

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



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**COMMONWEALTH REGISTER  
VOLUME 33  
NUMBER 09  
SEPTEMBER 26, 2011**

# COMMONWEALTH REGISTER

VOLUME 33  
NUMBER 09

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
HEALTH CARE PROFESSIONS LICENSING BOARD**

*In the Matter of Tinian Health Center* )  
(Amendment of Practice Agreement for )  
Remote Supervision )

Case No. 2010-04

**SEVENTH AMENDMENT TO THE BOARD EMERGENCY ORDER #01  
APPROVING PRACTICE AGREEMENT AMENDMENT  
FOR REMOTE SUPERVISION**

**Summary of Amendments**

This amendment to this Order is entered today, August 22, 2011 pursuant to the Board's decision on August 17, 2011, to extend this Order and the Practice Agreement required by this Order, another 90 days effective August 22, 2011. It also immediately authorizes physician assistant Juan B. Pangelinan and any other CNMI licensed physician assistant ("PA"), during the period this Order is in effect, to work at the Tinian Health Center ("THC"), under the supervision of THC's physician, Dr. Stephan Lebamoff and any other CNMI licensed physician approved by the Board to supervise the physician assistant(s), located at a site other than the same Tinian Health Center when Dr. Lebamoff is off duty or off-island. This Order is valid through the end of the day of November 20, 2011.

**Discussion**

The "Health Care Professions Licensing Act of 2007" ("the Health Care Act" or "the Act"), 3 CMC §§ 2201 – 36, P.L. 15-105, requires that a physician assistant ("PA") be licensed by the Health Care Professions Licensing Board ("the Board") and that his/her conduct conform to certain statutory and regulatory standards and specific dictates.

The pre-existing regulations of the predecessor Medical Professions Licensing Board continue in effect, except as amended by the Board:

- (e) Except as otherwise provided herein, the regulations, guidelines, standards, and procedures related to the regulation of the functions and operation of a regulated health care professional and/or profession that are in force when this Act becomes effective, shall continue to apply until amended or repealed by the Board.

3 CMC §§ 2235(e). The Board has amended its regulations in part. 140 NMIAC 50-3 Commonwealth Health Care Professions Licensing Board Regulations. 30 Com Reg. 03, p28388 – 28426. It has not yet amended its PA regulations so the pre-existing regulations apply.

The Board's authority proceeds from the Act and the Administrative Procedure Act. The Act established the Board with complete jurisdiction, power and authority to regulate the health care professions. 3 CMC § 2204(a). The Board's powers include:

- To adopt rules and regulations to enforce the Act. 3 CMC § 2206(b);
- To issue, deny and condition licenses. 3 CMC § 2206 (c );
- To conduct disciplinary hearings to suspend or revoke licenses, 3 CMC § 2206 (h);
- To suspend or revoke a license. 3 CMC § 2206(k);
- To act summarily in the face of the likelihood of harm to:
  - i. the public health, safety or welfare; or
  - ii. to the patients of a health care professional who is regulated by this Chapter. 3 CMC § 2206(n).

A PA practicing with a license issued prior to the new Act and its new regulations continues as a licensee until the Board suspends or revokes that license:

For the transition period between the application of the old Medical Practice Act and the new Health Care Professions Licensing Act, specifically until new applicable Regulations are promulgated, each practicing member of each profession over which the Board has jurisdiction shall be deemed practicing with a license until regulations are promulgated for the respective profession and an indicated re-licensing application period has ended, or until the Board acts to suspend, modify, revoke or otherwise affect a license, whichever comes first.

140 NMIAC § 50.3-101-002.

At all times a PA shall have in place a “practice agreement” with a supervising physician. 140 NMIAC § 50.1-1220, 1230(d). Such agreement ordinarily provides the scope of a PA’s activities and ensures that the physician will be available for consultation, and will review and co-sign patient records. It also provides that the physician co-signs for prescription of medication and other treatments, except that the PA may not prescribe DEA-controlled substances. 140 NMIAC § 50.1-1235.

The Administrative Procedure Act provides for license hearings, when a notice of a hearing is required, and defers to an agency’s specific organic act. 1 CMC §§ 9108 – 10. This Order addresses an emergency situation coming under the specific “immediate and grave danger to the public” provision of the HCPLA, 3 CMC § 2206(n).

#### **Facts**

Dr. Priyantha Wijayagunaratne, the only physician at THC, has submitted his resignation effective December 1, 2010. However, beginning on Friday, November 12, 2010, Dr. Wijayagunaratne will be on sick leave until December 1, 2010. Accordingly, as of Monday, November 15, 2010, THC is without a physician.

THC requested the Board consider an Emergency Order to exempt THC’s Mid-Level Provider, PA Juan B. Pangelinan, PA William R. Weiss and any other CNMI licensed physician assistant (“PA”), during the period this Order is in effect, to provide health care at THC through remote supervision. CHC, through Mr. John Tagabuel and Secretary Joseph K. Villagomez, has agreed to provide physician supervision to the physician assistants at THC. Supervision will be provided by the CHC’s Emergency Room physician, Dr. Greg Kotheimer and any other CNMI licensed physician approved by the Board to supervise the physician assistant(s), located at a site other than the same Tinian Health Center when Dr. Lebamoff is off duty or off-island.

#### **Board Findings and Conclusions**

The Board finds that it would be unfair to the people of Tinian to restrict physician assistants from practicing at THC merely because the Center’s physician is off duty or off-island. This Order provides authority for remote supervision from Saipan. We will not continue the authority provided in this Order indefinitely but we will continue it for a time.

#### **Ruling and Ordering Paragraphs**

The Board having been fully advised in the premises of this matter, for the above-stated reasons, hereby Orders that:

1. Physician assistant Juan B. Pangelinan and any other CNMI licensed physician assistant during the period this Order is in effect, may work at the Tinian Health Center (“THC”), under the supervision of a CNMI licensed physician located at a site other than the same Tinian Health Center when Dr. Stephen Lebamoff is off duty or off-island.

