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



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor Timothy P. Villagomez Lieutenant Governor

EXTENSION OF EMERGENCY Volcanic of Anatahan

WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and

NOW, THEREFORE, I, BENIGNO R. FITIAL, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further exteded for a like term, and giving reasons for extending the emergency.

Dated this 26th of November 2008.

BENIGNO R. FITIAL Governor

Cc:

Lt. Governor (Fax: 664-2311) Senate President (Fax: 664-8803) House Speaker (Fax: 664-8900) Mayor of the Northern Islands (Fax: 664-2710) Executive Assistant for Carolinian Affairs (Fax: 235-5088) Attorney General (Fax: 664-2349) Secretary Of Finance (Fax: 664-1115) Commissioner of Public Safety (Fax: 664-9027) Special Assistant for Management and Budget (Fax: 664-2272) Special Assistant for Programs and Legislative Review (Fax: 664-2313 Press Secretary (Fax: 664-2290) United States Coast Guard (236-2968)

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PUBLIC NOTICE

OF PROPOSED AMENDMENTS TO THE QUALIFYING CERTIFICATE (QC) RULES AND REGULATIONS WITHIN THE COMMONWEALTH DEVELOPMENT AUTHORITY

BY THE COMMONWEALTH DEVELOPMENT AUTHORITY AND THE DIVISION OF REVENUE AND TAXATION, DEPARTMENT OF FINANCE

INTENDED ACTION TO ADOPT THE PROPOSED AMENDMENTS TO THE QC RULES AND

REGULATIONS: The Commonwealth of the Northern Mariana Islands, Commonwealth Development Authority and the Division of Revenue and Taxation, Department of Finance intend to adopt the attached amendments to the QC Rules and Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Amendments to the QC Rules and Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: The Board of Directors of the Commonwealth Development Authority thru its Chairman and the Director of the Division of Revenue and Taxation, Department of Finance are authorized to promulgate the QC rules and regulations pursuant to §3323 of the Investment Incentive Act of 2000 (P.L. 12-32, as amended), 4 CMC §3323, and Chapter XII of the QC Rules and Regulations.

THE TERMS AND SUBSTANCE: These proposed amendments to the QC Rules and Regulations were formulated to restate, enhance and clarify the existing regulations and are necessary to effectively carry out the intent of the Investment Incentive Act of 2000.

THE SUBJECTS AND ISSUES INVOLVED: These proposed amendments to QC Rules and Regulations are promulgated:

- 1. To allow modifications to Qualifying Certificates of Beneficiaries that are not in default status.
- 2. To develop procedures for modifications to Qualifying Certificates of Beneficiaries that are not in default status.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES AND REGULATIONS. These proposed amendments would affect other sections of the existing QC Rules and Regulations.

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments to the QC Rules and 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 Oscar C. Camacho, Acting Chief Executive Officer to the following address, fax or email address, with the subject line "Proposed Amendments to QC Rules & Regulations".

Commonwealth Development Authority P.O. Box 502149 · Wakin's Building, Chalan Pale Arnold Road Saipan, MP 96950 Tel. No.: 234-7145/7146/6293/6245 · Fax No.: 235-7147 Email address: administration@cda.gov.mp

Comments are due within 30 days from the date of publication of this notice. Please submit your data, views and arguments. $(1 \text{ CMC } \S 9104(a)(2))$

These proposed amendments to QC Rules and Regulations were approved by the CDA Board of Directors on October 15, 2008.

Submitted by:

Pedro I. Hibus, Chairman CDA Board

. Selinael (Acting) S. Inos, Secretary of Finance

11/12/08

11/13/08

A for the Division of Revenue & Taxation

Received by:

Esther S. Fleming Governor's Special Assistant for Administration

Filed and

Recorded by:

11.17.08

Esther M. San Nicolas **Commonwealth Register**

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 amendments to the QC 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 14^{+-} day of November, 2008.

Gregory Baka

Gregory Baka Acting Attorney General

ARONGOL TOULAP

REEL POMPOL LLIWEL KKAAL NGÁLI ALLÉGHÚL <u>QUALIFYING CERTIFICATE</u> (QC) LLÓL <u>COMMONWEALTH DEVELOPMENT AUTHORITY</u>

SÁNGI <u>COMMONWEALTH DEVELOPMENT AUTHORITY</u> ME SCHÓÓY SEPÁLITI (DIBISIONUL REVENUE AND TAXATION), BWULASIYOOL FINANCE

AgHIYEGHIL IGHA EBWE FILLÓÓY POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL QC:

<u>Commonwealth</u> Téél falúw falúwasch Efáng Marianas, <u>Commonwealth Development Authority</u> me <u>Dibisionul Revenue and Taxation</u>, <u>Bwulasiyool Finance</u> e tipeli rebwe fillóóy ssiwel kka e appasch ngáli Alléghúl QC bwelle <u>Administrative Procedure Act</u>, 1 CMC Tálil 9104(a). Lliwel kkaal sángi Alléghúl QC ebwe kkamalló ótol seigh (10) ráálil mwiril yaar fillóóy me akkatelóól Ilól <u>Commonwealth Register</u>. (1 CMC Tálil 9105(b)).

BWÁNGIL: Mwiischil <u>Commonwealth Development Authority</u> Sángi Samwool me Assamwoolul <u>Dibisionul Revenue and Taxation</u>, <u>Bwulasiyool Finance</u> nge eyoor bwangiir rebwe akkaté alléghúl QC bwelle reel Tálil 3323 Ilól <u>Investment Incentive Act</u> Ilól 2000 (P.L. 12-32, 4 CMC Tálil 3323), iye aa liwelló, me Chapter XII Alléghúl QC kkaal.

ÓUTOL ME KKAPASAL: Pomwol Iliwel kkaal sángi Alléghul QC kkaal nge eyooata bwelle ebwe assáfáállong, aghatchúwulo me affata alléghúl kka ighila me rebwe ghutchuw kkapasal <u>Investment Incentive Act</u> Ilól 2000.

KKAPASAL ME AWEWEEL KKA EYOOR: Pomwol Iliwel kkaal ngáli Alléghúl QC ebwe akkaté:

- 1. Bwelle rebwe siweli <u>Qualifying Certificate</u> sangi <u>Beneficiaries</u> ikka rese ghééghé.
- 2. Rebwe ayoor mwóghutul ssiwel kkaal ngáli <u>Qualification</u> sángi <u>Beneficiaries</u> ikka rese ghééghé.

AKKÁÁW AWEWEEL ME/ME NGÁRE AWEEWE KKA E WEIRES, ALLÉGHÚL KKAAL: Pomwol Iliwel kka ebwe aweiresi tálil kka eyoor Ilól Alléghúl QC.

AFALAFAL REEL AMMWELIL ME AKKATÉÉL: Pomwol Iliwel kkaal ngáli Alléghúl QC kkaal ebwe isisilong Ilól <u>Commonwealth Register</u> Ilól Tálil kka raa pomwoli me fillóól allégh kka e ffé (1 CMC Tálil 9102(a)(1) me appaschetá igha ebwe fisch ngáliir toulap me Ilól bwulasiyool gobenno kkaal Ilól alongal <u>senatorial district</u> kaal, e weewee schagah Ilól kkapasal Amerikkónu/Remeraalis/Refalúwasch. (1CMC Tálil 9104(a)(1)).

ISISILONGOL AGHIYEGH: Afanga me ngáre bwughiiló ischil mángemángúmw reel Oscar C. Camacho, Acting ngáli Chief Executive Officer sángi <u>address</u> kkaal, fax me ngáre email <u>address</u>, reel kkapas ye "Proposed Amendments ngáli Alléghúl QC".

> <u>Commonwealth Development Authority</u> P.O. Box 502149 · Wakin's Building, Chalan Pale Arnold Road Seipél, MP 96950 Tel. No.: 234-7145/7146/6293/6245 · Fax No.: 235-7147 Email address: <u>administration@cda.gov.mp</u>

Ischil mángemáng ebwe atotoolong Ilól eliigh (30) ráálil yaal akkatééló arong yeel. Óutu ghal soong ów isisilong yáámi aingiing. (1 CMC Tálil 9104(a)(2)).

Powmol lliwel kkaal ngáli Alléghúl QC nge aa allégheló mereel Mwiischil CDA ótol Sarobwél 15, 2008.

Isaliyallong:

Pedro I. Itibus, Samwoolul CDA Mwiischil Directors

. Seladel (acting)

11/12/08

Eloy S. Inos, Samwoolul Finance IB Llól Dibisionul Revenue and Taxation

Esther S. Fleming Sów Alillisii Sów Lemelem

13/08

Mwir sángi:

Ammwel sángi: ___________ Esther M. San Nicolas commonwealth Register

<u>//·/7·08</u> Rál

Sángi allégh ye 1 CMC Talil 2153(e) (Alúghúlúghúl AG reel allégh kka ebwe akkaté ighila) me 1 CMC Tálil 9104(a)(3) (bwughi alúghúlúghúl AG reel pomwol Iliwel kkaal ngáli Alléghúl QC kka e appasch ikka raa takkal amweri fischi sángi Soó Bwungul Allégh Lapalap me ebwe akkatééló, 1 CMC Tálil 2153(f) (akkatéél allégh kkaal).

Rállil ye <u>14</u>llól maramal Aremwoy, 2008.

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Gregory Baka

Gregory Baka Sów Bwungul Allégh Lapalap

NOTISIAN PUPBLIKU

PUT MAPROPONEN AMENDASION SIHA PARA AREKLAMENTO YAN REGULASION QUALIFYING CERTIFICATE SIHA (QC) GI HALOM COMMONWEALTH DEVELOPMENT AUTHORITY

GINEN I COMMONWEALTH DEVELOPMENT AUTHORITY YAN DIBISION I REVENUE YAN TAXATION, DIPATTAMENTON FINANCE

MA'INTENSIONA NA AKSION PARA U MA'ADÀPTA I MAPROPONEN AMENDASION SIHA PARA I AREKLAMENTO YAN REGULASION QC SIHA: I Commonwealth Sangkattan na Islan Notte Marianas siha, Commonwealth Development Authority yaN i Dibision Revenue yan Taxation, Dipattamenton Finance ma'intensiona na para u ma'adåpta i mañechetton na amendasion siha para i Areklamento yan Regulasion QC siha, sigun i lai i Åkton Administrative Procedure, 1 CMC §9104(a). I amendasion siha para i Areklamento yan Regulasion QC siha ni para u efektibu dies (10) diha siha despues di ma'adåptasion yan pupblikasion gi halom Rehistran Commonwealth. (1 CMC §9105(b)).

ATURIDAT: I Kuetpon Direktot siha gi Commonwealth Development Authority ginen i Kabiseyu yan Direktot I Dibision Revenue yan Taxation, Dipattamenton Finance man ma'åturisa para u macho'gue areklamento yan regulasion QC siha sigun i §3323 gi Åkton Investment Incentive gi 2000 (P.L. 12-32, 4 CMC §3323), komu ma'amenda, yan Kapitulu XII gi Areklamento yan Regulasion QC siha.

