and Maintenance Section. The Executive Director may include non-Authority employees on an Evaluation Committee, if he determines, in writing, that the participation of non-Authority

employees is in the best interest of Commonwealth. Non-Authority employees shall be compensated for their time spent and expenses incurred in service on an Evaluation Committee in the same manner as Authority Board members are compensated under 2 CMC § 2125. Each Evaluation Committee shall consist of between three and five members. Whenever practical, members of the Evaluation Committee should have some training, familiarity, or experience with the proposal being reviewed. As a matter of policy, the Authority should strive to afford in-service training, whenever possible, to its employees as to procurement procedures and standards so that their participation in the evaluation process is productive and helpful to the Authority and fair to all proposers. The Executive Director shall, by Memorandum, direct the Evaluation Committee to convene as soon as practical following the close of the period for submission of proposals. The Evaluation Committee shall deliberate and apply the evaluation criteria in this section to determine the most responsible and most responsive proposer by rank.

(i) Award. Award shall be made to the responsible proposer whose proposal is determined in writing to be most advantageous to the Authority taking into consideration price and the evaluation factors set forth in the request for proposals and as applied in the evaluation plan. No other factors nor criteria shall be used in the evaluation which are not in the evaluation plan. The contract file shall contain the basis on which the award was made; all evaluation sheets; and any closing report of the evaluation committee. Unsuccessful proposers shall be given notice within three (3) days of the date of contract award and the notice shall inform of the number of proposals received; the name and address of the proposer receiving an award; and in general terms the reason why the proposer's submission was not accepted. In no event shall a proposer's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other proposer. The contract file shall contain the selected proposal and the information and basis on which the award was made.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 Com. Reg. 32150 (Dec. 29, 2011). The amendments amended this section and entitled it "Request for Proposals" where it was previously entitled "Competitive Sealed Proposals." The amendments also created section (g) (Evaluation Committee).

Part 300 - Cancellation of Invitation for Bids or Requests for Proposals

§ 40-50-301 Cancellation

- (a) An Invitation for Bids or Request for Proposals may be cancelled and any and all bids or proposals may be rejected by the Executive Director, the Board, or the Appeals Committee for the following reasons:
- (1) Inadequate or ambiguous specifications contained in the solicitation;
 - (2) Specifications which have been revised;
 - (3) Goods or services being procured are no longer required;

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- (4) Inadequate consideration given to all factors of cost to the Authority in the solicitation;
- (5) Bids or proposals received indicate that the needs of the government can be certified by a less expensive good or service;
- (6) All offers with acceptable bids or proposals received are at unreasonable prices;
- (7) Bids were collusive; or
- (8) It is in the best interest of the Authority, in the exercise of its discretion, to cancel the Invitation for Bid or Request for Proposal.

(b) The Executive Director or the Board, on appeal, shall have the right to cancel an award without any liability to the bidder or proposer including, but not limited to, interest charges, compensatory damages, consequential damages, attorneys' fees, restocking charges, shipping charges, surety or bonding charges, taxes, or any other costs, except the return of any bid or proposal fee, deposit, guarantee, or other security, at any time before a contract has been fully executed by all parties.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 Com. Reg. 32150 (Dec. 29, 2011). The amendments created subsection (a)(8). The Commission inserted a comma after the word "guarantee" in subsection (b) pursuant to 1 CMC § 3806(g).

Part 400 - Qualifications and Duties

§ 40-50-401 Responsibility of Bidders and Proposers

- (a) Awards shall be made to responsible contractors. To be determined responsible, a prospective contractor must:
- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
 - (2) Be able to comply with the required delivery or performance schedule;
 - (3) Have a satisfactory performance record;
 - (4) Have a satisfactory record of integrity and business ethics including a current tax clearance;
 - (5) Have no adverse record relating to matters before or concerning the CNMI Department of Labor, Federal Immigration Laws, Davis Bacon Act, the CNMI Bureau of Environmental and Coastal Quality, the U.S. Environmental Protection Agency, U.S. Department of Labor, U.S. Department of Commerce, the Federal Aviation Administration, the Federal Maritime Commission, the United States Coast Guard, the United States Equal Employment Opportunity Commission, the U.S. Internal Revenue Service, or other federal and local regulatory agencies;
 - (6) Have the necessary organization, experience and skills, (or the ability to obtain them) required to successfully perform the contract;
 - (7) Have the necessary production, construction and technical equipment facilities, or the ability to obtain them;

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(8) When required by the Authority, have a valid CNMI Business License and may, whenever practical, an office on the island where the construction work or service is to be performed; and

(9) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

(10) The above factors are not to be deemed exclusive.

