

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

CHAPTER 50-50

PROCUREMENT REGULATIONS

Part 001	General Provisions	§ 50-50-215	Sole Source Procurement
Subpart A	General	§ 50-50-220	Emergency Procurement
§ 50-50-001	Purposes	§ 50-50-221	Special Procurements
§ 50-50-005	Authority	§ 50-50-225	Competitive Sealed Proposals
§ 50-50-010	Supplementary	§ 50-50-230	Competitive Selection
	Principles of Law Applicable		Procedures for Professional Services
§ 50-50-015	Requirement of Good Faith	Subpart B	Cancellation of Invitation for
§ 50-50-020	Application of Regulations		Bids or Request for Proposals
§ 50-50-025	Validity of Contract	§ 50-50-235	Cancellation
§ 50-50-030	Remedy Against Employee	Subpart C	Qualifications and Duties
§ 50-50-033	Repeal of Existing Rules and	§ 50-50-240	Responsibility of Bidders and
	Regulations		Offerors
Subpart B	Definitions	§ 50-50-245	Pre-qualification of
§ 50-50-035	Definitions		Contractors
Subpart C	Public Access	Subpart D	Types of Contracts
§ 50-50-040	Public Access to Procurement	§ 50-50-250	Types of Contracts
	Information	Subpart E	Inspection and Audit
		§ 50-50-255	Right to Inspect Place of
			Business
Part 100	Procurement Organization	§ 50-50-260	Right to Audit Records
§ 50-50-101	Responsibility for	Subpart F	Reports and Records
	Procurement and Supply Functions	§ 50-50-265	Report of Anti-competitive or
§ 50-50-105	Procurement and Supply		Deceptive Practices
	Administrators	§ 50-50-270	Retention of Procurement
§ 50-50-110	Duties of the Procurement and		Records
	Supply Administrators		
§ 50-50-115	Contract Oversight	Part 300	Procurement of
§ 50-50-120	Split Contracts		Construction and Architect-Engineer
§ 50-50-125	Acceptance of Gratuities and		Services
	Kickbacks by the Director and CUC	§ 50-50-301	Construction Procurement
	Employees	§ 50-50-305	Architect-Engineer Services
		§ 50-50-310	Indefinite Delivery, Indefinite
			Quantity Contracts
Part 200	Source Selection and	Part 400	Protests and Disputes
	Contract Formation	Subpart A	Bid Protests and Appeals
Subpart A	Source Selection	§ 50-50-401	Protests to the Director
§ 50-50-201	Methods of Source Selection	§ 50-50-405	Appeals of Director's
§ 50-50-205	Competitive Sealed Bidding		Decisions to the Board of Directors
§ 50-50-206	Qualified Product List	§ 50-50-410	Remedies
§ 50-50-207	Specifications and Brand	§ 50-50-415	Effective Date
	Names	Subpart B	Disputes
§ 50-50-208	Price Agreements		
§ 50-50-210	Small Procurements		
§ 50-50-212	Intermediate Procurements		

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

§ 50-50-420 Disputes

Part 500 Ethics in Public Contracting

Subpart A Definitions

§ 50-50-501 Definitions of Terms

Subpart B Standards of Conduct

§ 50-50-505 Policy

§ 50-50-510 General Standards

§ 50-50-515 Employee Disclosure Requirements

§ 50-50-520 [Repealed]

§ 50-50-525 [Repealed]

§ 50-50-530 Prohibition Against Contingent Fees

§ 50-50-535 Contract Clauses

§ 50-50-540 Restrictions on Employment of Present and Former Employees

§ 50-50-545 Use of Confidential Information

§ 50-50-550 Collusion by Bidders

§ 50-50-555 Penalties

§ 50-50-560 Authority to Debar or Suspend

Part 600 Miscellaneous Provisions

§ 50-50-601 Severability

Chapter Authority: 4 CMC §§ 8122 and 8123; 4 CMC § 8157.

Chapter History: Amdts Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Amdts Proposed 47 Com. Reg. 52705 (July 15, 2025); Amdts Adopted 43 Com. Reg. 47888 (Nov. 28, 2021); Amdts Proposed 12 Com. Reg. 47636 (Sept. 28, 2021); Adopted 29 Com. Reg. 26582 (June 18, 2007);* Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

* The regulations were not published for comment prior to adoption. See Commission comment to this chapter.

Commission Comment: For the history of the regulatory authority of the Commonwealth Utilities Corporation in the Commonwealth, see the general comment to chapter 50-10.

On January 27, 2006, Governor Fitial issued Executive Order No. 2006-1 (Reorganization Plan No. 1 of 2006). In Executive Order No. 2006-1, Governor Fitial allocated CUC to the Department of Public Works (DPW), as a division of DPW; abolished the Board of Directors of CUC; and transferred the Board's functions to DPW. 28 Com. Reg. 25520 (Feb. 28, 2006).

On January 27, 2006, Governor Benigno R. Fitial signed Emergency Declaration No. 2006-2 (28 Com. Reg. 25519 (Feb. 28, 2006)). In Emergency Declaration No. 2006-2, Governor Fitial assumed full control of the CUC; suspended "all regulatory statute provisions and regulations applicable to the CUC, including procurement regulations"; suspended the authority of the Board of Directors; and reprogrammed all necessary money to provide CUC with funds to address the imminent fuel shortage. 28 Com. Reg. 25519 (Feb. 28, 2006).

On March 29, 2006, Governor Fitial signed Executive Order No. 2006-03. Governor Fitial ordered that the utilities division of DPW (formerly CUC) be under a state of emergency in Executive Order No. 2006-03. 28 Com. Reg. 25527 (Mar. 30, 2006).

On May 5, 2006, Governor Fitial issued Executive Order No. 2006-4 which rescinded Reorganization Plan No. 1 of 2006 (Executive Order No. 2006-1). Executive Order No. 2006-4, the "Commonwealth Utilities Corporation Reorganization Executive Order," reestablished CUC as a public corporation and set forth its duties and powers. 28 Com. Reg. 25626 (May 19, 2006). Executive Order No. 2006-4 addressed corporate directors, officers and employees; general corporate operations and miscellaneous matters, including providing the executive director of CUC with the power to issue regulations necessary to carry out the purposes of the Commonwealth Utilities Corporation Reorganization Executive Order.

Executive Order No. 2006-4 § 4 provides:

§ 8152. Procurement and Audits.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(a) The corporation shall comply with the procurement regulations of the Commonwealth or such other procurement regulations as may be issued by the executive director and approved by the Secretary of Finance and Attorney General.

In June 2007, CUC published a notice of adoption in the Commonwealth Register with an exact copy of NMIAC, title 50 chapter 50. 29 Com. Reg 26582 (June 18, 2007). The notice indicates approval of the Attorney General as required by Executive Order No. 2006-4 § 4 (§ 8152). 29 Com. Reg 26582 (June 18, 2007). The notice provides:

The issuance of the procurement regulations is effective upon the approval of the Secretary of Finance and the Attorney General. See 4 CMC sec. 8152(a), as amended by Executive Order 2006-4.

...

The Executive Director of CUC has determined the continued application of such procurement regulations is in the best interests of CUC and the CNMI Government and that such regulations should be adopted as permanent under the authority provided by Executive Order 2006-4.

However, CUC does not appear to have complied with the Administrative Procedure Act (1 CMC §§ 9101 et seq.) when readopting the regulations set forth in this chapter. The adoption notice does not include any reference to the date of publication of proposed regulations or demonstrate compliance with the 30 day notice and comment period required by 1 CMC § 9104(a). Moreover, the notice did not address the requirements for emergency regulations set forth in 1 CMC § 9104(b). Consequently, the validity of the regulations set forth in this chapter is questionable because the adoption procedure following the suspension of the regulations imposed by Emergency Declaration No. 2006-2 did not meet the requirements of the Administrative Procedure Act (1 CMC §§ 9101 et seq.).