SUSTÂNSIAN I PALÂBRA SIHA: Man maproponen amendasion siha para i Areklamento yan Regulasion siha man mafotma para u mata'lon yumåma, adilånta, na'klåru i man gaige na regulasion siha yan man nesesårio na u efektibu i intension i Akton Investment Incentive gi 2000.

I SUHETU YAN ASUNTO NI MAN TINEKKA': Man maproponen amendasion siha para i Areklamento yan Regulasion QC siha na para u macho'gue:

- 1. Para u masedi tinilaika para l Benefision Qualifying Certificate para i ti man problema na eståo.
- 2. Para u adilånta i areklamento siha para i tinilaika siha para i Benefision Qualifying Certificate ni ti man problema na eståo.

ANNOK I MAN ACHUELE' YAN/PAT INAFEKTA NA LAI, AREKLAMENTO YAN REGULASION

SIHA: Este siha i man maproponen amendasion siha siempre inafekta otro seksiona siha gi presente na Areklamento yan Regulasion QC siha.

MANERA SIHA YANGGEN PARA U MAPO'LO YAN MAPUPBLIKA: 1 man mapropone na amendasion siha para 1 Areklamento yan Regulasion siha debi na u mapupblika gi halom Rehistran Commonwealth gi seksiona ni mapropone yan nuebu na ma'adåpta na regulasion siha (1 CMC §9102(a)(1) yan mapega gi konbiniente na lugåt siha gi halom civic center yan i ligåt na ofisinan gobietnamento siha gi kada distriton senadot, parehu English yan i dos prinsipåt na lengguåhen natibu. (1 CMC §9104(a)(1)). PARA U MAPRIBENIYI OPIÑION SIHA: Na'hånåo pat entrega i opiñion-mu para i Acting Chief Executive Officer as Oscar C. Camacho gi sigiente na address, fax pat email address, yan i råyan suhetu "Mapropone na Amendasion para i Areklamento yan Regulasion QC siha".

> Commonwealth Development Authority P.O. Box 502149 ··Wakin's Building, Chålan Påle' Arnold Road Saipan, MP 96950 Tel. No.: 234-7145/7146/6293/6245 . Fax No.: 235-7147 Email address: administration@cda.gov.mp

Todu opiñion man uttimo gi halom trenta (30) diha siha na tiempo ginen i pupblikasion este na notisia. Pot fabot na'hålom i infotmasion, hinasso yan kinontra siha. (1 CMC §9104(a)(2))

Este i man mapropone na amendasion siha para i Areklamento yan Regulasion siha man ma'apreba ginen i Kuetpon Direktot CDA gi Oktubri 15, 2008.

Nina'hålom as:

Pedro I. Itibus, Kabiseyon CDA Kuetpon

11

Eloy S. Inos, Sekritårion Finance oara i Dibision Revenue yan Taxation

Esther §. Fleming

Rinesibi as:

11 .17 .08

Fecha

Espisiat na Ayudante para i Atministrasion Gobietno

Pine'lo yan Rinekot as:

Esther M. San Nicolas **Rehistran Commonwealth**

Sigun i 1 CMC §2153(e) (Inapreban Abugådu Heneråt put i regulasion siha na debi na u macho'gue komu fotma) yan 1 CMC §9104(a)(3) (minantetiene ni inapreban Abugådu Heneråt) i

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man mapropone na amendasion siha para i Regulasion i QC ni mañechetton guini ni esta man marebisa yan man ma'apreba kumo fotma ya sufisiente ligåt ginen i CNMI Abugådu Heneråt yan debi na u mapupblika, 1 CMC §2153(f) (pupblikasion areklamento yan regulasion siha).

Mafecha gi diha <u>14</u> gi Nubembre, 2008.

Gregory Baka

Acting Abugådu Heneråt

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Page Numbers are changed. Table of Contents to read as follows:

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CHAPTER IV. REVIEW OF THE APPLICATION

Section 7 becomes Section 8.

A new Section 7 to read as follows: "The CDA Board shall, at the same time as it make its final recommendations to the Governor, also forward a copy of the recommendations to the Director of Revenue and Taxation and to the applicant, for their information."

CHAPTER X. MODIFICATION, SUSPENSION AND REVOCATION

Section A is amended in its entirety. A new Section B is added. Original Section B becomes Section C with minor amendments.

Section A to read as follows:

A. <u>Modification, Suspension, or Revocation</u>.

1. The CDA Board may recommend the modification of a Qualifying Certificate:

a. For a Beneficiary, if in compliance, where the request by the Beneficiary to modify

its Qualifying Certificate is made in writing to the CDA Board within ninety (90)

days of the effective date of the Beneficiary's Qualifying Certificate. Modification

hereunder is only available, and this provision (X.A.1.a.) only applies, to timely

modification requests made on or after October 1, 2008.

- b. For failure of the Beneficiary to comply with any of the terms or conditions contained therein or within these Rules and Regulations or the Investment Incentive Act of 2000.
- 2. In other instances of non-compliance, the CDA Board may also recommend the suspension or revocation of a QC.

New Section B will read as follows:

- B. Modification Procedure when Beneficiary is in Compliance.
 - Upon receiving a request for modification by the Beneficiary, within forty-five (45) days of that request, the CDA Board may either disapprove the request or recommend that the Governor modify the Qualifying Certificate.
 - 2. If within forty-five (45) days of the written request for modification, the CDA Board fails to either disapprove the request or recommend that the request be granted, in whole or in part, the request shall be forwarded directly to the Governor for his consideration.
 - 3. All recommendations for modification shall be made only after consultation with the Division of Revenue and Taxation.
 - Any recommendations for modification submitted to the Governor shall be accompanied by a written memorandum containing the findings, conclusions, conditions, and recommendations of the CDA Board.
 - 5. Any recommendation forwarded to the Governor for modification not approved by the Governor within forty-five (45) calendar days shall be deemed disapproved on the forty-sixth (46th) day following such receipt.
 - 6. The CDA Board shall, at the same time as it forwards the recommendations to the Governor, also forward a copy of its recommendations for modification to the Director of Revenue and Taxation and to the Beneficiary for their information.
 - 7. Upon modification of a Qualifying Certificate, CDA shall cause to be published in a CNMI newspaper of general circulation a notice of such modification.

Originally Section B is now Section C and as amended with subsection 1 will read as follows:

C. Modification, Suspension or Revocation Procedure in Non-Compliance Instances.

 Upon initial determination by the CDA Board that there may be grounds for modification, suspension or revocation of a Qualifying Certificate for non-compliance, the Administrator shall give the Beneficiary fifteen (15) days written notice of the opportunity for a hearing conducted in accordance with the provisions of the Administrative Procedures Act, 1 CMC §9101 et seq. The purpose of the hearing shall be to determine if there are sufficient grounds to modify, suspend or revoke the Beneficiary's Qualifying Certificate.

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Rota Casino Gaming Commission

Post Office Box 1547, Rota, MP 96951 Phone:1.670.532.7242 Fax:1.670.532.9454 Email: rotacommission@gmail.com

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE INITIAL RULES AND REGULATIONS OF THE ROTA CASINO GAMING COMMISSION, (hereafter "RCGC").

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: the Commonwealth of the Northern Mariana Islands, Rota Casino Gaming Commission 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. (1CMC § 9105 (b)).

AUTHORITY: The Rota Casino Gaming Commissioners hereafter "Commissioners") are empowered by the Rota Casino Gaming Act of 2007 to adopt rules and regulations for the administration and enforcement of the statute governing the activities of the RCGC. On October 28, 2008 pursuant to a duly noticed meeting, the Commissioners voted unanimously for the passage of the attached proposed procurement regulation.

THE TERMS AND SUBSTANCE: The Rules and Regulations provide rules of procurement for the operation essential to RCGC to ensure a systematic procedure as proposed in the attached rules and regulation.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

- 1. Creates a Procurement and Supply within RCGC whereby there is a systematic method of procuring goods and services which are essential to the operation, management and maintenance of RCGC as deem fit by the Commissioners.
- 2. The proposed regulation also provides a section for disputes on the procurement process for any aggrieved party.

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 § 9104(a) (1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Chairman Diego Songao at the above address, fax or email address, with the subject line "Procurement and Supply Regulations."

Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC \S 9104(a)(2)).

These proposed regulations were approved by the Commissioners for the Rota Casino Gaming Commission on October 28, 2008.

<u>////08</u> Date Submitted by: Victorino DLG, Torres Attorney for Rota Casino Gaming Commission Received by: For Esther S. Fleming Special Assistant for Administration 11/25/08 Date Filed and Recorded by: Mut Can Esther M. San Nicolas Filed and <u>12.1.08</u> Date Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § (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 25 day of November, 2008

Hegory Baka Gregory Baka

Gregory Baka^{*} Acting Attorney General

Kumision Luta Huegon Salappe' Post Office Box 1547, Luta, MP 96951 Telefon: 1.670.532.7242 Fax: 1.670.532.9454 Email: rotacommission@gmail.com

NOTISIAN PUPBLIKU PUT MAPROPONEN AREKLAMENTO YAN REGULASION SIHA POT I FINENE NA NA AREKLAMENTO YAN REGULASION SIHA GI KUMISION LUTA POT HUEGON SALÀPPE' PARA MO'NA ("RCGC").

MA'INTENSIONA NA AKSION PARA U MA'ADÀPTA ESTE SIHA I MAN MAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: i Commonwealth gi Sangkattan na Islan Notte Marianas siha, I Kumislon Luta Huegon Salåppe' ha intensiona na para u adàpta komu petmaniente na regulasion siha ni mafiechetion na Maproponen Regulasion siha, sigan gi manera siha gi Åkton i Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u efektibu gi halom dies diha siha despues di adaptasion yan pubplikasion gi halom i Rehistran Commonwealth. (1CMC § 9105 (b).

ATURIDAT: I Kumisinan Luta siha pot Huegon Saláppe' guini despues aiha "Kumisina") man ma'aturisa ginen i Akton Huegon Saláppe' Luta gi 2007 para u edápta i araklamento yan regulasion siha para i atministrasion yan u mana' metogot i lai ni ginobebietna i aktibidát siha gi RCGC. Gi Oktubri 28, 2008 sigun i propiu na notisian i miting, i Kumisina siha todu bumota para u mapása ni mañechetton na maproponen regulasion procurement.

I SUSTÂNSIAN I PALÂBRA SIHA: I Areklamento yan Regulasion siha ha pribeniyi areklamenton i procurement para i fondamenton operasion para u mana' sigura na i maneran i sistema komu mapropone ni chechetton na areklamento yan regulasion.

