

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



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**COMMONWEALTH REGISTER**

**VOLUME 42**

**NUMBER 05**

**MAY 28, 2020**

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# COMMONWEALTH REGISTER

VOLUME 42  
NUMBER 05  
MAY 28, 2020

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# Commonwealth Ports Authority

Main Office: SAIPAN INTERNATIONAL AIRPORT, 2<sup>ND</sup> Floor Arrival Bldg.  
PO BOX 501055 • SAIPAN • MP • 96950  
Phone: (1-670) 237-6500/1 Fax: (1-670) 234-5962  
E-Mail Address: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com) Website: [www.cpa.gov.mp](http://www.cpa.gov.mp)



## PUBLIC NOTICE

### **Proposed Amendments to the Airport Rules and Regulations of the Commonwealth Ports Authority**

The Executive Director of the Commonwealth Ports Authority ("CPA") hereby notifies the public that the Commonwealth Ports Authority intends to promulgate amendments to its Airport Rules and Regulations.

**INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE AIRPORT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY:** Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority intends to promulgate the following additional section to its Airport Rules and Regulations.

**TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED:** The proposed regulations add NMIAC § 40-10.1-1280 to the Airport Rules and Regulations of the Commonwealth Ports Authority. This new provision establishes fees CPA will charge in regard to SIDA badges, miscellaneous permits and replacements, the Pacific Region ARFF/Aviation Training Facility, copying fees, decals, cards, keys, and room and equipment rental.

**AUTHORITY:** The following proposed amendments have been fully reviewed by the CPA Board of Directors, which exercises all powers vested in the Commonwealth Ports Authority. During the board meeting held on February 25, 2020, the Board of Directors approved the proposed amendments for publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Ports Authority has the authority to promulgate these regulations pursuant to 2 CMC § 2122.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1).

**TO PROVIDE COMMENTS:** Persons or entities wishing to submit comments must do so in writing to Mr. Christopher S. Tenorio, Executive Director, CPA, by means of one of the following: Email, fax, mail or hand-delivery to the CPA Administrative Office located on the Second Floor of the Francisco C. Ada/Saipan International Airport with the subject line "**Comments on Proposed Airport Rules and Regulations.**"

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: cpa.admin@pticom.com


All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA

3/5/2020  
Date

Received by:

  
MATHILDA A. ROSARIO  
Special Assistant for Administration

05/14/2020  
Date

Filed and Recorded by:

  
ESTHER S.N. NESBITT  
Commonwealth Registrar

05.19.2020  
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Attorney General

5/18/2020  
Date



## **NUTISIAN PUPBLIKU**

### **I Manmaproponi na Amenda siha para i Areklamentu yan Regulasion i Plâsan Batkun Airi gi Aturidât I Puetton Commonwealth**

I Direktot Eksakatibu gi Aturidât I Puetton Commonwealth ha infotma guini pâ'gu i pupbliku na i intensiona i Aturidât I Puetton Commonwealth para u macho'gui i amenda siha gi iyon-niha Areklamentu yan Regulasion i Plâsan Batkun Airi.

**I AKSION NI MA'INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA AMENDA SIHA PARA I AREKLAMENTU YAN REGULASION I ATURIDÂT I PUETTON COMMONWEALTH:** I nutisia guini pâ'gu munâ'i sigun para 1 CMC § 9104(a) nu i Âktun i Administrative Procedure na i Aturidât I Puetton Commonwealth ha intensiona para u cho'gui i tinattiyi na dinanña na seksion para i Areklamentu yan Regulasion i Plâsan Batkun Airi.

**I TEMA, SUSTÂNSIA, YAN I DISKRIPSION I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA:** I manmaproponi na regulasion siha ha na'hâlum i NMIAC § 40-10.1-1280 para i Areklamentu yan Regulasion i Plâsan Batkun Airi. Esti nuebu na tinilaika siha ha istablesi i âpas sitbisu ni i CPA siempri ha dimânda para i bach "SIDA, miscellaneous permits" yan "replacements," i "Pacific Region ARFF/Aviation Training Facility, âpas kopia siha, decals, cards," yâbi, yan kuâttu yan atkilon ramienta siha.

**ÂTURIDÂT:** I tinattitiyi na manmaproponi na amenda siha manmaribisa ginin i Kuetpun Direktot CPA siha, ni manggai fuetsas ginin bitut i aturidât gi hâlum i Aturidât I Puetton Commonwealth. Gi durântin huntan Kuetpu ni magopti gi Fibreru 25, 2020, i Kuetpun Direktot siha ma'aprueba i manmaproponi na amenda siha para pupplikasion gi halum i Rehistran Commonwealth para Nutisia yan Upiñon sigun gi para i Âktun Administrative Procedure yan para inaprueba ginin i Abugâdu Henerât sigun gi 1 CMC § 2153(e). I Aturidât I Puetton Commonwealth gai aturidât para u cho'gui esti na regulasion siha sigun para 2 CMC § 2122.

**DIREKSION PARA U MAPO'LU YAN PARA PUPBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Manmaproponi yan Nuebu na Ma'adâpta na Regulasion siha, (1 CMC § 9102(a)(1)), yan u mapega gi kumbinienti na lugât siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu Inglis yan prinsipât na lingguâhin natibu. 1 CMC § 9104(a)(1).

**PARA U MAPRIBENIYI UPIÑON SIHA:** I petsona siha pat atyu i manmalagu' para u na'hålum upiñon siha debi na u cho'gui gi tinigi' para guatu as: Siñot Christopher S. Tenorio, Direktot Eksakatibun i CPA, gi unu na tinattiyi siha: Email, fax, mail pat intrega guatu gi Ufisinan Atministrasion i CPA ni gaigi gi 2<sup>nd</sup> Floor gi Francisco C. Ada/Saipan International Airport yan i suhetu na rāya **"I Upiñon gi Manmaproponi na Areklamentu yan Regulasion i Plāsan Batkun Airi."**

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com)

**Todu na tinigi' upiñon siha debi na u manahålum gi hålum trenta (30) dihas dispues di pupublikasion esti na notisia.**

Nina'hålum as:

  
CHRISTOPHER S. TENORIO  
Direktot Eksakatibu, CPA

3/5/2020  
Fetcha

Rinisibi as:

  
MATHILDA A. ROSARIO  
Ispisiât Na Ayudânti Para I Atministrasion

05/14/2020  
Fetcha

Pine'lu yan  
Ninota as:

  
ESTHER S. NESBITT  
Rehistran Commonwealth

05.19.2020  
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i Abugâdu Henerât CNMI yan debi na u mapupblika, 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Abugâdu Henerât

5/18/2020  
Fetcha



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## ARONGORONGOL TOULAP

### **Pommwol Liiwel ngáli Alléghúl me Mwóghutughutúl Airport me Commonwealth Ports Authority**

Executive Director-il Commonwealth Ports Authority ("CPA") e aronga ngáli toulap bwe Commonwealth Ports Authority re mángemángil rebwe arongawow liiwel kkal ngáli Allégh me Mwóghutughutúl Airport.

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL LIIWEL NGÁLI ALLÉGH ME MWÓGHUTUGHUTÚL AIRPORT ME COMMONWEALTH PORTS AUTHORITY:** Arongorong yeel nge e isiisiwow sáangi 1 CMC § 9104(a) reel Administrative Procedure Act iye Commonwealth Ports Authority re mángemángil rebwe arongawow tánil ikka re aschuulong ngáli Alléghúl me Mwóghutughutúl Airport.

**KKAPASAL, AWEWEL, ME MASAMASAL KKPAS ME ÓUTOL:** Pommwol mwóghutughutúl liiwel NMIAC § 40-10.1-1280 ngáli Alléghúl me Mwóghutughutúl Airport reel Commonwealth Ports Authority. Ffél provisions e itittiw reel mwuttal CPA iye ebwe ayoora óbwóss iye e ssúl ngáli SIDA badges, angúúngú ikka e miscellaneous me liiwelil ngáre replacements, óbwóssul Copy ngáli Pacific Region ARFF/Aviation Training Facility, decals, cards, yaapi, me kkato me peiráághil atkkilóón.

**BWÁNGIL:** Pommwol liiwel ikka e amwirimwiritiw nge ra takkal amwuri fischiiy sáangi CPA Board-il Directors, iye eyoor mwóghutughutúl sáangi Commonwealth Ports Authority. Atol igha re yéélágh wóól Mááischigh 25, 2020, Board-il Directors ra átirowa pommwol liiwel ngáli arongorong me llól Commonwealth Register ngáli Arongorong me Kkapas sáangi Administrative Procedure Act me ngáli átirow sáangi Soulemelemil Allégh Lapalap sáangi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Ports Authority reel rebwe arongawow mwóghutughut kkal sáangi 2 CMC § 2122.

**AFAL REEL AMMWELIL ME AKKATÉÉWOWUL:** Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól tánil Pommwol me Ffél Mwóghutughut ikka ra Adóptáánil, 1 CMC § 9102(a)(1), ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento me llól senatorial district, fengál reel English me llól mwáliyaasch. 1 CMC § 9104(a)(1).

**REEL ISIISILONGOL KKPAS:** Aramas ngáre schóó kka re tipáli rebwe isiisilong kkapas rebwe isch ngáli Mr. Christopher S. Tenorio, Executive Director, CPA, ngáli milikka e amwirimwiritiw: Email, fax, afanga ngáre bwughiló reel Bwulasiyol CPA Administration iye e lo Second Floor me Francisco C. Ada/Saipan International Airport nge ebwe lo wóól subject line bwe **"Comments on Proposed Personnel Rules and Regulations."**

Commonwealth Ports Authority  
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Ebwe isiisilong alongal ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel.

Isáliyalong:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA

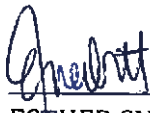
3/5/2020  
Ráál

Bwughiyal:

  
MATHILDA A. ROSARIO  
Special Assistant ngáli Administration

05/14/2020  
Ráál

Ammwelil:

  
ESTHER S.N. NESBITT  
Commonwealth Registrar

05.14.2020  
Ráál

Sángi 1 CMC §2153(e) me 1 CMC § 9104(a)(3) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me átirowa bwe aa ffil reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Soulemelemil Allégh Lapalap

5/18/2020  
Ráál



SIDA BADGE FEES	
Fee Type	Cost per Badge
Fingerprint and Security Threat Assessment Processing	\$45.00
New, Renewal, Broken, or Change of Status on SIDA Badge	\$15.00
Lost or Stolen Badge	\$50.00
Failure to Immediately surrender SIDA Badge after expiration	\$100.00

PERMITS	
Fee Type	Per Permit
AOA Driving Permit	\$15.00
AOA Driving Permit - Replacement	\$5.00
Ground Transportation Permit - Replacement	\$15.00
Hot Work Permit	\$25.00
Filming/Photography	\$25.00

PACIFIC REGION ARFF/AVIATION TRAINING FACILITY (PRATC)	
Fee Type	Per Student
FAR Part 139 Live Fire Burn	\$500.00
Structure Fire Burn	\$300.00
ARFF Basic Academy (Airport Fire Fighter, Driver Operator, EMS First Responder)	\$5,500.00
Part 139 Course – 5 Days (Bundle)	\$2,205.00
Part 139 Course – 4 Days	\$1,850.00
Part 139 Course – 3 Days	\$1,400.00
Part 139 Course – 2 Days	\$950.00

Part 139 Course – 1 Day	\$500.00
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COPY FEES	
Fee Type	Per Page
8.5" x 11" - Black and white	\$0.25
8.5" x 11" - Color	\$0.50
8.5" x 14" – Black and white	\$0.25
8.5" x 14" - Color	\$0.50
11" x 17" – Black and white	\$0.50
11" x 17" - Color	\$1.00
24" x 36" – Black and white	\$2.00
24" x 36" - Color	\$5.00
36" x 48" – Black and white	\$3.75
36" x 48" - Color	\$6.00

Decals, Cards, Keys, Room and Equipment Rental	Fees
Vehicle Decals – Secured Area	\$15.00 per vehicle
Fingerprint Cards – 2 Sets	\$15.00 per set of 2
Tenant Key Replacement	\$14.00 each
Airport Conference Room Rental – Room Use Only	\$10.00 per hour
Airport Conference Room Equipment Fee	\$25.00 per use
Saipan Airport ARFF Classroom Rental – Room Use Only	\$10.00 per hour
Saipan Airport ARFF Class Room Rental Equipment Fee	\$25.00 per use
ARFF Self Contained Breathing Apparatus (SCBA) Refill – Maximum of 10 cylinders per refill	\$5.00 per refill

Returned Check	\$25.00 plus additional bank fees
Administrative Fee	25% of Total Billing



# Commonwealth Ports Authority

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## **PUBLIC NOTICE**

### **Proposed Amendments to the Harbor Regulations of the Commonwealth Ports Authority**

The Executive Director of the Commonwealth Ports Authority ("CPA") hereby notifies the public that the Commonwealth Ports Authority intends to promulgate amendments to its Harbor Regulations.

**INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE HARBOR REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY:** Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority intends to promulgate the following additional section to its Harbor Regulations.

**TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED:** The proposed regulations add NMIAC § 40-20.1-170 to the Harbor Regulations of the Commonwealth Ports Authority. This new provision establishes fees CPA will charge in regard to force protection, miscellaneous permits and replacements, copying fees, decals, cards, keys, and room and equipment rental.

**AUTHORITY:** The following proposed amendments have been fully reviewed by the CPA Board of Directors, which exercises all powers vested in the Commonwealth Ports Authority. During the board meeting held on February 25, 2020, the Board of Directors approved the proposed amendments for publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Ports Authority has the authority to promulgate these regulations pursuant to 2 CMC § 2122.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1).

**TO PROVIDE COMMENTS:** Persons or entities wishing to submit comments must do so in writing to Mr. Christopher S. Tenorio, Executive Director, CPA, by means of one of the following: Email, fax, mail or hand-delivery to the CPA Administrative Office located on the Second Floor of the Francisco C. Ada/Saipan International Harbor with the subject line "**Comments on Proposed Harbor Regulations.**"

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: cpa.admin@pticom.com


All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA

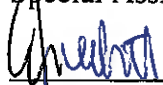
3/5/2020  
Date

Received by:

  
MATHILDA A. ROSARIO  
Special Assistant for Administration

05/14/2020  
Date

Filed and Recorded by:

  
ESTHER S. NESBITT  
Commonwealth Registrar

05.09.2020  
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Attorney General

5/18/2020  
Date



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### **NUTISIAN PUPBLIKU**

#### **I Manmaproponi na Amenda siha para i Regulasion i Bâhia nu i Aturidât I Puetton Commonwealth**

I Direktot Eksakatibu gi Aturidât I Puetton Commonwealth ha infotma guini på'gu i pupbliku na i intensiona i Aturidât I Puetton Commonwealth para u macho'gui i amenda siha gi iyon-nîha Regulasion i Bâhia.

**I AKSION NI MA'INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA AMENDA SIHA PARA I REGULASION I BÂHIA NU I ATURIDÂT I PUETTON COMMONWEALTH:** I nutisia guini på'gu munâ'i sigun para 1 CMC § 9104(a) nu i Âktun i Administrative Procedure na i Aturidât I Puetton Commonwealth ha intensiona para u cho'gui i tinattiyi na dinanña na seksion para i Regulasion i Bâhia.

**I TEMA, SUSTÂNSIA, YAN I DISKRIPSION I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA:** I manmaproponi na regulasion ha na'hâlum i NMIAC § 40-20.1-170 para i regulasion i Bâhia siha gi Aturidât I Puetton Commonwealth. Esti i mannuebu na tinilaika ha istablesi i âpas sitbisiu siha ni i CPA siempri ha dimânda put para i fuinetsan pruteksion, "miscellaneous permits and replacements," âpas sitbisiun kopia siha, "decals, cards," yabi, yan kuâttu yan atkilon ramienta siha.

**ÂTURIDÂT:** I tinattitiyi na manmaproponi na amenda siha manmaribisa ginin i Kuetpun Direktot i CPA siha, ni manggai fuetsas ginin bitut i aturidât gi hâlum i Aturidât I Puetton Commonwealth. Gi durântin huntan Kuetpu ni magopti gi Fibreru 25, 2020, i Kuetpun Direktot siha ma'aprueba i manmaproponi na amenda siha para publikasion gi halum i Rehistran Commonwealth para Nutisia yan Upiñon sigun gi para i Âktun Administrative Procedure yan para inaprueba ginin i Abugâdu Henerât sigun gi 1 CMC § 2153(e). I Aturidât I Puetton Commonwealth gai aturidât para u cho'gui esti na regulasion siha sigun para 2 CMC § 2122.

**DIREKSION PARA U MAPO'LU YAN PARA PUPBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Manmaproponi yan Nuebu na Ma'adâpta na Regulasion siha, (1 CMC § 9102(a)(1)), yan u mapega gi kumbinienti na lugât siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu Inglis yan prinsipât na lingguâhin natibu. 1 CMC § 9104(a)(1).

**PARA U MAPRIBENIYI UPIÑON SIHA:** I petsona siha pat atyu i manmalagu' para u na'hâlum upiñon siha debi na u cho'gui gi tinigi' para guatu as: Siñot Christopher S.

Tenorio, Direktot Eksakatibun i CPA, gi unu na tinattiyi siha: Email, fax, mail pat

**COMMONWEALTH REGISTER VOLUME 42 NUMBER 05 MAY 28, 2020 PAGE 043538**

Ada/Saipan Internation Airport yan i suhetu na rãya "I Upiñon gi Manmaproponi na Regulasion i Bãhia."