(b) Obtaining information. Prior to award, the Executive Director or Procurement Officer or designee shall obtain information from the bidder or proposer necessary to make a determination of responsibility using the factors in subsection (a) above. The unreasonable failure of a bidder or proposer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or proposer.

(c) Right of non-disclosure. Information furnished by a bidder or proposer pursuant to subsection (b) may not be disclosed outside of the office of the Authority without prior consent by the bidder or proposer.

(d) Non-responsibility determination. When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the Executive Director or Procurement Officer stating the basis for the determination and this shall be placed in the contract file.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 Com. Reg. 32150 (Dec. 29, 2011). The Commission deleted a comma (,) in (a)(5) to correct a manifest error.

§ 40-50-405 Pre-qualification of Contractors/ Request for Qualification Statements

Prospective suppliers of goods or services may be pre-qualified for particular types of construction, goods and services when determined necessary by the Executive Director or Procurement Officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening. However, the Executive Director has the discretion to cancel any requests for qualification statements or cancel any pre-qualification process whenever deemed in the best interest of the Authority.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-410 Heightened Residency Preference in Specific Contracts for Services

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(a) Authority.

This section is hereby promulgated by the Commonwealth Ports Authority in accordance with the Administrative Procedure Act and its enabling statute and shall have the force and effect of law.

(b) Statement of Purpose.

Whereas the Authority reaffirms its obligation to enter into contracts only with responsible contractors who have the ability to perform the contract, in these times of economic hardship and massive unemployment, the Authority is compelled to join with other agencies of the CNMI government to enforce and adopt measures insuring that CNMI labor laws requiring mandatory inclusion of local residents be enforced. Further, inasmuch as the Authority is responsible for ensuring homeland security at our ports it is imperative that all contractors employ resident workers for work on the Authority premises. As an autonomous agency, the Authority may impose a greater resident worker percentage in awarding contracts for services in its discretion which is based on providing our residents with an economic advantage in employment, particularly in unskilled or in semi-skilled areas of services such as landscaping or tree-trimming.

(c) Increased Percentage in Local Hiring of Resident Workers in Contracts or Services.

Unless such a provision would conflict with a Commonwealth or federal law or regulation applicable to a particular contract for public works or improvements, all Authority contracts for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping shall contain provisions to which the contractor warrants, represents and obligates itself, at all times during the period of the contract, to hire and employ qualified individuals who are residents of the Commonwealth in sufficient numbers so that no less than seventy five percent of the contractor's total work force, including management and any subcontractor work force, measured in labor work hours, is comprised of residents of the Commonwealth, as defined in the Nonresident Worker's Act and in this section [§ 40-50-410(i)].

(d) Required Documentation on Record for Each Contractor.

(1) In submitting bids or proposals for services to the Authority for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping every contractor shall state their acknowledgment of the heightened resident worker requirement and certify that the bidding contractor has the minimum percentage of resident workers or shall have the minimum percentage of workers employed and hired within thirty days of any award of a contract for services to which § 40-50-410 applies.

(2) Each contractor for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping services shall keep records and provide to the Authority upon request to do so, on standardized forms acceptable to the Authority, an accurate record showing the name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor and the contractor's subcontractors, on the specific projects covered by § 40-50-410, including full-time, part-time, permanent and temporary employees.

(3) All forms required under § 40-50-410 retained by the contractor shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury.

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The federal form known as the I-9 is an acceptable document for use or evidence of compliance with § 40-50-410. As to proof residency for a worker, acceptable forms of proof are birth certificates; passports; entry permits or other documentation from the CNMI Department of Labor or Division of Immigration showing local “immediate relative” status; or a “green card” from the United States Bureau of Citizenship Services.

(e) Sanctions for Non-Compliance.

(1) Notwithstanding any civil or criminal penalties available under the laws of the Commonwealth of the Northern Mariana Islands for perjury, the Authority may also debar the contractor or subcontractor as set forth in this chapter for perjury or material misrepresentations on any forms submitted to the Authority in connection with a contract bid or award.

(2) Should any contractor or subcontractor fail to abide by the heightened local workforce provisions of § 40-50-410, the contractor or subcontractor may be declared by the Authority to be an irresponsible bidder. Such declaration shall mean that the contractor or subcontractor is debarred from further contracts with the Authority. The debarment may be rescinded by the Authority upon terms and conditions acceptable to the Authority, but such rescission is not required and is solely at the discretion of the Authority.

(f) Binding on Subcontractors.