In 2008 and 2009, Governor Benigno R. Fitial issued several emergency declarations affecting CUC procurement in response to the Commonwealth PUC Act of 2006 specifically requiring the declaration of a disaster emergency pursuant to 3 CMC § 5121. See Executive Order No. 2008-10 (30 Com. Reg. 28775 (Sept. 2008)), Executive Order No. 2008-13 (30 Com. Reg. 28785 (Sept. 2008)), Executive Order No. 2008-17 (30 Com. Reg. 28901 (Oct. 2008)), Executive Order No. 2008-20 (30 Com. Reg. 28963 (Dec. 1, 2008)), Executive Order No. 2008-21 (31 Com. Reg. 29474 (Apr. 2009)), Executive Order No. 2008-22 (31 Com. Reg. 29467 (Apr. 2009)), Executive Order No. 2009-01 (31 Com. Reg. 29184 (Jan. 2009)), Executive Order No. 2009-02 (31 Com. Reg. 29458 (Apr. 2009)), Executive Order No. 2009-03 (31 Com. Reg. 29448 (Apr. 2009)), Executive Order No. 2009-04 (31 Com. Reg. 29593 (May 2009)), Executive Order No. 2009-05 (31 Com. Reg. 29842 (Aug. 2009)), Executive Order No. 2009-06 (31 Com. Reg. 29855 (Aug. 2009)), Executive Order No. 2009-07 (31 Com. Reg. 29869 (Aug. 2009)), and Executive Order No. 2009-08 (31 Com. Reg. 29908 (Sept. 2009)). On August 1, 2008, the Governor declared a state of disaster emergency for thirty days regarding CUC's power generation failure and suspended the procurement regulations in this chapter and enabled CUC, within PL 16-9, to sign a power contract relating to the Aggreko temporary wholesale generation power contract. See EO No. 2008-10 (30 Com. Reg. 28775 (Sept. 2008)). The ensuing emergency declarations, EOs 2008-13, -17, -20 through -22 and EOs 2009-01 through -08, extended the state of emergency for another 30 days with the same effect as EO 2008-10 on the regulations in this chapter, and incorporated all findings and conclusions of the preceding Executive Orders, some with modifications.

Public Law 17-34 (effective March 10, 2011), codified at 4 CMC § 8191, amended PL 16-17 § 3, codified at 4 CMC § 8191.

On December 3, 2011, PL 17-62 was enacted to authorize the Executive Director to execute a loan in the absence of an organized board of directors.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

Part 001 - General Provisions

Subpart A - General

§ 50-50-001 Purposes

- (a) Interpretation. The regulations in this chapter shall be construed and applied to promote their underlying purposes and policies.
- (b) Purposes and Policies. The underlying purposes and policies of this chapter are:
- (1) To provide for increased public confidence in the procedures followed in CUC procurement;
 - (2) To ensure the fair and equitable treatment of all persons who deal with the procurement system of CUC;
 - (3) To provide increased economy in CUC procurement activities and to fully maximize the purchasing value of CUC funds;
 - (4) To foster effective broad-based competition within the free enterprise system; and
 - (5) To provide safeguards for the maintenance of a procurement system of quality and integrity.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-005 Authority

This chapter is promulgated under the authority of 4 CMC §§ 8122 and 8123, which give CUC the duties and powers to be in control of and be responsible for procurement and supply for utility services in the Commonwealth; and 4 CMC § 8157, which empowers the Board of Directors to issue regulations.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-010 Supplementary General Principles of Law Applicable

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

Unless displaced by the provisions of this chapter, the principle of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth and common law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement this chapter.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-015 Requirement of Good Faith

The regulations in this chapter require all parties, including CUC employees and contractors, involved in the negotiation, bidding, performance, or administration of CUC contracts to act in good faith.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-020 Application of Regulations

Except as otherwise specified by law, this chapter applies to every expenditure of CUC funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. Nothing in this chapter shall be construed to prevent CUC from complying with the terms and conditions of any grant, cooperative agreement, or memoranda of understanding.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-025 Validity of Contract

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

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-030 Remedy Against Employee

Any procurement action of an employee of CUC in violation of this chapter is an action outside the scope of his or her employment. Should such wrongful acts be demonstrated to be willful on the part of a CUC employee, CUC 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 such wrongful act.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-033 Repeal of Existing Rules and Regulations

Any regulations concerning the provision of procurement services, in existence prior to the date of adoption of this chapter, are herewith repealed.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

Subpart B - Definitions

§ 50-50-035 Definitions

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

- (a) “Attorney General” means the Attorney General of the Northern Mariana Islands.
- (b) “Authorized agent” is any person or firm authorized in writing by CUC to act as CUC’s agent or on CUC’s behalf.
- (c) “Business day” is Mondays through Fridays, excluding legal holidays. All other references to “days” shall be calendar days.
- (d) “CNMI” is the Commonwealth of the Northern Mariana Islands.
- (e) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of CUC and is not a matter of public of public knowledge or available to the public on request.
- (f) “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.
- (g) “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.
- (h) “Construction plans” shall mean engineering drawings representing the design of a specific project.
- (i) “Contract” means all types of agreements regardless of what they may be called for the procurement of supplies, services or construction.
- (j) “Cost of service connection” means costs incurred in the provision of utility service.
- (k) “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.
- (l) “CUC” means the Commonwealth Utilities Corporation of the Commonwealth government.
- (m) “Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specific or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (n) “Director” means the Executive Director of the Commonwealth Utilities Corporation or his designee.
- (o) “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.
- (p) “Employee” means an individual receiving a salary from CUC and non-salaried individuals performing personal services of the government. This definition extends to the members of the Board. Consultants, independent contractors, and part-time workers shall be considered employees.
- (q) “Executive Director” shall mean the person holding the position of Executive Director of the Commonwealth Utilities Corporation, CNMI.
- (r) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind of nature, printing, insurance, leases of real and personal property, and sale or other disposal of personal property.
- (s) “Governmental department” shall mean any department, and/or agency of the CNMI government, including autonomous agency.
- (t) “Governor” means the Governor of the Northern Mariana Islands.
- (u) “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.
- (v) “Immediate family” means spouse, children, parents, brothers, sisters, mother-in-law, father-in-law, sister-in-law, and brother-in-law, or any member of the household.
- (w) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (x) “Mailed” means any notice or other communication shall be considered “mailed” when it is properly addressed and deposited in any United States Post Office mail drop, postage paid.
- (y) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.
- (z) “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.
- (aa) “Project” shall mean the structure, undertaking, or improvement to be constructed in whole or in part through the performance of the work covered by this chapter and all other special provisions.
- (bb) “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.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(cc) “Regulator” shall mean the Commonwealth Public Utilities Commission, or its successor in interest, or if no such commission exists, the Board of the government-owned utility.

(dd) “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.

(ee) “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.

(ff) “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.

(gg) “Work” shall be understood to mean all equipment, materials, operations, and incidental activities necessary for the completion of any part or all of the project covered by this chapter.