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com)


Todu na tinigi' upiñon siha debi na u manahãlum gi hãlum trenta (30) dihas dispues di pupublikasion esti na nulisia

Nina'hãlum as:

  
CHRISTOPHER S. TENORIO  
Direktot Eksakatibu, CPA

3/5/2020  
Fetcha

Rinisibi as:

  
MATHILDA A. ROSARIO  
Ispisiãt Na Ayudãnti Para I Atministrasion

05/14/2020  
Fetcha

Pine'lu yan  
Ninota as:

  
ESTHER S. NESBITT  
Rehistran Commonwealth

05.14.2020  
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligãt ginin i Abugãdu Henerãt CNMI yan debi na u mapupblika, 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Abugãdu Henerãt

5/18/2020  
Fetcha



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## ARONGORONGOL TOULAP

### **Pommwol Liiwel ngáli Mwóghutughutúl Harbor me Commonwealth Ports Authority**

Executive Director-il Commonwealth Ports Authority ("CPA") e aronga ngáli toulap bwe Commonwealth Ports Authority re mángemángil rebwe arongawow liiwe kkal ngáli Mwóghutughutúl Harbor.

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL LIIWEL NGÁLI ALLÉGH ME MWÓGHUTUGHUTÚL PROCUREMENT ME COMMONWEALTH PORTS AUTHORITY:** Arongorong yeel nge e isiisiwow sáangi 1 CMC § 9104(a) reel Administrative Procedure Act iye Commonwealth Ports Authority re mángemángil rebwe arongawow táilil ikka re aschuulong ngáli Mwóghutughutúl Harbor.

**KKAPASAL, AWEWEL, ME MASAMASAL KKPAS ME ÓUTOL:** Ebwe schuulong llól pommwol mwóghutughut NMIAC § 40-20.1-170 ngáli Mwóghutughutúl Harbor-il Commonwealth Ports Authority. Ffél liiwe e itittiw reel óbwóss ikka CPA rebwe ayooraí óbwóss ikka e ssul ngáli force protection, miscellaneous permits me replacements, copying fees, decals, cards, yaapi, me óbwóssul katto me attkkilóónol peiráágh.

**BWÁNGIL:** Pommwol liiwe ikka e amwirimwiritiw nge ra takkal amwuri fischiiy sáangi CPA Board-il Directors, iye eyoor mwóghutughutúl sáangi Commonwealth Ports Authority. Atol igha re yéélágh wóól Mááischigh 25, 2020, Board-il Directors ra átirowa pommwol liiwe ngáli arongorong me llól Commonwealth Register ngáli Arongorong me Kkapas sáangi Administrative Procedure Act me ngáli átirow sáangi Soulemelemil Allégh Lapalap sáangi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Ports Authority reel rebwe arongawow mwóghutughut kkal sáangi 2 CMC § 2122.

**AFAL REEL AMMWELIL ME AKKATÉÉWOWUL:** Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól táilil Pommwol me Ffél Mwóghutughut ikka ra Adóptááilil, 1 CMC § 9102(a)(1), ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento me llól senatorial district, fengál reel English me llól mwáliyaasch. 1 CMC § 9104(a)(1).

**REEL ISIISILONGOL KKPAS:** Aramas ngáre schóó kka re tipáli rebwe isiisilong kkapas rebwe isch ngáli Mr. Christopher S. Tenorio, Executive Director, CPA, ngáli milikka e amwirimwiritiw: Email, fax, afanga ngáre bwughiló reel Bwulasiyol CPA Administration iye e lo Second Floor me Francisco C. Ada/Saipan International Airport nge ebwe lo wóól subject line bwe "Comments on Proposed Harbor Regulations."



Commonwealth Ports Authority  
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Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com)


Ebwe isiisilong alongal ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel.

Isáliyalong:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA

3/5/2020  
Ráál

Bwughiyal:

  
MATHILDA A. ROSARIO  
Special Assistant ngáli Administration


05/14/2020  
Ráál

Ammwelil:

  
ESTHER S. NESBITT  
Commonwealth Registrar

05.19.2020  
Ráál

Sángi 1 CMC §2153(e) me 1 CMC § 9104(a)(3) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me átirowa bwe aa ffil reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalpal CNMI me ebwe akkatééwow. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Soulemelemil Allégh Lapalap

5/18/2020  
Ráál

FORCE PROTECTION	
Fee Type	Per Officer
Roving Patrol Officer (Includes use of vehicle)	\$45.00 per hour
Harbor Patrol Operator	\$35.00 per hour
Gate Post	\$30.00 per hour
Supervisor	\$35.00 per hour
Harbor Patrol Boat	\$1,000 per day

PERMITS	
Fee Type	Per Permit
Ground Transportation Permit - Replacement	\$15.00
Hot Work Permit	\$25.00
Filming/Photography	\$25.00

COPY FEES	
Fee Type	Per Page
8.5" x 11" - Black and white	\$0.25
8.5" x 11" - Color	\$0.50
8.5" x 14" - Black and white	\$0.25
8.5" x 14" - Color	\$0.50
11" x 17" - Black and white	\$0.50
11" x 17" - Color	\$1.00
24" x 36" - Black and white	\$2.00
24" x 36" - Color	\$5.00

36" x 48" – Black and white	\$3.75
36" x 48" - Color	\$6.00

<b>Decals, Cards, Keys, Administrative, Room and Equipment Rental</b>	<b>Fees</b>
Vehicle Decals – Secured Area	\$15.00 per vehicle
Tenant Key Replacement	\$14.00 each
Seaport Conference Room Rental – Room Use Only	\$10.00 per hour
Seaport Conference Room Equipment Fee	\$25.00 per use
Seaport Vessel Clearance Fee – Vessels Exiting the CNMI Waters w/ No Operations Conducted at Ports Under CPA Management	\$12.00 per clearance
Returned Check	\$25.00 plus additional bank fees
Administrative Fee	25% of Total Billing



# Commonwealth Ports Authority

Main Office: SAIPAN INTERNATIONAL AIRPORT, 2<sup>ND</sup> Floor Arrival Bldg.  
PO BOX 501055 • SAIPAN • MP • 96950  
Phone: (1-670) 237-6500/1 Fax: (1-670) 234-5962  
E-Mail Address: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com) Website: [www.cpa.gov.mp](http://www.cpa.gov.mp)



## PUBLIC NOTICE

### **Proposed Amendments to the Procurement Rules and Regulations of the Commonwealth Ports Authority**

The Executive Director of the Commonwealth Ports Authority ("CPA") hereby notifies the public that the Commonwealth Ports Authority intends to promulgate amendments to its Procurement Rules and Regulations.

**INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE PROCUREMENT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY:** Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority intends to promulgate the following additional section to its Procurement Rules and Regulations.

**TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED:** The proposed regulations amend NMIAC §§ 40-50-035, 110, 115, 201, 202, 205, 210, 215, 225, 301, 401, 701, 801, 802, 901, 1020, and Part 500 and add NMIAC §§ 505, 510, and 515 to the Procurement Rules and Regulations of the Commonwealth Ports Authority. The amendments include revisions for clarification, consolidation of regulations by subject matter, and the removal of redundant language. Additionally, new provisions were added regarding consultant performance reports, bid solicitation, the process of award in invitations to bid, small purchases, proposal rejection, RFP cancellation, RFP evaluation committee, and contract terms and the administration of contracts.

**AUTHORITY:** The following proposed amendments have been fully reviewed by the CPA Board of Directors, which exercises all powers vested in the Commonwealth Ports Authority. During the board meeting held on February 25, 2020, the Board of Directors approved the proposed amendments for publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Ports Authority has the authority to promulgate these regulations pursuant to 2 CMC § 2122.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1).

**TO PROVIDE COMMENTS:** Persons or entities wishing to submit comments must do so in writing to Mr. Christopher S. Tenorio, Executive Director, CPA, by means of one of the following: Email, fax, mail or hand-delivery to the CPA Administrative Office located on the Second Floor of the Francisco C. Ada/Saipan International Airport with the subject line "**Comments on Proposed Procurement Rules and Regulations.**"

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
Tel. (670) 237-6500/6501  
Fax: (670) 234-5962  
Email: cpa.admin@pticom.com


All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA

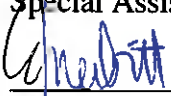
3/5/2020  
Date

Received by:

  
MATHILDA A. ROSARIO  
Special Assistant for Administration

04/27/2020  
Date

Filed and Recorded by:

  
ESTHER S. NESBITT  
Commonwealth Registrar

05-19-2020  
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Attorney General

5/19/2020  
Date



# Commonwealth Ports Authority

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## **NUTISIAN PUPBLIKU**

### **I Manmaproponi na Amenda siha para i Areklamentu yan Regulasion i Procurement nu i Aturidât I Puetton Commonwealth**

I Direktot Eksakatibu gi Aturidât I Puetton Commonwealth ha infotma guini pâ'gu i pupbliku na i intensiona i Aturidât I Puetton Commonwealth para u macho'gui i amenda siha gi iyon-ñiha Areklamentu yan Regulasion i Procurement.

**I AKSION NI MA'INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA AMENDA SIHA PARA I AREKLAMENTU YAN REGULASION I PROCUREMENT NU I ATURIDÂT I PUETTON COMMONWEALTH:** I nutisia guini pâ'gu munâ'i sigun para 1 CMC § 9104(a) nu i Âktun i Administrative Procedure na i Aturidât I Puetton Commonwealth ha intensiona para u cho'gui i tinattiyi na dinanña na seksion para i Areklamentu yan Regulasion i Procurement.

**I TEMA, SUSTÂNSIA, YAN I DISKRIPSION I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA:** I manmaproponi na amenda i NMIAC §§ 40-50-035, 110, 115, 201, 202, 205, 210, 215, 225, 301, 401, 701, 801, 802, 901, 1020, yan Pâtti 500 yan na'hâlum i NMIAC §§ 505, 510, yan 515 para i Areklamentu yan Regulasion i Procurement nu i Aturidât I Puetton Commonwealth. I amenda ingklusu i tinilaika siha para klarifikasion, mana'danña i regulasion ginin maneran i suhetu, yan i manasuhan i ti prisisu na linguuâhi. Yan mâs, i nuebu na tinilaika mana'hâlum put i "consultant performance reports," solisitan diga, i maneran nu i primiu gi imbitasion para mandiga, mandikiki' na finâhan, inifresin pinini, kanselasion RFP, ibaluasion RFP kumite, yan teman kontrâta yan i atministrasion nu i kontrâta siha.

**ÂTURIDÂT:** I tinattitiyi na manmaproponi na amenda siha manmaribisa ginin i Kuetpun Direktot i CPA siha, ni manggai fuetsas ginin bitut i aturidât gi hâlum i Aturidât I Puetton Commonwealth. Gi durântin huntan Kuetpu ni magopti gi Fibreru 25, 2020, i Kuetpun Direktot siha ma'aprueba i manmaproponi na amenda siha para pupplikasion gi halum i Rehistran Commonwealth para Nutisia yan Upiñon sigun gi para i Âktun Administrative Procedure yan para inaprueba ginin i Abugâdu Henerât sigun gi 1 CMC § 2153(e). I Aturidât I Puetton Commonwealth gai aturidât para u cho'gui esti na regulasion siha sigun para 2 CMC § 2122.

**DIREKSION PARA U MAPO'LU YAN PARA PUPBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Manmaproponi yan Nuebu na Ma'adâpta na Regulasion siha, (1 CMC § 9102(a)(1)), yan u mapega gi kumbinienti na lugât siha gi halum i civic

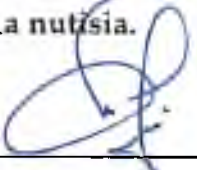
center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu Inglis yan prinsipât na lingguâhin natibu. 1 CMC § 9104(a)(1).

**PARA U MAPRIBENIYI UPIÑON SIHA:** I petsona siha pat atyu i manmalagu' para u na'hålum upiñon siha debi na u cho'gui gi tinigi' para guatu as: Siñot Christopher S. Tenorio, Direktot Eksakatibun i CPA, gi unu na tinattiyi siha: Email, fax, mail pat intrega guatu gi Ufisinan Atministrasion i CPA ni gaigi gi 2<sup>nd</sup> Floor gi Francisco C. Ada/Saipan Internation Airport yan i suhetu na râya "I Upiñon gi Manmaproponi na Areklamentu yan Regulasion i Procurement."

Commonwealth Ports Authority  
P.O. Box 501055 Saipan, MP 96950  
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Fax: (670) 234-5962  
Email: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com)

Todu na tinigi' upiñon siha debi na u manahålum gi hålum trenta (30) dihas dispues di pupublikasion esti na nutisia.

Nina'hålum as:

  
CHRISTOPHER S. TENORIO  
Direktot Eksakatibu, CPA

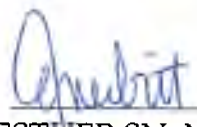
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Rinisibi as:

  
MATHILDA A. ROSARIO  
Ispisiât Na Ayudânti Para I Atministrasion

04/27/2020  
Fetcha

Pine'lu yan  
Ninota as:

  
ESTHER SN. NESBITT  
Rehistran Commonwealth

05.19.2020  
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Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i Abugâdu Henerât CNMI yan debi na u mapupblika, 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Abugâdu Henerât

5/19/2020  
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**Commonwealth Ports Authority**  
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### **ARONGORONGOL TOULAP**

#### **Pommwol Liiwel ngáli Alléghúl me Mwóghutughutúl Procurement me Commonwealth Ports Authority**

Executive Director-il Commonwealth Ports Authority ("CPA") e aronga ngáli toulap bwe Commonwealth Ports Authority re mángemángil rebwe arongawow liiwel kkal ngáli Allégh me Mwóghutughutúl Procurement.

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL LIIWEL NGÁLI ALLÉGH ME MWÓGHUTUGHUTÚL PROCUREMENT ME COMMONWEALTH PORTS AUTHORITY:** Arongorong yeel nge e isiisiwow sáangi 1 CMC § 9104(a) reel Administrative Procedure Act iye Commonwealth Ports Authority re mángemángil rebwe arongawow tánil ikka re aschuulong ngáli Alléghúl me Mwóghutughutúl Procurement.

**KKAPASAL, AWEEWEL, ME MASAMASAL KKPAS ME ÓUTOL:** Pommwol mwóghutughutúl liiwel NMIAC §§ 40-50-035, 110, 115, 201, 202, 205, 210, 215, 225, 301, 401, 701, 801, 802, 901, 1020, me Part 500 me aschuulong NMIAC §§ 505, 510, me 515 ngáli Alléghúl me Mwóghutughutúl Procurement reel Commonwealth Ports Authority. E schuu llól liiwel kkal bwe ebwe ffil, c onsolidation ngáli mwóghutughut sáangi subject matter, me sáághi kkapas ikka ese ffil. Ebwe bwal schuulong, ffél liiwel ikka re aschuulong iye e ssul ngáli mwóghutughutúl consultant reports, bid solicitation, mwóghutughutúl award llól invitations reel rebwe bid, ghitighiit amééwal, proposal rejection, RFP evaluation committee, me kkapasal contract me administration of contracts.

**BWÁNGIL:** Pommwol liiwel ikka e amwirimwiritiw nge ra takkal amwuri fischiiy sáangi CPA Board-il Directors, iye eyoor mwóghutughutúl sáangi Commonwealth Ports Authority. Atol igha re yéélágh wóól Mááischigh 25, 2020, Board-il Directors ra átirowa pommwol liiwel ngáli arongorong me llól Commonwealth Register ngáli Arongorong me Kkapas sáangi Administrative Procedure Act me ngáli átirow sáangi Soulemelemil Allégh Lapalap sáangi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Ports Authority reel rebwe arongawow mwóghutughut kkal sáangi 2 CMC § 2122.

**AFAL REEL AMMWELIL ME AKKATÉÉWOWUL:** Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól tánil Pommwol me Ffél Mwóghutughut ikka ra Adóptáánil, 1 CMC § 9102(a)(1), ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento me llól senatorial district, fengál reel English me llól mwáliyaasch. 1 CMC § 9104(a)(1).


**REEL ISIISILONGOL KKPAS:** Aramas ngáre schóó kka re tipáli rebwe isiisilong kkapas rebwe isch ngáli Mr. Christopher S. Tenorio, Executive Director, CPA, ngáli milikka e amwirimwiritiw: Email, fax, afanga ngáre bwughiló reel Bwulasiyol CPA Administration iye e lo Second Floor me Francisco C. Ada/Saipan International Airport nge ebwe lo wóól subject line bwe "Comments on Proposed Procurement Rules and Regulations."



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Ebwe isiisilong alongal ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel.