The local hiring provisions of § 40-50-410 shall bind the contractor both with respect to persons hired directly by the contractor and to all persons hired by the contractor’s subcontractors. The contractor shall be responsible for assuring that all subcontractors document said compliance by submitting, and making available to the Authority such documents for verification and/or to any local agency so designated by the Authority including the Division of Immigration.

(g) Inclusion in Contracts — Bid Documents — Subcontracts.

(1) Contracts and bid documents shall incorporate § 40-50-410 by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract entitling the Authority to all the remedies and damages available for material breach of a contract.

(2) All subcontracts shall expressly acknowledge the Authority’s status as a third party beneficiary to the subcontract and further expressly acknowledge that the Authority, as a third party beneficiary, shall have the right to enforce the provisions of § 40-50-410 with regard to that subcontract or seek remedies available under § 40-50-410, should a party to the subcontract fail to comply with any of the provisions of § 40-50-410 that apply to the subcontract.

(3) Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with § 40-50-410.

(h) Exception for Emergency.

The provisions of § 40-50-410 shall not apply where the Authority determines that the contract is necessary to respond to a declared emergency which endangers the public health, welfare or safety and there is no time to apply the provisions of § 40-50-410. “Emergency” is that which is defined in § 40-50-220.

(i) Definition of “Resident Worker”.

As used in § 40-50-410, the term “Resident Worker” is defined to mean a United States citizen or national; a lawful permanent resident of the United States or valid “green card” holder; a citizen of the Freely Associated States employed in the Commonwealth or attending school pursuant to the Compact of Free Association; an “immediate relative” of a United States citizen having been granted such lawful status with current and valid status by the CNMI Division of Immigration. A “resident worker” shall not include any person holding alien worker status from the CNMI Department of Labor and/or holding an “entry permit” whose presence in the CNMI is pursuant to his/her employment as a contract or nonresident worker under the Nonresident Workers Act. To the extent that this definition conflicts with any applicable federal or CNMI law or regulation, the conflicting provision shall be severed and the remaining provision or definition shall remain in effect.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 29 Com. Reg. 26691 (Aug. 17, 2007); Proposed 29 Com. Reg. 26436 (Mar. 15, 2007).

Commission Comment: Public Law 15-95 (effective Oct. 4, 2007), codified at 1 CMC § 7404, restricts contract awards for capital improvements, public works, and procurement of goods and services for the amount of \$500,000 or less to business owned by US citizens. PL 15-95 sets forth the specific requirements for local preference in government contract awards. Public Law 15-118 (effective Dec. 14, 2007) amends PL 15-95 to exempt federally funded projects or procurement of goods and services governed by federal regulations that conflict with CNMI local preference requirements. The provisions of PL 15-95 and PL 15-118 supersede this section to the extent that they conflict.

The original publication of this section contained “Commonwealth Ports Authority Airport Rules and Regulations” at the top of the page setting forth the proposed amendment codified in this section. 29 Com. Reg. 26436 (Mar. 15, 2007). The designation of “Airport Rules and Regulations” is an error. The original proposal contains the statement “Amendment to CPA Procurement Regulations,” the substance of the regulation addresses a residency preference for procurement of service contracts and the adoption notice only refers to amendments to CPA Procurement Rules and Regulations. See 29 Com. Reg. 26436 (Mar. 15, 2007) and 29 Com. Reg. 26691 (Aug. 17, 2007). Therefore, the amendment is properly codified in this section, not in NMIAC chapter 40-10.

The Commission inserted “a” before “greater” in subsection (b) to correct a manifest error. In subsection (f), the original mistakenly referenced “Section 3.4 of the Authority’s regulation.” The Commission inserted the proper NMIAC cite (§ 40-50-220) for section 3.5 regarding emergency procurement to correct a manifest error.

Part 500 - Contract Terms and Administration of Contracts

§ 40-50-501 Types of Contracts

(a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited. Further, use of cost-plus-fixed-fee contracts are prohibited. For reference, cost-plus-fixed-fee contracts are those agreements which provided for payment to the contractor of a negotiated fee that is fixed at the inception of the contract and where the fixed fee does not vary with actual cost but would be adjusted as a result of changes in the work to be performed under the contract.

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(b) Authority contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under subsection (c). A cost-reimbursement contract must contain a ceiling which the contractor shall not exceed without the prior written confirmation by the Authority Comptroller and the prior written approval by the Executive Director.

(c) A cost reimbursement contract may be used when the Executive Director determines in a writing which is attached to the contract that:

- (1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
- (2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by the Authority for contingencies that never occur; or
- (3) Use of a cost reimbursement contract is likely to be less costly to the Authority than any other type due to the nature of the work to be performed under the contract.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: In subsection (b), the Commission added a period after "Executive Director" to correct a manifest error.