(hh) “Works” shall mean all power service equipment for both high and low voltage, construction and maintenance materials and operations, including but not limited to, poles, conductors, insulators, switches, anchors, guy wires, transformers, concrete pads, grounding equipment, conduits, hardware, rights of way, tree trimming, clearing, grading, excavation, backfill, metering, and all other such operations required to conduct electrical power from CUC power source to the customer’s service entrance conductors.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart C - Public Access

§ 50-50-040 Public Access to Procurement Information

Procurement information shall be a matter of public record and shall be available for public inspection. Persons interested in inspecting procurement information may request such information in writing under the Open Government Act. Procurement information may be kept confidential when necessary to ensure proper bidding procedures. This decision shall be made only by the Director.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 100 - Procurement Organization

§ 50-50-101 Responsibility for Procurement and Supply Functions

The Executive Director of the Commonwealth Utilities Corporation (CUC), hereafter referred to as Director is hereby designated as the responsible officer for the procurement and supply function

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

of CUC and to assist the Board of Directors in the execution of those duties and exercise powers authorized under 4 CMC §§ 8122 and 8123.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: On December 3, 2011, PL 17-62 was enacted to authorize the Executive Director to execute a loan in the absence of an organized board of directors.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

§ 50-50-105 Procurement and Supply Administrators

The Director may designate administrators to administer and coordinate the day-to-day activities of the procurement and supply functions. An administrator may be assisted in carrying out his/her functions and duties by other employees.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-110 Duties of the Procurement and Supply Administrators

The duties and responsibilities of the procurement and supply manager include, but are not limited to, the following:

- (a) Oversee that this chapter is observed in all CUC procurement;
- (b) Conduct bidding, procurement, negotiation, or administration of CUC contracts upon request of the official with expenditure authority; and
- (c) Provide advanced planning for the centralized purchase of CUC supplies or services in coordination with the division managers and deputy director.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

Modified, 1 CMC § 3806(a).

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-115 Contract Oversight

(a) Before the execution of a contract, it must be reviewed and approved by the Director or his/her designee. The Director or his/her designee shall review all contracts for construction, the procurement of goods, leases, the sale of goods, and for services by an independent contractor to ensure compliance with this chapter, that the contract is for CUC purpose, and does not constitute a waste or abuse of CUC funds.

(b) The contract shall next be reviewed by the Chief Financial Officer who shall certify the availability of funds.

(c) The CNMI Attorney General or the legal counsel for the Corporation shall certify the form and legal capacity of every CUC contract and subsequent change order(s).

(d) A contract shall be approved first by the Director, and the Chairman of the Board of Directors before it is signed by the contractor. The Director shall cause such review to occur in a prompt and timely manner.

(e) Upon his own initiative, the Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract.

(f) The Director or his designee shall approve of all contracts for services by an independent contractor in a non-employment status.

(g) A contract may be referred to the Director by the Chairman of the Board of Directors or the legal counsel of the Corporation for further review based on additional evidence that it may not comply with this chapter. If the Director withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.

(h) It is the responsibility of the Director or his/her designee to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary signatures have been obtained.

(i) The supervision and inspection of a project is the primary responsibility of the Director or his/her designee.

(ij) No contract is effective against CUC until all officials whose signatures appear on the contract form have signed the contract.

Modified, 1 CMC § 3806(a).

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

§ 50-50-120 Split Contracts

If the Director determines that a contract has been split into subcontracts for the purpose of avoiding bidding or if a change order or modification is unreasonably being made in a contract to increase the contract price where a contract has been bid and awarded to the lowest responsible bidder, then the Director shall require the contract or the modification to be competitively bid. An unreasonable modification or change order would be, for example, one which would have been reasonably foreseeable at the time of the formation of the contract.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-125 Acceptance of Gratuities and Kickbacks by the Director and CUC Employees

(a) In addition to the restriction found in § 50-50-525, the Director and the employees of CUC shall be subject to these additional restrictions to avoid the appearance of impropriety.

(b) The Director and the employees of CUC cannot accept from any person any gift of value given with the intent to influence their business judgment and shall comply with the Government Ethics Code Act of 1992.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 50-50-201 Methods of Source Selection

Unless otherwise authorized by law or by regulation, all CUC contracts shall be awarded by competitive sealed bidding under § 50-50-205 (Competitive Sealed Bids), except as provided in:

- (a) § 50-50-210 (Small Procurements);
- (b) § 50-50-212 (Intermediate Procurements);
- (c) § 50-50-215 (Sole Source Procurement);
- (d) § 50-50-220 (Emergency Procurement);
- (e) § 50-50-221 (Special Procurements);
- (f) § 50-50-225 (Competitive Sealed Proposals);
- (g) § 50-50-230 (Professional Services);

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (h) § 50-50-301 (Construction Procurement);
- (i) § 50-50-305 (Architect-Engineer Services) as amended September 29, 2021.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-205 Competitive Sealed Bidding

- (a) **Invitations for Bids.** An invitation for bids shall be issued and shall include at the minimum:
 - (1) An invitation for bids number;
 - (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; and
 - (10) Any bonding requirements.
- (b) **Public Notice.** Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set for the opening of bids. Publication of notice in a newspaper of general circulation in the Commonwealth once per week over a period of 30 calendar days, or publication of notice via electronic media (e.g., posting to CUC's website) for a period of 30 consecutive calendar days, shall be deemed to be adequate notice.
- (c) **Bidding Time.** A bidding time of at least thirty calendar days shall be provided, unless the Director determines a shorter period is reasonable and necessary.
- (d) **Bid Receipt.** All bids shall be submitted to the CUC Procurement and Supply Office. CUC will determine the method of bid submission which may include one or more of the following methods:
 - (1) By hard copy
 - (2) In electronic format
 - (3) By electronic mail (email).

Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office, or electronically secured if submitted by electronic format or by email. If a bid is opened by mistake, it shall be resealed or re-secured and the person who opened the bid shall put in writing to include his/her signature and his/her title and deliver it to the Director. No information contained in the bid shall be disclosed prior to the bid opening. The Director shall cause the opened bid to be placed into the sealed receptacle or be electronically secured.

- (e) **Bid Opening.** The bid opening shall be conducted by the Director or his/her designee. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

in the invitation for bids. The Director or his/her designee shall be present at the bid opening. The bids received prior to the bid closing date and time shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Director or his/her designee shall prepare a written summary of the bid opening.

(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.

(g) **Bid Rejection.** A bid may be rejected for any of the following reasons:

- (1) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;
- (2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to CUC. For example, bids shall be rejected in which the bidder:
 - (i) Protects against future changes in condition, such as increased costs;
 - (ii) Fails to state a price and indicates that prices shall be the price in effect at the time of delivery;
 - (iii) States a price but qualifies it as subject to price in effect at time of delivery; or
 - (iv) Limits the rights of CUC;
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder.

Additionally, any and all bids may be rejected when such action is determined in writing by the Director to be in the best interest of CUC. Should this result in the cancellation of the invitation for bids, the procedures outlined in § 50-50-235 shall be followed.

(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 Director in writing. After the bid opening, no changes in bid price or other provision of bids prejudicial to the interest of CUC or fair competition shall be allowed. Whenever a bid mistake is suspected, CUC shall request confirmation of the bid prior to award. In such instance, if the bidder alleges an error, CUC shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (h)(1) or (h)(2).

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

- (i) An obvious clerical mistake is clearly evident upon examining the bid document. Examples of such mistakes are error in addition or the obvious misplacement of a decimal point, or
- (ii) The otherwise lowest 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 existence of a mistake.

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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (i) Evidence as to the existence of a mistake is not discovered until after the award;
- (ii) There exists no clear and convincing evidence to support what the bid intended; or
- (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.

(2) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a CUC contract is written and has been approved by all the officials required by law and regulations. CUC contracts shall contain a clause which states that the signature of the private contractor shall be last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials.

(3) In the event all bids exceed CUC's cost estimate, and time or economic considerations preclude re-solicitation of work of a reduced scope, the official authorized by the Director may negotiate an adjustment of the bid price, including changes in bid requirements, without changing the scope of work, with the lowest responsive bidder to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-206 Qualified Product List

(a) CUC may develop and maintain a qualified products list in instances in which the testing or examination of goods before initiating a procurement is necessary or desirable to best satisfy the requirements of CUC. For purposes of this section, "goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs. The Director or his/her designee is responsible for coordinating with division managers to develop a qualified products list.