Isáliyalong:

  
CHRISTOPHER S. TENORIO  
Executive Director, CPA


3/5/2020  
Ráál

Bwughiyal:

  
MATHILDA A. ROSARIO  
Special Assistant ngáli Administration

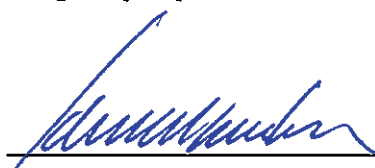
04/27/2020  
Ráál

Ammwelil:

  
ESTHER S. NESBITT  
Commonwealth Registrar

05.19.2020  
Ráál

Sángi 1 CMC §2153(e) me 1 CMC § 9104(a)(3) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me átirowa bwe aa ffil reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalap CNMI me ebwe akkatééwow. 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Soulemelemil Allégh Lapalap

5/15/2020  
Ráál

**CHAPTER 40-50**  
**PROCUREMENT RULES AND REGULATIONS**

**Part 001 General Provisions**

- § 40-50-001 Authority
- § 40-50-005 Purposes
- § 40-50-010 Requirement of Good Faith
- § 40-50-015 Application of Regulations
- § 40-50-020 Severability
- § 40-50-025 Validity of Contract
- § 40-50-030 Remedy Against Employee
- § 40-50-035 Definitions
- § 40-50-040 Public Access to Procurement Information

**Part 100 Procurement Organization**

- § 40-50-101 Executive Director
- § 40-50-105 Duties of the Executive Director
- § 40-50-110 Contract Review and Oversight
- ~~§ 40-50-115 Acceptance of Gratuities~~

**Part 200 Source Selection and Contract Formation**

- § 40-50-201 Methods of Source Selection
- § 40-50-202 Architect-Engineer Design and Construction Management Services
- § 40-50-203 [Reserved]
- § 40-50-204 [Reserved]
- § 40-50-205 Invitation for Bids
- § 40-50-210 Small Purchases
- § 40-50-215 Sole Source Procurement
- § 40-50-220 Emergency Procurement
- § 40-50-225 Request for Proposals

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

- § 40-50-301 Cancellation

**Part 400 Qualifications and Duties**

- § 40-50-401 Responsibility of Bidders and Proposers
- § 40-50-405 Pre-qualification of Contractors/Request for Qualification Statements
- § 40-50-410 Heightened Residency Preference in Specific Contracts for Services

**Part 500 Contract Terms and Administration of Contracts ~~Types of Contracts Allowed and Types of Contracts Prohibited~~**

- § 40-50-501 Types of Contracts
- § 40-50-505 Price, Payment, and Other Terms
- § 40-50-510 Contract Monitoring and Evaluation of Results
- § 40-50-515 Change Orders

**Part 600 Inspection and Audit**

- § 40-50-601 Right to Inspect Place of Business
- § 40-50-605 Right to Audit Records

**Part 700 Reports and Records**

- § 40-50-701 Retention of Procurement Records

**Part 800 Procurement of Construction Services**

- § 40-50-801 Construction Procurement
- ~~§ 40-50-802 Contract Terms and Administration of Contracts~~

## **TITLE 40: COMMONWEALTH PORTS AUTHORITY**

<b>Part 900</b>	<b>Protests and Disputes</b>	§ 40-50-1010	General Standards
§ 40-50-901	Protests to the Executive Director	§ 40-50-1015	No Financial Interests
§ 40-50-905	Appeals of Executive Director's Decision to the Board	§ 40-50-1020	Gratuities and Kickbacks
§ 40-50-910	Remedies	§ 40-50-1025	Prohibition Against Contingent Fees
§ 40-50-915	Effective Date	§ 40-50-1030	Contract Clauses
§ 40-50-920	Disputes	§ 40-50-1035	Restrictions on Employment of Present and Former Board Members or Employees
§ 40-50-925	Appeal Committee	§ 40-50-1040	Use of Confidential Information
<b>Part 1000</b>	<b>Ethics in Contracting</b>	§ 40-50-1045	Collusion by Bidders
§ 40-50-1001	Definitions of Terms	§ 40-50-1050	Authority to Debar or Suspend
§ 40-50-1005	Policy		

Chapter Authority: 2 CMC § 2122(j).

Chapter History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26691 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26436 (Mar. 15, 2007); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Amdts Adopted 17 Com. Reg. 13748 (Oct. 15, 1995); Amdts Proposed 17 Com. Reg. 13261 (Apr. 15, 1995); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

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

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

### **Part 001 - General Provisions**

#### **§ 40-50-001 Authority**

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

Modified, 1 CMC § 3806(d).

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

#### **§ 40-50-005 Purposes**

The underlying purposes and policies of this chapter are:

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

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

Modified, 1 CMC § 3806(g).

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

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

#### **§ 40-50-010 Requirement of Good Faith**

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

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

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

#### **§ 40-50-015 Application of Regulations**

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

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

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

### **§ 40-50-020 Severability**

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

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

### **§ 40-50-025 Validity of Contract**

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

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

### **§ 40-50-030 Remedy Against Employee**

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

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

### **§ 40-50-035 Definitions**

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

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

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(e) “Construction” means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.

(f) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.

(g) “Contracting officer” means the ~~person the~~ Chairman of ~~the Authority~~ CPA’s Board of Directors or ~~the authorized~~ person designated in such acting capacity as authorized by the Board ~~or through~~ the Chairman to execute and supervise the administration of all contracts and who shall have authority to review and approve any ~~Exchange~~ ~~Orders~~ to contracts so long as such change orders do not require any reprogramming of funds or exceed the authorized budget for such a contract.

(h) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter, and a fee, if any.

(i) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.

(j) “Employee” means an individual receiving a salary from the Authority. Consultants, independent contractors, and part-time workers shall not be considered employees.

(k) “Executive Director” means the Executive Director of the Authority, or his designee.

~~(m)~~ “Firm-fixed-price Contract” means an contract which provides for a price which is not subject to and which does not authorize any subsequent adjustment as a result of the contractor’s cost-experience in performing the contract. This type of contract places, and shall be construed as such, upon the contractor the maximum risk for loss and the contractor shall bear full responsibility for all costs, foreseen or unforeseen, or any resulting profit or loss as a result of the performance of the contract.

~~(n)~~ “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of personal property, and sale or other disposal of personal property.

~~(o)~~ “Government” means the Commonwealth of the Northern Mariana Islands government which includes the executive, legislative, and judicial branches.

~~(p)~~ “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

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

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

(qr) “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.

(rs) “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.

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

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

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

~~(u) “Firm fixed price Contract” means any contract which provides for a price which is not subject to and which does not authorize any subsequent adjustment as a result of the contractor’s cost experience in performing the contract. This type of contract places, and shall be construed as such, upon the contractor the maximum risk for loss and the contractor shall bear full responsibility for all costs, foreseen or unforeseen, or any resulting profit or loss as a result of the performance of the contract.~~

~~(v) “Purchase description” means the words used in a solicitation by the Authority, in whatever form, to describe in narrative and/or technical fashion the goods, services, or construction services to be purchased or contracted for and which includes specifications attached to, or made part of, the solicitation.~~

~~(w) “Requirements Contract” means a contract which provides for the filling of all actual purchase requirements of designated Authority activities for supplies or services~~

~~during a specified period, with deliveries or performance to be scheduled with the contractor and which the contractor is obligated to deliver and provide in return for a fixed amount or rate to be paid by the Authority.~~

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

Commission Comment: The Commission inserted commas after the words "improving" in subsection (e), "contractors" in subsection (j), "legislative" in subsection (m), "association" in subsection (o), and "leasing" in subsection (p) pursuant to 1 CMC § 3806(g).

#### **§ 40-50-040 Public Access to Procurement Information**

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

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

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

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

### **Part 100 - Procurement Organization**

#### **§ 40-50-101 Executive Director and Procurement Officer**

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

Modified, 1 CMC § 3806(g).



## **TITLE 40: COMMONWEALTH PORTS AUTHORITY**

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

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

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

- (a) Oversee that this chapter is observed in all Authority procurement. The Executive Director shall provide for full and open competition for goods and services under this chapter through use of the competitive procedure that is best suited to the circumstances of the contract action. However, the Executive Director may appoint and designate a Procurement Officer to carry out the provisions of this chapter and all related duties and responsibilities of procurement. The Procurement Officer shall be within the Comptroller's Office/Accounting for purposes of administration and oversight since procurement requires coordination with the Comptroller as to expenditures and certification of funds available for all procurement;
- (b) Conduct bidding, procurement, negotiation, or administration of Authority contracts including, but not limited to, receiving requests for procurement/proposals/bids from Authority managers or personnel; determining availability of funds for procurement in consultation with the Comptroller; preparing and issuing publications soliciting proposals, qualification statements, or other bids; assembling the record of submissions; preparing the criteria for review of proposals; developing the relevant procurement forms; and establishing a uniform set of Standard Operating Procedures for procurement within the Authority;
- (1) The Executive Director may direct the establishment of Standard Operating Procedures for Procurement which shall contain the developed and approved forms and procedures consistent with this chapter;
- (2) The Executive Director may direct the Comptroller to establish additional procedures and fiscal controls for procurement in order to ensure oversight and accountability in the procurement process including Purchase Orders; Purchase Requisition or Voucher Forms; Requests to Initiate Requests for Proposals or Invitations for Bids; Petty Cash Authorization; and other appropriate forms.
- (c) Provide advanced planning for the centralized purchase of Authority supplies;
- (d) Exercise general supervision and control over all inventories of supplies belonging to the Authority including, but not limited to, developing procedures and forms for cost controls and accounting; and
- (e) Establish and maintain programs for the inspection, testing and acceptance of supplies.

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

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

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

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

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

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

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

Modified, 1 CMC § 3806(g).

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

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

**§ 40-50-110 Contract Review and Oversight**

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

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

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

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

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

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

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

Modified, 1 CMC § 3806(g).

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

Commission Comment: The Commission inserted a period (.) at the end of the last sentence of subsection (a) to correct a manifest error.

#### ~~§ 40-50-115—Acceptance of Gratuities~~

~~The members of the Board or employees of the Authority cannot accept from any person any gift of value given to them with the intent to influence their business judgment.~~

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

### **Part 200 - Source Selection and Contract Formation**

#### **§ 40-50-201 Methods of Source Selection**

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

(a) § 40-50-210 (Small Purchases);

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

Modified, 1 CMC § 3806(g).

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

Commission Comment: The Commission removed the semicolon (;) and inserted a period (.) at the end of subsection (d) to correct a manifest error. The Commission inserted a comma after the word "sub-contractors" pursuant to 1 CMC § 3806(g).

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

(a) Architect-Engineer and Construction Management Services shall be procured as provided in this section except when authorized as a sole-source procurement.

(b) The Executive Director and Procurement Officer shall consult with the Authority Engineering Department or Section and maintain files of current statements of qualifications of architect-engineer or construction-management firms. The Authority shall solicit and publicly announce all requirements for architect-engineer or construction-management services for Authority projects based on the project requirements and needs. The Authority shall set forth the requirements for such firms and establish an evaluation plan for qualifications.

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

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

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

(f) Evaluating Results.

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

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

(ii) The reasons for and the amount of any cost overruns or delays in the completion of the project or service;

(iii) Whether the consultant fulfilled all the requirements of the contract, and if not, the requirements of the contract that the consultant failed to fulfill;

(iv) Factors outside the control of the consultant that caused difficulties in the consultant's performance of the contract; and

(v) The results of the contract, including a discussion regarding how the contract aids the goals of the Authority.

(2) Consultant Performance Reports may be considered by the Evaluation Committee when evaluating qualification statements for consulting services.

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

Commission Comment: The Commission inserted the apostrophe (') after "firm" in subsection (c) to correct a manifest error.

§ 40-50-203 [RESERVED]



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

**§ 40-50-204 [RESERVED]**

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

**§ 40-50-205 Invitation for Bids**

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

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

- (1) An invitation for bids number or "CPA Project No." designation
- (2) Date of issuance;
- (3) Name, address, and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour, and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place, and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions;
- (10) Any bonding requirements;
- (11) A valid CNMI Business License and Taxpayer Identification Number unless exempted by the Authority or applicable Federal law or regulation; and
- (12) A reasonable administrative fee for costs/handling for an IFB such as for scanning, duplication, or preparation depending on the nature or complexity of the IFB, the sum of which shall be set forth in the IFB solicitation.
- (13) Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall adequately set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill the Authority's minimum requirements;
- (14) The bid solicitation shall accurately reflect the Authority requirement. It shall adequately state what is to be done or what is to be delivered to the Authority in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Bids which fail this provision shall be deemed non-responsive.

(c) **Public Notice.**

- (1) The Executive Director or Procurement Officer or authorized designee shall publicize all invitation for bids in order to increase competition and broaden industry participation. A bidding period of at least thirty (30) calendar days shall be provided unless

the Executive Director or authorize designee certifies that a shorter time period is reasonable and necessary. However, the bidding period notice shall never be less than fourteen (14) calendar days. Further, the Executive Director or authorized designee may extend the bidding period for up to an additional ninety (90) calendar days considering the degree of urgency; the complexity of the contract requirements; the anticipated need for and extent for subcontracting; the geographical distribution of bidders; and the normal transmittal time for invitations and bids. Bid solicitation provisions that require bidders to notify the Authority of the bidder's intent to bid must provide bidders at least fourteen (14) calendar days from the date of the bid solicitation publication to submit such notice and such "intent to bid" requirements must be included in the public notice.

(2) The Procurement Officer or authorized designee shall publish the invitation for bids in two newspapers of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.

(d) Bid Receipt.

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

(2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Executive Director or Procurement Officer or authorized designee. No information contained in the bid shall be disclosed prior to the bid opening. The Executive Director or Procurement Officer or authorized designee shall cause the opened bid to be placed into the sealed receptacle.

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



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

(g) **Bid Rejection.**

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

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

(2) **The Authority's Right to Reject or Cancel Bids:** The Authority, through the Executive Director or authorized designee, may reject any and all bids or cancel the IFB and re-advertise at its discretion. The Authority may cancel or reject bids for reasons deemed by the Executive Director to be in the best interest of the Authority, including but not limited to, a change of requirements for the IFB; any material confusion, ambiguity or vagueness in the IFB which were not apparent at publication; any change in the funding availability for a solicitation; a change or modification in the scope of the IFB; or the Authority wishes to impose additional requirements for bidders which are necessary and material for the IFB. If, after rejecting bids for materials and supplies, the Authority, through the Executive Director or authorized designee, determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Authority may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

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

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

- (i) An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or
- (ii) The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.
- (2) **Withdrawal of Bids.** Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.
- (3) **Cancellation of Awards.** The Cancellation of awards or contracts shall only be permitted when:
  - (i) Evidence as to the existence of the mistake is not discovered until after the award;
  - (ii) There exists no clear and convincing evidence to support the bid intended; and
  - (iii) Performance of the contract at the award price would be unconscionable.
- (i) **Award.**
  - (1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders shall also be promptly notified. The Authority shall provide the lowest responsible and responsive bidder an "Intent to Award" letter. Upon receipt of the "Intent to Award" letter, the bidder shall sign the contract. The signed contract shall then be routed for CPA signatures, and once all required signatures and supporting documents are obtained, CPA shall issue a "Notice to Proceed" letter and the executed contract to the contractor. The "Notice to Proceed" letter shall provide notice to the contractor to begin the work contracted for and will state the date on which the contract time begins. The "Notice to Proceed" letter serves as the official award of the project.
  - ~~(2) Notice of an award shall only be made in writing.~~
  - ~~(3) Notice of an award shall only be made by the presentation of a contract with all the required signatures to the bidder.~~ No acceptance of an offer shall occur nor shall any contract be formed until a contract is written and has been approved by all required personnel of the Authority under this chapter.

Modified, 1 CMC § 3806(a).

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

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

#### § 40-50-210 Small Purchases

(a) Any procurement not exceeding ~~\$3,000.00~~ \$25,000.00 may be made in accordance with these small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

~~(b) — No bidding is required for any procurement of \$25,000.00 or less.~~

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

~~(ec)~~ Purchase Orders or Purchase Requisition requests may be utilized for small purchases below ~~\$250.00~~ \$25,000.00 and may be administered by the Comptroller's Office through the Procurement Officer.

~~(e) — The Executive Director or Procurement Officer must obtain written price and quotations from at least three vendors f~~For any procurement valued from ~~\$250.00~~ \$1,000.00 to \$25,000.00, ~~the Executive Director or Procurement Officer shall submit a request for a written quotation or written price from at least three~~ potential on or off-island vendors. A request for a written quotation must be in writing.

~~(fd)~~ The Executive Director or Procurement Officer or authorized designee is authorized to process open purchase orders for a procurement valued from \$1,000.00 and below with authorized signers listed on the purchase order.

History: Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

#### **§ 40-50-215 Sole Source Procurement**

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

(b) The written determination shall state the unique capabilities required and why they are required and the consideration given to alternative sources. The written determination shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the availability of funding for such services as certified by the Comptroller;

and a written copy of any applicable federal grant or regulation under which the services are authorized or required.

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

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

#### **§ 40-50-220 Emergency Procurement**

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

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

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

#### **§ 40-50-225 Request for Proposals**

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

contract for less than \$25,000 should it be in the best interest of the Authority, on discretion of the Executive Director, to do so.

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

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

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

(e) Proposal Rejection.

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

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

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

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

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

(v) Limits the rights of the Authority.

(2) The Authority's Right to Reject or Cancel Proposals: The Authority, through the Executive Director or authorized designee, may reject any and all proposals or cancel the RFP and/or re-advertise at its discretion. The Authority may cancel or reject proposals for reasons deemed by the Executive Director to be in the best interest of the Authority, including but not limited to, a change of requirements for the RFP; any material confusion, ambiguity, or vagueness in the RFP which was not apparent at publication; any change in the funding availability for a solicitation; a change or modification in the scope of the RFP; or the Authority wishes to impose additional requirements for proposers which are necessary and material for the RFP. If, after rejecting proposals, the Authority, through the Executive Director or authorized designee, determines that, in its opinion, the goods or services may be obtained at a lower price in the open market, the Authority may authorize such purchases without further observance of the provisions requiring contracts, proposals, or notices.

(ef) Evaluation factors.