2. Supervision: Dr. Greg Kotheimer, other ER physicians at CHC and any other CNMI licensed physician included in the valid Practice Agreement, which shall be approved by the Board, as supervising physicians.
3. The last Practice Agreement signed by Dr. Stephan Lebamoff, Dr. Kotheimer and PA Pangelinan is extended for 90 days effective today, August 22, 2011 until the end of the day of November 20, 2011.
4. The agreement shall include:
  - a. The supervising physician(s) will provide adequate means for direct communication between themselves and the PA. The direct communication may occur through the use of technology, which may include but is not limited to, two-way radio, telephone, fax machine, modem, or other telecommunication device.
  - b. Daily emails shall be exchanged between the PA and the supervising physician for permitted prescriptions.
  - c. The database of patients on chronic or long-term scheduled medications shall be maintained and updated by the PA. The supervising physician to ensure adherence to the standard of care shall review it monthly.
  - d. Chart notes and prescriptions will be sent to the supervising physician for review and signature, as provided below.
  - e. The supervising physician shall closely monitor chronic pain contracts for adherence.
5. The physician assistants are authorized to prescribe:
  - a. Schedule III-V medications as follows:
    1. The PA is authorized to prescribe Schedule III through V medications as needed but shall be limited to prescribing, administering, and/or dispensing no more than 21-day supply. For refills, the supervising physician must co-sign the prescription and clearly write his DEA number on the prescription form. The supervising physician(s) shall review and sign chart notes within 21 days.
    2. All prescriptions for Schedule III-V medications written by the PA must be documented in the patient's chart and must include the name of the drug, dose, and route of administration, frequency, duration, quantity prescribed and name of supervising physician he consulted.
  - b. Schedule II medications as follows:
    1. In extreme emergency cases (myocardial infarction, motor vehicle trauma, certain fractures, pancreatitis, urethral and ureteral stones) Schedule II medications may be administered immediately, followed by a phone call to the supervising physician as soon as the patient is stable. In all other emergencies, Schedule II medications may not be prescribed, administered, or ordered without a verbal order from the ER physician on duty at CHC. The PA must first discuss the case with the ER physician. If the physician makes a verbal order for a Schedule II medication it must be appropriately documented in the patient's chart (as described in "B" above).

2. All such prescriptions and chart notes must be presented to the supervising physician(s) within seven (7) days for co-signature. The PA shall be limited to prescribing no more than a 7-day supply and there will be no refills.
- c. All prescriptions will indicate the quantity of the medication being prescribed both numerically and alphabetically (e.g., "10" and "ten").
6. THC is to provide the Board a monthly report of the following:
  - a. The dates when Dr. Lebamoff is off-duty and/or off-island;
  - b. Name(s) of the supervising physician(s) at the CHC ER when Dr. Lebamoff is off-duty and/or off-island;
  - c. Name(s) and date(s) of physician, other than Dr. Lebamoff, practicing at THC when Dr. Lebamoff is off-duty and/or off-island;
  - d. Name(s) and date(s) of supervising physician reviewing chart notes and prescriptions for signature;
7. This Order is valid through the end of the day of November 20, 2011.
8. The Board shall review this matter at its next board meeting. THC management is invited to appear at that meeting or via conference call and update the Board on its efforts at recruiting a supervising physician.
9. A copy of this Order shall be placed in a public area of the Tinian Health Center. The Executive Director, or her designee, is directed to do the following in person or by electronic means:
  - a. Serve this Order on the physician assistants;
  - b. Serve this Order to Dr. Stephen Lebamoff;
  - b. Serve this Order on the director of the Tinian Health Center;
  - c. Serve this Order on the Secretary of the Dept. of Public Health;
  - d. Serve this Order on the supervising physicians at CHC's ER;
  - e. Have this Order published in the next Commonwealth Register; and
  - f. Place this matter on the Board's agenda for ratification at its next board meeting.

A party seeking to appeal this Order is directed to 1 CMC § 9112 (b), which provides for judicial review of final orders within 30 days in the Commonwealth Superior Court. The Board believes that this is a final Order.



/s/ Ken Pierson, DDS  
Acting Chair

Dated: August 22, 2011

/s/ Leticia Borja, MD, Board Member  
/s/ Ahmad Al-Alou, MD, Board Member  
/s/ Pam Carhill, MPT Board Member

Health Care Professions Licensing Board  
Bldg #1242, Pohnpei Ct.  
Capitol Hill, Saipan, MP 96950  
Tel: (670) 664-4809  
Fax: (670) 664-4814  
Email: bpl@pticom.com



Commonwealth of the Northern Mariana Islands  
Saipan Higher Education Financial Assistance

Jose C. Mafnas, Chair  
P.O. Box 10001 PMB 3648, Garapan, Saipan, MP 96950  
Northern Marianas Housing Corporation No. A-42, Garapan, Saipan MP 96950  
tel: 670.233.5995 fax: 670.233.5996

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION  
OF REGULATIONS OF  
Saipan Higher Education Financial Assistance**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED AMENDMENTS TO THE SAIPAN HIGHER EDUCATION FINANCIAL  
ASSISTANCE REGULATIONS**

**Volume 33, Number 07, pp 031761-777, of July 22, 2011  
Adopted as Permanent with No Changes**

**ACTION TO ADOPT PROPOSED REGULATIONS:** The Board of Saipan Higher Education Financial Assistance (the "Board of SHEFA"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board of SHEFA announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

As attached and as published, the Proposed Regulations adopted as permanent regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

**PRIOR PUBLICATION:** The prior publication was as stated above. The Board of SHEFA adopted the regulations as final at its meeting of September 19, 2011.

**MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:** None.

**AUTHORITY:** The Board of SHEFA is required by the Saipan and Northern Islands Legislative Delegation to adopt rules and regulations regarding those matters over which the Board of SHEFA has jurisdiction. SLL 13-21, as amended, the "Saipan Higher Education Financial Assistance Act of 2003" (10 CMC §§ 3921 - 28, as amended, eff. February 2, 2004).

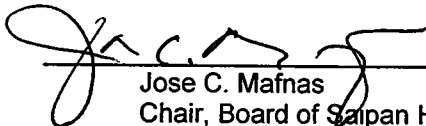
**EFFECTIVE DATE:** Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

**COMMENTS AND AGENCY CONCISE STATEMENT:** Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).


I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 15th day of September, 2011, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

  
\_\_\_\_\_  
Jose C. Mafnas  
Chair, Board of Saipan Higher  
Education Finance Assistance

9/20/2011  
\_\_\_\_\_  
Date

Filed and  
Recorded by:

  
\_\_\_\_\_  
ESTHER M. SAN NICOLAS  
Commonwealth Register

9.22.2011  
\_\_\_\_\_  
Date

0 Form Notice of Final Adoption of Regs.wpd





Commonwealth of the Northern Mariana Islands  
COMMONWEALTH ELECTION COMMISSION

Frances M. Sablan, Chairperson  
Commonwealth Election Commission, P.O. Box 500470  
Susupe, Saipan MP 96950  
Tel: (670) 664-8683; fax:(670) 664-8689

**PUBLIC NOTICE FOR PROMULGATION OF  
PROPOSED RULES AND REGULATIONS  
FOR THE NORTHERN MARIANAS DESCENT REGISTRY (NMDR)  
UNDER THE COMMONWEALTH ELECTION COMMISSION**

The Commonwealth of the Northern Mariana Islands, Commonwealth Election Commission (CEC) intends to adopt as permanent the attached Proposed Rules and Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Rules and Regulations would become effective 30 days after compliance with 1 CMC §§ 9102 and 9104 (a).

**AUTHORITY:** The Commonwealth Election Commission is empowered by Public 17-40 to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § 6105 & P.L. 17-40

The Rules and Regulations provides for the Commonwealth Election Commission to establish a Northern Marianas Descent Registry (NMDR) for the registration of Northern Marianas Descent pursuant to Article XII of the NMI Constitution.

The proposed rules and regulations are as follows:

**Authority.** The authority for the adoption and promulgation of the Northern Marianas Descent Registry Rules and Regulations is vested under the authority and directions set forth in Section 5 of Public Law 17-40.

**Purpose and Scope.** The purpose of the rules and regulations in this chapter is to establish and maintain an official listing and records of persons of Northern Marianas Descent.

### **Registration**

**General Registration Procedures.** The primary method of registration for Northern Marianas Descent (NMD) shall be in person before a duly authorized registration clerk, a Commission staff person or a Commission member. Any qualified individual may register at the Commission office in Saipan, at their residence or such other places that the Commission allows for the registration of voters.

**Registration Affidavit.** An NMD registers to vote by completing the affidavit, as attached and incorporated herein as exhibit A to this chapter and providing all of the information as required by law, and executing same under the penalty of perjury.

## **Mail Registration**

(a) A person otherwise qualified under Article XII, § 4 of the Northern Mariana Islands Constitution may submit his registration affidavit by mail so long as the registration affidavit is signed. Upon signing the registrant must mail the registration affidavit via either first class, priority mail or express mail to the following address:

Commonwealth of the Northern Mariana Islands  
Commonwealth Election Commission  
PO Box 500470  
Saipan, MP 96950

(b) A registration affidavit by mail must be postmarked no later than the date required for registration of all Commonwealth voters in order to vote in a general or special election. In the event the eligible voter mails the affidavit from such a locale that does not properly affix a postmark, such as a ship or submarine, then the date on the affidavit shall be presumed to be the day that the affidavit was mailed by the eligible voter. If that date is on or before the date the affidavit is due, then the voter shall be presumed to be registered if the Commission satisfactorily determines that the voter is eligible.

**Mail Registration Requirements.** As required by law, a person who desires to register by mail must not be physically present in the Commonwealth, and the registration clerk who receives the registration affidavit by mail must check the post mark or other such evidence to insure that the individual who submitted the application did not mail it from a location inside the Commonwealth.

**Northern Marianas Descent Qualification.** Any person who is otherwise qualified to register by mail must meet the requirements as set forth in Article XII, § 4 of the Northern Mariana Islands Constitution, as executed on the affidavit of registration.

**Public Record Information of NMD Registration.** It is understood that nothing in the Commonwealth Election Code or the Open Government Act as both are presently worded protects the privacy of the information contained in the affidavit of registration for NMD's. Therefore any person may request information about an NMD that is provided on the individual's registration affidavit. Therefore it is the decision of the Commission that the affidavit information shall remain a public record. Nothing in this section can prevent the Commission from changing this requirement should there be a change in either of these laws that declare this information private.

**Registration Clerks.** Registration clerks shall be all duly employed staff members of the Commission, and any Commission member or any other person who is properly designated by the Commission. Upon receipt of the duly executed affidavit, a registration clerk shall promptly transmit the affidavits to the Commission's offices on Saipan via first-class mail in a sealed envelope to the same address mentioned above or immediately via personal delivery so that the NMD's names shall appear on the register. The Commission shall ensure registration clerks have enough NMD registration affidavits.

**No Refusal Right.** No registration clerk shall refuse to register a person seeking to register even if the clerk believes that the person is not qualified to register. Instead the registration clerk shall allow the individual to fill out the affidavit, but shall immediately inform the Executive Director or a Commission staff person that the person attempting to register might not be eligible to register as an NMD in the Commonwealth. The Commission shall then follow the hearing procedures on all such registrations as listed below.