§ 40-50-505 Price, Payment, and Other Terms

(a) Price. In executing contracts, the Authority shall set the maximum amount that can be charged under the contract and disallow open-ended contracts, i.e. contracts which do not specify the maximum contract price. Whatever contract type is selected, the Authority shall limit contracts to a fixed price or a ceiling price, and the contractor shall not exceed the price set unless a change order is approved.

(b) Payment Terms. Payments shall be made by the Authority only upon the submission of an original certified invoice of services rendered or of work performed with a description of the activity or worked performed and for which payment is requested for that submitted invoice. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. Unless authorized by the funding federal agency, the Authority shall not advance payments for any federally-funded contract. Other types of payments are as follows:

(1) Advance Payments. Advance payments are generally prohibited except when the Executive Director determines, with the concurrence of the Comptroller, that paying the contractor in advance will result in specific advantages to the Authority. However, advance payments shall be limited to not more than 25 percent of the contract price.

(2) Progress Payments. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. The Authority shall make no progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract.

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(c) The contract shall accurately reflect the actual requirement of the Authority, stating adequately what is to be done or to be delivered to the Authority. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified. Contracts with general requirements shall be disallowed. The Authority shall require specific quantities or amounts or deliverables whenever applicable.

History: Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Proposed 42 Com. Reg. 43544 (May 28, 2020).

§ 40-50-510 Contract Monitoring and Evaluation of Results

(a) Contract Monitoring.

(1) Contract monitoring shall be accomplished through “production surveillance and reporting.” Production surveillance is a function which the Executive Director uses to determine contractor progress and to identify any factors that may delay performance. It shall involve the Authority’s review and analysis of

(i) Contractor performance plans, schedules, controls, and industrial processes, and

(ii) The contractor’s actual performance under them.

(2) When information on contract performance status is needed, officials with expenditure authority shall require contractors to submit production progress reports. The Executive Director shall review and verify the accuracy of contractor reports and advise the Comptroller and the Board of Directors of any action he plans to take because of any potential or actual delay in performance, including withholding of payments.

(b) The Executive Director shall verify, whenever necessary and practicable, the results of monitoring to the Comptroller and the Board of Directors including the extent of surveillance such as the contractor’s history of contract performance, the contractor’s experience with the contract supplies or services, and the contractor’s financial capability.

(c) Evaluating Results.

(1) Whenever practicable, the Executive Director or the Procurement Officer, in concert with any project managers or consultants for the Authority may complete, within 30 days of the end of the contract, a post-evaluation of each contractor which shall be kept on file for 36 months. The report shall, at a minimum, include the following:

(i) Whether the contracted work or service was completed as specified in the contract, and the reasons for and amount of any cost overruns or delayed completions.

(ii) Whether the contracted work or services met the quality standards specified in the contract.

(iii) Whether the contractor fulfilled all the requirements of the contract, and if not, in what ways the contractor did not fulfill the contract.

(iv) Factors outside the control of the contractor that caused difficulties in contractor performance.

(v) How the contract results and findings will be utilized to meet the goals of the Authority.

(2) The post evaluation of each contractor may be submitted before final payment and close-out of the contract is done. The post evaluation report may be considered in the Authority’s decision to award a contract.

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History: Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Proposed 42 Com. Reg. 43544 (May 28, 2020).

§ 40-50-515 Change Orders

(a) Every contract amendment, modification, change order, or contract price adjustment under any contract/agreement to which the Authority is a party or signatory shall be subject to prior written approval by the Contracting Officer, as reviewed by the Executive Director or his designee on a form prepared by or approved by the Procurement Officer. Further, no contractor nor vendor shall commence with any such amendment, modification, change order, contract/agreement price adjustment without prior approval by the Contracting Officer. Further, any change order which increases the total contract price for any non-federally or non-FAA-funded projects shall require prior approval by the Board with the concurrence of the Executive Director. Federally-funded projects which increase the total contract price only require the approval of the granting or applicable federal agency.

(b) A change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, there shall be no change order resulting in an increase in contract cost or time when it is a direct or indirect result of the contractor's inexperience; pricing miscalculations; inefficiency; or incompetence. The Authority, through the Executive Director, may approve a change order should it be in the best interest of the Authority which may include additional consideration for the benefit of the Authority in return for such change order(s).

(c) Change orders on construction and Architect-Engineer and Construction Management contracts which exceed 25 percent of the contract price shall be automatically procured through competitive procedures except when determined by the Executive Director pursuant to subsection (b) above.