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



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

- (i) A statement of the evaluation factors and any significant subfactors and their importance;
- (ii) A description of the evaluation process; the point system to be used as to the criteria for evaluation; the methodology; and the techniques to be used; and
- (iii) Documentation requirements.

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

(g) Evaluation Committee: The Executive Director or his designee shall convene an Evaluation Committee which may be comprised of representatives from the following Authority sections/divisions in order to have as representative and wide range of perspectives and experience: Accounting Section; Administration Section; Engineering Section; Ports Police; ~~Airport~~ Aircraft Rescue & Firefighting (AARFF); Operations Section; and Maintenance Section. The Executive Director may include non-Authority employees on an Evaluation Committee, if he determines, in writing, that the participation of non-Authority employees is in the best interest of Commonwealth. Non-Authority employees shall be compensated for their time and expenses incurred in service on an Evaluation Committee in the same manner as Authority Board members are compensated under 2 CMC § 2125. Each Evaluation Committee shall consist of between ~~There shall be no less than three and five members~~ (3) members up to five (5) members. Whenever practical, members of the Evaluation Committee should have some training, familiarity, or experience with the proposal being reviewed. As a matter of policy, the Authority should strive to afford in-service training, whenever possible, to its employees as to procurement procedures and standards so that their participation in the evaluation process is productive and helpful to the Authority and fair to all proposers. The Executive

Director shall, by Memorandum, direct the Evaluation Committee to convene as soon as practical following the close of the period for submission of proposals. The Evaluation Committee shall deliberate and apply the evaluation criteria in this section to determine the most responsible and most responsive proposer by rank.

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

\* So in original.

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

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

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

### **§ 40-50-301 Cancellation**

(a) An Invitation for Bids or Request for Proposals may be cancelled, and any and all bids or proposals may be rejected, ~~when such action is determined by the Executive Director, or the Board, or the Appeals Committee upon the consideration of an appeal by the Appeals Committee, including, but not limited to, for~~ the following reasons:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) Specifications which have been revised;
- (3) Goods or services being procured are no longer required;
- (4) Inadequate consideration given to all factors of cost to the Authority in the solicitation;
- (5) Bids or proposals received indicate that the needs of the government can be certified by a less expensive good or service;
- (6) All offers with acceptable bids or proposals received are at unreasonable prices; ~~or~~
- (7) Bids were collusive; ~~or~~
- (8) It is in the best interest of the Authority, in the exercise of its discretion, to cancel the Invitation for Bid or Request for Proposal.

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

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

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

## **Part 400 - Qualifications and Duties**

### **§ 40-50-401 Responsibility of Bidders and Proposers**

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

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Be able to comply with the required delivery or performance schedule;
- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics including a current tax clearance;

(5) Have no adverse record relating to ~~employment matters including but not limited to matters before~~ or concerning the CNMI Department of Labor, Federal Immigration Laws, Davis Bacon Act, the CNMI Bureau of Environmental and Coastal Quality Division of Environmental Quality, ~~or the U.S. Environmental Protection Agency, U.S. Department of Labor, U.S. Department of Commerce, the Federal Aviation Administration, the Federal Maritime Commission, the United States Coast Guard, and the United States Equal Employment Opportunity Commission, or the U.S. Internal Revenue Service, or other federal and local regulatory agencies;~~

(6) Have the necessary organization, experience and skills, (or the ability to obtain them) required to successfully perform the contract;

(7) Have the necessary production, construction and technical equipment facilities, or the ability to obtain them;

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

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

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



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

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

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

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

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

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

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

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

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

(a) **Authority.**

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

(b) **Statement of Purpose.**

Whereas the Authority reaffirms its obligation to enter into contracts only with responsible contractors who have the ability to perform the contract, in these times of economic

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

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

(d) **Required Documentation on Record for Each Contractor.**

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

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

(3) All forms required under § 40-50-410 retained by the contractor shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury. The federal form known as the I-9 is an acceptable document for use or evidence of compliance with § 40-50-410. As to proof residency for a worker, acceptable forms of proof are birth certificates; passports; entry permits or other documentation from the CNMI Department of Labor or Division of Immigration showing local "immediate relative" status; or a "green card" from the United States Bureau of Citizenship Services.

(e) **Sanctions for Non-Compliance.**

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

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

(f) **Binding on Subcontractors.**

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

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

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

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

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

(h) **Exception for Emergency.**

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

(i) **Definition of "Resident Worker".**

As used in § 40-50-410, the term "Resident Worker" is defined to mean a United States citizen or national; a lawful permanent resident of the United States or valid "green card" holder; a citizen of the Freely Associated States employed in the Commonwealth or attending school pursuant to the Compact of Free Association; an "immediate relative" of a United States citizen having been granted such lawful status with current and valid status

by the CNMI Division of Immigration. A “resident worker” shall not include any person holding alien worker status from the CNMI Department of Labor and/or holding an “entry permit” whose presence in the CNMI is pursuant to his/her employment as a contract or nonresident worker under the Nonresident Workers Act. To the extent that this definition conflicts with any applicable federal or CNMI law or regulation, the conflicting provision shall be severed and the remaining provision or definition shall remain in effect.

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

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

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

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

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

**Part 500 - Contract Terms and Administration of Contracts~~Types of Contracts~~  
~~Allowed and Types of Contracts Prohibited~~**

**§ 40-50-501 Types of Contracts**

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

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

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

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

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

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

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

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

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

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

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

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

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

**(a) Contract Monitoring.**

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

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

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

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

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

**(c) Evaluating Results.**

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

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

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

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

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

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

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

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

**§ 40-50-515 Change Orders**

**(a) Every contract amendment, modification, change order, or contract price adjustment under any contract/agreement to which the Authority is a party or signatory shall be subject to prior written approval by the Contracting Officer, as reviewed by the**



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

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

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

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

## **Part 600 - Inspection and Audit**

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

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

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

### **§ 40-50-605 Right to Audit Records**

As required by 1 CMC § 7845, the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data, or papers relevant to an Authority contract or

grant for a period of three years after the final payment under the contract or grant. A clause to this effect shall appear in all Authority contracts and obligations.

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

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

## **Part 700 - Reports and Records**

### **§ 40-50-701 Retention of Procurement Records**

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

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

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

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

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

Commission Comment: The Commission inserted a comma after the word "services" in subsection (b)(3) pursuant to 1 CMC § 3806(g).

## **Part 800 - Procurement of Construction Services**

### **§ 40-50-801 Construction Procurement**

(a) Invitation for Bids.

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

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

- (I) Notice to Bidders. General information regarding project;
- (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;



- (iii) General Conditions. Standard contract clauses governing the performance of work;
- (iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
- (v) Technical Specifications. Specifications governing the technical aspects of the work to be performed.

(b) Bid Security.

- (1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts ~~when the price is estimated by the contracting officer to exceed \$25,000.00 or when the contracting officer determines it is in the interest of the Authority.~~ when the Executive Director or Procurement Officer estimates the price may be estimated by the contracting officer to exceed \$25,000.00 or when the contracting officer determines it is in the interest of the Authority. Bid security shall be on a bid bond, by certified check, cashiers' check, or other form acceptable to the Authority.
- (2) Amount. Bid security shall be an amount equal to at least ten percent of the amount of the bid or other amount as specified in the invitations for bids.
- (3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds.

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

- (1) A performance bond satisfactory to the Authority, at a minimum a B+-rated surety up to a Treasury-listed surety company and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, in an amount equal to one hundred percent of the price specified in the contract; and
- (2) A payment (insurance) bond satisfactory to the Authority, with the following minimum ratings by the following rating entities: Rated A- by A.M. Best (Excellent); Aa3 by Moody's (Excellent); or AA- by Standard & Poors (Strong) and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The payment bond shall be in an amount equal to one hundred percent of the price specified in the contract.
- (3) The Executive Director shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation and, prior to the execution of the contract, the selected contractor shall submit the following:
  - (i) A current license from the bonding company showing that it has authority to issue bonds; and
  - (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of the bond issued to the selected contractor in favor of the Authority;
  - (iii) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Executive Director, to substitute and submit an acceptable bond prior to executing a contract. The Executive Director and/or Procurement Officer shall confirm the acceptability of the bonding company from other

## **TITLE 40: COMMONWEALTH PORTS AUTHORITY**

CNMI Government or Federal Agencies such as the Insurance Division Director of the Department of Commerce or the Federal Aviation Administration. If the selected contractor fails to submit an acceptable payment or performance bond within the deadline or extension allowed by the Executive Director, then the contract shall be deemed canceled as non-responsive and the next responsible bidder selected.

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

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

~~(f) Fiscal Responsibility/ Amendments/ Change Order Approval~~

~~(1) Every contract amendment, modification, change order, or contract price adjustment under any contract/agreement to which the Authority is a party or signatory shall be subject to prior written approval by the Contracting Officer, as reviewed by the Executive Director or his designee on a form prepared by or approved by the Procurement Officer. Further, no contractor nor vendor shall commence with any such amendment, modification, change order, contract/agreement price adjustment without prior approval by the Contracting Officer. Further, any change order which increases the total contract price for any non-federally or non-FAA-funded projects shall require prior approval by the Board with the concurrence of the Executive Director. Federally-funded projects which increase the total contract price only require the approval of the granting or applicable federal agency.~~

~~(2) A change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, there shall be no change order resulting in an increase in contract~~

~~cost or time when it is a direct or indirect result of the contractor's inexperience, pricing miscalculations, inefficiency, or incompetence. The Authority, through the Executive Director, may approve a change order should it be in the best interest of the Authority which may include additional consideration for the benefit of the Authority in return for such change order(s).~~

~~(3) — Change orders on construction and Architect Engineer and Construction Management contracts which exceed 25 percent of the contract price shall be automatically processed through competitive procedures except when determined by the Executive Director pursuant to subsection (2) above.~~

~~(4) — No contractor shall continue to perform work nor provide goods or services beyond the terms of the existing contract in the absence of any extension, modification, approval of a new contract, or an approved change order except that the Executive Director has the discretion to extend any contract for up to six (6) months based on circumstances beyond the control of the contracting parties, so long as the price and other terms are not changed in any material.~~

**(g) Completion of Contracts/ Release of Retention Amount.** Every contract for construction or delivery of goods or services may have a retention clause where up to ten (10%) of the total contract price shall be retained subject to a Certificate of Completion. A contract shall be deemed completed when the Executive Director and/or the Authority's Construction Manager or Consultant certifies in writing the completion of the project or contract. Prior to the Certification of Completion, the Authority or its Construction Manager or Project Consultant shall issue a Certification of Substantial Completion certifying that a substantial portion of the contract has been completed except for satisfaction or performance of any corrective work or "punch list." Upon issuance of a Certificate of Substantial Completion the Authority may release up to 5% of the retained funds. Upon issuance of a Certificate of Completion the Authority shall release the remaining 5% within thirty (30) days of submission. Acceptance of the retained funds by the Contractor shall be deemed to be an acceptance of and confirmation of satisfaction of all sums due from the Authority.

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

Commission Comment: The Commission corrected "cashiers check or" in subsection (b)(1) to "cashiers' check, or" and corrected the capitalization of "non-federally" in subsection (f)(1) pursuant to 1 CMC § 3806(f) and (g).

#### **~~§ 40-50-802 Contract Terms and Administration of Contracts~~**

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

~~(b) — Payment Terms. Payments shall be made by the Authority only upon the~~

~~submission of an original certified invoice of services rendered or of work performed with a description of the activity or work performed and for which payment is requested for that submitted invoice. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. As to any federally funded Airport Improvement Project ("AIP"), advance payments shall not be allowed.~~

~~Other types of payments are as follows:~~

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

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

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

~~(d) — The primary responsibility for ensuring compliance in contracting rests with the Executive Director. The Executive Director must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.~~

~~(e) — The oversight responsibility for the Authority's administration and enforcement of its contracts rests primarily with the Executive Director. He or she shall be responsible for developing standard contract administration procedures to be used by officials with expenditure authority, maintaining a central depository of contractor evaluations, and making the evaluations available to other CNMI Government agencies upon request.~~

~~(f) — Contract Monitoring.~~

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

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

~~(ii) — The contractor's actual performance under them.~~



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

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

~~(h) — Evaluating Results.~~

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

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

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

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

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

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

~~(2) — The post evaluation of each contractor may be submitted before final payment and close-out of the contract is done.~~

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

~~(g) — Fiscal Responsibility/Amendment/Change Order Approval.~~

~~(1) — Every contract amendment, modification, change order, or contract price adjustment under any contract/agreement to which the Authority is a party or signatory shall be subject to prior written approval by the Contracting Officer, as reviewed by the Executive Director or his designee on a form prepared by or approved by the Procurement Officer. Further, no contractor nor vendor shall commence with any such amendment, modification, change order, contract/agreement price adjustment without prior approval by the Contracting Officer. Further, any change order which increases the total contract price for any non-federally or non-FAA-funded projects shall require prior approval by the Board with the concurrence of the Executive Director. Federally funded projects which increase the total contract price only require the approval of the granting or applicable federal agency.~~

~~(2) — A change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, there shall be no change order resulting in an increase in the cost or time when it is a direct or indirect result of the contractor's inexperience, pricing~~

~~misconduct, inefficiency, or incompetence. The Authority, through the Executive Director, may approve a change order should it be in the best interest of the Authority which may include additional consideration for the benefit of the Authority in return for such change order.~~

~~(3) Change orders on construction and Architect Engineer and Construction Management contracts which exceed 25 percent of the contract price shall be automatically approved if the competitive price is determined by the Executive Director pursuant to subsection (2) above.~~

~~(4) No contractor shall continue to perform work or provide goods or services beyond the terms of the existing contract in the absence of a y extension; modification; approval of a new contract; or an approved change order except that the Executive Director has the discretion to extend any contract for up to six (6) months based on circumstances beyond the control of the contracting parties, so long as the price and other terms are not changed in any material way.~~

## **Part 900 - Protests and Disputes**

### **§ 40-50-901 Protests to the Executive Director**

#### **(a) General**

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

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

(3) The Executive Director shall decide the protest within thirty (30) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires a longer time, in which event he shall specify the appropriate longer time. If the Executive Director fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the Authority's Board of Director by filing such Notice of Appeal with the Chairman through the Board Secretary at the Authority Administration Section, Saipan International Airport. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information that the Executive Director or any party may submit which is

relevant and necessary for the determination of the protest;

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

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

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

**(b) Protests Before Award**

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

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

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

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

**(c) Protests After Award**

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Executive Director, at least the contractor shall be furnished the notice of protest and its basis in accordance with subsection (a)(2) above. When it appears

likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Authority's interest, the Executive Director should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(d) **Computation of Time**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(h) **Conference.**

(1) A conference on the merits of the appeal with the Appeal Committee may be held at the request of the appellant, any other interested party, or the Executive Director. A request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The Appeal Committee will

determine whether a conference is necessary for resolution of the appeal and this determination is not subject to reconsideration.

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

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

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

(i) Request for Reconsideration.

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

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

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

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

#### **§ 40-50-910 Remedies**

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

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

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

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
  - (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or
  - (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract;

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

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

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

#### **§ 40-50-915 Effective Date**

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

Modified, 1 CMC § 3806(d).

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

#### **§ 40-50-920 Disputes**

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

(b) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the dispute is necessary, the Executive Director shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a written description that shall include:

- (1) Description of the dispute;
- (2) Reference to pertinent contract terms;
- (3) Statement of the factual areas of disagreement or agreement; and
- (4) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(c) Appeals. The Appeal Committee shall review and render a decision on an appeal

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

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

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

#### **§ 40-50-925 Appeal Committee**

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

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

### **Part 1000 - Ethics in Contracting**

#### **§ 40-50-1001 Definitions of Terms**

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

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

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

(d) "Financial interest" means:

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

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

## **TITLE 40: COMMONWEALTH PORTS AUTHORITY**

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

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

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

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

### **§ 40-50-1005 Policy**

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

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

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

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

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

### **§ 40-50-1010 General Standards**

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

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

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

### **§ 40-50-1015 No Financial Interests**

(a) No Board member shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a

corporation in which such Board member owns less than five percent of the entire capital stock. To this end, the Authority shall require that corporate bidders submit the names of all of its stockholders and the percentage of their ownership.

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

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

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

**§ 40-50-1020 Gratuities and Kickbacks**

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

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

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

Commission Comment: The Commission inserted a comma after the word "gratuity" in subsection (b) pursuant to 1 CMC § 3806(g).

**§ 40-50-1025 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 Authority contracts upon an agreement or

understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

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

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

#### **§ 40-50-1030 Contract Clauses**

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

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

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

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

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

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

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

#### **§ 40-50-1040 Use of Confidential Information**

It shall be a breach of ethical standards for any Board member or employee or former Board member or employee to knowingly use confidential information for actual or anticipated

personal gain, or the actual or anticipated personal gain of any other person.

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

**§ 40-50-1045 Collusion by Bidders**

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

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

**§ 40-50-1050 Authority to Debar or Suspend**

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

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

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

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

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

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

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

(4) Any other cause that the Executive Director determines to be so serious and



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compelling as to effect responsibility as an Authority contractor, including debarment by another governmental entity; and

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

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

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

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



**Commonwealth of the Northern Mariana Islands**  
**Office of the Secretary of Public Works**  
2<sup>nd</sup> floor - Oleai Joeten Commercial Center  
Saipan, MP 96950



**Commonwealth of the Northern Mariana Islands**  
**Department of Public Works - Division of Building Safety Code**

James A. Ada, Secretary  
Department of Public Works, Division of Building Safety Code, Caller Box 10007 CK  
2<sup>nd</sup> floor Oleai Joeten Commercial Center, Saipan MP 96950

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**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Department of Public Works, Division of Building Safety Code intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

**AUTHORITY:** The Secretary is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § 2404 (Secretary issues regulations)

**THE TERMS AND SUBSTANCE:** The Rules and Regulations provide that the Building Safety Code Regulation update the schedule of fees and adoption of provisions.