(b) In the initial development of any qualified products list, CUC shall give adequate public notice of the opportunity for potential contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential contractors, sellers or suppliers to submit goods for the testing and examination. Any potential contractor, seller or supplier, even though not solicited, may offer its goods for consideration.

(c) CUC's inclusion of goods on a qualified products list shall be based on the results of tests or examinations. CUC may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier that offered the goods for testing or examination, including by using only numerical designations. CUC may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(d) The inclusion of goods on a qualified products list does not constitute and may not be construed as a prequalification of a bidder or proposer, any prospective contractor, seller or supplier of goods on the qualified products list.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

§ 50-50-207 Specifications and Brand Names

CUC shall determine all specifications used in this Chapter.

(a) A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to CUC because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by CUC.

(b) CUC is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this section may be construed as prohibiting CUC from specifying one or more comparable products as examples of the quality, performance functionality or other characteristics of the product needed by CUC.

(d) A brand name specification may be prepared and used only if CUC determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of CUC based on one or more of the following written determinations:

(1) That use of a brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

(2) That use of a brand name specification would result in substantial cost savings to CUC;

(3) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(4) That efficient utilization of existing goods requires the acquisition of compatible goods or services.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

§ 50-50-208 Price Agreements

(a) A price agreement constitutes a firm offer by the contractor regardless of whether any order or purchase has been made or any performance has been tendered under the price agreement. Unless the price agreement otherwise provides, a price agreement is enforceable for the period stated in the price agreement, and obligations thereunder are not revocable by the contractor.

(b) Under a price agreement, no quantity unreasonably disproportionate to any stated estimate, or, in the absence of a stated estimate, to any normal or otherwise comparable prior requirements may be demanded unless otherwise expressly provided in the price agreement. However, CUC may amend or terminate a price agreement or an order under a price agreement under any of the following circumstances:

(1) Any failure of CUC to receive funding, appropriations, limitations, allotments or other expenditure authority, including the continuation of program operating authority sufficient, as determined in the discretion of CUC, to sustain purchases at the levels contemplated at the time of

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

contracting; or

(2) Any change in law or program terminating that makes purchase under the price agreement no longer authorized or appropriate for CUC's use.

(c) A price agreement does not constitute an exclusive dealing commitment on the part of CUC or the contractor unless the price agreement expressly so provides.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

§ 50-50-210 Small Procurements

CUC may make awards for procurements of goods and services not exceeding \$100,000 in any manner deemed practical or convenient, including by direct selection or award.

(a) Any procurement not exceeding the amounts established herein may be made in accordance with small procurement procedures. However, procurement requirements shall not be artificially divided to constitute a small procurement.

(b) No competitive quotations are required for procurements up to \$50,000. CUC may contract for small procurements, but the cumulative amendments may not increase the total contract price to greater than \$50,000.

(c) For procurements valued over \$50,000 and up to \$100,000, CUC must solicit price quotations from at least three prospective vendors and base the selection on competitive price and quality. However, for procurement of original equipment manufacturer (OEM) parts, CUC may solicit a quotation directly from the OEM.

(d) Purchase orders may be utilized for small procurements in subsections (b) and (c) only. In no other instance may purchase orders be utilized instead of contracts.

(e) CUC may amend small procurement contracts to resolve unforeseen cost overages. However, amendment shall not be used to circumvent the intermediate procurement process. Unless otherwise waived by the Director, Procurement shall provide a written explanation for all overages that cause a small procurement to exceed the applicable monetary limits of subsections (b) and (c).

(f) A procurement may not be artificially divided or fragmented to constitute a small procurement under this section.

Modified, 1 CMC § 3806(a).

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-212 Intermediate Procurements

CUC may make awards for procurements of goods and services exceeding \$100,000 but not exceeding \$250,000 in any manner deemed practical or convenient, and without requiring a bid review or source selection committee.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (a) A procurement may not be artificially divided or fragmented to constitute an intermediate procurement under this section.
- (b) When conducting an intermediate procurement, CUC shall seek at least three (3) informally solicited competitive price quotes or competitive proposals from prospective contractors. CUC shall keep a written record of the sources of the quotes or proposals received. If three (3) quotes or proposals are not reasonably available, fewer will suffice, but the person obtaining offers shall make a written record of the effort made by CUC to obtain the quotes or proposals. However, for procurement of original equipment manufacturer (OEM) parts, CUC may solicit a quotation directly from the OEM.
- (c) If a contract is awarded, CUC shall award the contract to the offeror whose quote or proposal will best serve the interests of CUC, taking into account price as well as considerations including without limitation experience, expertise, product functionality, suitability for a particular purpose, delivery, best value, and contractor responsibility under these Regulations.
- (d) CUC shall prefer written quotations, bids, or proposals for intermediate procurements. Verbal quotations may only be used when the procurement can be clearly defined and communicated, which may include without limitation to product numbers, a specific task, or other considerations that will provide CUC with the most advantageous, expeditious results.
- (e) CUC may negotiate with an offeror to clarify its quote, bid, proposal, or to effect modifications that will make the quote, bid, or proposal acceptable or make the quote, bid, or proposal more advantageous to CUC.
- (f) Intermediate procurements may be increased above the original amount of award by change order or amendment within the following limitations:
- (1) Up to an aggregate contract price increase of 15% over the original contract amount as determined by the affected CUC manager and the Director's designee, or solely by the Director, that a price increase is warranted for additional related goods/services.
 - (2) Up to an aggregate contract price increase of 25% over the original contract amount, when the Director determines that a price increase is warranted for additional related goods/services.
 - (3) In the event that the aggregate contract price increase will exceed the \$250,000 limit based on the increase of rule (f)(1) and (f)(2) above, the Director shall determine that a price increase exceeding \$250,000 is warranted for additional related goods/services but not to exceed the cumulative contract price of \$325,000.
 - (4) In the event that the aggregate contract price increase will exceed the \$325,000 limit, the Board of Directors shall determine that a price increase exceeding \$325,000 is warranted for additional related goods/services.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

§ 50-50-215 Sole Source Procurement

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (a) A contract may be awarded for a supply, service or construction item without competition when the Director determines in writing that there is a demonstrated benefit to CUC for sole source procurement for the required supply, service or construction item.
- (b) The written determination shall be prepared by the Director and must be based on findings that may include:
- (1) That the efficient utilization of existing goods or services requires the acquisition of compatible goods or services;
 - (2) That the goods or services are required for the exchange of software or data with other public or private agencies;
 - (3) That the goods or services are for use in a pilot or an experimental project;
 - (4) That CUC's ability to provide vital services to its customers may be jeopardized should another good or service fail to match exactly the features, characteristics, performance, compatibility, reliability, or functionality of the sought-after good or service; or
 - (5) Other findings that support the conclusion that the goods or services are available from only one source.
- (c) However, for procurement of original equipment manufacturer (OEM) parts, CUC may solicit a quotation directly from the OEM.
- (d) To the extent reasonably practical, CUC shall negotiate with the sole-source to obtain contract terms that are advantageous to CUC.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-220 Emergency Procurement