### **Hearings on Challenges of Registrations**

(a) As authorized by law, the Commission shall hold hearings on all challenged registrations where it appears that the proposed registrant does not meet the qualifications required by statute to register under the Commonwealth Constitution. The hearings shall occur no more than 30 days after the registrant submitted their registration affidavit. As allowed by law the hearings will be informal in nature. A quorum of the Commission shall be necessary to conduct a hearing. Due to the informal nature of the hearing, and where necessary, a Commission member may participate at the hearing through the telephone. Pursuant to the law, the quorum must consist of at least 5 members provided that there is at least one representative from each senatorial district. It is not necessary that the hearing be noticed publicly, but the challenged registrant shall be given reasonable advance notice and opportunity to be heard at the hearing.

(b) The challenged registrant shall be allowed to offer any oral or documentary evidence as to why he should be registered. The challenged registrant may be represented by counsel of his or her own choosing and at his own expense. Any person shall be allowed to offer any oral or documentary evidence as to why the person should or should not be registered. The challenged registrant may also participate at the hearing by being physically present or through the telephone.

(c) The decision denying the challenged registrant the right to be registered shall be decided by a 3/4 majority of the Commission members present at the hearing, including those participating through the telephone. In all other cases where less than 3/4 of the Commission members present vote to deny the registrant the right to be registered, then it shall be presumed that the registrant is qualified to register. No Commission member who does not participate by being present (either physically or through the telephone) in a challenge hearing shall be allowed to vote on whether or not the registrant can register. The Commission shall announce its decision in writing to the challenged registrant as well as make it available to the public no later than three days after the conclusion of the hearing.

(d) The decision of the Commission shall be final; however the judicial review petition procedures of the Commonwealth Administrative Procedure Act [1 CMC §9101, et. seq.] shall also govern the Commission's decision, as being an agency action.

### **Miscellaneous Provisions**


**Severability.** If any provision of the regulations in this chapter shall be held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations in this chapter shall not be affected thereby.

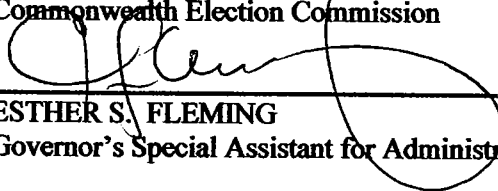
**Effective Date.** The regulations in this chapter shall take effect upon the notice of adoption and upon final publication in the Commonwealth Register.


The Commission is soliciting comments regarding these proposed amendments. Anyone interested in commenting on the amendments to the regulations may do so in writing to the Commonwealth Election Commission, P.O. Box 500470, Saipan, MP 96950. Written Comments may also be delivered to the Commonwealth Election Commission's Offices or faxed to (670) 664-8689. All comments must be in writing and must be received in 30 days from the date this notice is published in the Commonwealth register.

These proposed rules and regulations were approved by the Commonwealth Election Commission on June

9, 2011.

Submitted by:  June 9, 2011  
Frances M. Sablan, Chairperson  
Commonwealth Election Commission  
Date

Received by:  09/12/11  
ESTHER S. FLEMING  
Governor's Special Assistant for Administration  
Date

Filed and  
Recorded by:  09.12.11  
ESTHER M. SAN NICOLAS  
Commonwealth Register  
Date

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

Dated the 10 day of JUNE, 2011.

  
EDWARD T. BUCKINGHAM  
Attorney General



**Commonwealth Gi Sangkattan Na Islas Marianas Siha  
KUMISION ILEKSION COMMONWEALTH**

Frances M. Sablan, Kabiseyu  
Kumision Ileksion Commonwealth, P.O. Box 500470  
Susupe, Saipan MP 96950  
Tel: (670)664-8683; Fax: (670)664-8689

**NUTISIAN PUBLIKU PARA UMACHO'GUI I MANMAPROPONI NA AREKLAMENTU YAN  
REGULASION SIHA PARA I NORTHERN MARIANAS DESCENT REGISTRY (NMDR) GI  
PAPA' I  
KUMISION ILEKSION COMMONWEALTH**

I Commonwealth gi Sangkattan na Islas Marianas siha, I Kumision Eleksion Commonwealth (CEC) ha intensiona para u adápta komu petmanenti mafiechettun i Manmaproponi na Areklametu yan Regulasion siha, sigun i para i manera siha gi Áktun 1 gi Administrative Procedures, 1 CMC § 9104(a). I Areklamentu yan Regulasion na para u ifektibu trenta(30) dihas dispues di makumpli i 1 CMC §§ 9102 yan 9104 (a).

**ÁTURIDÁT.** I Kumision Ileksion Commonwealth nina'i fuetsa ni Public 17-40 para u adápta i areklamentu yan regulasion siha para i atministrasion yan enforcement i aktibidát siha gi governing statute. 1 CMC § 6105 & P.L. 17-40.

I Areklamentu yan i Regulasion siha ha pribeniyi i Kumision Ileksion Commonwealth para u estapblisa i Northern Marianas Descent Registry (NMDR) para i registrasion i Northern Marianas Descent sigun I Attikulu XII gi Konstitusion NMI.

I maproponi na areklamentu yan regulasion manattatiyi siha:

**Áturidát.** I áturidát para i adáptasion yan para u macho'gui i Areklamentu yan Regulasion Registry siha gi Sangkattan na Marianas ni pribilehu gi papa' i áturidát yan direksion siha ni mapega mo'na gi halum Seksiona 5 gi Lai Publiku 17-40.

**Purpose yan Scope.** I hinangai I areklamentu yan regulasion siha guini na kapitulu na para u estapblisa yan u maintain i ufisiát na lista yan notan petsona siha gi Northern Marianas Descent.