**THE SUBJECTS AND ISSUES INVOLVED:** These rules and regulations:

1. Add new word with definitions for Fences under § 155-10.1-211 , Annual Certificate of Compliance under § 155-10.1-335 and Additional Definitions under § 155-10.1-705;
2. Update and change Fees under § 155-10.1-225;
3. Delete certain provisions for Purpose: Energy and Energy Conservation under § 155-10.1-027, Discretion to Adapt to Circumstances under § 155-10.1-030, Electronic filing and Meeting under § 155-10.1-165 and Additional Definitions under § 155-10.1-705;
4. Amended language for Existing Structures under § 155-10.1-005, Cooperation from Public Agencies and Application to Public Buildings under § 155-10.1-020,

Special Permits under § 155-10.1-160, Cessation in Construction under §155-10.1-230, Certificate of Occupancy under § 155-10.1-301, International Building Code of 2009;

5. Addition of regulation for Site Plan under § 155-10.1-120, Unsafe Structures under § 155-10.1-401, Sign under § 155-10.1-420 and Prohibition and Penalty under § 155-10.1-501.

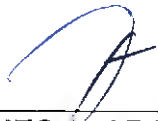
**CONCURRENT ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS:** The Board has followed the procedures of 1 CMC § 9104(b) and (c) to adopt these Proposed Regulations on an emergency basis for 120 days. The Governor signed the emergency regulations on July 3, 2008. The emergency regulations are now in effect.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

**TO PROVIDE COMMENTS:** Send or deliver your comments to Mr. James A. Ada, Secretary of Public Works *Attn: Building Safety Code Rules and Regulation*, at the above address, fax or email address, with the subject line "Building Safety Code Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).


These proposed regulations were approved by the Secretary on April 27, 2020.

Submitted by:

  
JAMES A. ADA  
Secretary of DPW


4/27/20  
Date

Received by:

  
MATHILDA A. ROSARIO  
Governor's Special Assistant for  
Administration

05/14/2020  
Date

Filed and  
Recorded by:

  
ESTHER SN. NESBITT  
Commonwealth Registrar

05-19-2020  
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 12 day of May, 2020.

  
EDWARD MANIBUSAN  
Attorney General

0 NOPR proposed regs on computer software P&S.wpd



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Commonwealth Téel Falúw kka Efáng Ilól Marianas  
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MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL ALLÉGH ME MWÓGHUTUGHUT KKAL: Commonwealth Téel Falúw kka Efáng Ilól Marianas, Department of Public Works, Division of Building Safety Code re mángemángil rebwe adóptááli Pommwol Mwóghutughut ikka e appasch bwe ebwe lléghló fféerúl, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló Mwóghutughut kkal Ilól seigh ráál mwiril aal adóptááli me akkatééwowul me Ilól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Eyoor bwángil Sekkretóoriyo sáangi Legislature reel ebwe adóptááli allégh me mwóghutughut ngáli administration me alléghúl statute ikka e lemeli aal mwóghutughut. 1 CMC § 2404 (mwóghutughut ikka Sekkretóoriyo e isiisiwow).

KKAPASAL ME WEEWEL: Allégh me Mwóghutughut kkal e ayoorai Mwóghutughutúl Building Safety Code reel rebwe ayoorai liiwwel reel atol óbwóss me adóptáál provisions.

KKAPASAL ME ÓUTOL: Allégh me mwóghutughut kkal:

1. Aschuulong ffél kkapas fengál me weewel ngáli “Fences” faal § 155-10.1-211, “Annual Certificate” reel

“Compliance” faal § 155-10.1-335 me Weewel ebwe Schuulong faal § 155-10.1-705;

2. Ffél me siiweli Óbwóss faal § 155-10.1-225;

3 Amwóyló akkáaw “provisions” ngáli Bwulul; “Energy” me “Energy Conservation” faal § 155-10.1-027,

“Discretion” reel rebwe Adóptááli ngáli “Circumstances” faal § 155-10.1-030, Ammwelil iye e Electronic

me Yéélágh faal § 155-10.1-165 me Weewel ikka e Schuulong faal § 155-10.1-705;

4. Liiweli kkapas ngáli Kkayú ikka e lo faal § 155-10.1-005, “Cooperation” sáangi “Public Agencies” me

“Application” ngáli “Public Buildings” faal § 155-10.1-020, Special Permit faal § 155-10.1-160,

“Cessation”llól “Construction” faal § 155-10.1-230, “Certificate of Occupancy” faal § 155-10.1-301,

“International Building” Code-il 2009;

5. Aschuulong mwóghutughut ngáli “Site Plan” faal § 155-10.1-120, “Unsafe Structures” faal § 155-10.1-

401, Ghikkill faal § 155-10.1-420, me “Prohibition” and Óbwóss faal § 155-10.1-501.

ABWUNGUBWUNGUL ADÓPTAAL MWÓGHUTUGHUT LLÓL GHITIPOTCH NGÁLI EBWUGHÚW ME RUWEIGH (120) RÁÁL: Board re attabweey ngáli mwóghutughutúl 1 CMC § 904(b) me (c) reel rebwe adóptááli Pommwol Mwóghutughut kkal llól ghitipotch ngáli ebwughúw me ruweigh ráál. Soulemelem aa ghikilla mwóghutughut llól ghitipotch wóól Wuun 2, 2008. Aa bwunguló mwóghutughut kkal.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commowealth Register llól táлил pommwol me ffél mwóghutughut ikka ra adóptáálil ( 1 CMC § 9102(a)(1)) me ebwe appaschetá me llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch. (1 CMC § 9104(a)(1)).

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Mr. James A. Ada, Sekkretóoriyol Public Works *Attn: Building Safety Codes* reel féléfél iye e lo weiláng, fax ngáre email address, ebwe lo wóól subject line bwe “Building Safety Code Rules and Regulations”. Ebwe toolong ischil kkapas llól eliigh (30) ráál mwiril all akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angiingi. (1 CMC § 9104(a)(2)).


Aa átirow pommwol mwóghutughut kkal sáangi Sekkretóoriyo wóól Sééta 27, 2020.

Isáliyalong:

  
JAMES A. ADA  
Sekkretóoriyol DPW


4/27/20  
Ráál

Bwughiyal:

  
MATHILDA A. ROSARIO  
Layúl Soulemelem Special  
Assistant ngáli Administration

05/14/2020  
Ráál

Ammwelil:

  
ESTHER S.N. NESBITT  
Commonwealth Registrar

05-19-2020  
Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkal bwe aa lléghló reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalap CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Aghikkillátiw wóól 18 ráál May, 2020.

  
EDWARD MANIBUSAN  
Soulemelemil Allégh Lapalap





Commonwealth of the Northern Mariana Islands  
Office of the Secretary of Public Works  
2<sup>nd</sup> floor - Oleai Joeten Commercial Center  
Saipan, MP 96950



Commonwealth gi Sangkattan na Islas Mariñas  
Department of Public Works – Division of Building Safety Code

James A. Ada, Sekretariu

Department of Public Works, Division of Building Safety Code, Caller Box 10007 CK  
2<sup>nd</sup> Floor Oleai Joeten Commercial Center, Saipan MP 96950

Tilifon: 670.234-2726/2296; fax: 670.235.2732

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[dpw.bsc@gmail.com](mailto:dpw.bsc@gmail.com)

I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTE SIHA I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariñas, I “Department of Public works”, I “Division of Buildings Safety Code” ha intensiona para u adapta kumu petmanienti na regulasion i manñechettun Manmaproponi na Regulasion siha, sigun gi maneran i Aktun “Administrative Procedure”, 1 CMC § 9104(a). I Regulasion siha siempri umifektibu gi halum dies (10) dihas dispues i adaptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDAT: I Sekretariu ma'atturisa ginen i Lehislatura para u adapta i areklamentu yan i regulasion siha para i atministrasion yan katga huyung i lai ni ha gubebietna i aktibidat i sekretariu. 1 CMC § 2404 (Ninahuyung regulasion i Sekretaria siha).

I TEMA YAN SUSTANSIA I PALABRA SIHA: I Areklamentu yan i Regulasion siha ha pribeni na i Regulasion i Building Safety Code u mananuebu i fetchan apas yan adaptan i prubensión.

I SUHETU NI MASUMARIA YAN ASUNTU NI MANTINEKKA: Esti na Areklamentu yan Regulasion siha:

1. Na'hálum nuebu na palabra yan i definisión para “Fences” gi papa' § 155-10.1-211, Kada § Sákkán na Settifikasion Kontráta gi papa' § 155-10.1-335 yan Na'hálum Mäs Definisión gi papa' 155-10.1-705;
2. Na'nuebu yan tulaika i Ápas gi papa' § 155-10.1-225;
3. Funas manpattikulát na prubensión siha para Intension; “Energey” yan “Energy Conservation” papa' § 155-10.1-027, “Discretion” para u Adapta para Sikumstansia gi papa' § 155-10.1-030, “Electronic” na pine'lu yan Hunta gi papa' § 155-10.1-165 yan Na'hálum mäs Definisión gi papa' § 155-10.1-705;

4. Ma'amenda na lingguáhi para Gagaigi na Estroktura gi papa' § 155-10.1-005, "Cooperation" ginin i Ahensia Pupbliku siha yan Aplikasion para "Public Buildings" gi papa' § 155-10.1-020, Ispisiát na Konsienti gi papa' § 155-10.1-160, "Cessation" gi halum Kunstráksion gi papa' § 155-10.1-230, Setifikasién nu Okupanti gi papa' § 155-10.1-301, "International Building Code" nu 2009;
5. Na'hálum mäs nu regulasion para Plånun Lugát gi papa' § 155-10.1-120, Ti Sáfu' na Estroktura gi papa' § 155-10.1-401, Fitma gi papa' § 155-10.1-420 yan Prohibisién yan Pena gi papa' § 155-10.1-501

INAPRUEBAN ADÁPTASION I "EMERGENCY" NA REGULASION PARA UNU SIENTUS BENTI (120) DIHAS: I Kuetpu ha' tátti yi i maneran i 1 CMC § 9104 (b) yan (c) para u ma'adáp̄ta esti i Manmaproponi na Regulasion siha gi "emergency basis" para unu sientus benti (120) dihas. I Maga'láhi ha' fitma i "emergency" na regulasion siha gi Huliú 3, 2008. I "emergency" na regulasion umifektibu pá'gu.

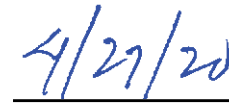
DIREKSION PARA U MAPO'LU YAN PUPBLIKA: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi Rehistran Commonwealth gi hálum i seksiona gi manmaproponi yan i nuebu na regulasion ni ma'adáp̄ta siha (1 CMC § 9102(a)(1)) yan u mapega gi halum i kumbinienti na lugát siha giya i civic center yan gi halum ufisinan gubietnu siha gi hálum distritun senadot parehu English yan gi lingguáhin natibu. (1 CMC § 9104 (a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hánao pat intrega hálum i upiñon-mu siha guatu as Siñot James A. Ada, Sekretáriun "Public Works" *Attension: Areklamentu yan Regulasion "Buildings Safety Code"*, atyu i gethilu na "address, fax" pat "email address", yan i ráyan suhetu "Areklamentu yan Regulasion Building Safety Code". I upiñon ma'ekspekta gi halum trenta (30) dihas ginen i fetcha i publikasion esti na nutisia. Put fabot na hálum i imfotmasion-mu, kunistasién pat águmentu siha. (1 CMC § 9104 (a)(2))

Esti i manmaproponi na regulasion siha inaprueba ginin i Sekretáriu gi Abrit 27, 2020.


Nina Hálum as:

  
JAMES A. ADA  
Secretary of DPW

  
Fetcha

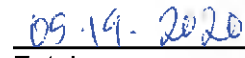
Rinisibi as:

  
MATHILDA A. ROSARIO  
Ispisiat na Ayudánti para i  
Atministrasion Gubietnu

  
Fetcha

Pine'lu yan  
Ninota as:

  
ESTHER SN. NESBITT  
Rehistran Commonwealth

  
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) hentan inaprueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligat i CNMI Abugâdu Henerât yan debi na u mapuplika, 1 CMC § 2153(f) (pupplikasion areklamentu yan regulasion siha).

Mafetcha gi diha 19, gi May 2020.

  
**EDWARD MANIBUSAN**  
Abugâdu Henerât

TITLE 155  
DEPARTMENT OF PUBLIC WORKS

Chapters

- 155-10      Building Safety Division
  - 155-10.1      Building Safety Code Rules and Regulations
  - 155-10.2      Flood Damage Prevention Regulations

CHAPTER 155-10  
BUILDING SAFETY DIVISION

Subchapters

- 55-10.1      Building Safety Code Rules and Regulations
- 155-10.2      Flood Damage Prevention Regulations

SUBCHAPTER 55-10.1  
BUILDING SAFETY CODE RULES AND REGULATIONS

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- § 155-10.1-001      Authority
- § 155-10.1-005      Existing Structures
- § 155-10.1-010      Compliance Required
- § 155-10.1-015      Administration and Enforcement
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- § 155-10.1-140      Endorsement
- § 155-10.1-145      Approved Drawings; Revisions Prohibited

- § 155-10.1-150 Disposition
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**Part 200 Inspection, Fees, and Compliance**

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- § 155-10.1-205 Tests as Proof of Compliance
- § 155-10.1-210 Prefabricated Buildings
- § 155-10.1-211 Fences
- § 155-10.1-215 Stoppage of Work for Non-Compliance
- § 155-10.1-220 Revocation Permit
- § 155-10.1-225 Fees
- § 155-10.1-230 Cessation in Construction

**Part 300 Certificates of Occupancy**

- § 155-10.1-301 Certificate of Occupancy
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- § 155-10.1-310 Content
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- § 155-10.1-401 Unsafe Structures
- § 155-10.1-405 Examination
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- § 155-10.1-601 International Building Code Adopted
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**Part 700 Definitions**

- § 155-10.1-701 Statutory Definitions
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**Appendix A Guidance Standards through Building Safety Code**  
**Appendix B Testing Laboratories and Other Entities**

**Part 001- General Provisions**

**§ 155-10.1-001 Authority**

The regulations in this subchapter are promulgated pursuant to the authority of the Building Safety Code, Public Law 6-45, as amended.

**§ 155-10.1-005 Existing Structures**

The following specified provisions shall apply to existing buildings and structures:

- (a) It shall be unlawful to make any change in the use or occupancy of any structure or building without the approval of the Building Safety Official and his certification that such new use of the structure or building is permitted under the Safety Code and the regulations in this subchapter and that such change does not result in a greater hazard to public safety or welfare. Such change in use must also comply with the requirements of the zoning code, Public Law 5-32.
- (b) If a building is increased in floor space or number of stories, the entire building or structure shall be made to conform to the requirements of the Safety Code and the regulations in this subchapter.
- (c) Where alterations or repairs are made within any period of twelve months which affects or includes in excess of fifty percent of the existing floor space area, the entire structure or building shall be made to comply with the provisions of the Safety Code and the regulations in this subchapter applicable to new buildings and structures. Exception: if the new construction is separated from the existing by fire walls of 2 houses or greater than existing construction does not have to comply.
- (d) Ordinary Residential repairs to buildings or structures, of which repairs do not, within the twelve months period, exceed twenty-five percent of the existing floor space area of the building or structure, may be made without application or notice to the Building Safety Official; provided, that the term ordinary repairs shall not include the removal or cutting of any structural member or support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the existing requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring, or other work affecting public health, safety or welfare.

(Insert new Subsection and re-letter and number appropriately):

- (f) The following minor repairs and accessory structure as describe below are exempted from requiring building permit.
- (a) Detached additional or accessory structures not exceeding 120 square feet in floor area.
  - (b) Non-structural (wire/wood) fences not over 7 feet.
  - (c) Retaining walls/fences (CMU/concrete) that are not over 4 feet in height measured from the bottom of the footing to the top of the wall.
  - (d) Water tanks supported directly on grade and capacity, and not greater than 5,000 gallons.
  - (e) Painting, tiling, papering, carpeting, cabinets, counter tops, and similar finishes, or door or window replacement that does not alter the original opening or structure.
  - (f) Swings and other playground equipment.
  - (g) Ordinary repairs that in total do not exceed \$5,000 in value.
  - (h) Structures traditional to the Chamorro or Carolinian cultures, such as pala-pala, constructed primarily of natural materials indigenous to the Northern Mariana Islands.

#### **§ 155-10.1-010 Compliance Required**

No building or structure shall be constructed, extended, repaired, or altered in violation of the provisions of the Safety Code and the regulations in this subchapter, except for ordinary repairs as defined in § 155-10.1-005(d); and except further, that the raising or lowering or moving of a building or structure as a unit necessitated by a change in grade or the widening of a street shall be permitted; provided, that the building or structure is not otherwise altered or its use or occupancy changed.

#### **§ 155-10.1-015 Administration and Enforcement**

The administration and enforcement of the provisions of the Safety Code and the regulations in this subchapter shall be the responsibility and duty of the Building Safety Official.