I ASUNTO SIHA NI MAN TINETEKKA: Este na areklamento yan regulasion siba:

- 1. Ha na' guaha Procurement yan supply gl halom i RCGC kosa ki u sanu i sisteman i procuring fektos yan i setbisio ni nesisario para i operasion, manchante yan inadaben i RCGC komu propiu ginen i Kumisina siha.
- 2. I maproponen regulasion lokkue' ha pribenlyi seksiona para i rinesiste gi procurement process para maseha häfa i rason i pattida.

DIREKSION PARA U MAPO'LO YAN PUPBLIKASION: Este i man Mapropone na Regulazion siha debi na u mapupblika gi halom i Rehistran Commonwealth gi seksione ni mapropone yan miebu na ma'adàpta na regulasion siha)1 CMC § 9104(a) (1)).

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PARA U MAPRIBENIYI OPINION SIHA: Na' hanâgui pat osino entrega i opifion-mu siha para Kabesiyu as Diego Songao gi sanhilo' na address, fax pat email address, yan i rayan suhetu ni "Regulasion Procurement yan Supply Siha." Todu opiñion debi na u fan hålom gi halom trents(30) diha siha na tlempo ginen i fechan pupblikasion este na notisia. Put fabot na halom i informasion, opiñion pat osino testamonion kinontra siha. (1 CMC § 9104(a)(2)).

I man mapropone na regulasion siha man ma'apreba ginen i Kumisina siha para i Kumision Luta Huckon Salappe' gi Okmbri 28, 2008.

Nina halom as: Victorino DLG. Torres Abugadu para Luta Kumision Huegon Salappe'

11/25/08 Fecha

Rinesibi as: <u>GWillige</u> Esther S. Fleming Espesiát na Ayudánte Para I Auninistrasion Gobietno

1/25/08

12.1.08 Focha

Pine lo yan Rinekot as: Moles Esther M. San Nicolas Rehistran Commonwealth

Sigun i I CMC § 2153(c) (i Abugadu Henerat ha apreba i regulasion siha ni para u macho'gue komu fotma) yan 1 CMC § (a)(3) (minantiene ni inapreban i Abugadu Henerat) i maproponen regulasion siha ni mañechetton guini man marebisa yan man ma'apreba komu fotman yan sufisiente ligåt ginen i CNMI Abugådu Heneråt yan debi na u mapupblika, 1 CMC § 2153(f) (pupblikasion areklamento yan regulasion siba).

Mafecha gi diha 25 gi Nubembre, 2008

Hegory Baka

Gregory Baka Acting Abugadu Henerat

ROTA CASINO GAMING COMMISSION Post Office Box 1547, Rots, MP 96950 Phone 1.670. 532. 7242 Fax: 1 670. 532. 9454 Email: rotacommission@mail.com

ARONGOL TOULAP REEL POMWOL ALLELGH KKA RE AGHIYEGHI ALLEGHUL LLOL <u>ROTA CASINO GAMING COMMISSION</u>. (ighila mwetelo mmwal "RCGC")

MÁNGEMÁNG IGHA EBWE FILLÓÓY POMWOL ALLÉGH KKAAL:

<u>Commonwealth</u> Téél falúw kka falúwasch Marianas, <u>Rota Casino Gaming Commission</u> e mwuschel ebwe schéschéél fillóóy allégh kka e appasch, bwelle mwóghutul <u>Adminsitrative Procedure Act</u>, 1 CMC Tálil 9104(3). Allégh kkasi ebwe kkamalió llói seigh (10) táálil ngáre schagh raa fillóóy me akkatéélong llói <u>Commonwealth Register</u>. (1 CMC Tálil 9105 (b)).

BWÁNGIL: Ighila, <u>Rota Casino Gaming Commissioners</u> "Mwiisch") nge e tabweey bwángil <u>Rota Casino Gaming Act</u> 1161 2007 igha ebwe fillóóy allégh sangi <u>administration</u> me mwóghutul aweewe ye e lemeli RCGC, Ótol Itch 28, 2008 bwelle e fis sangi mwiisch, E lap yaar schóóy mwiisch bootááli pomwol alleghul <u>procurement</u> ye e appasch.

AWEWEEL ME KKAPASAL: Ayoorata allégh bwelle alléghúl <u>procurement</u> mwóghutul ye c welepakk sangi RCGC igha ebwe fisch mwóghutul allegh kka e appasch.

OUTOL ME AWEEWE KKA EYOOR: Allegh kkaal:

- Fféér Mwóghutul me Wiisal llól RCGC ye eyoor aweewel procurement goods me mwóghutughut ye e welepakk pomwol, lemelemil me ammwelil llól RCGC ye e toowow mercel Mwiisch.
- 2. Pontwol allégh kkaal nge ebwal isisilong tálil aweewe reel mwoghutul procurement igha ressóbw weites amweyút.

AFALAFAL REEL AMMWELIL ME AKKATEEL: Pomwol Allegh kkaal ebwe akkatéélő llól <u>Commonwealth Register</u> sángi Tálil ye re pomwoli me fillóól allégh kka e ffé (1 CMC Talil 9104(a) (1)).

REEL ISISILONGOL MÁNGEMÁNG: A fanga me ngáre bwughiiló reel Samwool ye Diego Songao reel <u>address</u> umwu elo weiláng, <u>fax</u> me ngáre <u>email address</u>, reel kkapas ye "Procurement and Supply Regulations.:"

Aghiyegh ebwe isisilong llól elilgh (30) ráálil igha schagh az akkaté ammataf yeel. Óutu ghal soong ów isisilong yáámi aingiing. (1 CMC Tálil 9104(a)(2)).

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Pomwol allégh kkaal nge as aléghéléghéló mercel Mwilsch ngáli Rota Casino Gaming Commission ótol Itch 28, 2008.

Isaliyallong:

Mwir sangi: 9

g: _______ Victoino RLG. Torres Sów Bwungul Allégh Lapalap Ngáli <u>Rota Casino Gaming Commission</u>

11/25/08 Ral

11/25/08

Sów Alillisil Sów Lomelem

milon Ammwel sángi:

Esther M. San Nicolas Commonwealth Register

12.1108 Ral

Sángi allégh ye 1 CMC Talil 2153(e) (Alúghúlúgh mereel AG reel allégh kka ebwe akkaté ighila) me 1 CMC Tálil (a)(3) (bwughi alúghúlúghúl AG) pomwol allégh kka e appasch nge raa takkal amweri fischi mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkatééwow. 1 CMC Talil 2153(f) (akkatéél allégh kkaal).

Rádiil yeel 25 Ilól maramal Sarobwél, 2008

Hegory Baka

Gregory Baka Acting ngáli Sów Bwungul Allégh Lapalap

ROTA CASINO GAMING COMMISSION

POST OFFICE BOX 1547, ROTA, MP 96951

WE THE UNDERSIGNED, BEING ALL OF THE CHARTER MEMBERS OF THE ROTA CASINO GAMING COMMISSION, PURSUANT TO THE ROTA CASINO ACT OF 2007, WE AS THE MEMBERS OF THE COMMISSION HEREBY SET FORTH AND UNANIMOUSLY APPROVED THE PROCURMENT OF THE ROTA CASINO GAMING COMMISSION.

SIGNED AND DATED ON 28^{H} Day of 0000 BER in the Year 2008, IN THE ISLAND OF ROTA OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

O M. SONGA DIFC

CHAIRMAN OF THE COMMISSION

'ELPHREM S. TAIMANAO VICE CHAIRMAN OF THE COMMISSION

JUSTIN S. MANGLONA SECRETARY OF THE COMMISSION

MELCHOR A. MENDIOLA MEMBER OF THE COMMISSION

ABELINA T. MENDIOLA MEMBER OF THE COMMISSION

LEGAL SUFFICIENCY:

THE FOLLOWING PROCURMENT HAS BEEN RECEIVED AND APPROVED FOR LEGAL

028923

SUFFICIECY. **VICTORINO DLG. TORRES** LEGAL COUNSEL

Procurement

PROCUREMENT

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ROTA CASINO GAMING COMMISSION Procurement Regulations

ARTICLE 1- GENERAL PROVISIONS

Section 1-101 – Purposes

- (1) Interpretation. These regulations shall be construed and applied to promote their underlying purposes and policies
- (2) Purposes and Policies. The underlying purposes and policies of these regulations are :
 - (a) to standardize and centralize the procurement policies and practices of the RCGC.
 - (b) to provide for increased public confidence in the procedures followed in RCGC procurement;
 - (c) to insure the fair and equitable treatment of persons who deal with the procurement system of the system of the RCGC.
 - (d) to provide and increased economy in RCGC procurement activity and to maximize to the fullest extent practicable the purchasing value of RCGC funds.
 - (e) to foster effective broad -based competition within the free enterprise system; and
 - (f) to provide safeguards for the maintenance of procurement system of the quality and integrity.

Section 1-102 Authority

All powers and authorities herein rests with the Commission. The Commissioners hereby appoints the Executive Director unless the Commission appoints another designee. The responsibility for the procurement and supply and in the event the Executive Director's position is vacant, such responsibility shall rest with the Chairman. Any procurement over \$25,000 shall have the concurrence of the Chairman, and in the event the Executive Director is vacant, the Chairman shall have the concurrence of the Commission

Section 1-103 Supplementary General Principles

Unless displaced by the particular provisions of these regulations, principles of law and equity including but not limited to, the uniform Commercial Code of the Commonwealth of the RCGC Code of the Ethics and Common Law of fraud. conflict of interest, waste, false pretenses, and public purpose shall supplement these regulations:

Section 1-104 Requirement of Good Faith

These regulations require al parties, including RCGC employees, contractors and suppliers, involved in the negotiation, bidding, performance or administration of RCGC contract to act in good faith.

Section 1-105 Application of Regulations

These regulations apply to every expenditure of the RCGC funds for goods, services or construction irrespective or source.

Section 1-106 Severability

If in any provision of these regulations or any applications thereof to any person or circumstances is held invalid in court of competent jurisdiction, such invalidity shall not effect other provisions of applications of these regulations which can be given effect without the invalid provision or application and. to this end, the provisions of these regulations are declared to be severable.

Section 1-107 Validity of Contract

No RCGC contract shall be valid unless it complies with these regulations

Section 1-108 Computation of Time

- (1) Except otherwise specified, all "days" referred to this regulations are deemed to be working days of the RCGC.
- (2) In computing any period of time prescribed or allowed by these procedure, the day of he act or event from which the designated period of time begins to run shall be included.
- (3) The term "file" or "submit" except as otherwise provided refers to the date of transmission.

Section 1-109 Preference to Local Contractor

All other factors being judge equal it shall be the policy of the RCGC to first prefer companies or individuals located on Rota and secondly elsewhere in the Commonwealth before considering non-CNMI vendors for procurement placement.

Section 1-110 Public Access to Procurement Information

Except as otherwise stated herein, procurement information shall be a matter of public record and available to the public by appointment Monday through Friday, unless otherwise authorized by the Commission.