- (a) Notwithstanding any other provision of this chapter, CUC may make an emergency procurement when there exists a threat to public health, safety, or welfare, or where there exists a threat to CUC facilities, infrastructure and staff under emergency conditions. An emergency procurement must be as competitive as practical under the circumstances.
- (b) The Director shall have the authority to give directions to staff to respond to an emergency outside the normal procurement process. As soon as reasonably possible, procurement procedures must be followed.
- (c) Should the emergency procurement exceed \$350,000, the Director must notify the Chairman of the Board of Directors of the emergency and submit a written report to the Board of Directors by the next board meeting but no later than 30 days to include the details of the basis for the emergency, the procurement details, and the impact to CUC and the community should the procurement be processed under the other provisions of this Chapter. CUC may enter into or amend an emergency contract upon approval by the Board of Directors if the emergency justification for entering into the contract still exists, and the contract or amendment is necessary to address the continuing emergency.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

§ 50-50-221 Special Procurements

The Director may submit a written request to the Board for a special procurement. The written request must describe the proposed contracting procedure, the goods or services or the class of goods or services to be acquired, and the circumstances that justify the use of a special procurement or an alternative procedure prescribed by the Board. The written request must also include a determination by the Director of findings that include:

- (a) The special procurement is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and,
- (b) Either:
 - (1) The special procurement is reasonably expected to result in substantial cost savings for CUC or for the public, or
 - (2) The special procurement otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under competitive sealed bids, competitive sealed proposals, small procurements, intermediate procurements, or under any rules adopted hereunder.
- (c) If CUC intends to award a contract through a special procurement that calls for competition among prospective contractors, CUC shall award the contract to the offeror CUC determines to be the most advantageous to CUC.
- (d) When the Board approves of a special procurement for a class of goods or services under this section, CUC may award contracts to acquire goods or services within the class of goods or services in accordance with the terms of the Board's approval without the need to make a subsequent request to the Board for a special procurement.
- (e) CUC shall give adequate public notice of the approval process, and the notice shall describe the goods or services or class of goods or services to be acquired through the special procurement.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025).

§ 50-50-225 Competitive Sealed Proposals

- (a) Conditions for use. When the Director determines in writing that the use of a competitive sealed bidding is either not practical or not advantageous to the government, a contract may be entered into by competitive sealed proposals.
- (b) Request for proposals. Proposals shall be solicited through a request for proposals.
- (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 proposals. Proposals shall be opened to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(e) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors.

(f) Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to ensure full understanding of, and responsiveness to, solicitation requirements. Offerors 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 offerors.

(g) Award. Award may be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to CUC taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

(h) Proposal Rejection. Any and all proposals may be rejected when such action is determined in writing by the Director to be in the best interest of CUC. Should this result in the cancellation of the request for proposals, the procedures outlined in § 50-50-235 shall be followed.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-230 Competitive Selection Procedures for Professional Services

(a) Procurement method. The services of accountants, physicians or lawyers shall be procured as provided in this section except when authorized as a small procurement, intermediate procurement, emergency procurement, special procurement, or sole-source procurement.

(b) Policy. It is the policy to publicly announce all the requirements for professional services and negotiate contracts based on the demonstrated competence and qualifications at a fair and reasonable price. The Director shall maintain files of current statements of qualifications of professional firms. Persons engaged in providing professional services may submit statements of qualifications and expressions of interest providing such types of services. These statements may be amended at any time by filing a new statement.

(c) Public announcement and form of request for proposals. Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror and state the relative importance of particular qualifications.

(d) Discussions. The Director or his/her designee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(e) Award. The award shall be made to the offeror determined in writing by the Director to be the best qualified based on the evaluation factors set forth in the request for proposals and negotiations of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror then negotiations shall be formally terminated with the selected offeror. If proposals were submitted by one or more offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart B - Cancellation of Invitation for Bids or Request for Proposals

§ 50-50-235 Cancellation

An invitation for bids or request for proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined in writing by the Director and approved by the Chairman of the Board of Directors to be in the best interest of CUC, including but not limited to any of the following reasons:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to CUC in the solicitation;
- (e) Bids or proposals received indicate that the needs of CUC can be certified by a less expensive good or service;
- (f) All of the bids or proposals exceed the budget authorized for the procurement;
- (g) All offers with acceptable bids or proposals received are at unreasonable prices; or
- (h) Bids or proposals were collusive.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart C - Qualifications and Duties

§ 50-50-240 Responsibility of Bidders and Offerors

(a) The award shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (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;
- (5) Have the necessary organization, experience, and skill, (or the ability to obtain them), required to successfully perform the contract;
- (6) Have the necessary production, construction, and technical equipment facilities, or the ability to obtain them; and
- (7) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

(b) **Obtaining information.** Prior to award, the Director shall obtain information from the bidder or offeror necessary to make determination of responsibility using the factors in subsection (a) above. The unreasonable failure of a bidder or offeror 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 offeror.

(c) **Right of non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Director, the Attorney General or any involved government agency without prior consent by the bidder or offeror.

(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 Director stating the basis for the determination, and this shall be placed in the contract file.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-245 Pre-qualification of Contractors

Prospective suppliers of goods or services may be prequalified for particular types of construction, goods and services when determined necessary by the Director. 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.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart D - Types of Contracts

§ 50-50-250 Types of Contracts

(a) Use of a cost-plus-a-percentage-cost and percentage of construction cost methods of contracting is prohibited.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(b) CUC contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under subsection (c).

(c) A cost reimbursement contract may be used when the Director determines in 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 CUC for contingencies that never occur; or
- (3) Use of a cost reimbursement contract is likely to be less costly to CUC than any other type due to the nature of the work to be performed under the contract.

(d) The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of the contract award.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart E - Inspection and Audit

§ 50-50-255 Right to Inspect Place of Business

CUC, 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 CUC.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-260 Right to Audit Records

As required by § 404 of Public Law No. 3-91 [1 CMC § 7845], the contractor and subcontractor or grantee or 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 a CUC contract or grant for a period of three (3) years after the final payment under the contract or grant. A clause to this effect shall appear in all CUC contracts and obligations.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart F - Reports and Records

§ 50-50-265 Report of Anti-competitive or Deceptive Practices

(a) When any person suspects the following practices are occurring among bidders, offerors, contractors or subcontractors, a notice of the relevant facts shall be transmitted to the Attorney General without delay:

- (1) Unfair methods of competition;

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (2) Deceptive acts; or
- (3) Unfair business practices.

(b) These acts are more fully defined at 4 CMC §§ 5101 through 5206.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-270 Retention of Procurement Records

(a) All procurement records shall be retained by the Procurement Administrators for a minimum of seven (7) years from the last payment made or the date the goods or services were received.

(b) The Procurement Administrators shall maintain a record listing of all contracts made under sole-source procurement or emergency procurement for a minimum of seven (7) years. The records shall contain:

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

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

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 300 - Procurement of Construction and Architect-Engineer Services

§ 50-50-301 Construction Procurement

(a) Invitation for Bids.

(1) Deposit. The 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 § 50-50-205(a). 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 form and certifications that must be submitted with the bid;
- (iii) The 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. Specification governing the technical aspects of the work to be performed.

(b) Bid Security.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the Director to exceed \$25,000.00 or when the Director determines it is in the interest of CUC. Bid security shall be on a bid bond, in cash, by certified check, cashiers' check, or other form acceptable to CUC. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to CUC.

(2) Amount. Bid security shall be an amount to at least fifteen percent of the amount of the bid or other amount as specified in the invitations for bids depending upon the source of funding.

(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.

(1) When a construction contract is awarded in excess of \$25,000, the following bonds or security shall be delivered to CUC and shall become binding on the parties upon the execution of the contract:

(i) A performance bond satisfactory to CUC, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to CUC, in an amount equal to one hundred percent of the price specified in the contract; and

(ii) A payment bond satisfactory to CUC, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to CUC, 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 bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(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 therefore 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 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 persons, 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 an address where it maintains an office or conducts its business.*

*So in original.