(d) No contractor shall continue to perform work nor provide goods or services beyond the terms of the existing contract in the absence of any extension; modification; approval of a new contract; or an approved change order except that the Executive Director has the discretion to extend any contract for up to six (6) months based on circumstances beyond the control of the contracting parties, so long as the price and other terms are not changed in any material way.

History: Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Proposed 42 Com. Reg. 43544 (May 28, 2020).

Part 600 - Inspection and Audit

§ 40-50-601 Right to Inspect Place of Business

The Authority may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Authority.

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History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-605 Right to Audit Records

As required by 1 CMC § 7845, the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data, or papers relevant to an Authority contract or grant for a period of three years after the final payment under the contract or grant. A clause to this effect shall appear in all Authority contracts and obligations.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission inserted a comma after the word “data” pursuant to 1 CMC § 3806(g).

Part 700 - Reports and Records

§ 40-50-701 Retention of Procurement Records

(a) All procurement records shall be retained by the Executive Director or Procurement Officer within a designated office or location in hard copy and/or digital format.

(b) The Executive Director or Procurement Officer shall maintain a record listing all contracts made under sole-source procurement or emergency procurement not to exceed five years following the completion of the contract or service. The Authority may, at its discretion, retain all procurement records in digital format and dispose of hard copies of such records after five years. The record shall contain:

- (1) Each contractor’s name;
- (2) The amount and type of each contract;
- (3) A listing of the supplies, services or construction procured under each contract; and
- (4) Evaluation or inspection reports.

(c) All procurement records, except those designated as not subject to disclosure, shall be available to public inspection.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

Part 800 - Procurement of Construction Services

§ 40-50-801 Construction Procurement

(a) Invitation for Bids.

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(1) Deposit. The Executive Director shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

(2) Contents. The invitation for bids shall be prepared in accordance with § 40-50-205(b). In addition, the following items shall be included in the invitation for bids:

(I) Notice to Bidders. General information regarding project;

(ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;

(iii) General Conditions. Standard contract clauses governing the performance of work;

(iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and

(v) Technical Specifications. Specifications governing the technical aspects of the work to be performed.

(b) Bid Security.

(1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts when the Executive Director or Procurement Officer estimates the price may exceed \$25,000.00 or determines it is in the interest of the Authority. Bid security shall be on a bid bond, by certified check, cashiers' check, or other form acceptable to the Authority.

(2) Amount. Bid security shall be an amount equal to at least ten percent of the amount of the bid or other amount as specified in the invitations for bids.

(3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds.

When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the Authority and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the Authority, at a minimum a B+-rated surety up to a Treasury-listed surety company and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) A payment (insurance) bond satisfactory to the Authority, with the following minimum ratings by the following rating entities: Rated A- by A.M. Best (Excellent); Aa3 by Moody's (Excellent); or AA- by Standard & Poors (Strong) and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The payment bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(3) The Executive Director shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation and, prior to the execution of the contract, the selected contractor shall submit the following:

(i) A current license from the bonding company showing that it has authority to issue bonds; and

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(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of the bond issued to the selected contractor in favor of the Authority;

(iii) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Executive Director, to substitute and submit an acceptable bond prior to executing a contract. The Executive Director and/or Procurement Officer shall confirm the acceptability of the bonding company from other CNMI Government or Federal Agencies such as the Insurance Division Director of the Department of Commerce or the Federal Aviation Administration. If the selected contractor fails to submit an acceptable payment or performance bond within the deadline or extension allowed by the Executive Director, then the contract shall be deemed canceled as non-responsive and the next responsible bidder selected.

(d) Suits on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(e) Suits on Payment Bonds; Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(f) Completion of Contracts/ Release of Retention Amount. Every contract for construction or delivery of goods or services may have a retention clause where up to ten (10%) of the total contract price shall be retained subject to a Certificate of Completion. A contract shall be deemed completed when the Executive Director and/or the Authority's Construction Manager or Consultant certifies in writing the completion of the project or contract. Prior to the Certification of Completion, the Authority or its Construction Manager or Project Consultant shall issue a Certification of Substantial Completion certifying that a substantial portion of the contract has been completed except for

satisfaction or performance of any corrective work or “punch list.” Upon issuance of a Certificate of Substantial Completion the Authority may release up to 5% of the retained funds. Upon issuance of a Certificate of Completion the Authority shall release the remaining 5% within thirty (30) days of submission. Acceptance of the retained funds by the Contractor shall be deemed to be an acceptance of and confirmation of satisfaction of all sums due from the Authority.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-802 Contract Terms and Administration of Contracts [Repealed.]

[Repealed.]