Section 1-111 Remedy against the Employee

Any procurement action of an employee of the RCGC in violation of these regulations is an action outside of the scope of him/her employment. The RCGC will seek to have any liability asserted against it by a contractor which directly result from the improper act to be determined judicially to be individual liability of the employee who committed the wrongful act.

Section 1-112 Definition

As used in these regulations, unless the context otherwise requires, the following meanings apply:

- (1) Chairman means the Chairman of the RCGC.
- (2) Chief means the Executive Director or his/her designee
- (3) *Commission* means the currently appointed Commissioners of the Rota Casino Gaming Commission as a collective body.
- (4) Commonwealth or CNMI means the Commonwealth of the Northern Mariana Islands.
- (5) *Confidential Information* means any information which is available to an employee only because of the status as an employee of the RCGC and is not a matter of public knowledge or generally available to the public request.
- (6) Conspicuously means presentation in such special distinctive from, print or manner that the reasonable person should have notice it.
- (7) Construction means the process of building, altering, repairing, improving or demolishing of a structure or building or improvements commonly known as " capital improvements ". It does not include the routine maintenance of existing structures, building, or real property.
- (8) *Contract* means all types of agreement, regardless of the terminology for the procurement of supplies, services or construction.
- (9) Cash Reimbursement Contract means a contract under which a contractor is reimbursed for cost which are allowable and in accordance with the contract terms and regulations, and a fee, if any:

(10) *Direct* and indirect participation in a procurement decision ,approval, disapproval recommendation, preparation of any part of a procurement document, influencing the content of any specification or procurement standard rendering of advice, investigation, auditing or participation in any other advisory capacity.

(11) *Dispute* means an interpretative disagreement concerning the legal rights and obligations of the contracting parties.

(12) Employee means an individual receiving regular compensation from the RCGC including Appointive officials and non salaried individuals performing personal services for the RCGC. The definition extends to the Commissioners and all staff members. Consultant and part time workers shall be considered employees for the purposes of these regulations.

(13) Executive Director means the Executive Director of the RCGC

- (14) Financial Interest means
 - (a) Ownership of any interest or involvement in any relationship from which or as a result of which a person within the past years received or is presently or in the future entitled to receive compensation.
 - (b) holding a position in a business such as officer, director, trustee, partner, employee or the like;
 - (c) being a creditor of a company, its owner(s) or officers(s)
 - (d) exerting influence on financial or management decision of a business, which benefit s directly or indirectly.

(15) *Gift or Gratuity* means a payment, loan, subscription, advance deposit of money services or anything or more than a nominal value, present or promised, unless consideration of substantially equal or greater value is convened.

(16) *Goods* means all property, including but not limited to equipment material, supplies, and or any tangible personal property of any kind or nature, printing, insurance, leases or real property, and sale or other disposal of real and personal property.

(17) Immediate family means spouse, children, parents, brothers, and sisters.

(18) Invitation for Bids means all documents, whether attached or incorporated by a license utilized for soliciting bids

(19) Legal Counsel means the legal counsel of RCGC.

(20) *Persons* include any body corporate, association, firm, business or partnership as well as natural person.

(21) *Procurement* means buying purchasing, renting, leasing, or acquiring construction goods or services, including description or requirements, selection and solicitation of sources, preparation award of contract and all phases of contract administration.

(22) *Protest* means an objection lodged by a party outside of RCGC with regard to the selection of a sources for award of contract or other procurement action.

(23) Public Auditor means the office of the CNMI Public Auditor.

(24) *Purchase Description* means the words used in solicitation to described the good services or construction to be purchased and includes specifications attached to or made part of the solicitation.

(25) *Responsible in reference to a bidder*, means a person who has submitted a bid of a proposal which conforms in all material respect s to the integrity and reliability which should assure good faith performance.

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(26) *Responsive in reference to a bidder*, means a person who has submitted a bid or a proposal which conforms in all material respects to the invitation for bids or RFP.

(27) *RFP* means Request for Proposal which is an invitation to bid on a certain large complex for construction goods or services.

(28) *Services* means the furnishing of time, labor or effort by a person other than an employee and not involving the delivery of a specified end product other than task completion, reports, plans or incidental documents.

(29) RCGC means the Rota Casino Gaming Commission as an organization.

ARTICLE 2 - PROCUREMENT ORGANIZATION

Section 2-101 Creation of Procurement and Supply Section

There is created a Procurement and Supply Section. The Executive Director shall administer all procurement activities.

Section 2-102 Chief of Procurement and Supply

The Executive Director or his/her designee is designated as the Chief of the Procurement and Supply. With the approval of the Commission, the Executive Director may appoint another responsible employee as the Chief of Procurement and Supply to administer day to day procurement activities. The chief may receive clerical assistance

in the performance of his duties from employees provided, however that no employee of the Accounting Section, Receiving and Warehousing Personnel shall be directly involved in initiating procurement actions.

Section 2-103 Duties of the Chief

- (1) Oversee that these regulations are observed in all RCGC procurement.
- (2) Provide an advance planning for the centralized purchase of RCGC supplies.
- (3) Procure or supervise the procurement of all supplies, goods, and services needed by the RCGC.
- (4) Conduct bidding, procurement negotiation or administration of RCGC contracts upon request of the Executive Director.
- (5) Establish and administer repair and maintenance programs for RCGC equipment
- (6) Sell and trade or otherwise dispose of surplus or unserviceable supplies or equipment belonging to RCGC.
- (7) Exercise general supervision and control over all inventories of RCGC supplies.
- (8) Exercise general oversight and control of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use.
- (9) Establish and administer programs for inspection, testing and acceptance of supplies.

Section 2-104 Centralized Procurement

All purchases shall be centralized in the Procurement and Supply Section under the administration of the Chief.

Section 2-105 Bulk Procurement of Supplies

Subject to normal competitive bid requirements, the chief may, with the approval of the Executive Director, purchase certain consumable supplies in large quantities or solicit annual contracts to provide consumable supplies where deemed efficient. No separate contract or purchase order of these supplies will be approved except under emergency conditions.

ARTICLE 3 SOURCE SELECTION, AND CONTRACT FORMATION

ARTICLE 3 Part A - Source Selection

All RCGC procurement shall be awarded by the competitive sealed bidding, except as provided in:

Section 3-101- Method of Source Selection

Request for Interest.

(1) The RCGC recognizes that in light of the limited resources and new developments on the island of Rota, a direct request for interest may be necessary in order to receive more interest for prospective bidders or casino operators. Accordingly, the Executive director may direct certain solicitation to any potential contractor for services, good or potential casino operators in order to promote a better bidding result or investment interest. This request for interest need not be directed specifically for any of the Source Selection bidding process but may also include interest to promote a better response to advance the RCGC's policies, rules and regulations or proposed rules and regulations or in the issuance of a casino license.

The request for interest shall have at a minimum the following:

- (a) request for interest number;
- (b) date of issuance;
- (c) name, address and location of issuing officer; and
- (d) purpose of the request for interest.

The request for interest does not establish any contractual relationship between RCGC and any respondent unless specifically stated in the Request for Interest and all conditions are satisfied therein.

(1) Section 3-102 to Section 3-111

Section 3-102 Competitive Sealed Bidding

- (1) When competitive sealed bidding is required, an Invitation for Bids shall be issued which shall include at a minimum:
 - (a) an invitation for bids number
 - (b) date of issuance
 - (c) name, address, and location of issuing office;
 - (d) specific location where bids to be submitted
 - (e) date, hour, and place of bid opening
 - (f) a purchase description in sufficient detail to permit full and open competition among bidders and establish criteria by which bids can be evaluated.
 - (g) quantity to be furnished
 - (h) time, place and method of delivery or performance requirements
 - (i) essential contractual terms and conditions ; and
 - (j) any bonding requirement
- (2) Adequate public notice of the invitation for bids shall be given a reasonable time prior to date set forth for the opening bids. Publication of notice in a newspaper of general circulation in the Commonwealth on three (3) separate dates shall be deemed to be adequate notice.
- (3) A bidding time of at least twenty (20) calendar days, shall be provided, unless the Chief determines a shorter period is reasonable and necessary.
- (4) All bids shall be submitted to the Chief of Procurement and Supply Section. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at the office. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set the invitation for Bids and must be received within seven (7) working days of that date. Bidders outside the Commonwealth must notify the chief in writing of their intend to bid in order to receive this additional seven (7) days for the receipt of the actual bid documents. This notice of intend to bid may be by any mode of written communication including telex, facsimile, or other electronics transmission.
- (5) If a bid is premature opened by mistake, it shall be resealed and the person who open the bid shall write his signature and print his title on the envelop and deliver to the chief. No information contained in the bid opening. The chief shall cause the opened bid to be place into the sealed receptacle.
- (6) The Bid opening shall be conducted by Chief on the date specified in the invitation for Bids. All bids received prior to the advertised bid closing shall be open publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid shall be open to public inspection. The chief shall prefer a written summary of the bid opening.
- (7) Bids shall be unconditionally accepted without alteration or correction, except as authorized in these regulations, Bids shall be evaluated based on the requirements set fort in the invitation to Bids.
- (8) A bid may be rejected for any of the following reasons:
 - (a) failure to conform to essential requirements of the Invitation for bids such as specification or time delivery,
 - (b) imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the RCGC. For example, bids shall be rejected in which the bidder:

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- (i) protects against future changes in conditions, such increased cost:
- (ii) fails to share a price and indicates the price shall be the price in effect at the time of delivery
- (iii) states a price but disqualifies it as a subject to price in effect at time of delivery or:
- (iv) limits the rights of RCGC.
- (c) unreasonableness as to price or:
- (d) a bid for a non responsible bidder
- (9) Correction or withdrawal of inadvertently erroneous bids, before or after award or cancellation of awards based on bids or mistakes must be accomplished by the chief in writing. Whenever a bid mistake is suspected, the RCGC shall request confirmation on the bid prior to award. In such an instance, if the bidder alleges an error, the RCGC shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) and (b).
 - (a) Correction of bids shall only be permitted when:
 - (i) an obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistake 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.
 - (b) 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.
 - (c) 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.
- (10) 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 these regulations. Unsuccessful bidders shall also be promptly notified.
 - (a) Notice of award to the successful bidder shall be considered informal notification only and not constitute a contract or intent to enter into a contract by RCGC. An award shall only become effective upon execution of a contract as prescribe herein. No acceptance of an offer shall occur nor shall any rights or obligations be incurred until a RCGC contract is written and has been approved by all the officials required.

(b) In the event that all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent (5%), the Chairman may authorize the Chief to modify the bid requirements in the hope of bringing the bid price within the amount of available funds. The Chief will then inform all responsive and responsible bidders whose original bid was within five percent (5%) of the available funds of the bid requirement modification and request submission of an adjusted bid price. The notification shall be documented in writing and modified bids received attached to the original bidding documents. If all bids exceed five percent (5%) of available funds, there shall be notice by the Chief to all bidders that there will be a rebidding.