**Registrasion**

**Minanehan Registrasion Henerát Siha.** I prinsipát na method i registrasion para i Northern Marianas Descent(NMD) debi na i petsona gi me'nan i ma'aturisa na registration clerk, i staff Kumision pat i miembrun i Kumision. Maseha háyi kualifikáo na indibiyuát sina ma rihistra gi Ufisinan Kumision giya Saipan, gi residensian-ñiha pat ottru siha na lugát na i Kumision ha sedi para i registrasion i mambobota siha.

**Dokumentun Registrasion.** I NMD ha rihistra para u bota ginin i kinempidun i dokumentu, komu mafiettun yan u incorporate guini komu i exhibit A guini na kapilu yan pribeniniyi todú imfetmasion siha komu madimanda ginin i lai, yan executing parehu gi papa' i penalty of perjury.

## **Registrasion Kåtta**

(a) I petsona osino i kualifikáo gi papa' i Attikulu XII § 4 gi Konstitusion Sangkattan na Islas Marianas sina ha na'hålum i dokumentun registrasion-fia kontra kåtta kuntát komu i dokumentun registrasion ni mafitma. Gi mafitman i marihista debi na i mail i dokumentun registrasion via maseha via first class, priority mail para i sigienti na address:

Commonwealth of the Northern Mariana Islands  
Commonwealth Election Commission  
P. O. Box 500470  
Saipan, MP 96950

(b) I dokumentun registrasion by mail debi na u ma-postmark antis di i fecha ni madimánda para registrasion ni para todú i mambibota gi Commonwealth ni para u siña mambota gi henerát pat espisiát na ileksion. Yanggin siakásu na kualifikáo i bibota ha na'hánáo i kattan dokumentu ginin i locale ni ti ha na'dinanchi i affix i postmark , tát komu bátku pat submarine, pues i bibota debi na u hassu na i ha'áni ni ha na'hánáo i dokumentu ni ginin i kualifikáo na bibota.

**Dinimándan Rehistrasion Kåtta Siha.** Komu madimánda ni lai, i petsona ni ha tanga para u rihistra gui' kontra mail debi na ti u fáttu presentí gi halum Commonwealth, yan i registration clerk ni ha risibi i dokumentun registrasion ginin i mail debi na u ma-post mark pat u otrú ebidensia na ha na'siguru i indibiyuát na na'hålum i aplikasion ni ti ha mail ginin i lugát gi halum i Commonwealth.

**Kualifikasion Northern Marianas Descent.** Maseha háyi na petsona ni ha osino kualifikáo para u rihistra kontra katta debi na u kumpli i dinimánda siha ni mapega mo'na gi Attikulu XII, § 4 gi Konstitusion i Sangkattan na Islas Marianas, komu ma-execute i dokumentun registrasion.

**Imfotmasion Notan Ppubliku gi Rehistrasion NMD.** Makumprendi na táya' gi halum i Kodigun Ileksion Commonwealth pat i Áktun i Open Government komu parehu gi presentí matuge'fia ni prinitehi i privacy gi imfetmasion ni ha sasahguan gi dokumentun rehistrasion i NMD's. Láo maseha háyi na petsona siña manggágáo imfotmasion put i NMD ni prinibeniyi gi dokumentun rehistrasion indibiyuát. Láo disision i Kumision na i dokumentun imfotmasion debi na u sága gi notan ppubliku. Táya' guini na seksiona siña umatáha i Kumision kontra i tinilaikan esti na dinamánda debi ha' u guaha tinilaika maseha gi esti siha na lai ni ha diklára na esti private na imfotmasion.

**Registration Clerks.** I registration clerks debi na todú emple'áon Kumision, yan maseha miembrun Kumsion pat maseha háyi otrú na petsona ni madisikna ginin i Kumsion. Sigun i risibu ni ma-execute na dokumentu, i registration clerk debi na u na'siguru na ha transmiti i dokumentu siha para i Ufisinin Kumision siha giya Saipan via first-class mail gi halum i ma-seal na sobri para i parehu na address ni mamensiona gi sanhilu' pat insigidas via ma'intrega petsonát kosa ki i na'an NMD siha debi na u fanannuk gi rihistra. I Kumision debi na u na'siguru na i register clerks guaha nahung dokumentun rehistrasion NMD siha.

**Taya' Diretchun Pinini.** Taya' registration clerk debi na rinunsia ni para u rihistra i petsona ni manaliligáo para u rihistra maskiseha i clerk ha tungu' na ti kualifikáo i petsona para u rihistra. Inlugát i registration clerk debi na u sedi i indibiyuát na u fill out i dokumentu, láo debi insigidas u imfotma i Direktot Eksakatibu pat i staff Kumision na i petsona ha chagi para u rihistra gui' láo siña ti kualifikáo para u rihistra komu NMD gi halum Commonwealth. I Kumision debi dispues na u tattiyi i areklamentun hinekkunguk siha gi todú i sigienti na registrasion komu malista gi sampapa'.

## **Hinekkunguk i Chinâmpan Rihistrasion Siha**

(a) Komu ma'aturisa ginin i lai, i Kumision debi na u na'guaha hinekkunguk siha gi todû i chinampân rihistrasion siha gi anai a'annuk na i maproponi na i registrant ti ha kumpli i kuâlifikasion siha ni madimânda ginin i estatua ni para u rihistra gi papa' i Konstitusion Commonwealth. I hinekkunguk siha debi na u masusedi putlumâs ki trenta(30)dihas dispues di i registrant ha na'hâlum i iyun-ñiha dokumentun rihistrasion. Komu masedi ginin i lai i hinekkunguk siha na para u informal in nature. I kinabâlis Kumision debi na u nisisâriu para u kondukta hinekkunguk. Sigun gi para i informal nature gi hinekkunguk, yan amânu na nisisâriu , i miembrun Kumision siña pumattisipao gi hinekkunguk kontra i tilifon. Sigun gi lai, i kinabâlis debi na u kunsisti gi putlumenus singku(5) na miembru siha ni mapribeniya na guaha maskiseha unu na reipresentânti ginin kada distritun senadot. Ti nisisâriu na i hinekkunguk na u mapublika, lâo i chânsan registrant debi na u nâ'i nutisia kuntempu yan oputtunidât ni para u ma'ekkunguk gi huntan hinekkunguk.