History: Repealed 42 Com. Reg. 44069 (Sept. 28, 2020); Repeal Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Part 900 - Protests and Disputes

§ 40-50-901 Protests to the Executive Director

(a) General

(1) Any actual or prospective bidder, proposer, or contractor who asserts a claim or asserts that it has been aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. The protest shall be received by the Executive Director in writing within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. The Executive Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. The written protest shall state fully the factual and legal grounds for the protest;

(2) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. The protesting party shall provide such notice and a copy of its protest to all other bidders involved in or affected by the protest and shall file a declaration or proof of service with the Executive Director. Proof of Notice is required by the protesting party to other bidders or proposers within three (3) calendar days of filing its protest. These persons shall also be advised that they may submit their views and relevant information to the Executive Director within. Normally, the time specified will be ten (10) calendar days;

(3) The Executive Director shall decide the protest within thirty (30) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires a longer time, in which event he shall specify the appropriate longer time. If the Executive Director fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the Authority’s Board of Director by filing such Notice of Appeal with the Chairman through the Board

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Secretary at the Authority Administration Section, Saipan International Airport. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information that the Executive Director or any party may submit which is relevant and necessary for the determination of the protest;

(4) When a protest, before or after award, has been appealed to the Appeal Committee, as provided in these procedures, and the Executive Director shall submit a report, and the Executive Director should include with his report a copy of:

- (i) The protest;
- (ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;
- (iii) The solicitation, including the specifications on portions relevant to the protest;
- (iv) The abstract of offers or relevant portions;
- (v) Any other documents that are relevant to the protest; and
- (vi) The Executive Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Executive Director's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Executive Director shall be considered the complete Administrative Record on appeal to the Appeal Committee unless the Appeal Committee supplements the record with additional testimony or evidence.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Executive Director's decision has been taken to the Appeal Committee, the Executive Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protests Before Award

(1) When a proper protest against the making of an award is received, the award shall be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (b)(2) below.

(2) When a written protest is received, award shall not be made until the matter is resolved, unless the Executive Director determines that:

- (i) The materials and services to be contracted for are urgently required;
 - (ii) Delivery or performance will be unduly delayed by failure to make award promptly;
- or
- (iii) A prompt award will be advantageous to the Authority.

(3) If award is made under subsection (b)(2) above, the Executive Director shall document the file to explain the need for an immediate award. The Executive Director also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(c) Protests After Award

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Executive Director, at least the contractor shall be furnished the notice of protest and its basis in accordance with subsection (a)(2) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Authority's interest, the Executive Director should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be "working days" of the Authority. "Working days" means Monday through Friday, excluding legal holidays. "Calendar days" means every day, including weekends and legal holidays. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

(2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-905 Appeals of Executive Director's Decision to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Executive Director may be taken provided that the party taking the appeal has first submitted a written protest to the Executive Director as provided in § 40-50-901, and the Executive Director has denied the protest or has failed to act on the protest within the time provided for in section § 40-50-901(a)(3) above.

(b) Form of Appeal. No particular form of pleading is required for filing an appeal to the Appeal Committee. The appeal shall, however:

- (1) Include the name and address of the appellant;
- (2) Identify the name and number of the solicitation or contract;
- (3) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
- (4) Specifically request a ruling by the Appeal Committee.

(c) Time for Filing Appeal. An appeal from the Executive Director's decision must be received by the Appeal Committee not later than ten calendar days after the appellant receives the decision of the Executive Director, or, in the event that the Executive Director has not decided the protest within ten days from the date that he should have decided the protest pursuant to section § 40-50-901(a)(3) above. Any appeal received after these time limits shall not be considered by the Appeal Committee unless good cause is shown or unless the Appeal Committee determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Authority should the appeal be considered.

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(d) Notice of Protest, Submission of Executive Director's Report and Time for Filing of Comments on Report.

(1) The Chairman of the Appeal Committee, immediately upon appointment by the Board Chairman, shall notify the Executive Director in writing within one day of the receipt of an appeal, requesting the Executive Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The Executive Director shall be requested to furnish in accordance with § 40-50-901(a)(2) copies of the protest and appeal documents to such parties with instructions to communicate further directly with the Appeal Committee.

(2) The Appeal Committee shall request the Executive Director to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within 30 calendar days) in accordance with § 40-50-901(a)(4) and to furnish a copy of the report to the appellant and other interested parties as defined in § 40-50-901(a)(2).

(3) Comments on the Executive Director's report shall be filed by the protesting party and any interested party with the Appeal Committee within ten calendar days after the Appeal Committee's receipt of the report, with a copy to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Appeal Committee within five days after receipt of the comments to which rebuttal is directed, with a copy to the appellant, and interested parties, as the case may be.

(4) The failure of an appellant or any interested party to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.