Section 3-103 Competitive Sealed Proposal

When the Chief determines in writing that the use of competitive sealed bidding is either not practical or not advantageous to the RCGC and receives the approval of the Chairman, a contract may be entered into by competitive sealed proposals. In such event, the following procedures shall apply:

- (1) Proposals shall be solicited through a Request for Proposal (RFP).
- (2) Except as otherwise stated in this section, all pertinent provisions of Section 3-102 shall apply to an RFP initiated procurement.
- (3) The request for proposals shall state the relative importance of price and other evaluation factors.
- (4) Proposals shall be opened so as to avoid disclosure of contents to competing offerers during the process of negotiation. A register of proposals received shall be prepared and opened for public inspection after contract award.
- (5) As provided in the RFP, discussions may be conducted with responsible offerers who submit proposals determined to have a reasonable chance of being selected for award for the propose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerers 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 final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerers.
- (6) Award shall be made to the responsible offerer whose proposal is determined to be the most advantageous to RCGC taking into consideration price and other evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The

Executive Director shall make a written recommendation to the Commission as to the best qualified offerer based on the evaluation factors set forth in the RFP, and negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.

(7) The contract file shall document the basis on which the award was made.

Section 3-104 Professional Service Procurement

*The services of accountants, lawyers, architects, engineers or other professional practitioners shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement or sole-source procurement.

- (1) It is the policy of RCGC to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. Waiver of this public announcement may be approved by the Chairman when an emergency short-term need is determined to exist and a qualified professional is found to be immediately available at a fair and reasonable price.
- (2) Adequate notice of the need for professional services shall be given by the Chief through an RFP. The RFP shall describe the services required, list the type of information and data required of each offerer and state the relative importance of particular qualifications.
- (3) The Chief may conduct discussions with any offerer who has submitted a proposal to determine such offerers qualifications for further consideration and for the purpose of negotiation of a compensation amount determined to be fair and reasonable. Discussions shall not disclose any information derived from proposals submitted by other offerers.
- (4) The Executive Director shall make a written recommendation to the Commission as to the best qualified offerer based on the evaluation factors set forth in the RFP, and negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.
- (5) If compensation cannot be agreed upon with the best qualified offerer then negotiations will be formally terminated with the selected offerer. If proposals were submitted by one or more other offerers determined to be qualified, negotiations may be conducted with such other offerer or offerers in the order of their respective qualification ranking and the contract may be awarded to the highest ranked offerer with whom the amount of compensation is determined to be fair and reasonable.

Section 3-105 Construction Procurement

(1) All procurement of construction services shall be by competitive sealed bid in accordance with Section 3-102 and this section. In addition to the requirements of Section 3-102 (1), the invitation for bids shall contain the following information for bidders:

- (a) general information regarding the project;
- (b) information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
- (c) special contract clauses depending on the nature and dollar amount of the work to be performed; and
- (d) technical specifications of the work to be performed.
- (2) Bid security shall be required for all competitive sealed bidding of construction contracts where the price is estimated by the Chief to exceed \$25,000 or when the Chief determines it is in the interest of the RCGC.
 - (a) Bid security shall be in the form of a bid bond, certified check, cashiers check or other form acceptable to the RCGC which shall be submitted with the sealed bid.
 - (b) Bid security shall be an amount equal to fifteen percent (15%) of the amount of the bid or other amount as specified in the Invitation for Bids.
 - (c) Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as nonresponsive.
- (3) When a construction contract is awarded in excess of \$25,000, the following bonds or security shall be delivered to the RCGC and shall become binding on the parties upon execution of the contract.
 - (a) A performance bond satisfactory to the RCGC, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the RCGC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
 - (b) A payment bond satisfactory to the RCGC executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the RCGC, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.
- (4) Every person who has furnished labor or material to the contractor or its subcontractors for work in respect of which a payment bond has been furnished under this section, and who has not been paid in full thereof before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by such person for which such claim is made, shall have the right to sue on the payment bond.
 - (a) Claimants under this section shall be entitled to sue for the balance unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person.
 - (b) Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing the payment bond under this section, shall have a right of action upon

the payment bond giving written notice to the contractor within ninety (90) days from the date on which such person performed the last of the labor or furnished the last of the material upon which such claim is made. Such notice shall state with substantial accuracy the amount claimed, the name of the party to whom the material was furnished or for whom the labor was performed and dates of such furnished or performance. Such notice shall be personally served or served by registered or certified mail, postage prepaid, in an envelope addresses to the contractor at any place the contractor maintains an office or conducts its business.

- (c) Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth. No such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was furnished by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.
- (5) Every contractor modification, change order or price adjustment under a construction contract shall be subject to prior written certification by the Chief as to the effect of the contractual modification, change order or price adjustment on the total contract budget. In the event that the certification disclose a resulting increase in the total contract budget, such contract modification, change order or adjustment in contract price shall be fully subject to the provisions of Subsection 3-107 (2) and processed in accordance with Section 3-303. In the event of a legitimate and proper contract modification, change order or price adjustment for which sufficient funds are unavailable, the Executive Director may authorize the designee to renegotiate the scope of the contract, if feasible, so that the total contract price does not exceed available funds.

Section 3-106 Cancellation of Invitation for Bids and Request for Proposals

An invitation for bids or request for proposals may be canceled *at any time during the review process* and any or all bids or proposals may be rejected, when such action is determined in writing and approved by the Executive Director to be in the best interest of the RCGC because of:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) specification which have been revised;
- (3) goods or services being procured which are no longer required;
- (4) inadequate consideration given to all factors of cost to the RCGC in the solicitation;
- (5) bids or proposals received indicate that the needs of the RCGC can be satisfied by less expensive good or service;
- (6) all offers with acceptable bids or proposals received are at unreasonable prices;

- (7) bids were collusive; or
- (8) cancellation is otherwise determined to be in the best interest of the RCGC

Section 3-107 Subverting the Competitive Bid Process

- (1) It shall be a violation of these regulations to split a contract into subcontracts or multiple contracts for the purpose of avoiding competitive bidding.
- (2) Any contract which was awarded on the basis of the lowest responsive, responsible bidder and which subsequently requires a substantial change order or modification resulting in a materially increased cost shall be closely scrutinized by the Executive Director for propriety and referred to the Public Auditor unless the justification is readily apparent. An improper modification or change order would be, for example, on which should have been reasonably foreseeable at the time of the formation of the contract. Requests for modification or change orders judged to be improper shall constitute a violation of these regulations.

Section 3-108 Small Purchases

Any procurement not exceeding the amounts established herein may be made in accordance with these small purchase procedures. However, artificially dividing procurement requirements so as to constitute a small purchase shall be a violation of these regulations.

- (1) Bidding is not required for procurement under \$5,000.
- (2) After sending specifications to these vendors, the Executive Director must obtain price quotations from at least three (3) vendors if available and base the selection on competitive price and quality. All price quotations obtained must be written and retained in the procurement files supporting the purchase.
- (3) Purchase orders may be utilized for purchases in subparagraphs (1) and (2).
- (4) This section shall not apply to lease or purchase of vehicles. Any lease or purchase of vehicles shall be procured pursuant to Section 3-102 or other applicable provisions of these regulations.
- (5) This section does not apply for travel authorization.

Section 3-109 Sole Source Procurement

A contract may be awarded for supply services or goods without completion:

- (1) A written justification for sole source procurement shall be prepared by the person requesting the procurement and shall contain the unique capabilities required and why they are required and the considerations given to alternative sources.
- (2) To obtain professional services or policy consultant for the purpose of consultation for the Commission as it deem fit and necessary.
- (3) The Executive Director shall negotiate with the sole source contractor to obtain the best price possible under the circumstances.

Section 3-110 Emergency Procurement

- (1) Notwithstanding any other provision of these regulations, the RCGC may make emergency procurement when there exists an immediate threat to the health, safety or welfare of it's employees or to the Commission's ability to discharge it's legal obligations. An emergency procurement must be as competitive as practicable under the circumstances.
- (2) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the Executive Director and approved by the Chairman.

Section 3-111 Expedited Purchasing in Special Circumstances

- (1) When special circumstances require the expedited procurement of goods or services, the Executive Director shall approve expedited procurement without the solicitation of bids or proposals. Such request will be submitted in writing describing the special circumstances which, in the opinion of the Executive Director, justify the expedited procurement.
- (2) Factors to be considered in the request from the Executive Director in approving or disapproving this request shall be:
 - (a) The urgency of the RCGC need for the good or service;
 - (b) The comparative costs of procuring the goods or service from a sole source or through the competitive process;
 - (c) The availability of the goods or service in Rota or the Commonwealth and the timeliness in acquiring it; and
 - (d) Any other factors establishing that the expedited procurement is in the best interest of the RCGC.

- (3) Upon the Executive Director's written determination that the factors in (2) above justify an expedited purchase, he shall process the necessary document(s) and proceed in procuring the required goods or service in the most efficient manner.
- (4) The Executive Director shall ensure that the expedited procurement is accomplished as competitively as possible under the circumstances.
- (5) The total amount of goods or service that may be approved under this section shall not exceed \$25,000.

Section 3-112 Request for Interest

(1) The RCGC recognizes that in light of the limited resources and new developments on the island of Rota, a direct request for interest may be necessary in order to receive more interest for prospective bidders or casino operators. Accordingly, the Executive Director may direct certain solicitation to any potential contractor for services, good or potential casino operators in order to promote a better bidding result or investment interest. This request for interest need not be directed specifically for any of the Source Selection bidding process but may also include interest to promote a better response to advance the RCGC's policies, rules and regulations or proposed rules and regulations or in the inssuance of a casino license.

The request for interest shall have at a minimum the following:

- (a) request for interest number;
- (b) date of inssuance
- (c) name, address and location of issuing officer; and
- (d) purpose of the request for interest.

The request for interest does not establish any contractual relationship between RCGC and any respondent unless specifically stated in the Request for Interest and all conditions are satisfied therein.

ARTICLE 3 Part B – Qualification of Contractors

Section 3-201 Responsible Bidders and Offerers

- (1) Awards shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:
 - (a) have adequate financial resources to perform the contract, or the ability to obtain them;
 - (b) be able to comply with the required delivery or performance schedule;
 - (c) have a satisfactory performance record;

- (d) have a satisfactory record of integrity and business ethics;
- (e) have the necessary organization, experience and skills (or the ability to obtain them) required to successfully perform the contract;
- (f) have the necessary production, construction and technical equipment facilities, or the ability to obtain them; and
- (g) be otherwise qualified and eligible to receive and award under applicable laws and rules.
- (2) Prior to award, the Executive Director shall obtain information from bidder or offerer as necessary to make a determination of responsibility based on the factors in paragraph 1 above. The unreasonable failure of a bidder or offerer 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 offerer.
- (3) Information furnished by a bidder or offerer pursuant to paragraph 2 shall be accessible within the RCGC only on a need-to-know basis and may not be disclosed to outside parties without prior consent by the bidder o offerer.
- (4) 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 stating the basis for the determination and this shall be placed in the contract file.