(b) I chânsan registrant debi na u masedi para u ofresi maseha hâfa na sinangan pat tinigi' dokumentu komu para hâfa na debi na rihistra gui'. I chânsan registrant siña maprisenta gui' ni inayek-ña na abugâdu yan gâsto-ña. Maseha hâyi na petsona debi na u masedi para u ofresi maseha hâfa na sinangan pat ebidensian tiningi' dokumentu komu para hâfa i petsona debi pat ti debi na u marihistra. I chânsan registrant siña lokkui' pumattisipao gi hinekkunguk prumisenta pat kontra i tilifon.

(c) I pinini na disision i chinansan i registrant gai diretchu para u marihistra debi na u dinisidi ginin tres put sientu(3/4) mayuria gi miembrun i Kumision siha ni manggaigi gi hinekkunguk, ingklusu atyu siha i mampattisipao kontra i tilifon. Gi todû ottru siha na manera gi anai menus ki tres put sientu(3/4) gi miembrun i Kumision mamprisenti gi botu para u puni i registrant ni diretchu ni para u rihistra , pues debi na u hallum na i registrant kualfikao para u rihistra. Tâya' i miembrun Kumision ni ti pumattisipao ni ti prumisenti ( parehu mâttu pat kontra tilifon) gi chinansan hinekkunguk debi na u masedi para u fambota gi maskiseha pat ti i registrant siña manrihistra. I Kumision debi na u anunsia i disision-ña gi tinigi' para i chinansan registrant asi komu u bakânti para i publiku ti u menus ki tres (3) diha dispues di uttimun i hinekkunguk.

(d) I disision i Kumsion debi na u funhâyan; taimanu i judicial review petition procedures gi Âktun i Commonwealth Administrative Procedure [1 CMC §9101, et.seq.] debi lokkui' na u ginibietna i disision Kumision, komu action ahensia.

## **Miscellaneous Provisions**


**Severability.** Yanggin hâfa na prubension i regulasion siha gi esti na kapitulu debi na umasustieni sa' ti bâli ginin i kotti gi competent jurisdiction, i binalin i tetehnan gi regulasion siha guini na kapitulu ti debi na u inafekta guihi.

**Inefektibun Fecha.** I regulasion siha gi halum esti na kapitulu debi na u take effect gigun i nutisian adaptasion yan gigun munhâyan i publikasion gi halum i Rehistran Commonwealth.

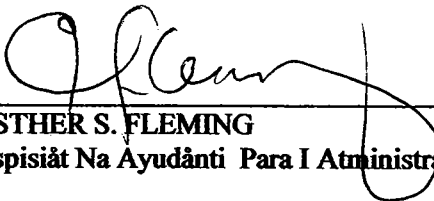
I Kumision manggâgagao imfotmasion siha sigun gi esti i manmaproponi na amendasion siha. Maseha hâyi na petsona gai intirisao muna'halum imfotmasion gi amendasion para i regulasiion siha siña ha' macho'gui gi tinigi' para guatu gi Commonwealth Election Commission, P.O. Box 500470, Saipan, MP 96950. Tinigi' imfotmasion siha siña mana'hânão guatu gi Ufisanan Commonwealth Election Commission siha pat u ma-faxed para li (670)664-8689. Todû imfotmasion siha debi na matugi' yan debi na u marisibi

gi halum trenta(30) dihas na tiempu ginin i fetchan esti na nutisia ni mapupblika gi halum i rehistran Commonwealth.


Este i manmaproponi na areklamentu yan regulasion siha manma'aprueba ginin i Kumision Eleksion Commonwealth gi Huniu 9, 2011.

Nina'hálum as:   
\_\_\_\_\_  
Frances M. Sablan, Kabiseyu  
Kumision Eleksion Commonwealth

June 9, 2011  
Fecha

Rinisibi as:   
\_\_\_\_\_  
ESTHER S. FLEMING  
Espisiát Na Ayudánti Para I Aministrasion Gubietnu

09/12/11  
Fecha

Pine'lu yan  
Ninota as:   
\_\_\_\_\_  
ESTHER M. SAN NICOLAS  
Rihistran Commonwealth

09.12.11  
Fecha

Sigun i 1 CMC § 2153(e) ( Inaprueba Abugádu Henerát na i regulasion siha para u macho'gui komu fotma) yan 1 CMC § 9104(a)(3) (hinentan inaprueban Abugádu Henerát) i manmaproponi na regulasion siha ni mafiechettun guini ni manmaribisa yan manma'aprueba komu fotma yan sufisienti ligát ginin i CNMI Abugádu Henerát yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafecha guini gi diha 10, gi JUNE, 2011

  
\_\_\_\_\_  
EDWARD T. BUCKINGHAM  
Abugádu Henerát





**Commonwealth of the Northern Mariana Islands  
COMMONWEALTH ELECTION COMMISSION**

Frances M. Sablan, Chairperson  
Commonwealth Election Commission, P.O. Box 500470  
Susupe, Saipan MP 96950  
Tel: (670) 664-8683; fax: (670) 664-8689

**ARONGORONGOL TOULAP REEL POMWOL FFÉÉRÚL ALLÉGH  
REEL NORTHERN MARIANAS DESCENT REGISTRY (NMDR)  
FAAL COMMONWEALTH ELECTION COMMISSION**

Commonwealth Election Commission, (CEC) mellól Commonwealth of the Northern Mariana Islands nge e mángiyy bwe ebwele adaptáliiló ngare lléghló Pomwol Fféérúl Allégh, reel rebwe attabweey mwóghutughutul Administrative Act, 1 CMC § 9104(a). Allégh kkaal nge ebwe alléghló 30 ráll mwurill aar attabweey 1 CMC § § 9102 me 9104(a).