(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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

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) **Fiscal Responsibility.** Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Chairman, Board of Directors, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the price contract modification, change order or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-305 Architect-Engineer Services

(a) **Procurement Method.** Architect-engineer services shall be procured as provided in this subpart except when authorized as a small, intermediate, or emergency procurement. The Procurement Administrators should consider the following services to be “architect-engineer services” subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable Commonwealth law, which the Commonwealth law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is an architectural and engineering service and shall be procured pursuant to this subpart from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is an architectural and engineering service and is to be procured pursuant to this subpart. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions set forth in § 50-50-201.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(b) Policy. It is the policy to publicly announce all requirements for architect-engineer services and negotiate contracts based on demonstrated competence and qualifications at a fair and reasonable price.

(c) Selection. The Director and the Deputy Directors of Power, Water, and Wastewater Divisions shall jointly maintain files of current statements of qualifications of architect-engineer firms. After the public announcement of requirements for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms, regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required. Each potential contractor shall be evaluated in terms of the following:

- (1) Professional qualifications necessary for satisfactory performance of required services;
- (2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;
- (3) Capacity to accomplish the work in the required time;
- (4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;
- (5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and
- (6) Any other evaluation criteria that the expenditure authority deems appropriate.

(d) Negotiation. The official with expenditure authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to CUC. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated, and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, then the officer with expenditure authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

(e) Liability for CUC costs resulting from design errors or deficiencies. Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for CUC's costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and issue a demand for payment of the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the CUC's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 43 Com. Reg. 47888 (Nov. 28, 2021); Proposed 43 Com. Reg. 47636 (Sept. 28, 2021); Proposed 43 Com. Reg. 47636 (Aug. 15, 1991); Proposed 12 Com. Reg. 47636 (Sept. 28, 2021); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-310 Indefinite Delivery, Indefinite Quantity Contracts

(a) Scope.

(1) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts. Such contracts are generally referred to as “IDIQ” contracts.

(2) This subpart does not limit the use of other than competitive procedures authorized by this title.

(3) Nothing in this subpart restricts the authority of the CUC to enter into schedule, multiple awards, or task or delivery order contracts under any other provision of law.

(4) The regulatory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in § 50-50-305. However, CUC shall not be precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with § 50-50-305.

(b) Definitions. As used in this Title.

(1) *Delivery-order contract* means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

(2) *Task-order contract* means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(c) General.

(1) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

(2) The various types of indefinite-delivery contracts referenced in Section 50-50-310(c) offer the following advantages as all three types permit:

(i) Inventory stocks to be maintained at minimum levels; and

(ii) Direct shipment to CUC.

(3) Indefinite-quantity contracts and requirements contracts also permit:

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of supplies or services after requirements materialize.

(4) Indefinite-quantity contracts limit the CUC's obligation to the minimum quantity specified in the contract.

(5) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under § 50-50-250. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.*, estimated number of labor hours) must comply with the appropriate procedures

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

of this subpart. such as but not limited to fixed pricing or cost reimbursement contract, subject to the conditions in Section 250(c).

(d) Definite-quantity contracts.

(1) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(2) *Application.* A definite-quantity contract may be used when it can be determined in advance, and in writing, that:

- (i) A definite quantity of supplies or services will be required during the contract period; and
- (ii) The supplies or services are regularly available or will be available after a short lead time.

(e) Requirements contracts.

(1) *Description.* A requirements contract provides for filling all actual purchase requirements of designated CUC activities for supplies or services during a specified contract period (from one contractor), with deliveries or performance to be scheduled by placing orders with the contractor.

(i) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(ii) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the CUC's obligation to order. The contract may also specify maximum or minimum quantities that the CUC may order under each individual order and the maximum that it may order during a specified period of time.

(2) *Application.*

(i) A requirements contract may be appropriate for acquiring any supplies or services when the CUC anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated CUC activities will need during a definite period.

(ii) No requirements contract in an amount estimated to exceed \$3 million (including all options) may be awarded to a single source unless aligned with (b)(iii) below.

(iii) Any contract in excess of \$3 million shall be awarded as either an emergency procurement, competitive sealed proposal, or invitation to bid, unless the Director makes a written determination that (1) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work; (2) the contract provides only for a firm-fixed price task or delivery orders for products for which unit prices are established in the contract; or services for which price are established in the contract for the specific tasks to be performed.

(3) *CUC property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of CUC property, a failure by CUC to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" shall not entitle the contractor to any equitable adjustment in price.

(4) Limitations on use of requirements contracts.

(i) Except as provided in paragraph (4)(ii) of this subpart, no solicitation for a requirements contract for advisory and assistance services, architectural & engineering services, or construction services in excess of three (3) years and \$15 million (including all options) may be issued unless

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

the contracting officer or other official designated by the head of the agency determines in writing, after evaluation of the offers, that the services required are either:

- (A) not practicable to make multiple awards using the procedures set forth because only one contractor can reasonably perform the work because the work is so unique or highly specialized the tasks are so integrally related;
 - (B) only one offeror is capable of providing the services required at the level of quality received; or
 - (C) only one offer is received.
- (ii) The limitation in paragraph (d)(i) of this subpart is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, architect or engineer services, and construction services if the contracting officer or other official designated by the head of the agency determines that such services are necessarily incident to, and not a significant component of, the contract.

(f) Indefinite-quantity contracts.

(1) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The CUC places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(i) The contract must require the CUC to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(ii) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the CUC is fairly certain to order.

(iii) The contract may also specify maximum or minimum quantities that the CUC may order under each task or delivery order and the maximum that it may order during a specific period of time.

(iv) A solicitation and contract for an indefinite quantity must:

(A) Specify the period of the contract, including the number of options and the period for which the CUC may extend the contract under each option;

(B) Specify the total minimum and maximum quantity of supplies or services the CUC will acquire under the contract;

(C) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the CUC will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(D) State the procedures that the CUC will use in issuing orders, such as but not limited to task orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the CUC will use to provide awardees a fair opportunity to be considered for each order. CUC should consider the following as to provide all potential bidders with fair opportunity:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control;

(2) potential impact on other orders place with the contractor;

(3) minimum order requirements;

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (4) the amount of time needed to make informed business decisions on whether to respond to potential orders; and
- (5) other considerations as deemed appropriate (e.g., proposed conceptual approach, past performance, etc.).
- (v) The following are exceptions to the “fair opportunity” requirement referenced immediately above:
 - (A) the CUC's need for supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
 - (B) only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
 - (C) the order must be issued on a sole-source basis in the interest of economy and efficiency, since it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order;
 - (D) it is necessary to place an order to satisfy a minimum guarantee; or
 - (E) governing law expressly authorizes or requires that the purchase be made from a specified source.
- (vi) Include a description of the activities authorized to issue orders; and
- (vii) Include authorization for placing oral orders, if appropriate, provided that the CUC has established procedures for obligating funds and that oral orders are confirmed in writing.
- (2) *Application.* Contracting officers may use an indefinite-quantity contract when the CUC cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the CUC will require during the contract period, and it is inadvisable for the CUC to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.
 - (i) Multiple award preference:
 - (A) Planning the acquisition.
 - (B) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this subpart, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.
 - (C) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:
 - (1) The scope and complexity of the contract requirement.
 - (2) The expected duration and frequency of task or delivery orders.
 - (3) The mix of resources a contractor must have to perform expected task or delivery order requirements.
 - (4) The ability to maintain competition among the awardees throughout the contracts' period of performance.
 - (ii) The contracting officer must not use the multiple award approach if:
 - (A) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (B) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
- (C) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- (D) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;
- (E) The total estimated value of the contract is at or below the simplified acquisition threshold;
or
- (F) Multiple awards would not be in the best interests of the CUC.
- (iii) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards, such as, but not limited to, IT services or new software implementation.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 43 Com. Reg. 47888 (Nov. 28, 2021); Proposed 43 Com. Reg. 47636 (Sept. 28, 2021).