#### **§ 155-10.1-020 Cooperation from Public Agencies and Application to Public Buildings**

- (a) This Safety Code and the regulations in this subchapter apply to public buildings and construction projects. It is the expressed intent of these regulations that the design and construction, alteration, modification, occupancy, and use of all public buildings shall be in full compliance with the requirements of the Safety Code.
- (b) Commonwealth departments, agencies, or other branches of government that exercise any degree of control over construction, use, or occupancy of buildings or structures, appurtenances connected or attached thereto or equivalent thereof, under other applicable laws of the Northern Mariana Islands shall cooperate and assist in the enforcement of the provisions of this Safety Code and the regulations in this subchapter.



(c) Any employee or agency empowered to review the design or make inspections of such structures shall promptly report to their department or agency supervisor any violations of the provisions of the Safety Code and these regulations, for prompt reporting of the violation to the Building Safety Official.

(d) Every government agency shall apply for a permit, pay appropriate fees and collaborate with inspections prior to commencing work. No agency shall occupy a structure without a current certificate of occupancy.

**§ 155-10.1-025 Purpose; Rules and Regulations**

(a) The provisions of the regulations in this subchapter are designed to set forth the standards for protection of the public health, safety and welfare. The expressed approval of certain materials, methods, devices or equipment which will satisfy these same standards.

(b) In furtherance of the intent of subsection (a) of this section, the Building Safety Official may formulate and promulgate and may amend or repeal regulations supplementary to and not inconsistent with the provisions of this and other applicable federal and Commonwealth laws. Said regulations shall have the force and effect of law and shall be concerned with the uses of alternate materials, methods, devices, equipment and test which are deemed acceptable for meeting the standards established by or pursuant to the law; and with such other matters as the Building Safety Official, from time to time may deem necessary in order to effectuate the expressed purposes of this law. It is the intent of this section that the standards of the governmental agencies and recognized national technical organizations listed in appendix A of this subchapter shall serve as a guide in prescribing regulations promulgated pursuant to this law.

**~~§ 155-10.1-027 Purpose; Energy and Energy Conservation~~**

~~The people of the Commonwealth deserve high quality energy services which are clean, efficient, and promote economic development within the Commonwealth.~~

~~(a) Economic stimulus funds, under the federal American Recovery and Renewal Act of 2009 (ARRA), are available to the CNMI if the Commonwealth takes steps to enhance energy efficiency and the wise use of energy consonant with the ARRA. The statements of goals, purposes, and intentions in this section are intended to assist in qualifying for the stimulus funds.~~

~~(b) The Department's goals for the Commonwealth include:~~

- ~~(1) Increase energy efficiency to reduce energy costs and consumption for consumers, businesses, and government;~~
- ~~(2) Reduce reliance on imported energy;~~
- ~~(3) Improve the reliability of electricity and fuel supply and the delivery of energy services; and~~
- ~~(4) Reduce the impacts of energy production and use on the environment.~~

~~(c) — The Department's goals for the Commonwealth are consistent with the ARRA's, in that we propose to:~~

- ~~(1) — Preserve and create jobs and promote economic recovery;~~
- ~~(2) — Assist those most impacted by our difficult economic times;~~
- ~~(3) — Promote investments needed to increase economic efficiency; and~~
- ~~(4) — Promote investment in environmental protection and other infrastructure that will provide long-term economic benefits.~~

~~(d) — The Governor has certified in writing the CNMI's compliance with § 410 of the ARRA.~~

~~(e) — As the ARRA states, at a minimum the Commonwealth should plan for and maximize efforts toward achieving the specific goal of reducing per capita energy use from the CNMI's 1990 per capita energy use, by 2012.~~

~~(f) — As the ARRA states, the Department agrees that the Commonwealth Public Utilities Commission ("CPUC") should seek to implement, in appropriate proceedings for CUC and/or its successors, a general policy that ensures that utility financial incentives are aligned with:~~

- ~~(1) — Helping the customers use energy more efficiently;~~
- ~~(2) — Proving timely cost recovery;~~
- ~~(3) — Providing a timely earnings opportunity associated with cost-effect, measurable and verifiable energy savings in a way that sustains or enhances utility customers' incentives to use energy more efficiently.~~

~~(g) — As the ARRA states, the Executive, through the Department of Public Works, should implement the following:~~

- ~~(1) — A residential building energy code/s that meets or exceeds the most recent international energy conservation code, or achieves equivalent or greater energy savings;~~
- ~~(2) — A commercial building energy code/s throughout the CNMI that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings;~~
- ~~(3) — A plan to achieve 90% compliance with the above energy codes within eight years, including active training and enforcement programs and annual measurement of the rate of compliance.~~

~~(h) — As the ARRA states, the Executive should, to the maximum extent practicable, prioritize ARRA-based federal grants toward funding energy efficiency and renewable energy programs, including, but not limited to:~~

- ~~(1) — Expansion of existing energy efficiency programs, approved by the Department of Public Works or the CPIC, including energy efficiency retrofits of buildings and facilities funded by the CNMI or through rates under CPUC oversight;~~
- ~~(2) — Expansion of existing programs, approved by Department of Public Works or the CPUC, to support renewable energy projects and deployment activities, including but not limited to programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and~~
- ~~(3) — Cooperation and joint activities with states and territories to advance more efficient and effective use of ARRA funding to support such priorities.~~

~~(i) The Commonwealth should also be using the most up to date building codes. The present statutes adopt much older codes. But the old codes have been updated to the level of the International Building Code ("IBC") of 2009. The IBC's triennial updating process calls upon the expertise and real-world experience of thousands of building professionals, including building code officials. The Department wishes to bring our building codes up to date, empower the Building Safety Official to update as the construction industry and its professions update, recognize the proper seismic and typhoon safety standards and codes, and empower DPW to adopt the Tropical Energy Code drafted especially for the CNMI, Guam, Hawai'i, Puerto Rico, and the Virgin Islands.~~

~~(j) The Department also wishes to make clear that DPW has full capability to administer the stimulus funding as well as the functions given it over the years, including develop and implement any required plans to achieve 90% of the ARRA-driven energy goals within eight years.~~

#### **§ 155-10.1-030 Discretion to Adapt to Circumstances**

The Building Safety Review Board on recommendation of the Building Safety Official, may vary or modify the application of any provision of the Safety Code or the regulations in this subchapter consonant with their spirit and intent, upon application of the owner or his representative, in any of the following conditions:

(a) When the proposed variation or modification will not affect the public health, safety, or welfare, designed to be achieved, provided, or protected by the provisions of the Safety Code or the regulations in this subchapter.

#### **§ 155-10.1-035 New or Alternate Materials**

(a) Any new or alternate materials, methods, devices, or equipment which are not covered by the Safety Code and the regulations in this subchapter may be used by their proponent only when the proposed use has been expressly authorized in writing by the Building Safety Official.

(b) The proponent shall file, in addition to his application for a building permit, a request for authorization to use the proposed new or alternate material, method, device, or equipment, accompanied by proof in support of his claim regarding the consistency of the proposed use with the standards established by the Safety Code and the regulations in this subchapter. Such proof shall consist of a complete report from an approved materials testing laboratory listed in the appendix B to this subchapter on the performance characteristics of the subject matter to meet the proposed use as set forth in the application for a building permit.

(c) The Building Safety Official, within a reasonable time after submission but not to exceed ninety days, of the request for authorization of the proposed use, shall approve or disapprove such use. Said approval or disapproval shall be in writing, and shall set forth the basis of said Building Safety Official decision. Any approval shall require the applicant to utilize such material, method, device, or equipment in strict conformity with the terms of the approval.

#### **§ 155-10.1-040 Prohibition**

It shall be unlawful to construct, enlarge, alter, remove or demolish, or change the occupancy of a building, public or private, from one use group to another, without first filing an application with the Building Safety Official in writing and obtaining the required permit therefore, except that ordinary repairs as defined in § 155-10.1-005(d) which do not involve any violation of the Safety Code and the regulations in this subchapter shall be exempt from this provision.

### **Part 100 - Building Permit Application and Review Process**

#### **§ 155-10.1-101 Application for Permit**

An application for a permit shall be submitted in such form as the Building Safety Official may prescribe and shall be accompanied by the required fee as prescribed in the regulations in this subchapter.

#### **§ 155-10.1-105 Application Procedure**

An application for a permit shall be made by the owner or lessee of the property, or agent of either, or by a CNMI licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the legal owner it shall be accompanied by a duly verified affidavit of the owner that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and, where the owner or lessee is a corporation, the responsible officer names shall be stated on the application.

#### **§ 155-10.1-110 Contents**

An application shall contain a general description of the proposed work, identify its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building, and such additional information as may be required by the Building Safety Official.

#### **§ 155-10.1-115 Information Required**

An application for a permit shall be accompanied by not less than two copies of the specifications and of the drawings drawn to scale, with sufficient clarity and dimensions, to show the nature and character of the work to be performed. When quality of materials is essential for compliance with the Safety Code, specific information shall be given to establish such quality; and in no case shall the Safety Code be cited or the term "legal specifications" or its equivalent be used as a substitute for specific information. The Building Safety Official may waive the requirement for filing drawings if the work involved is of a minor nature. The Building Safety Official may prescribe a uniform format and size for drawings and specifications required with an application for permit.

#### **§ 155-10.1-120 Site Plan**

- (a) There shall be filed a site plan showing the scale, size, and location of all the new construction and all existing structures on the site, distance from lot lines and the established street grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and constructions that are to remain on the site or plot. The Building Safety Official may waive the requirements of this section when the work involved is of a minor nature.

(Insert new Subsection and re-letter and number appropriately):

- (b) At a minimum, the site plan or civil plan shall consist of the following:
- (1) As-Built drawing showing the existing features within the site and surroundings as may be deemed necessary;
  - (2) Setback measurement with respect to the lot lines and government right-of-way;
  - (3) For structures in a flood zone, a finish floor elevation shall be referenced to a vertical datum;
  - (4) With the exception of single family residential unit, include design layout and number of parking areas (stalls) and show intended vehicular movements within the parking area as well as ingress and egress;
  - (5) Required applicable standard temporary safety traffic devices within the project;
  - (6) Grading and drainage plan including driveway connection to the public right-of-way showing its gradient;
  - (7) Location of existing utilities and the proposed point of connections;
  - (8) Reference elevation to a local datum;
  - (9) Construction debris management plan.

#### **§ 155-10.1-125 Additional Details**

The Building Safety Official shall require that adequate details of structural, mechanical, and electrical work including computations, stress diagrams, and other essential technical data to be filed. All engineering drawings and computations shall bear the signature of a CNMI licensed professional engineer or architect who shall be responsible for the work.

#### **§ 155-10.1-130 Examination and Review**

The Building Safety Official shall promptly examine or cause to be examined, each application for a building permit and all drawings, specifications, information, and materials filed in conjunction therewith, in order to ascertain whether the proposed work is in compliance with the requirements of the provisions of the Safety Code and the regulations in this subchapter. Whenever the actual physical conditions of the proposed work, or the site thereof, are not apparent from the application for a building permit and the materials filed in conjunction therewith, the Building Safety Official may require the submission of additional information or may examine or cause to be examined the site of the proposed work in order to determine such conditions.

**§ 155-10.1-135      Action on Applications**

(a) The Building Safety Official shall act upon each application for a building permit without unreasonable or unnecessary delay. On finding conformity with all the requirements of the regulations in this subchapter, the Safety Code, and other applicable laws, the Building Safety Official shall, upon receipt of the required fee, issue the permit to the applicant.

(b) If an application for a permit or the drawings and specifications submitted therewith describe proposed work are not in conformity with all the requirements of law, or do not contain sufficient information to enable the Building Safety Official to reach a decision, he shall not issue such a permit, but shall return the drawings and specifications to the applicant, together with a written statement setting forth his or her refusal to issue such permit, and reason therefore. The Building Safety Official, upon request of the applicant, shall make such refusal, containing the reasons therefore, in writing.

**§ 155-10.1-140      Endorsement**

The Building Safety Official, upon the issuance of a permit, shall endorse in writing or stamp on both sets of drawings and specifications "APPROVED FOR PERMIT # \_\_\_\_\_," and affix his or her signature to such endorsement.

**§ 155-10.1-145      Approved Drawings; Revisions Prohibited**

Approved drawings and specifications shall not be revised, modified, or altered in any manner affected by the provisions of the Safety Code or the regulations in this subchapter without the expressed written authorization from the Building Safety Official, and all such work shall be done in accordance with approved drawings and specifications.

**§ 155-10.1-150      Disposition**

The Building Safety Official shall retain at least one set of approved and endorsed drawings and specifications with their attached data and return one endorsed set to the applicant. The applicant's set shall be kept at the work site, at all times, during which the authorized work is in progress, and shall be open for inspection at all reasonable times to the Building Safety Official or his authorized representative.

## **§ 155-10.1-155 Permit**

(a) The issuance of a building permit or approval of drawings and specifications shall not be construed to be a permit for, or approval of any violation of the provisions of the Safety Code, the regulations in this subchapter, or other applicable law, except in the case of an approved modification pursuant to Safety Code § 7114 [2 CMC § 7114]. Any permit presuming to cancel such provisions or condone such violations shall be invalid and void in its entirety.

(b) The issuance of a building permit after approval of drawings, specifications, and attached data submitted therewith, shall not prevent the Building Safety Official from thereafter requiring corrections of any errors in said drawings in writing, specifications, and data, nor from prohibiting building construction to be carried on thereunder until such correction(s) is/are made.

(c) Any building permit shall lapse and become invalid, if the work authorized by it is not commenced within six months after its issuance; or if the work is suspended or abandoned for a period of six months at any time after the work has been commenced. For cause, the Building Safety Official may allow an extension up to a maximum of six months each. All such extensions shall be in writing and noted on the building permit and in the building permit records at the Building Safety Official office.

## **§ 155-10.1-160 Special Permits**

The Building Safety Official may, at his discretion after the receipt of an application for a building permit and pending issuance of such permit, issue a special permit for the foundations or other substructures, without assurance that a building permit for the super structure will be granted.

However, the special permit shall be issued only after the site plan, foundation plans including calculations has been reviewed and approved. Such activity as the applicant may undertake under said special permit must be in full compliance with the provisions of the Safety Code, the regulations in this subchapter, and any other applicable laws.

## **§ 155-10.1-165 Electronic Filings and Meetings**

(a) Any filing, application, presentation of plans or specifications, or other submission made pursuant to these regulations shall be in writing as defined in the regulations for this chapter. A person submitting electronically in a software format other than Microsoft Word, Excel, or Adobe Acrobat shall first obtain the approval of the Building Safety Official or his designee. For instance, architectural plans generated in AutoCad or SoftCad are not readable on the Department's computers unless a reader program is included with the submission. Preferred media for submission would be CD/DVD or ~~flash drive~~ FLASH DRIVE for files over 3 MB. Email attachment is acceptable for files of 3 MB or less.

(b) Any hearing, conference, or other meeting, can, with the agreement of the Building Safety Official or his designee, be conducted virtually, as defined in these regulations for this chapter, provided that a person entitled to attend is able to have the same access to the meeting as each participant at the noticed site. Typically, this will mean that a speaker



phone is, or computer speakers are, placed in the advertised venue and the person attending can hear each person speaking. If video conferencing is used the person shall be permitted to see the screen.

## **Part 200 – Inspection, Fees, and Compliance**

### **§ 155-10.1-201 Inspection**

(a) All construction or work in progress for which a permit is required shall be subject to inspection from time to time by the Building Safety Official, or his designated representative(s). Certain types of constructions may require continuous or special inspections as determined by the Building Safety Official. Any person or persons interfering with the Building Safety Official or his authorized representative in the performance of such duties shall be liable to the penalties hereinafter provided.

(b) Work requiring a building permit shall not begin until the permit holder or his agent shall have posted an inspection checklist or other notice, in a conspicuous place on the premises and in such a position as to allow the Building Safety Official or his authorized representative to make entries thereon regarding inspection of the work. The checklist or other notice which shall be furnished by the Building Safety Official shall be maintained in such position by the permit holder until the work has been completed and a certificate of occupancy issued. The checklist or other notice shall maintain a record of every inspection including the time, date, and all violations of the provisions of the Building Safety Code, the regulations in this subchapter, or of other applicable laws, rules, and regulations.

(c) Re-inspections.

(1) A re-inspection fee may be assessed for each inspection or re-inspection when such work or portion of work for which an inspection is called is not complete or when corrections called for by the Building Safety Official or his designated representative(s) are not made or are inadequately made.

(2) This subsection is not to be interpreted as requiring re-inspection fees the first time a job is rejected for failure to comply with the requirements of this code, but as a means of discouraging the practice of calling for inspections before the job is ready for such inspection or re-inspection.

(3) Re-inspection fees may be assessed when the permit checklist or other notice is not properly posted on the work site, the approved drawings are not readily available to the inspector, access is not provided on the date inspection is requested, or construction deviates from drawings and/or specifications approved by the Building Safety Official.

(4) To obtain a re-inspection the applicant shall file an application therefore\*in writing upon a form furnished for that purpose, by the Building Safety Official and shall pay a re-inspection fee if so assessed in accordance with this subsection.

(5) When re-inspection fees are assessed, no re-inspection of the work shall be performed until the required fees have been paid in full.

### **§ 155-10.1-205 Tests as Proof of Compliance**

(a) Whenever there is insufficient evidence that any material or any construction does not conform to the requirements of the Safety Code or the regulations in this subchapter, or in order to substantiate claims for the use of alternate materials or methods of construction, the Building Safety Official may require tests, as proof of compliance, to be made at the expense of the owner or his agent by an approved agency or testing laboratory.