**BWÁNG:** Commonwealth Election Commission nge eyoor bwángil sáangi Alléghúl Toulap 17-43 bwe ebwe adapta allégh me akkúlé ngáli adminstration me rebwe amamaawa allégh kka lemeliyal. 1 CMC § 6105 me Public Law ye 17-40.

Allégh me Akkúlé kkaal nge ebwe alisi Commonwealth Election Commission bwe ebwe mmwewlil ayoor Northern Marianas Descent Registry (NMDR) me Northern Marianas Descent rebwe register sáangi bwángil Article XII mellól CNMI Constitution.

Pomwol fféérúl allégh me akkúlé kkaal nge ikka e táltiw:

**Bwáng:** reel rebwe adpta me fféér allégh reel mille Northern Marianas Descent Registry Alléghúl me Akkúléeyal nge elo faal bwángil me aitiyal Tálil 5 mellól Alléghul Toulap ye 17-40.

**Bwúlúl me aal scope:** Bwúlúl allégh me akkúlé kka llól chapter yeel nge ebwe ayooráátá me ammwala fischiiy tálil me reekodul iteer aramas kka Northern Mariana Descent.

**Registration**

**Mwóghutughutul Registration:** Ghommwal fféérúl registration reer Northern Mariana Islands (NMD) nge ebwe ulimmwal aramas ye re aturisaay ngare registration clerk, aramas ye e angaang ngáli Commission, nge membroot Commission. Aramas ye e qualified nge emmwel ebwe ló register llól Bwulaiyool Commission mewóól Saipél, reel imweer me inaanwo bwuley fa ye Commission e ayoor registratoin-uur voters.

**Alúhúgúil Registration:** Aramas ye Northern Marianas Descent, nge ebwe register bwe ebwe boota nge ebwe atakkaaló affidavit, nge e appasch nge e incorporated ighaal ngare exhibit A ngáli chapter yeel me ayoor alongal infodmasiyoos kka tingóreeyal allégh, me ayoor fféér faal mwuttaal misimis (perjury).

**Mail Registration:**

**(a)** Aramas ye e qualified faal Article XII, § 4 mellól Northern Mariana Islands Constitution nge emmwel

schagh ebwe atolongooyaal registration affidavit nge ebwe mail-li ngare aa sign-li. Ngare schagh aa sign-li nge aramas we e register ebwele afanga registration affidavit eweewe schagh ngare first class, priority mail me ngare express mail ngáli address ye faal:

Commonwealth of the Northern Mariana Islands  
Commonwealth Election Commission  
PO Box 500470  
Saipan, MP 96950

**(b)** Registration affidavit ye re afanga llól mail nge e fil bwe ebwe postmarked nge essóbw luu sáangi ráálil la registration ngáliir alongeer commonwealth voters bwelle rebwe mmwellil booata llól general ngare special election. Ngare igha eligible voter e afanga llól post affidavit we me bwuley we ese aghatchú aal postmark-li, sibwe ira ngare schúúlúwa mewóól submarine, ráll we wóol affidavit nge rebwe isáli bwe ráálil we eligible voter we e afanga affidavit we. Ngare ráálil we e ppung llól ngare mmwal ráálil we e due affidavit we, nge rebwele isáli bwe voter we aa register ngare Commission e mángiyy fischiiy bwe e eligible voter we.

**Requirement-il Mail Registration:** Igha aitiyal allégh, aramas ye e tipáli bwe ebwe register llól mail nge essóbw lo llól Commonwealth, nge registration clerk we e risibi registration-ul affidavit mellól mail nge ebwe amwuri fischiiy postmark me meeta aghikkil kka e fil bwe ebwe alúghúlúghúw bwe aramas we e atotoolong application nge ese afanga llól mail me bwuley kka elo llól Commonwealth.

**Northern Marianas Descent Qualification.** Aramas ye e qualified bwe ebwe register llól mail nge ebwe tabweey requirements kkewe e itiwow sáangi Article XII, § 4 mellól Northern Mariana Islands Constitution, igha e executed mellól affidavit-il registration.

**Infodmasiyoonul Toulap Reel NMD Registration.** E ammataf bwe esóor mellól Commonwealth election Code ngare Open Government Act igha ii me ruwoow e affataawow reel privacy information ye elo llól aal eschay NMD affidavit-il registration. Iwe, inaanwo iyo aramas nge emmwel ebwe aiyegh infodmasiyoon reel aal eschay NMD affidavit-il registration. Iwe, elo ngáli Commission bwe infodmasiyoonul affidavit we nge ebwe lo bwe reekoodul toulap. Esóor mellól táлил yeel mille emmwel ebwe pileey Commission bwe ebwe liwiliiló requirement ngare eyoor lliiwel mellól inaanwo ifa meleyil allégh kkaal iye e apasa bwe infodmasiyoon yeel nge private.

**Registration Clerks:** Registration clerks nge rebwe schéschéél angaang me ngare staff-il Commission ngare membrool me iyo aramas ye Commission e aitiy. Igha schagh e toolong affidavit we, nge registration clerk ebwe afanga ngáli Bwulasiyool Commission kka Seipél affidavit kkewe nge ebwe afnaga llól first class mail llól envelope ye e sealed nge afanga ngáli address we elo weiláng milla kkáyil ngare bwughi amweeyiló bwe iteer NMD kkewe ebwe bwááwow llól register. Commission ebwe alúghúlúghúw bwe e gummy sáangiir clerks reel NMD affidavit-il registration.