Section 3-202 **Pregualification of Contractors**

Prospective suppliers of goods or services may be prequalified for particular types of construction, goods and services when determined necessary by the Executive Director. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include pregualified vendors and others believed to be clearly qualified. In all sealed competitive bidding, bidders who have not been prequalified must establish their qualifications in the bid documents.

ARTICLE 3 Part C – Contracts

Section 3-301 Execution of Contracts

* The Chairman or the Acting Chairman, are the only individuals authorized to enter into contracts on behalf of RCGC.

Section 3-302 **Types of Contracts**

(1) Use of a cost-plus-a-percentage-of-cost or percentage-of-construction-cost methods of contracting are prohibited.

- (2) RCGC contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under paragraph 3.
- (3) A cost reimbursement contract may be used when the Executive Director determines in writing which is attached to the contract that:
 - (a) uncertainties in the work to be performed make the cost to performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
 - (b) use of a cost reimbursement contract is likely to be less costly to the RCGC than any other type due to the nature of the work to be performed under the contract.

Section 3-303 Contract Review, Processing and Oversight

- (1) All contracts must first be prepared by the Executive Director who shall certify that he has complied with Procurement Regulations, that the proposed contract is for a public purpose and it does not constitute a waste or abuse of RCGC funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference. Two original copies of the contract document shall be submitted to the Executive Director.
- (2) The Executive Director will review the contract for propriety and conformance with these regulations, such review to occur in a prompt and timely manner. If the Executive Director finds any aspect of the contract to be deficient or defective in any respect, he shall return the contract for appropriate resolution. Otherwise, the Executive Director will approve the contract as to compliance with Procurement Regulations. Upon his own initiative or upon the request of the Public Auditor, the Executive Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract.
- (3) The contract shall next be approved by the certifying authority within the Accounting Section as defined in the RCGC Internal Fiscal Management Procedures who shall certify the availability of funds.
- (4) The contract shall next be submitted to the Legal Counsel who shall certify the contract as to form and legal capacity.
- (5) Next, the contract shall be presented at a meeting of the Commission for final approval or disapproval by vote. An affirmative decision by the Commission shall serve as the authorization for the Chairman to enter into the contractual agreement on behalf of the Commission.
- (6) After all proper approvals have been obtained, the Executive Director shall forward two original copies of the contract to the contractor for his approval and signature.

- (7) After signature by the contractor, the Executive Director shall review the contract documents for completeness. If he satisfied, he shall submit the two original copies of the contract signed by the contractor to the Chairman for his execution.
- (8) After execution by the Chairman, the Executive Director shall inform all parties in writing that the contract is in force ad that contact implementation according to the terms contained therein may proceed. Concurrently, the Executive Director will forward original copies of the contract to the contractor and Legal Counsel. A photocopy of the contract shall be provided to the Executive Director and a second photocopy shall be retained by the Executive Director in the procurement contract file.
- (9) A contract may be referred back to the Executive Director or the Legal Counsel for further review based on additional evidence that it may not comply with these regulations. If the Executive Director or Legal Counsel withdraws approval or refuses to approve a contract, the basis for this action shall be stated in writing.
- (10) It is the responsibility of the Executive Director to ensure that the contractor does not sign the contract or incur any expenses related to implementation of contract terms until all necessary RCGC signatures have been obtained. The primary responsibility for supervision and inspection of a contractor's project in progress also rests with the Executive Director.

ARTICLE 3 Part D – Inspection and Audit

Section 3-401 Report of Anticompetitive or Deceptive Practices

* When for any reason, any one involved directly or indirectly in the process suspects the following practices are occurring among bidders, offerers, contractors, subcontractors or RCGC employees a notice of the relevant facts shall be transmitted by the person suspecting such activity directly to the Commission without delay:

- (1) unfair methods of competition
- (2) deceptive acts; or
- (3) unfair business practices

Section 3-402 Retention of Procurement Records

- (1) All records relating to procurement or proposed procurement shall be retained by the Executive Director in good order for a period of not less than five years.
- (2) Procurement records maintained by the Executive Director shall include a current listing of all contracts made under sole-source procurement, emergency procurement or expedited procurement since the adoption of RCGC procurement regulations or for the previous five years, whichever is less. The records shall contain:

- (a) each contractors name;
- (b) the amount and type of each contract; and
- (c) a listing of the supplies, services or construction procured under each contract.

ARTICLE 4 – BID PROTESTS AND CONTRACT DISPUTES

Section 4-101 Protests to the Executive Director

- (1) Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. The protest shall be filed in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The Executive Director shall consider all timely protests or objections to the award of a contract, whether submitted before or after award.
- (2) When a proper protest against the making of an award is received, the award will be withheld pending disposition of the protest. Other persons, including bidders, involved in or affected by the protest shall be given notice by the Executive Director of the protest and its alleged basis. These persons shall also be advised that they may submit their views and relevant information to the Executive Director within a specified period of time, normally within one (1) week. Those bidders whose bids might become eligible for award shall be requested by the Executive Director, before expiration of time for acceptance of their bid, 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 (3) below.
- (3) When a written protest is received, award shall not be made until the matter is resolved, unless the Executive Director determines that:
 - (a) the materials and services to be contracted for are urgently required;
 - (b) delivery or performance will be unduly delayed by failure to make award promptly; or
 - (c) a prompt award will otherwise be advantageous to the RCGC

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

(4) The Executive Director shall decide the protest within twenty (20) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires longer time, in which event he shall specify the appropriate longer time and so advise all parties.

Section 4-102 Protest after Award

* When a protest is filed after the contract has been awarded, the contractor shall be furnished the notice of protest and its alleged basis. Additionally, the provisions of Section 4-101 subsections (1) and (4) apply. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the interests of RCGC, the Executive Director should seek a mutual agreement with the contractor to suspend performance on a no-cost basis.

Section 4-103 Appeal of Executive Director's Decision to the Procurement Review Committee

- *(1) A written appeal to the *Procurement Review Committee (Commission Subcommittee)* of a decision by the Executive Director may be made provided that the party taking the appeal has first submitted a written protest as prescribed in Section 4-101or 4-102, and the Executive Director has denied the protest or has failed to act on the protest within the time provided for in subsection 4-101 (4) above.
- *(2) No particular form of pleading is required for filing an appeal to the *Procurement Review Committee*. The appeal shall, however:
 - (a) include the name and address of the appellant;
 - (b) identify the contracting agency and the number of the solicitation or contract;
 - (c) contain a concise, logically arranged, and direct statement of the ground for appeal; and
 - (d) specifically request a ruling by the Procurement Review Committee.
 - (3) Any appeal of a decision of the Executive Director must be received by the Procurement Review Committee not later that ten (10) days after the appellant receives such decision, or in the event that the Executive Director has not decided the protest, within ten (10) days from the date that he should have decided the protest pursuant to subsection 4-101 (4) above. Subsequent processing of the appeal shall be accomplished in accordance with established rules, regulations or procedures of the Office of the *Procurement Review Committee*. The Executive Director shall cooperate fully with the *Procurement Review Committee* in the disposition of the appeal.
 - (4) When a protest has been appealed to the *Procurement Review Committee* and the RCGC is requested to submit a report, the Executive Director shall prepare the requested report which shall include copies of the following:
 - (a) the protest;
 - (b) 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;
 - (c) the protest decision of the Executive Director;

- (d) the solicitation, including the specifications or portions relevant to the protest;
- (e) an abstract of competing offers or relevant portions
- (f) any other documents that are relevant to the protest; and
- (g) the Executive Director signed statement setting forth findings, actions and recommendations and any additional evidence or information deemed necessary in determining the validity or 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 of the Executive Director prescribed in subsection (3) above.

Section 4-104 Protest Remedies

- *(1) If, prior to award, the Executive Director or the *Procurement Review 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 cancelled or revised to comply with law or regulation.
- *(2) If, after an award, the Executive Director or the *Procurement Review Committee* determines that a solicitation or award of a contract is in violation of law or regulation, then:
 - (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be rectified and affirmed, provided it is determined that doing so is in the best interest of the RCGC; 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, plus a reasonable profit, prior to termination; but
 - (b) 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 interest of the RCGC, without prejudice to rights to such damages as may be appropriate.

*Section 4-105 Duties of the Procurement Review Committee

To evaluate procurement practice, complaint and appeal for recommendation to the Commission.

*Section 4-106 Contract Disputes

- (1) Any dispute between the RCGC and a contractor relating to interpretation of the performance or compensation terms of a contract, which is the subject of these regulations, must be filed in writing with Executive Director within ten (10) calendar days after the facts surrounding the dispute become known.
- (2) The Executive Director will attempt to resolve the dispute by mutual agreement with the contractor. If the dispute cannot be settled, either party may request a decision on the dispute from the Legal Counsel. The Legal Counsel shall review the facts pertinent to the dispute, consult with the Executive Director as necessary and prepare a written decision which shall include:
 - (a) description of the dispute;
 - (b) statement of the factual areas of disagreement or agreement;
 - (c) reference to pertinent contract terms including apparent intent of the parties;
 - (d) statement of interpretation of the factual areas of disagreement and a conclusion of the dispute with any supporting rationale.

At his discretion, the Legal Counsel may require a hearing or that information be submitted on the record at a meeting of the Commission.

(3) Duty to Continue Performance. A contractor with a pending dispute must continue to perform according to all terms of the contract. Failure to do so shall be deemed a breach of the contract unless a waiver of this provision is granted by the Executive Director.

ARTICLE 5 – ETHICAL STANDARDS IN PROCUREMENT

*Section 5-101 Policy

Employment at RCGC constitutes a public trust with regard to the employee. In RCGC contracting, employees shall discharge their duties impartially so as to:

- (1) insure fair competitive access to RCGC procurement be all reasonable, responsive contractors; and
- (2) conduct themselves in a manner so as to foster public confidence in the integrity of the RCGC procurement process.

Section 5-102 General Standards

- (1) Any attempt to realize personal gain through public employment by conduct inconsistent with these regulations is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of this Article.
- (2) Any effort by a past, present or prospective contractor to influence any RCGC employee to breach the standards of ethical conduct set forth in these regulations is a breach of ethical standard and a violation of these regulations.

*Section 5-103 Employee Disclosure Requirements

- (1) Any RCGC employee who has a financial interest in or obtains any benefits from any RCGC contractor shall report such financial interest or benefit in writing to the Executive Director.
- (2) Any employee who knows or should have known of such financial interest or benefit and fails to report as required is in breach of these ethical standards.