Part 400 - Protests and Disputes

Subpart A - Bid Protests and Appeals

Commission Comment: Public Law 16-17, effective October 1, 2008, established a procurement process for private sector assistance agreements (PSAA), including a mechanism for addressing protests. 4 CMC § 8192. The provisions of PL 16-17 supersede this subpart to the extent that they conflict.

§ 50-50-401 Protests to the Director

- (a) General.
 - (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director. The protest shall be received by the Director in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto. The Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. If a protest is oral and the matter cannot be resolved, written confirmation of the protest shall be requested by the Director. The written protest shall state fully the factual and legal grounds for the protests;
 - (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. These persons shall also be advised that they may submit their views and relevant information to the Director within a specified period of time. Normally, the time specified will be one week;
 - (3) The 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;
 - (4) When a protest, before or after award, has been appealed to the Board of Directors, as provided in these procedures, and the Director is requested to submit a report, the Director should include with his report a copy of:
 - (i) The protest;

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(ii) The bid/proposal submitted by the protesting bidder/proposer and a copy of the bid/proposal of the bidder/proposer who is being considered for award, or whose bid/proposal 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 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 applicable, the Director's report should include the determination prescribed in subsection (b)(4) below.

(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 Director's decision has been taken to the Board of Directors, the Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above. To further expedite processing, the official who furnishes the Director's report should, upon request of the protester or the Board of Directors, simultaneously furnish a complete copy (except for information privileged by law or which the Director deems must be confidential to benefit from competitive bidding) to the protester. In such instances, the protester shall be requested to furnish a copy of any comments on the Director's report directly to the Board of Directors as well as the Director.

(b) Protests Before Award.

(1) The Director shall require that written confirmation of an oral protest be submitted by the time specified in subsection (a)(1) and may inform the protester that the award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded. An award may be made in the normal manner unless the Director finds it necessary in his discretion to take remedial action.

(2) When a proper protest against the making of an award is received the award should 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)(3) below.

(3) When a written protest is received, award should not be made until the matter is resolved, unless the 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 otherwise be advantageous to CUC.

(4) If award is under subsection (b)(3) above, the Director shall document the file to explain the need for an immediate award. The 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 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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

prejudicial to CUC's interest, the 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 Commonwealth government. 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: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-405 Appeals of Director's Decisions to the Board of Directors

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Board of Directors from a decision by the Director may be taken provided that the party taking the appeal has first submitted a written protest to the Director as provided in § 50-50-401 of these procedures, and the Director has denied the protest or has failed to act on the protest within the time provided for in § 50-50-401(a)(3) above.

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

(1) Include the name and address of the appellant;

(2) Identify the 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 on the issues on appeal.

(c) Time for Filing Appeal. An appeal from the Director's decision must be received by the Board of Directors not later than ten (10) days after the appellant receives the decision of the Director, or, in the event that the Director has not decided the protest within ten (10) days from the date that he should have pursuant to § 50-50-401(a)(3) above. Any appeal received after these time limits shall not be considered by the Board of Directors unless good cause is shown.

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

(1) The Board of Directors shall promptly notify the Director in writing of the receipt of an appeal. The Director shall be requested to promptly furnish in accordance with § 50-50-401(a)(2) of these procedures copies of the protest and appeal documents 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, with instruction to communicate further directly with the Board of Directors.

(2) Material submitted by an appellant will not be withheld from any Commonwealth or federal agency which may be involved in the appeal except to the extent that the withholding of information is permitted or required by law or regulation. If the appellant considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

the front page of the appeal document and the allegedly proprietary information must be so identified wherever it appears.

(3) The Board of Directors shall request the Director to submit a complete report on the appeal to the Board of Directors as expeditiously as possible (generally within 25 working days) in accordance with § 50-50-401(a)(4) of these procedures and to furnish a copy of the report to the appellant and to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied.

(4) Comments on Director's report shall be filed with the Board of Directors within ten (10) days after the Board of Directors' receipt of the report, with a copy to the Director and to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Board of Directors within five (5) days after receipt of the comments to which rebuttal is directed, with a copy to the Director, the appellant, and interested parties, as the case may be. Unsolicited CUC rebuttals shall be considered if filed within five (5) days after receipt by CUC of the comments to which rebuttals are directed.

(5) 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 Director will not make an award prior to resolution of the appeal except as provided in § 50-50-401(b). In the event the Director determines that award is to be made during the pendency of an appeal, the Director will notify the Board of Directors.

(f) **Furnishing of Information on Protests.** The Board of Directors shall, upon request, make available to any interested party information on the substance of the appeal which has been submitted by interested parties or agencies, 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 (10) days.

(g) **Time for Submission of Additional Information.** Any additional information requested by the Board of Directors from the appellant or interested parties shall be submitted no later than five (5) days after the receipt of such request. If it is necessary to obtain additional information from the Director, the Board of Directors shall request that such information be furnished as expeditiously as possible.

(h) **Conference.**

(1) A conference on the merits of the appeal with the Board of Directors may be held at the request of the appellant, the Director, or any interested party who appears to have a substantial and reasonable prospect of receiving an award if the appeal is denied. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the Director's report. Except in unusual circumstances, request for a conference received after such time will not be honored. The Board of Directors will determine whether a conference is necessary for resolution of the appeal.

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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (3) There shall preside at the taking of evidence:
- (i) The Board of Directors; or
 - (ii) A hearing officer appointed by the Board of Directors.
- (4) When the Board of Directors does not preside at the reception of the evidence, the hearing officer presiding shall initially decide the case by making an initial order or decision. The initial order or decision then becomes the order or decision of the Board of Directors without future proceedings unless there is an appeal to, or review on motion of, the Board of Directors within five (5) days of issuance of the initial order or decision. On timely appeal from or review of the initial order or decision, the Board of Directors has all the powers which it would have in making the initial order or decision, except as it may limit the issues on notice or by rule. When the Board of Directors makes the order or decision without having presided at the reception of the evidence, the hearing officer presiding shall first recommend an order or decision to the Board of Directors.
- (5) Before a recommended initial order or decision, or an order or decision on the Board of Directors' review of an order or decision, the parties are entitled to a reasonable opportunity to submit for the consideration of the person(s) participating in the decision, as applicable:
- (i) Proposed findings and conclusions;
 - (ii) Exceptions to the order or decision or recommended order or decision;
 - (iii) Supporting reasons for the exceptions or proposed findings and conclusions.
- (6) The record shall show the ruling or decision on each finding, conclusion, or exception presented. All orders or decisions, including initial or recommended orders or decisions, are part of the record and shall include a statement of:
- (i) Findings and conclusions, and the reasons or basis for them, on all the material issues of fact, law, or discretion presented on the record; and
 - (ii) The appropriate decision, order, relief, or denial thereof.
- (i) Time for Decision; Notice of Decision. The Board of Directors or appointed hearing officer (as the case may be) shall, if possible, issue a decision on the appeal within 25 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 Director.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-410 Remedies

- (a) Remedies Prior to Award. If prior to award the Director or the Board of Directors 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 Director or the Board of Directors 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 CUC; or

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

- (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;
- (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 CUC, without prejudice to CUC's rights to such damages as may be appropriate.
- (c) Finality of Findings of Fact by the Board of Directors. A determination of an issue of fact by the Board of Directors under these procedures shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-415 Effective Date

All protests as to the manner of bidding, the failure to properly award bid, the failure of CUC 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 subpart upon the request of the actual or prospective bidder, offeror, or contractor who is aggrieved.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart B - Disputes

§ 50-50-420 Disputes

- (a) Any dispute between CUC and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of the regulations in this chapter, must be filed in writing with the Director within ten (10) 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 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. An appeal from the Director's decision must be received by the Board of Directors not later than ten (10) days after the contractor receives the decision of the Director. The Board, or a hearing officer appointed by the Board, shall review and render a decision on the appeal. The Board, or a hearing officer appointed by the Board, may require a hearing or that information be submitted on

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

the record, in the Board's or hearing officer's sole discretion. The Board, or a hearing officer appointed by the Board, may affirm, reverse, or modify the Director's decision or remand it for further consideration.