(b) Tests shall be in accordance with generally recognized standard test procedures for the proposed use. In the absence of such standard test procedures, the Building Safety Official shall specify the test procedure.

(c) The Building Safety Official may require tests to be repeated, if at any time he has reason to believe that an approved or material or method no longer conforms to the requirements upon which the approval was based.

#### **§ 155-10.1-210 Prefabricated Buildings**

Where the unit or component parts of a prefabricated building are not readily accessible to inspection, the Building Safety Official may accept a certification from an approved testing agency that the building is identical with a specimen previously tested and approved by the agency.

#### **§ 155-10.1-211 Fences and Walls**

Purpose. The purpose of this chapter is to establish ~~development~~ standards and ~~regulation~~ for fence and wall heights when located near the intersection of two roadways. ~~The intent of this regulation is to provide for adequate line of sight distance for at unsignalize intersections. to increase the safety of the traffic. And to allow a minimum requirement for the approach sight line distance for drivers on both roadways approaching an intersection to have the ability to recognize a potential conflict of the intersecting road.~~ Fences and wall construction code is located in the IBC.

Permit Requirements. A permit is required for the construction of fences and walls greater than three feet. Such fences and walls shall be ~~behind~~ set back from the sidewalk or ~~from~~ the property line when located at an intersection of two roadways, to provide required sight distance, per the review and approval of the Building Safety Code Official.

Height Limits. All fences and walls shall comply with the height limits shown in Table 1 below.

(1) General Height Limits for Fences and Walls

Location of Fence/Wall	Maximum Height
Within required front yard	3 feet

Within required street side yard (i.e., along the street side of corner lots)	
4 feet from back of sidewalk	3 feet
4 feet from behind the property line	3 feet
Within required interior side and rear yard	7 feet
Within the line-of-sight, visibility area at an intersections of streets, alleys, and driveways	3 feet
Outside of required yard	7 feet

### **§ 155-10.1-215      Stoppage of Work for Non-Compliance**

(a) Upon notice from the Building Safety Official that work on any building or structure is being executed contrary to the provisions of the Safety Code, the regulations in this subchapter, or other applicable laws, or in an unsafe and dangerous manner, the Building Safety Official shall issue a stop work order and such work shall be immediately stopped.

(b) The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person in charge of the work; and shall state the conditions under which work may be resumed.

(c) The Building Safety Official may require that work be stopped on oral notice, pending issuance of a written order, in such instances where he deems immediate action is necessary for protection of public health, safety, or welfare.

### **§ 155-10.1-220      Revocation Permit**

The Building Safety Official shall revoke a permit or approval issued under the provisions of this law;

(a) In case of any false statement or misrepresentation as to a material fact in any application or drawings or specification in which the permit conditions are such that a permit should not have been issued.

(b) In any case where a building permit owner refuses to comply with a stop order issued under the provisions of § 155-10.1-215 herein above.

### **§ 155-10.1-225      Fees**

(a) Before a building permit is issued, a permit fee statement will be issued by the Division of Building Safety and shall be paid to the CNMI Treasury in accordance with the following schedule based upon valuation of the proposed work.

(1) The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and

labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the Building Official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the Building Official. Final building permit valuation shall be set by the Building Official.

(2) Building Permit Fees

Construction Costs	Fees
\$1.00 to \$500	\$15.00
\$501 to \$2,000	\$15.00 for the first \$500 plus \$2.00 for each additional \$100.00 or fraction thereof, to and including \$2,000.00.
\$2,001 to \$25,000	\$45.00 for the first \$2,000 plus \$9.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00.
\$25,001 to \$50,000	\$252.00 for the first \$25,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00.
\$50,001 to \$100,000	\$427.00 for the first \$50,000.00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00.
\$100,001 to \$500,000	\$677.00 for the first \$100,000.00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00.
\$500,001 to \$1,000,000	\$2,677.00 for the first \$500,000.00 and \$3.00 for each additional \$1,000.00 or fraction thereof, and including \$1,000,000.00.
\$1,000,001 and up	\$4,177.00 for the first \$1,000,000.00 plus \$2.00 for each additional \$1,000.00 or fraction thereof.

(3) Plan Review Fees

Residential Plan Review			
	Single Family Plan Review		
		\$1.00 – 1,999	\$0. See paragraph (c), just below.
		\$2,000 - \$25,000	½ bldg. permit fee. See paragraph (c), just below.
		\$25,001 & up	¾ bldg. permit fee. See paragraph (c), just below.
	Multiple Residential. Plan Review		
		\$1.00 - \$999	\$0. See paragraph (c), just below.
		\$1,000 and up	¾ bldg. permit fee. See paragraph (c), just below.
Commercial Plan Review			
		\$1.00 - \$999	\$0. See paragraph (c), just below.
		\$1,000 and up	¾ bldg. permit fee. See paragraph (c), just below.

(4) Demolition Permit Fees:

Description	Fee
Residential	\$100.00
Residential with basement	\$250
Residential two story high or more	\$350+\$250 per additional story
Residential two story high with basement	\$400+\$250 per additional story
Commercial or other type of building with floor area not exceeding 5,000 square feet.	\$350+\$10.00 per 100 square feet in excess of 5000Sq. ft. or fraction thereof
Commercial and other type of building not more than 3 floors in height.	\$500+\$200 per floor exceeding three floors

Sign Construction Permit Fees (Insert new Subsection and re-number appropriately):

<u>Description</u>	<u>Fee</u>
<u>Sign type (Advertisement, Commercial &amp; Neon)</u>	<u>\$100.00</u>

(5) Other Fees

<u>Demolition &amp; Removal Fees</u>	<u>(see schedule)</u>	
	<u>Residential</u>	<u>\$75.00</u>
	<u>Commercial</u>	<u>\$150.00</u>
<u>Grading Fees</u>		
	<u>Plan Review</u>	<u>\$0</u>
	<u>Permit</u>	<u>\$0</u>
<u>Sign Permit Fee (see schedule)</u>		<u>\$100.00</u>
<u>Copy of Building Permits (Placard and Applications)</u>		<u>\$20.00 a copy per set</u>
<u>Change of Contractor/ Company Name /Information</u>		<u>\$20.00</u>
<u>Revised Plan</u>		<u>\$50.00 per residential revision</u> <u>\$150.00 per commercial revision</u>
<u>Schedule of Inspection request</u>		<u>\$20.00 per residential revision</u> <u>\$100.00 per commercial/multi-family</u>
<u>Re-inspection</u>		<u>\$45.00/per hour</u>
<u>Other Inspection/Re-inspection Fee</u>		<u>\$45.00/per hour</u>
<u>Certificate of Occupancy (including Temporary)</u>		<u>\$25.00</u>
<u>Penalty/Violation of Building Code</u>		<u>(See schedule)</u>
<u>Placard</u>		<u>\$0</u>
<u>Fees for Documents and Related Services</u>		
<u>Digital Copy of a Plan, 18"x24"</u>		<u>\$2.50 \$3.00/per sheet</u>
<u>Digital Copy of a Plan, 24"x36"</u>		<u>\$4.00 \$5.00/per sheet</u>
	<u>Photocopies</u>	<u>Less than 20 copies — no charge;</u> <u>21 or more copies — \$0.50 per</u> <u>page \$0.50 per page letter or</u> <u>legal</u>
	<u>Photocopies, certified</u>	<u>\$1.50 \$2.50 per page</u>
	<u>Electronic files on CD</u>	<u>\$10.00 \$15.00 for each CD</u>
	<u>Electronic files on DVD</u>	<u>\$20.00 \$25.00 for each DVD</u>
	<u>Copies of meeting/hearing recording on cassette tape flash drive</u>	<u>\$25.00 per tape flash drive</u>

If complying with a request for information takes longer than one hour, labor shall be charged at the rate of \$20.00 per hour.



(b) Where work, for which a permit is required by the Safety Code and the regulations in this subchapter, is started or proceed with prior to obtaining said permit, the fees as set forth above shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of the Safety Code and these regulations in the execution of the work nor from the assessment of any other penalties prescribed herein.

(c) Before drawings and specifications are accepted for reviewing, a plan-review fee, in addition to the building permit fee, shall be paid to the Building Safety Official. For a building or structure not classified as a single-family dwelling unit and whose construction costs is \$1,000 or more, the plan-review fee shall be three-fourths of the building permit fee. For a single-family dwelling units whose valuation is over \$2,000 and less than \$25,000, the plan-review fee shall be one half the building permit fee. For single-family dwelling units whose valuation is \$25,001.00 and over, the plan-review fee shall be three-fourths the building permit fee.

#### **§ 155-10.1-230 Cessation in Construction**

A building permit shall be deemed abandoned whenever a cessation in construction of an approved building or structure exists for more than 180 calendar days, as evidenced by a failure to initiate work, or to call for inspections or ask for an extension. After such a lapse in construction, a new permit with payment of associated fees, must be secured. The Building Safety Official, by written order served upon the permit holder, may require the holder of the permit to maintain the premises in such condition of reasonable health and safety as may be determined by the Building Safety Official as appropriate.

#### **Part 300 - Certificates of Occupancy**

#### **§ 155-10.1-301 Certificate of Occupancy**

- a) No building or structure hereafter erected shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the Building Safety Official and posted on the premises certifying that such building conforms to the provisions of the Safety Code and the regulations in this subchapter, unless otherwise provided for in § 155-10.1-301 (b). The certificate of occupancy shall remain posted indefinitely in a conspicuous place. An Annual Certificate of Compliance certificate of occupancy for a business commercial property shall be issued with a term of one year only as provided for in § 155-10.1-335.

b) Temporary occupancy. The Building Safety Official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The Building Safety Official shall set a time period during which the temporary certificate of occupancy is valid.

#### **§ 155-10.1-305      Alterations**

No building or structure hereafter enlarged or extended, or so altered, wholly or in part, so as to change its classification or occupancy shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the Building Safety Official certifying that the work for which the permit was issued has been completed in accordance with the provisions of the Safety Code and the regulations in this subchapter; provided, that if the occupancy or use of such building was not discontinued during the work of alteration, the occupancy or use of said building or structure shall not continue for more than thirty days after completion of the alteration unless such certificate shall have been issued.

#### **§ 155-10.1-310      Content**

In addition to the certification as to compliance with the provisions of the Safety Code and the regulations in this subchapter, the certificate of occupancy shall state the purposes for which the building may be used in its several parts, the maximum permissible live loads on floors, the number of individual persons that may be accommodated in any space, in case such number is limited by a provision of law or by the permit.

#### **§ 155-10.1-315      Changes**

(a) No change of occupancy shall be made in a building or structure hereafter erected or altered inconsistent with the last issued certificate of occupancy, unless a new certificate of occupancy is issued. No change of occupancy of a building or structure, shall be made, unless the Building Safety Official finds, upon inspection, that such building or structure conforms substantially to the provisions of Safety Code with respect to the proposed new occupancy, and issues a certificate of occupancy thereof.

(b) The occupancy of a building shall not be deemed to have been changed because of a temporary vacancy or change of ownership or tenancy. The re-establishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

#### **§ 155-10.1-320      Application**

Any person desiring a certificate of occupancy as hereinabove required shall after completion of the work for which a building permit was issued, file with the Building Safety Official a signed application therefore on a form furnished by the Building Safety Official stating, in writing, that the work has been completed in compliance with the terms of the building permit and the requirements of the Safety Code and the regulations in this subchapter.

#### **§ 155-10.1-325      Final Inspection**

The Building Safety Official, upon receipt of an application for a certificate of occupancy, shall promptly inspect or cause to be inspected the construction, enlargement, alteration, repair, conversion, movement, or improvement of the building, structure or appurtenances, or the installation of equipment for which a building permit was issued, in order to ascertain whether the proposed work has been completed in accordance with the requirements of the building permit and the provisions of the ~~[Safety]~~ the Code and of the regulations in this subchapter.

#### **§ 155-10.1-330      Issuance or Denial**

(a) If after inspection as provided in § 155-10.1-325, it is found that the proposed work has been completed in accordance with the requirements of the building permit, and the provisions of the Safety Code and the regulations in this subchapter, the Building Safety Official shall issue a certificate of occupancy. The Building Safety Official shall keep a permanent record of all certificates of occupancy issued.

(b) If after inspection, as provided in § 155-10.1-325, it is found that the proposed work has not been completed in accordance with the building permit and the terms of the Safety Code and these regulations, the Building Safety Official shall not issue an occupancy permit and shall order the work completed in compliance with the building permit, the Safety Code, and these regulations.

(c) The Building Safety Official may issue a temporary use permit for any portion(s) of the premises which may be safely occupied prior to the issuance of a certificate of occupancy.

#### **§ 155-10.1-335      Annual Certificate of Compliance**

- a) Applicability. Any commercial occupancy is required to secure an annual inspection of its premises for compliance with the Building Safety Code and fitness of the structure for its intended commercial purpose. A Certificate of Compliance must also be secured whenever there is a change of use or occupancy.
- b) Inspections. Inspectors from the Division of Building Safety will assess each commercial occupancy, in whole or in part, based on the following methodology as defined by the Building Safety Official:
  - 1. Business. Includes office space, retail, schools, professional services, and personal care businesses. Building owners/managers are included in the

Annual Inspection requirements for its landings, stairways, and interior spaces open to tenants but not subject to lease. The entire premises are subject to this inspection. When multiple licensed businesses operate in a common space or office suite, the lessee shall be responsible for securing the Annual Certificate of Compliance.

2. Restaurants. Includes single-room, kitchen only, facilities greater than 50 square feet with only a takeout counter, and establishments with inside customer seating. The entire premises are subject to this inspection.
3. Industrial. Includes light industrial, manufacturing, automotive repair, commercial storage, machine shops and similar facilities as determined by the Building Safety Official. The entire premises are subject to this inspection.
4. Apartments. Includes any set of rooms for dwelling that contain a kitchen and bathroom, that is part of a larger building, and made available for occupancy for periods of greater than one month. Inspection of apartments buildings are as follows:
  - i. Less than (5) units: entire premises are subject to this inspection.
  - ii. Between (5) and (12) units: All common areas and 50 percent of the residential units shall be inspected.
  - iii. Greater (12) units: All common areas and 35 percent of the residential units shall be inspected.
5. Hotel / Resorts. All common areas, office space and staff only facilities, such as laundry, storage and other facilities, are subject to inspection. Hotel/Resort restaurants are subject to separate inspection requirements under this regulation. Inspection of dwelling rooms are as follows:
  - i. Less than (5) units: entire premises are subject to this inspection.
  - ii. Between (5) and (12) units: All common areas and 50 percent of the dwelling rooms shall be inspected.
  - iii. Greater (12) units and less than (50) units: All common areas and 40 percent of the dwelling rooms shall be inspected.
  - iv. Greater than (50) Units. All common areas and 30 percent of the dwelling rooms shall be inspected.
6. Residential Rentals / Bed and Breakfasts. This includes single family housing units, residential units used as Bed and Breakfasts, Airbnb, and similar rentals. The entire premises are subject to this inspection.
- c) Fees. All fees must be paid to the CNMI Treasury based on an Assessment Statement from Division of Building Safety. Payment must be made in advance of scheduling an inspection. Fee are assessed based on the intended use of the commercial space, as provided in the following chart:

<u>Description</u>	<u>Fee</u>
<u>Business</u>	
<u>Building Common Areas</u>	
<u>Offices – less than 5 Rooms</u>	\$50.00
<u>Offices – More than 5, less than 12 Rooms</u>	\$100.00
<u>Offices – 12 or more Rooms</u>	\$150.00
<u>Restaurants</u>	
<u>Kitchen-Only Facility</u>	\$50.00

<u>Restaurants w/ Interior Customer Seating</u>	\$70.00
<u>Industrial Commercial Space</u>	\$100.00
<u>Apartments</u>	
<u>Less than 5 Units</u>	\$70.00
<u>Between 5 and 12 Units</u>	\$85.00
<u>Greater than 12 Units</u>	\$100.00
<u>Hotels / Resorts</u>	
<u>Less than 5 Dwelling Rooms</u>	\$100.00
<u>Between 5 and 12 Dwelling Rooms</u>	\$150.00
<u>Greater than 12 and less than 50 Dwelling Rooms</u>	\$200.00
<u>Greater than 50 Dwelling Rooms</u>	\$250.00
<u>Residential Rentals / Bed and Breakfasts</u>	\$70.00

- d) Issuance. The Division of Building Safety shall issue Certificates of Annual Compliance within 5 days of a successful inspection. The Certificate shall be posted in a conspicuous place.
- e) Renewals. All commercial operators must schedule an annual inspection to renew a Certificate of Occupancy at least 30 calendar days but no less than 10 calendar days prior to expiration.
- f) Violations. Failure to secure a certificate of compliance raises issues of non-habitability, and will lead to the revocation of any existing Building Occupancy Permit.