*Section 5-104 Employee conflict of Interest

- (1) It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows or should have known that:
 - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 - (b) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective financial interest is involved in the procurement.
- (2) Upon discovery of an actual or potential conflict or interest with regard to RCGC procurement, the affected employee shall file with the Executive Director a written statement of disqualification and shall withdraw from any further participation in the transaction. The employee may, at the same time, apply to the Legal Counsel for an advisory opinion as to what further participation, if any, the employee may have in the transaction or similar future transactions.

*Section 5-105 Gifts, Gratuities and Offers of Employment

- (1) It shall be a breach of ethical standards and a violation of these regulations for any RCGC employee to accept from any person any item of value given to them with the intent to influence their business judgment.
- (2) It shall be a breach of ethical standards and a violation of these regulations for any person to offer, give or agree to give any employee or former employee, or for any

employee of former employee to solicit, demand, accept or agree to accept from another person, a gift, gratuity or offer of employment in connection with any direct or indirect participation in a procurement.

(3) It shall be a breach of ethical standards and a violation of these regulations 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 influencing the award of a subcontractor order.

*Section 5-106 Contingent Fees and Kickbacks

- (1) It shall be a breach of ethical standards and a violation of these regulations for any person to be retained, or to retain any person, to solicit or secure RCGC contracts under an agreement or understanding for payment of a commission, percentage, brokerage or contingent fee, except for normal compensation of bona fide employees or bona fide established commercial agencies engaged in the trade or business of securing contracts for third parties.
- (2) Every person, before being awarded a RCGC contract, shall represent in writing that such person has not and will not compensate anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

*Section 5-107 Contract Clauses

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

*Section 5-108 Restrictions on Employment of Present and Former Employees

- (1) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be the employee of any person contracting with RCGC.
- (2) Where the RCGC is a party or has a direct or substantial interest, it shall be a breach of ethical standards for any former employee to knowingly act as a principal or agent for any party other than the RCGC in connection with any:
 - (a) judicial or other proceeding, application, request for a ruling or other determination;
 - (b) contract;
 - (c) claim; or
 - (d) charge or controversy;

pertaining to any matter in which the employee participated directly or indirectly in the procurement process while an employee.

- (3) Where the RCGC is a party or has a direct or substantial interest, it shall be a breach of ethical standards for any business in which an employee or former employee has a financial interest to knowingly act as a principal or agent for any party other than the RCGC in connection with any:
 - (a) judicial or other proceeding, application, request for a ruling or other determination;
 - (b) contract;
 - (c) claim; or
 - (d) charge or controversy;

pertaining to any matter in which the employee participates or participated directly or indirectly in the procurement process.

*Section 5-109 Use of Confidential Information

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

*Section 5-110 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage in the awarding of contracts is prohibited and constitutes a breach of ethical standards and a violation of these regulations.

- (1) The Executive Director shall declare a contract void and order all payments to the contractor suspended if he finds sufficient evidence that collusion or secret agreement was involved in obtaining the contract. The case will then be referred to the *Procurement Review Committee* for action as prescribed herein.
- (2) Where sufficient evidence of collusion or secret agreement is apparent prior to the contract being awarded, the Executive Director shall reject the collusive bids as not being submitted by responsible bidders. The case will then be referred to the Procurement Review Committee for action as prescribed herein.

*Section 5-111 Legal, Civil and Administrative Remedies

The Legal Counsel or Executive Director shall report any known or highly suspected departure from these regulations which also constitutes, or would constitute if proven, a violation of United States, CNMI or Municipal law or ordinance to law enforcement officials, the Attorney General

of the Commonwealth or other appropriate authority. In addition to existing remedies provided by law, any person who violates any of the provisions of these regulations may be subject to one or more of the following:

- (1) Any RCGC employee who violates the provisions of these rules and regulations is subject to adverse action as may be appropriate under the particular circumstances. Possible adverse action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of RCGC funds, or criminal prosecution.
- (2) A contractor or bidder who violates a provision of these rules and regulations shall be subject to a written warning, official reprimand, termination of the contract or suspension or debarment from future RCGC contracting as a contractor or subcontractor in addition to other penalties prescribed by law.
- (3) All proceedings under this section must be in accordance with applicable due process requirements.

*Section 5-212 Authority to Debar or Suspend

- (1) After reasonable notice of an alleged violation to a party against whom debarment or suspension is proposed and a reasonable opportunity for response, including an appearance at a meeting of the Commission if requested, the Executive Director, after consultation with the Chairman and the Legal Counsel, shall have the authority to debar or suspend a person for cause from consideration for award of future RCGC contracts. Debarment shall be for a period of one (1) to three (3) years. A suspension shall be imposed for a period of three (3) months to one (1) year.
- (2) Actions for which debarment or suspension are authorized include the following:
 - (a) conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (b) conviction under Commonwealth or Federal statues for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC 5101 et. seq.), unfair business practices as prescribed by 4 CMC 5202, or any other offenses indicating a lack of business integrity or business honesty which could directly affect perceived integrity as a RCGC contractor;
 - (c) conviction under Commonwealth or Federal statues of any crime involving the submission of collusive or fraudulent bids or proposals;

- (d) violation of contract provisions, as set forth below, which is regarded by the Executive Director to be serious enough to justify suspension or 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 public or private 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 suspension or debarment;
- (e) violation of any of the ethical standards set forth in Article 5; and
- (f) any other cause that the Executive Director determines to be so serious and compelling as to affect responsibility as a RCGC contractor, including debarment by another governmental entity.
- (3) The Executive Director shall issue a written *recommendation* to debar for *approval* by the Commission. The decision shall state the reasons for the action taken and the length of time which such debarment or suspension will be in effect.
- (4) A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person. Upon opinion of the Legal Counsel that notification of other agencies is legally permissible, a copy of the decision shall be provided to other governmental contracting authorities within the CNMI, the Territory of Guam or other jurisdictions judged appropriate by the Commission.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor Timothy P. Villagomez Lieutenant Governor

EXECUTIVE ORDER NO 2008-18

SUBJECT: Organization and management of the labor information data system

AUTHORITY: Constitution, Article III, Section 15

WHEREAS the Governor may make changes in the allocation of offices, agencies, and instrumentalities, and in their functions and duties, as necessary for efficient administration;

WHEREAS during 2008 the Department of Labor has upgraded its automated processing system and augmented it with an interactive website;

WHEREAS the Department of Labor's new system is tightly integrated with the data collection and processing done by the current labor and immigration identification and documentation system; and

WHEREAS the organization and current responsibilities of the Division of Immigration and the Department of Labor require a different allocation of responsibility for the labor information data system than exists currently;

NOW THEREFORE, to promote efficient administration, it is hereby

ORDERED:

- 1. <u>Department of Labor organization</u>: A new section is created within the Department of Labor entitled the Employment Data Section.
- <u>Transfer of administrative responsibility</u>: The digital data information system now known as the Labor and Immigration Identification and Documentation System (LIIDS) and all of the supporting paper files with respect to this system of records are transferred from the Division of Immigration and will be housed for administrative purposes in the Employment Data Section of the Department of Labor.

- 3. <u>Renaming</u>: The Labor and Immigration Identification and Documentation System shall be renamed as the Labor Information Data System (LIDS).
- 4. <u>Functions:</u> The functions and duties assigned to the Labor and Immigration Identification and Documentation System Section of the Division of Immigration shall be transferred, in their entirety, to the Employment Data Section of the Department of Labor.
- 5. <u>Personnel</u>: The current supervisor of the Labor and Immigration Identification and Documentation System Section shall remain in charge of all personnel, equipment, and data files as the supervisor of the Employment Data Section. All personnel currently assigned to the Labor and Immigration Identification and Documentation System Section of the Division of Immigration who are eligible and qualified under the laws and regulations applicable to the Department of Labor shall remain employed in their current duties and responsibilities in the Employment Data Section of the Department of Labor, reporting to the supervisor of that Section, after the transfer for administrative purposes to the Department of Labor. The supervisor of the Employment Data Section shall report to the Deputy Secretary of Labor for administrative purposes within the Department of Labor.
- 6. Equipment and files: All of the equipment and data files included in the current Labor and Immigration Information Data System are transferred to the Employment Data Section of the Department of Labor. Since February 2008, the Labor and Immigration Identification and Documentation System Section of the Division of Immigration has been scanning incoming paper records for labor applications into digital format and soon all current records will be in digital format. All paper records previously associated with the Labor and Immigration Identification and Documentation and Documentation System are the responsibility of the Manager, Administrative Services Section, within the Department of Labor.
- 7. <u>Budget</u>: The FY 2009 Governor's budget allocation for the Labor and Immigration Identification and Documentation System Section under the Division of Immigration and all of its FTEs are transferred to the Department of Labor for administrative purposes. Any subsequent budget limitations imposed by the Legislature with respect to the Labor and Immigration Identification and Documentation System Section as it existed under the Division of Immigration will apply to the transferred unit.
- 8. <u>Custodian of records</u>: The supervisor of the Labor and Immigration Identification and Documentation System Section of the Immigration Division has served as the custodian of records for purposes of legal requirements and that responsibility shall continue after the transfer to the Employment Data Section. Permit cards for Saipan, Rota, Tinian, and the Northern Islands may be issued only by the Employment Data Section and the official records with respect to permits shall be maintained by the Employment Data Section.

- 9. <u>Policy responsibility</u>: In order to maintain independence, integrity, supervised access, adequate supervision, and security of the data collection and reporting process, policy responsibility and decisions with respect to personnel remain with the Governor and are not transferred to the Department of Labor.
- 10. <u>Fees</u>: Fees for the sale of copies of data in either hard copy or digital formats from systems managed by the Employment Data Section shall be set by regulation by the Department of Labor. Data may be provided outside the Department of Labor or the Division of Immigration only in compliance with Commonwealth and federal privacy and other related laws protecting information about individuals and in accordance with existing policy guidance.
- 11. <u>Security:</u> The quarters housing the Employment Data Section shall be secured by passkeys and other necessary security arrangements and only the supervisor and employees of the Section shall have passkeys for entrance. At least two independent backups of all data files, stored in separate secure locations, shall be maintained at all times.
- 12. <u>Coordination with the Division of Immigration</u>: The Deputy Secretary of Labor and the Director of Immigration shall work together with the supervisor of the Employment Data Section to ensure that the data needs of the Division of Immigration are met. The equipment, data, and data backup files for the Border Management System shall be maintained separately from the equipment, data, and data backup files for the Labor Information Data System. While immigration functions are under the control of the Commonwealth government, personnel assigned to the Employment Data Section shall maintain the Border Management System for the Division of Immigration. Keeping the Border Management System software and data protected and operating properly is a high priority for the Employment Data Section and all necessary efforts and staff time will be devoted to this end. Provision of equipment and software for the Border Management System is the responsibility of the Division of Immigration.
- 13. Effective Date: This Order is effective as of November 1, 2008.