(d) **Duty to Continue Performance.** A contractor that has a dispute pending before the Director or an appeal pending before the Board or a hearing officer appointed by the Board must continue to perform according to the terms of the contract and. Failure to do so shall be deemed to be a material breach of the contract, unless the contractor obtains a waiver of this provision from the Director.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 500 - Ethics in Public Contracting

Subpart A - Definitions

§ 50-50-501 Definitions of Terms

Definitions of terms used within Part 500 of this Chapter can be found in § 50-50-035 of these Regulations.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted commas after the words "print" in subsection (b), "auditing" in subsection (c), "like" in subsection (d)(2), "services" in subsection (e), and "brother-in-law" in subsection (f) pursuant to 1 CMC § 3806(g).

Subpart B - Standards of Conduct

§ 50-50-505 Policy

CUC employment is a public trust. In CUC contracting, CUC employees shall discharge their duties impartially so as to:

- (a) Ensure fair competitive access to CUC procurement by reasonable contractors; and
- (b) Conduct themselves in a manner as to foster public confidence in the integrity of CUC.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-510 General Standards

(a) **Employees.** Any attempt to realize personal gain through CUC employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. In order to fulfill this ethical standard, employees must meet the requirements of this chapter.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

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

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-515 Employee Disclosure Requirements

(a) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from, any CUC contract with a business in which the employee has a financial interest shall report such benefit to the Director.

(b) Failure to disclose benefit received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-520 Employee Conflict of Interest

(a) Conflict of interest. It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (2) A business or organization in which the employee, or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
- (3) Any other person, business or organization with whom the employee or any of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-525 Gratuities and Kickbacks

(a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give an employee or former employee, or for any employee or former 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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

(b) Kickbacks. It shall be a breach of ethical standard 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: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-530 Prohibition Against Contingent Fees

(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 CUC 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 a CUC 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 standards.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-535 Contract Clauses

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

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-540 Restrictions on Employment of Present and Former Employees

(a) Present employees. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be while such an employee, the employee of any person contracting with CUC by whom the employee is employed.

(b) Restrictions on former employees in matters connected with their former duties. Permanent disqualification of former employee personally involved in a particular matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than CUC, in connection with any:

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(4) Charge or controversy in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where CUC is a party or has a direct or substantial interest.

(c) Disqualification of business when an employee has a financial interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than CUC, in connection with any:

(1) Judicial or other proceeding, application, request for a ruling or other determination;

(2) Contract;

(3) Claim; or

(4) Charge or controversy in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where CUC is a party or has a direct and substantial interest.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-545 Use of Confidential Information

It shall be a breach of ethical standards for any employee or former 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 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-550 Collusion by Bidders

Collusion or secret agreements between bidders for purpose of securing an advantage to the bidders against CUC in the awarding of contracts is prohibited. The official with the expenditure authority may declare the contract void if he finds sufficient evidence after a contract has been awarded, that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of CUC.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-555 Penalties

(a) CUC employees. CUC employee is any person whether appointed, excepted service or civil service. An employee who violates the provisions of this chapter is subject to adverse action as may be appropriate in his or her circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of CUC money, or criminal prosecution.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

(b) Contractors. A contractor who violates a provision of this chapter shall be subject to a written warning of reprimand, the termination of the contract, or suspension from being a contractor or subcontractor under a CUC contract in addition to other penalties prescribed by law.

(c) All proceedings under this section must be in accordance with due process requirements.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-560 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 Director, after consultation with the Board of Directors and the Attorney General or the CUC legal counsel, 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 (3) years. The same officer, after consultation with the Board of Directors and the Attorney General or the CUC legal counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

(b) The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense is* 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 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) Conviction under Commonwealth or federal antitrust statutes arising out of the submission of bids or proposals such as in chapter 2 of division 5 of title 4 of the Commonwealth Code;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the 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;

(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 considered a basis for debarment.

(5) Any other causes that the Director determines to be so serious and compelling as to effect responsibility as a CUC contractor, including debarment by another governmental entity; and

(6) For violation of any of the ethical standards set forth in this part 500.

*So in original; probably should be “as.”

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

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

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

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 600 - Miscellaneous Provisions

§ 50-50-601 Severability

If any provision of the regulations in this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the regulation which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

History: Adopted 47 Com. Reg. 52913 (Oct. 15, 2025); Proposed 47 Com. Reg. 52705 (July 15, 2025); Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

CHAPTER 50-60

INTERCONNECTION AND NET METERING

History: Proposed 34 Com. Reg. 32330 (February 29, 2012); Proposed 33 Com. Reg. 31300 (January 24, 2011).

Commission Comment: For the history of the regulatory authority of the Commonwealth Utilities Corporation in the Commonwealth, see the general comment to chapter 50-10.

In January 2011 and again in February, 2012, CUC proposed new regulations on interconnection and net metering. To date, an adoption notice has not been published. This chapter is reserved for future interconnection and net metering regulations should they be adopted.

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

CHAPTER 50-70

MEETINGS OF THE BOARD OF DIRECTORS

Part 001	General Provisions	§ 50-70-010	Meetings
Subpart A	General	§ 50-70-015	Notice of Intent to Attend
§ 50-70-001	Authority		Remotely
§ 50-70-005	Definitions		

Chapter History: Adopted 44 Com. Reg. 4876 (July. 28, 2022); Proposed 44 Com. Reg. 48323 (Apr. 28, 2022).

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

Part 001 - General Provisions

§ 50-70-001 Authority

The regulations in this chapter are promulgated under the authority of 4 CMC § 8157.

History: Adopted 44 Com. Reg. 4876 (July. 28, 2022); Proposed 44 Com. Reg. 48323 (Apr. 28, 2022).

§ 50-70-005 Definitions

The following terms, wherever used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

- (a) “Board” means the Board of Directors of the Commonwealth Utilities Corporation.
- (b) “Chairman” means the Chairman of the Board of Directors of the Commonwealth Utilities Corporation.
- (c) “Executive Director” means the Executive Director of the Commonwealth Utilities Corporation.

History: Adopted 44 Com. Reg. 4876 (July. 28, 2022); Proposed 44 Com. Reg. 48323 (Apr. 28, 2022).

§ 50-70-010 Meetings

Members of the Board of Directors who are in the Commonwealth of the Northern Mariana Islands but unable to attend a meeting in person may appear by means of the internet or online video conferencing, teleconferencing, or other electronic means of communication.

Members who appear by means of the internet or online video conferencing, teleconferencing or other electronic means of communication shall be considered present for the purposes of a quorum.

History: Adopted 44 Com. Reg. 4876 (July. 28, 2022); Proposed 44 Com. Reg. 48323 (Apr. 28, 2022).

§ 50-70-015 Notice of Intent to Attend Remotely

Members who plan to attend a meeting of the Board of Directors by means of the internet or online video conferencing, teleconferencing, or other electronic means of communication shall inform the Chairman of the Board and the Executive Director at least two (2) days prior to the meeting.

History: Adopted 44 Com. Reg. 4876 (July. 28, 2022); Proposed 44 Com. Reg. 48323 (Apr. 28, 2022).