(e) Withholding of Award. When an appeal has been filed before award, the Executive Director will not make an award prior to resolution of the protest except as provided in this section. In the event the Executive Director determines that award is to be made during the pendency of an appeal, the Executive Director shall notify the Appeal Committee.

(f) Furnishing of Information on Protests. The Appeal Committee shall, upon request, make available to any interested party information bearing on the substance of the appeal which has been submitted by interested parties, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten calendar days.

(g) Time for Submission of Additional Information. Any additional information requested by the Appeal Committee from the appellant or interested parties shall be submitted no later than five calendar days after the receipt of such request. If it is necessary to obtain additional information from the Executive Director, the Appeal Committee will request that such information be furnished as expeditiously as possible.

(h) Conference.

(1) A conference on the merits of the appeal with the Appeal Committee may be held at the request of the appellant, any other interested party, or the Executive Director. A request for a conference should be made prior to the expiration of the time period allowed

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for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The Appeal Committee will determine whether a conference is necessary for resolution of the appeal and this determination is not subject to reconsideration.

(2) Conference normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on an appeal.

(3) Any written comments to be submitted and as deemed appropriate by the Appeal Committee as a result of the conference must be received by the Appeal Committee within five calendar days of the date on which the conference was held.

(4) Time for Decision; Notice of Decision. The Appeal Committee shall, if possible, issue a decision on the appeal within thirty (30) calendar days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the Executive Director.

(i) Request for Reconsideration.

(1) Reconsideration of a decision of the Appeal Committee may be requested by the appellant, any interested party who submitted comments during consideration of the protest, and the Executive Director. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(2) Request for reconsideration of a decision of the Appeal Committee shall be filed not later than ten calendar days after the decision. The term “filed” as used in this section means receipt by the Appeal Committee. There shall be no further hearing nor conference on any request for reconsideration and the Appeal Committee shall decide on the request for reconsideration within five (5) calendar days.

(3) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-910 Remedies

(a) Remedies Prior to Award. If prior to award the Executive Director or the Appeal Committee determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be:

- (1) Cancelled; or
- (2) Revised to comply with law or regulation.

(b) Remedies After an Award. If after an award the Executive Director or the Appeal Committee determines that a solicitation or award of a contract is in violation of law or regulation, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or

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- (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (i) The contract may be declared null and void; or
 - (ii) The contract may be ratified and affirmed if such action is in the best interests of the Authority, without prejudice to the Authority's rights to such damages as may be appropriate.

- (c) Finality of Findings of Fact by the Appeal Committee. A determination of an issue of fact by the Appeal Committee under this part shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous. Any aggrieved party shall thereafter file its petition to review the Authority's determination as an agency decision under the CNMI Administrative Procedure Act and applicable rules of administrative procedure with the CNMI Superior Court.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-915 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of Authority to contract with a business after bidding, or the cancellation of bids which may or may not be the subject of lawsuit but have not reached final judgment as of the effective date of this chapter shall be heard in accordance with this part upon the request of the actual or prospective bidder, proposer, or contractor who is aggrieved.

Modified, 1 CMC § 3806(d).

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-920 Disputes

- (a) Any dispute between the Authority and a contractor relating to the performance, interpretation of a compensation due under a contract, which is the subject of this chapter, must be filed in writing with the Executive Director within ten calendar days after knowledge of the facts surrounding the dispute.

- (b) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the dispute is necessary, the Executive Director shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a written description that shall include:
 - (1) Description of the dispute;
 - (2) Reference to pertinent contract terms;
 - (3) Statement of the factual areas of disagreement or agreement; and
 - (4) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(c) Appeals. The Appeal Committee shall review and render a decision on an appeal from an adverse decision timely taken by a contractor. The Appeal Committee may require a hearing or that information be submitted on the record, in his discretion. The Appeal Committee may affirm, reverse or modify the decision or remand it for further consideration.

(d) Duty to Continue Performance. A contractor that has a dispute pending before the Executive Director or an appeal before the Appeal Committee must continue to perform according to the terms of the contract and failure to so continue shall be deemed to be a material breach of the contract unless he obtains a waiver of this provision by the Board.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-925 Appeal Committee

The Appeal Committee is comprised of three (3) members of the Board of Directors appointed by the Chairman to hear any appeal under these provisions. There shall be an Appeal Committee Chairman selected from the three board members by their agreement or selection by vote. The Chairman of the Authority's Board of Directors shall not be a member of the Appeal Committee.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 1000 - Ethics in Contracting

§ 40-50-1001 Definitions of Terms

(a) "Confidential information" means any information which is available to an employee only because of the employee's status as an employee of the Authority and is not a matter of public knowledge or available to the public on request.