## **Part 400 - Unsafe or Damaged Buildings and Structures**

### **§ 155-10.1-401 Unsafe Structures**

- (a) All unsafe buildings and structures are hereby declared to be illegal, and shall be repaired, vacated, or demolished, in accordance with the procedure established by the regulations in this subchapter.
- (b) For the purpose of this law, unsafe buildings are all buildings and structures and/or equipment thereof which are structurally unsafe, or which are unsanitary, or which are unfit for human habitation, or are not provided with adequate means of egress, or which constitute a fire hazard, and electrically unsafe, or are otherwise dangerous to public health, safety, or welfare, which in relation to existing uses constitute a hazard to the safety of the public or occupants by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

(Insert new Subsection and re-letter appropriately):

- (/) When it is necessary to demolish existing building or structure for the purpose of expansion, revitalization or obliteration of existing structures or existing housing area. To demolish means to do anything in the removal of a building in its entirety or any material

part thereof. Deconstruction is a process in which the building is carefully dismantled and building materials are removed for future use. This process is applicable to metal buildings or pre-engineered structures and pre-engineered buildings. The Building Safety Official is tasked to develop policies on demolition or deconstruction including processing of demolition permits and inspections. (See attached demolition fee schedule.)

#### **§ 155-10.1-405      Examination**

The Building Safety Official shall examine or cause to be examined every unsafe or damaged building or structure. He shall make or cause to be made, a written record of such examination, which shall set forth a factual description of the premises and specifically enumerate the particular conditions which are alleged to be violations of the provisions of the Safety Code or the regulations in this subchapter or otherwise render such buildings unsafe.

#### **§ 155-10.1-410      Report**

(a) The Building Safety Official, whenever he shall make a finding, as a result of the examination required in § 155-10.1-405 shall:

(1)(i) Notify in writing, by personal service or certified mail, return receipt requested, the owner, occupant, lessee, mortgagee, agent and other persons having an interest in said building as shown by official land records that the building or structure is unsafe, and that:

(A) The owner must vacate, or repair, or demolish said buildings or structure in accordance with the terms of the notice and of the regulations in this subchapter.

(B) The occupant or lessee must vacate said building, or may have it repaired in accordance with the terms of the notice and of these regulations.

(C) Said mortgagee, agent, or other persons having an interest in said building, may at his own risk, repair, vacate, or demolish said building or have such work or act done.

(ii) Any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice as herein provided.

(iii) Such notice shall describe the building deemed unsafe, shall include a statement of the particulars which make it unsafe, and shall contain an order requiring the building to be put in such condition as to comply with the terms of these regulations within a stated time, not exceeding thirty days.

(2) Post, or cause to be posted in a conspicuous place at the principal point of entry to the building deemed unsafe, a notice reading as follows:

"This building has been found to be a dangerous building by the Building Safety Official, government of the Northern Mariana Islands. This notice is to remain on the building until it is repaired, vacated, or demolished in accordance with the notice which has been given to all parties having an interest in this building. It is unlawful to remove this notice until such notice is complied with."

(b) The Building Safety Official, or his designee, in the event of non-compliance with the notice and order hereinabove provided for in this section shall:

(1) Notify in writing by personal service or certified mail, return receipt requested, the same parties as notified under subsection (a) of this section to appear before him on a specified date to show cause why the building deemed unsafe would not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the prior notice. The notice shall be given at least five business days before hearing.

(2) Hold a hearing and hear such testimony as Building Safety Official employees, owner, occupant, lessee, mortgagee, or other interested parties shall offer relative to the unsafe building. Interested parties shall be given a full and fair opportunity, in person or through counsel, to present any facts relative to the proposed action. The testimony taken shall be under oath and taken stenographically or by machine, but the parties shall not be bound by strict rules of evidence.

(3) Make written findings of fact from the testimony offered at said hearing, and on the basis of such findings render a written decision as to whether the building is safe, or unsafe within the meaning of the Safety Code and the regulations in this subchapter. The original copy of such findings and decisions shall be kept in the Department of Public Works. Other copies of the findings and decisions shall be sent to all parties served with notice of the hearing. Copies of the transcript made at the hearing shall be given to interested parties upon request and at their expense.

(4) On finding that the building is unsafe, issue an order based on such findings of fact, commanding all parties served with notice of the hearing to repair, vacate, or demolish such unsafe building; provided, that any person so notified, except the owner, shall have the privilege of vacating or repairing, and; provided further, that no person other than the owner shall be ordered to demolish said building.

(c) In the case of non-compliance with the above order, and if judicial review of the order is not sought within thirty days pursuant to the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Building Safety Official shall cause such building to be repaired, vacated, or demolished as the facts may warrant, in accordance with the standards for repair, vacating, or demolition set forth in subsection (d) of this section. The cost of such repair, vacating, or demolition shall be a lien against the land on which the building exists or existed, as the case may be, until recovered by the Commonwealth of the Northern Marianas.

(d) The Building Safety Official in ordering repair, vacating, or demolition of a building found unsafe, shall be governed by the following standards:

(1) If an unsafe building can reasonably be repaired so that it will no longer exist in violation of the terms of the regulations in this subchapter, it shall be ordered to be repaired.



(2) If an unsafe building is in such condition as to make it dangerous to the health, safety, or general welfare of its occupants, it shall be ordered to be vacated.

(3) If an unsafe building is damaged or decayed, or deteriorated to the extent of fifty percent of its original value or structure, it shall be demolished. In all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of these regulations, it shall be demolished. In all cases where the unsafe building is fire hazard existing or erected in violation of the Safety Code or these regulations or unsafe within the meaning of the Safety Code and regulations, it shall be demolished.

#### **§ 155-10.1-415      Emergency Order to Vacate**

The Building Safety Official, whenever he determines that an unsafe building, structure, or portion thereof, constitutes an immediate danger to the occupants, shall order the buildings, structure, or portion thereof, to be vacated at once and not re-occupied until issuance of a new certificate of occupancy by the Building Safety Official.

#### **§ 155-10.1-420      Sign**

(a) The Building Safety Official, on the vacating of any building in accordance with the provisions of §§ 155-10.1-410 and 155-10.1-415 of this subchapter, shall post or cause to be posted at each entrance to the building, a sign stating: "This building is unsafe and its use or occupancy is prohibited by the Building Safety Official. Any person entering this building without permission of the Building Safety Official shall be subject to fine."

(b) Such sign shall remain posted until the required repairs are made or demolition is completed.

(c) Any person entering the building, except for the purpose of making the required repairs or effecting demolition, or any person removing any sign posted by the Building Safety Official shall be liable for the penalties provided for in the regulations in this subchapter.

(d) Advertisement, Commercial and Neon Signs. No free-standing advertisement, commercial or neon signs, or signage permanently affixed to a structure shall be erected outside of the government rights-of-way without first securing a building permit and inspection.

#### **§ 155-10.1-425      Actual and Immediate Danger**

(a) In case there shall be, in the opinion of the Building Safety Official immediate danger of failure or collapse of a building or structure, or any part thereof so as to endanger life or property, he shall promptly cause such building or structure to be declared temporarily safe, or if necessary, to be demolished. In such cases the decision of the Building Safety Official shall be final and conclusive.

(b) The Building Safety Official, in exercising his powers and duties under this section, may at once enter any unsafe building, or the land on which it stands, or abutting land or structure, with such assistance and at such cost as he deems necessary. He may vacate

adjacent structures and protect the public by an appropriate fence or such other means as may be necessary, and for this purpose he may close a public or private way.

(c) Costs incurred under this section shall be paid by the government of the Northern Mariana Islands on a certified voucher of the Building Safety Official. Such costs shall be a lien on the land on which the building exists or existed, as the case may be, until recovered by the government of the Northern Mariana Islands.

## **Part 500 - Miscellaneous Provisions**

### **§ 155-10.1-501 Prohibition and Penalty**

(a) It shall be unlawful for any person to construct, alter, repair, remove, demolish, equip, use, occupy, or maintain any building or structure or portion thereof in the Northern Mariana Islands contrary to any provision of the Safety Code or the regulations in this subchapter.

(b) Any person violating the provisions of the Safety Code or these regulations shall be liable for a civil fine of not less than ten dollars and not more than five hundred dollars, per day provided that the fine shall not exceed ten thousand dollars or one percent of the total value of the project, whichever is greater. Such penalties may be imposed by the Building Safety Official in addition to any criminal penalties established by the Safety Code.

(c) Each day of a violation shall constitute a separate offense.

(d) Other departments and agencies of the Commonwealth of the Northern Mariana Islands shall cooperate and assist in the enforcement of the Safety Code and these regulations. Any employees of such department or agency empowered to review the design or make inspections of such structures shall promptly report to the head of his department or agency any suspected violations of the provisions of the Safety Code or these regulations. Such department or agency head shall promptly communicate the suspected violation to the Director of Public Works. Furthermore, it is the expressed intent of the Safety Code and these regulations that the design and construction, alteration, modification, occupancy, and use of all public buildings shall be in full compliance with the requirements of the Safety Code and regulations.

(Insert new fee schedule):

(/) Table of Fines

<u>Reference</u> CNMI Admin Code	<u>Violations</u>	<u>OFFENSE</u>		
		<u>First</u>	<u>Second</u>	<u>Third</u>
Part 500, §155-10.1-501	Performed construction work on building or structure without valid Building Permit	\$100.00	\$300.00	\$500.00
Part 200, §155-10.1-201	Failed to notify Building Official for routine inspections before proceeding with the next phase of the work.	\$50.00	\$100.00	\$200.00
Part 200, §155-10.1-201	Neglects the Stop Work Order by the Building Safety Official	\$100.00	\$200	Revoke Permit
1.6 Part 400	Failed to vacate unsafe building or structure when ordered by the Building Safety Official.	\$300.00	\$400.00	\$500.00
Need inclusion in, §155-10.1-420	Unauthorized removal, destruction or defacing of signs posted by the order of the Building Safety Official	\$100.00	\$200.00	\$300.00
Part 300, §155-10.1-301	Failed to secure Certificate of Occupancy of a building or structure	\$100.00	\$200.00	\$300.00
Part 300, §155-10.1-335	Failed to renew Annual Certificate of Compliance within 30 calendar days of expiration.	\$50.00	\$100.00	\$200.00
Part 100, §155-10.1-035	Failure to request authorization to use alternate material, device or equipment	\$100.00	\$200.00	\$300.00
Part 100, §155-10.1-005	Existing Structures – Illegal change in use or occupancy of any structure or building without the approval of the Building Safety Official.	\$200.00	\$300.00	\$500.00

**Part 600 - Building and Energy Codes**

**§ 155-10.1-601 International Building Code of 2009-Adop**

The International Building Code (“IBC”) of 2009 2018, which includes its ICC Family of codes such as the International Residential Code and energy codes, as adopted by the International Code Council is hereby adapted as the Commonwealth Building Safety Code. All statutory and regulatory references shall be superseded by the IBC of 2009 2018, as amended. Due to the length of the IBC, it is incorporated by reference herein, and a person wishing a copy shall be directed to the publisher, of the ICC.

**§ 155-10.1-605 Tropical Energy Code Adopted**

(a) The Model Tropical Energy Code (“TEC”) 2014, as prepared for the CNMI, Guam, Hawai’i, Puerto Rico, and the Virgin Islands, is hereby adopted as an amendment to, and a portion of, the IBC of 2018, as though written into the IBC.

(b) Due to the length of the TEC, it is incorporated by reference herein, and a copy of the TEC shall be made available for the cost of reproduction and distribution by the Department, either electronically or in hard copy form. Apparent conflicts between

provisions of the IBC and the TEC shall be resolved in writing upon request to the Building Safety Official.

(c) The Building Safety Official's future amendments to the Building Safety Code may include subsequent versions of the International Building Code and/or the Tropical Energy Code, or portions thereof.

#### **§ 155-10.1-610      Precedence of Commonwealth Building Safety Code**

Where conflicts or contradictions exist between provisions of the Building Safety Code and the regulations issued thereunder and a model code, then the Building Safety Code shall apply. (See 2 CMC sec. 7145)

#### **§ 155-10.1-615      Earthquake and Typhoon Standards**

(a) Compliance with technically proper earthquake and typhoon standards is a matter of life and death for the residents of and visitors to the CNMI, the application of the proper earthquake reference standard is a technical matter which cannot be ignored. The determination of the maximum sustained winds in recent typhoons and super-typhoons is also a technical matter which cannot be ignored. There are, therefore, sound technical reasons to construe ambiguous statutory language from 1990 to provide for the minimum protective standards rather than ceilings.

(b) Notwithstanding a contrary reading of the language of 2 CMC § 7146 (Earthquake Design Requirements), for purposes of earthquakes design requirements, the Northern Mariana Islands have been declared by the United States Geological Survey to be in Seismic Zone 4. Such a decision by the USGS shall be deemed conclusive. All structures which are required to meet earthquake construction requirements shall be designed and constructed to Seismic Zone 4 standards.

(c) Notwithstanding a contrary reading of the language of 2 CMC § 4147 (Typhoons), the minimum design strength of every building and structure and every portion thereof to which the Building Safety Code applies shall be designed and constructed to withstand the minimum horizontal and uplift pressure of wind velocity of at least 175 miles per hour.

### **Part 700 -    Definitions**

#### **§ 155-10.1-701      Statutory Definitions**

The definitions of 2 CMC § 7112 (Definitions) are adopted for this chapter without further detail, unless stated in the following subsections.

#### **§ 155-10.1-705      Additional Definitions**

The following definitions shall apply to this chapter.

(a) "Building safety code," "safety code," and "code" mean the International Building Code of 2009, including its energy codes, as adapted by the International Code Council, and as amended thereafter by regulations of the Building Safety Official.

~~(b) "Building safety code review board" or "Board" shall mean either of the following upon the Executive Order of the Governor:~~

~~(1) The Building Safety Code Review Board described in this Chapter 1\*, including 2 CMC sec. 7114 and 7125;~~

~~(2) Such other regulatory board designated by the Governor to fulfill the statutory responsibilities of the Building Safety Code Review Board; or~~

~~(3) A successor agency, or other instrumentality of the GNMI, that is authorized by the Board or otherwise by law, in writing to undertake specific notice, complaint, decision, enforcement, and/or other action of the matters addressed in this subchapter.~~

(c) "Building Official" means the Building Safety Official.

~~(d) "CABO code" or "Cabo code" means the IBC.~~

(e) "Code" means the Building Safety Code.

~~(f) "CPUC" means the Commonwealth Public Utilities Commission.~~

~~(g) "CUC" means the Commonwealth Utilities Corporations.~~

(h) "Delivered" or "Presented." The term means:

(1) Delivered in person;

(2) Deposited in the mail, with postage paid;

(3) Faxed, and a memo generated automatically by the sending fax machine or fax modem that the fax was received; or

(4) Emailed with an acknowledgment by the recipient that the email had been received.

(i) "Electronic communication" means communication mediated by the following electronic means: fax, email, internet posting that allows the reader to access the information and download a copy of it, CD-ROM, DVD, diskette, thumb drive, or other portable memory device.

(j) "Electronic Means" includes telephone, video-conference, electronic-communications-mediated written, aural and/or video means, including mediated through the internet, and/or email.

(k) "Decision" includes the adoption of a plan, regulation, rule, resolution, opinion, order, or directive. Typically, a decision is reduced to writing and includes a description or discussion of the reasons for it.

(l) "IBC" means the International Building Code.

(m) "ICC" means the International Code Council.

(n) "International Building Code" means the code developed and published by the ICC, or its successor organizations.

(o) "International Conference of Building Officials" shall mean International Code Council or its successor organizations.

(p) "Mail" means one of the following mail services: U.S. Postal Service (USPS) first class mail, or priority mail, or Express Mail; overnight mail by one of the following private carriers, if they serve the CNMI: Airborne Express; DHL; FedEx; UPS; or the national postal services of the following countries, using service equivalent to or better than USPS airmail: Australia; China; Japan; Korea; Republic of the Philippines; any FAS state.

(/) "Multiple Residential" are multi-family residential housing units for residential inhabitants contained within one complex. Units can be next to each other or stacked on top of each other, such as an apartment building or condominium plat.

(q) "Person" includes, but is not limited to a natural person, non-governmental organization, firm, association, partnership, limited liability company, corporation, and/or a government agency or other government corporation, political subdivision, or instrumentality of the CNMI or the United States.

(r) "Real time" or "real-time" means immediately before, during and/or after, as in "as it happens."

(s) "Registered" means, when applied to a design or construction professional, or to a builder or tradesman, "licensed."

(t) "Safety Code" means the Building Safety Code.

(u) "Signature" or "Signed" means as follows: The term includes a hard copy or an electronic communication that bears the hallmark of legitimacy, including original hard copy, xerox of an original, fax copy, electronic signature through use of a digital code, and an electronic copy of a hard copy signature if separately confirmed as true and correct.

~~(v) "Uniform Building Code" shall be read to mean the IBC.~~

(w) "Virtual" or "Virtually," when used with respect to a meeting, means by electronic means that provide for real-time communication to and from the participants in such a manner that each participant can hear and/or read the comments of each other participant.

(x) "Writing" includes hard copy, and electronic communications including such electronic formats as fax, email, pdf format and word processing formats which are generally commercially available.

(y) Rules of Construction: The following rules of construction shall be applied to the regulations of this subchapter:

(1) "Include," "includes," or "including" shall be read as though followed by "but not limited to" or "but is not limited to."

(2) The male, female, and neuter/neutral shall each be read to mean the other, unless the context expressly excludes such interpretation.

(3) The singular shall be read to mean the plural, and vice versa, except where the context specifically indicates otherwise.

#### Appendix A Guidance Standards through Building Safety Code

Guidance shall be found in the International Building Code ("IBC") of ~~2009~~ 2018, including its energy codes, as adopted by the International Code Council, and as amended thereafter by regulations of the Building Safety Official of the Department of Public Works.

#### Appendix B Testing Laboratories and Other Entities

##### Approved Materials Testing Laboratories

- (a) Underwriter Laboratory
- (b) Factory Mutual
- (d) California State Fire Marshal