Done this/ day of October, 2008.

BENIGNO R. FITIAL Governor

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor Timothy P. Villagomez Lieutenant Governor

EXECUTIVE ORDER 2008-19

RENEWAL OF DECLARATION OF A STATE OF DISASTER EMERGENCY:

PHARMACY DEPARTMENT AT CHC

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby renew the declaration of a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent and impending closure of the Pharmacy Department at the Commonwealth Health Center (hereafter "CHC"). This renewal is necessary as the Legislature has not yet passed a bill exempting pharmacists from the salary cap law. The original declaration of a state of disaster was set forth in Executive Order 2008-16 issued on September 25, 2008.

WHEREAS, the in-house Pharmacy Department at CHC cannot operate and dispense medications without a licensed pharmacist on duty. Currently, the Pharmacy Department faces near immediate closure. Closure of the Pharmacy will deprive all medical departments at CHC from receiving any medications for the patients. As such, the pharmacy crisis at CHC threatens an extreme, immediate and imminent endangerment to the health and welfare of the Commonwealth of the Northern Mariana Islands.

Executive Order 2008-19 Renewal of Declaration of Disaster Emergency: Pharmacy Department at CHC

This Executive Order shall expire on the 31^{st} day following the date of my signature, or sooner if the Legislature exempts pharmacists from the salary cap. The following findings and conclusions further support continuation.

I HEREBY FIND THAT:

1. The in-house pharmacy at CHC is under threat of imminent closure due to the lack of licensed pharmacists.

2. The in-house pharmacy at CHC is responsible for preparing and dispensing all medications for both out-patients and in-patients of the hospital. The pharmacist duties include mixing, preparing and supplying medications for and to all hospital departments, including but not limited to: the operating room, hemodialysis, chemotherapy, emergency room, internal medicine, pediatric neonatal intensive care unit, and the adult intensive care unit, just to name a few. These departments will cease to function effectively, if at all, without access to medications from the in-house pharmacy.

3. The last full time pharmacist employee resigned effective October 8, 2008. An interim full-time pharmacist and a part-time pharmacist were employed during the original Declaration of Emergency Disaster period that just ended. Renewing the Declaration of Emergency Disaster is necessary to keep these pharmacists on duty for the next 30 days.

4. The licensed pharmacist positions at CHC are currently subject to the salary cap limitations contained in 1 CMC §8248(a), thereby limiting pharmacists to annual salaries of \$50,000.00. There is a shortage of licensed pharmacists in the Commonwealth and the salary cap limitation makes hiring replacement pharmacists untenable as the fair market value of experienced and licensed pharmacists far exceeds the salary cap limitation.

5. The Secretary of Health has advised me that unless one or more licensed pharmacists can be immediately hired and retained to operate the pharmacy, that the health care operations of CHC will be severely curtailed and patients lives will be put at extreme risk

Executive Order 2008-19 Renewal of Declaration of Disaster Emergency: Pharmacy Department at CHC

6. This renewal of the Declaration of Emergency Disaster is necessary to protect the health and safety of our citizens and visitors who seek medical care and treatment at CHC.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands by extending the Emergency Declaration regarding the Pharmacy Department at CHC.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

(f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

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Executive Order 2008-19 Renewal of Declaration of Disaster Emergency: Pharmacy Department at CHC

I HEREBY ISSUE THE FOLLOWING DIRECTIVES:

Directive 1: The Secretary of Health and the Department of Public Health shall continue to adequately staff the Pharmacy Department at CHC with licensed pharmacists by whatever means necessary to ensure that the Pharmacy remains open and is fully operational to meet the needs of CHC and its patients.

Directive 2: The Secretary of Health shall notify me when he and his agency have determined that the Pharmacy crisis is resolved.

Directive 3: All statutes and regulations relating to the Pharmacy Department of CHC, pertaining to employees of the Commonwealth government and the salary cap limitations, hereby remain suspended in order to effect and fulfill the purposes of this Executive Order.

By today's renewal of the disaster emergency declaration, I intend to continue protecting the citizens of the CNMI and its many visitors by maintaining a viable and operational Commonwealth Health Center hospital.

This renewed Declaration of a State of Disaster Emergency shall take effect immediately on October 25, 2008 and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days thereafter unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

SO ORDERED this 24th day of October 2008.

BENIGNO R. FITIAL Governor

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor Timothy P. Villagomez Lieutenant Governor

EXECUTIVE ORDER 2008-20

DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S IMMINENT GENERATION FAILURE AND THE NEED TO PROVIDE IMMEDIATE RELIABLE POWER DURING REPAIRS

CONTINUATION #3

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect my preceding disaster emergency declarations on this matter, EO 2008-10, -13 and -17. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation.

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COMMONWEALTH REGISTER VOLUME 30 NUMBER 11 DECEMBER 1, 2008 PAGE () 28963 Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2300 Facsimile: (670) 664-2211/2311

6. CUC continues to lose generation capacity, which creates intermittent blackouts on portions of its system. During the past month CUC lost 4 MW to scheduled maintenance at Power Plant #4 and forced outages at Power Plant #1. CUC has lacked the funds to buy all needed parts to avoid such outages, and the contractors or in-house staff to carry out complete maintenance and repair. There is no indication that this situation will change in the next month.

7. This Declaration is still necessary to protect the health and safety of our children, our senior citizens, businesses and all other CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

(f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

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I find that:

1. All findings and conclusions of E0 2008-10, -13 and -17 are incorporated by reference herein.

2. In the past two months, CUC's contractor, Aggreko, has commissioned approximately 15 MW of temporary, diesel-fired power generators, pursuant to CUC contract # CUC-PG-08-CO16. This generation has meant the difference between rolling blackouts and generally continuous electric service to CUC customers. Because unforeseen technical issues have arisen periodically, there have been some forced outages. Although the Aggreko installation is professionally managed, events can occur which require the attention of non-CUC personnel, including security, pipefitters, and the related personnel, materials and supplies. Other issues may arise that will require rapid attention by CUC contractors and the securing of materials and supplies, particularly as 2 MW additional of Aggreko capacity have been delivered and connected to CUC's system.

3. Although CUC desires to comply in advance with environmental and land use regulations, the lack of permits and the permitting process would postpone or eliminate the inservice date and uninterrupted service provided by the Aggreko power generating equipment. In particular, taking Aggreko's units off line, while undergoing the time and expense of computer modeling of the emissions of Lower Base power plants could plunge Saipan into renewed rolling blackouts.

4. CUC is facing additional challenges due to the failure of its electric production and distribution facilities. In particular, the transformer feeding the Chalan Kiya distribution transformer requires immediate maintenance. The failure could plunge the south end of Saipan into lengthy blackouts, including the water wells in the Airport area and the Agingan Point sewage treatment facilities.

5. CUC has determined that its Tank 104 used oil facility is structurally unsound and must be emptied of its used oil in advance of severe weather, particularly a serious typhoon, to avoid any potential harm to the Commonwealth's waters, including the Lagoon. Further, there are 2,800 sealed barrels of used oil nearby which must also be removed. The removal must comply with federal environmental law. CUC lacks the internal capability to carry out the removal and must contract for these services.

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I direct:

Directive 1: CUC shall comply with CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, except as follows:

Upon a finding by the CUC Executive Director that such compliance is not feasible for purposes of responding to the State of Disaster Emergency, the CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, if any, are suspended as to such CUC procurements. CUC must fully document all such procurement activity for Executive, PUC, Public Auditor, and Legislative review.

Directive 2: The Commonwealth Public Utility Commission ("PUC") Act of 2006, PL 15-35, as amended, and the new CUC Act - PL 16-17 - are hereby suspended insofar as they would require the PUC's advance review or approval of CUC contracts and other measures relating to the supply of power or the operation and maintenance of CUC's system during the State of Disaster Emergency.

Directive 3: CUC is specifically empowered to execute the wholesale generation power contract it has negotiated with an independent power producer for a period of two years or less.

Directive 4: All regulatory statutes and regulations relating to the Aggreko temporary wholesale generation power contract, # CUC-PG-08-CO16, which CUC determines in writing will interfere with the deployment, in-service dates, and/or operation of the temporary power production facilities, are hereby suspended, except that CUC must within 30 days provide to me in writing its plan for compliance, and a copy of each agency's permits or a complete explanation why compliance has not yet been achieved and how it will be achieved.

Directive 5: CUC shall notify as soon as possible by email after each procurement governed by these directives, at least the following persons, advising of at least the following matters:

a: Persons: The Governor, President of the Senate, Speaker of the House, PUC, Public Auditor; and

b: Matters: Subject of the procurement; contractors and/or suppliers; amounts involved; the extent to which competitive bids or proposals were used; and short description of the reason for the action.

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Directive 6: CUC shall procure as soon as practicable the necessary technical expertise and other labor, parts and materials to remedy the failings of its Chalan Kiya-related distribution facilities.

Directive 7: CUC shall procure with all deliberate speed the contractors necessary to remove used oil from Tank 104 and the hundreds of nearby barrels; and, in particular, shall take every measure to insure that a typhoon shall not cause any of that oil to pollute the Lagoon.

As stated in EO 2008-10, PL 16-9 removed substantial impediments to CUC's securing by contract immediate, reliable, and cost-effective temporary power from an independent, non-utility power producer. That law amends the Commonwealth PUC Act of 2006, specifically requiring a gubernatorial declaration of disaster emergency pursuant to 3 CMC § 5121, so that CUC might sign an emergency wholesale power generation contract for two years or less without pre-review of the PUC or the PUC's issuance of a certificate of convenience and necessity. Each of these PUC decisions would have taken so long to investigate and make that the conditions discussed above may have developed in the meantime.

1 determined that, if CUC could immediately execute such a contract, it could quickly have temporary replacement generators placed into service and then shut down the dangerous Power Plant #1 engines. By disaster declaration EO-2008-101 intended to enable CUC, within the definitions of PL 16-9, to sign a power contract with the appropriate "person".

By today's disaster emergency declaration, 1 intend to continue to enable CUC, within the intent of PL 16-9, to continue to implement the temporary power contract which it signed. The purpose is to make the electric system as reliable as practicable, as soon as practicable, during the period of repair of CUC's generators. 1 also intend that government leaders be kept informed upon the operation of the temporary power equipment.

Toward that end, on September 29, 2008, I submitted to the presiding officers of the legislature a comprehensive interim report with exhibits relating to the subject of this emergency declaration, the Aggreko contract, and Executive Order Nos. 2008-10 and 2008-13. I will update that comprehensive interim report in accordance with 1 CMC § 7403(a), as additional information becomes available.

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This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a). "Writings" and letters include communications by email and fax.

Done this 4th day of November 2008.

BENIGNC FITIAL Governor

0 EO 2006-20 CUC SOE extended 3 wpd

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