(b) "Conspicuously" means written in such special or distinctive form, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(c) "Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(d) "Financial interest" means:

(1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently or in the future entitled to receive compensation; or

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(2) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like or holding any position of management.

(e) “Gratuity” means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(f) “Immediate family” means spouse, children, parents, grandparents; siblings; common-law partners; and/or household members.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission inserted commas after the words “print” in subsection (b) and “employee” in subsection (d)(2) pursuant to 1 CMC § 3806(g).

§ 40-50-1005 Policy

Authority, Board members and in contracting, employees shall discharge their duties impartially so as to:

(a) Ensure fair competitive access to Authority procurement by reasonable contractors; and

(b) Conduct themselves in a manner as to foster public confidence in the integrity of the Authority.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission corrected “insure” in subsection (a) to “ensure” pursuant to 1 CMC § 3806(g).

§ 40-50-1010 General Standards

(a) Board Members and Employees. Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the Board members or employee’s duties is a breach of a public trust. In order to fulfill this ethical standard, Board members and employees must meet the requirements of this chapter.

(b) Contractors. Any effort to influence any Authority Board members or employee to breach the standards of ethical conduct set forth in this chapter is also a breach of ethical standards.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1015 No Financial Interests

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(a) No Board member shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such Board member owns less than five percent of the entire capital stock. To this end, the Authority shall require that corporate bidders submit the names of all of its stockholders and the percentage of their ownership.

(b)(1) No Board member, officer, or employee of the Authority, either personally or as agent for anyone else, shall benefit directly or indirectly by reason of any sale, purchase, contract or transaction entered into by the Authority.

(2) Any person who, directly or indirectly, becomes interested in any such sale, purchase, contract or transaction while serving as a Board member, officer, or employee of the Authority shall be guilty of a felony. Upon the filing of an information of such felony, the Board in its judgment may suspend the services of the charged person pending final determination. Immediately upon conviction of a violation thereof, such person shall forfeit his office or position. Upon conviction thereof, he shall be punished by a fine not to exceed \$2,000.00 or by confinement in jail for not more than one year, or both.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1020 Gratuities and Kickbacks

(a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any Board member or employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore. The members of the Board or employees of the Authority cannot accept from any person any gift of value given to them with the intent to influence their business judgment.

(b) **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontractor or order.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: [Historical comments removed.]

§ 40-50-1025 Prohibition Against Contingent Fees

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(a) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained or to retain a person to solicit or secure Authority contracts upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) **Representation of Contractor.** Every person, before being awarded an Authority contract, shall represent, in writing that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1030 Contract Clauses

The prohibitions against gratuities, kickbacks, and against contingent fees shall be conspicuously set forth in every contract and solicitation therefore.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission inserted a comma after the word “kickbacks” pursuant to 1 CMC § 3806(g).

§ 40-50-1035 Restrictions on Employment of Present and Former Board Members or Employees

(a) **Present Board Members or Employees.** It shall be a breach of ethical standards for any Board member or employee who is participating directly or indirectly in the procurement process to become or be while such a Board member or employee, the employee of any person contracting with the Authority.

(b) **Restrictions on Former Board Members or Employees in Matters Connected with Their Former Duties.** Permanent disqualification of former Board member or employee personally involved in a particular matter. It shall be a breach of ethical standards for any former Board member or employee knowingly to act as a principal or as an agent for anyone other than the Authority, in connection with any of the following: a judicial or other proceeding, an application, request for a ruling or other determination; contract; claim; or charge or controversy in which the Board member or employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while a Board member or employee, where the Authority is a party or has a direct or substantial interest.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1040 Use of Confidential Information

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It shall be a breach of ethical standards for any Board member or employee or former Board member or employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1045 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the Authority in the awarding of contracts is prohibited. The Board may declare the contract void if it finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the Authority.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1050 Authority to Debar or Suspend

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Executive Director after consultation with the Board and the Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Executive Director, after consultation with the Board and the Attorney, shall have authority to suspend a person from consideration for award of contracts if there is cause for suspension. The suspension shall not be for a period exceeding three months.

(b) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense in an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under Commonwealth or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC §§ 5101, et seq.), violation of any unfair business practices as prescribed by 4 CMC § 5202, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a government contractor;

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the Executive Director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be

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considered a basis for debarment;

(4) Any other cause that the Executive Director determines to be so serious and compelling as to effect responsibility as an Authority contractor, including debarment by another governmental entity; and

(5) For violation of any of the ethical standards set forth in part 1000.

(c) **Decision.** The Executive Director shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) **Notice of Decision.** A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).