**Esóor Aar Wel Bwe Rebwe Assefáál:** Esóor registration clerk ye emmwel ebwe asefááliy eschay aramas ye ebwe register inaanwo igha e mángiyy bwe ese qualify aramas we bwe ebwe register. Far bwughi fen registration clerk we ebwe light ngáli aramas we bwe ebwe fill out-lee affidavit we, nge aa kkáyil sarong ngáli executive Director ngare eschay staff-bee aramas we nge eke aghala bwe ebwe register nge emmwel schagh essóbw eligible ngare bwal ii eschay NMD mellól Commonwealth. Commission nge ebwele atabweey mwóghtul hearing reel tappal registration kkewe, nge ebwe tabweey táлил kka elootiw faal.

**Hearings reel Angingiil Registrations:**

(a) igha e bwáng sáangi allégh, nge Commissioner ebwe ayoora hearings reel alongal registration kka re Yellowknife ngare e bwá aramas we e pomwoli bwe ebwe register nge qualify reel aitiyal allégh bwe ebwe register faal Commonwealth Constitution. Hearing kkaal nge essóbw luu sáangi 30 ráll sáangi igha aramas we e register e atolongngongooy aal affidafit-il registration. Igha allégh e lighiti bwe hearings kkaal nge ebwe informal. Ebwe quorum Commission ngare rebwe ayoora hearings kkaal. Bwelle igha e informal tappal hearings kkaal nge e fil bwe eschay meleyir membro ebwe tuutá llól hearing we ngare e kkepas llól tilifoon. Reel aitiyal allégh, nge ebwe yoor limmal (5) membrool Commission rebwe lo nge ebwe yoor eschay representative sáangi ghal eew me eew senatorial district. Ese bwal fil bwe ebwe yoor arongorongol toulap reel hearings kkaal, nge aramas aramas we re angiiingi ngáli nge rebwe aronga kkáyil me Alleghú bwe ebwe appasaaló mmeta tipal llól hearing kkaal.

(b) Registrant we re angiiingi ngáli nge rebwe light ngáli bwe ebwe apasaawow ngare ischiitiw meeta evidence kka e iráátiw meeta ebwe register reel. Registrant we re angiiingi ngáli nge emmwel schagh rebwe tingóreey bwe ebwe yoor eschay counsel ye ebwe represent-li nge filiyaal schagh me ii ebwe abwóssuw. Iyo aramas ye e tipáli nge emmwel schagh bwe ebwe apsaalong meeta ngare ischiiiw meeta Aaliyah reel meeta aramas we ese mmwelil register reel. Registrant we re angiiingi ngáli nge emmwel schagh bwe ebwe tuutá llól hearing we ngare e fit me emmwel schagh ebwe kkepas llól tilifoon.

(c) Mángemáng reel rebwe asefááliy registrant we reel aal wel nge ebwe yoor  $\frac{3}{4}$  mereer membro bwe rebwe lo reel hearing, rebwal toolong ikkiwe re kkepaslong llól tilifoon. Reel bwal akkááw mwóghutughut igha ese ghówtá  $\frac{3}{4}$  membrool Commission relo igha re botááli bwe ese fil bwe aramas we ebwe register, nge rebwe isáli bwe aramas we nge e qualify bwe ebwe register. Esóór membrool Commission ye ese (tuutá ngare kkepaslong llól tilifoon) ye rebwe lighti ngáli bwe ebwe bootááli ngare registrant we emmwelil register ngare saabw. Commission ebwe arongaawow meeta mángemángil nge ebwe ischitiw ngáli registrant we re angiiingi ngáli me ngáliir toulap nge essóbw luu sáangi eleráll sáangi igha e bwungló hearing we.

(d) Meeta ye mángiyeer schóól Commission nge ilaal amwúтчúl; nge mwóghutughutul judicial review petition mellól Commonwealth Administrative Act [ 1 CMC § 9101, et. Seq.] nge ebwe bwal lo ngare lemeliyal ngare mángemángil Commission, ngare aar mwóghut.


**Bwal Akkááw Autol:**

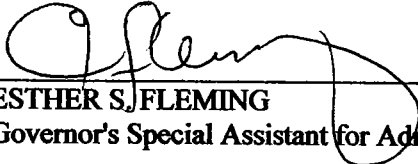
**Severability:** Ngare eyoor autol allégh kka llól táлил yeel re apsa bwe e invalid sáangi kotti ye eyoor bwángil, nge ghatchúl lussul allégh kka lló chapter yeel nge esóobw tiwól.


**Rállil Alléghló:** allégh kka llól chapter yeel nge ebwe alléghló ngare aa yoor arongorong meigha e toowow mellól Commonwealth Register.

Mwiisch yeel ekke tingór mángemáng me tiip reel pomwol fféerúl lliiwel kkaal. Iyo ye e tipáli bwe ebwe atotoolong mwaliyal reel mángemngil reel lliiwel kka ebwe liwili autol allégh kkaal nge emmwel schagh bwe ebwe atoolongol reel isch nge raa afanga ngáli Commonwealth Election Commission, P.O. Box 500470, Saipan, MP 96950. Mángemáng kka re ischiitiw nge e bwal mmwel schagh rebwe bwughiló llól Bwulasiyool Election Commission me ngare fax-li ngáli numuro ye (670) 664-8689. Alongal mwaliiliy nge ebwe ischitiw me rebwe bwughil llól 30 ráll sáangi igha e arongowow arongorong yeel mellól Commonwealth Register.

Allégh kkaal nge e angúungú sáangi Commonwealth Election Commission wóol Unniyo 9, 2011.

Isáliiyallong:  June 9, 2011  
Frances M. Sablan  
Chairperson, Board of Election  
Ráil

Ara,mas ye e bwughi:  09/12/11  
ESTHER S. FLEMING  
Governor's Special Assistant for Administration  
Ráil

E File me rekoodliiyal:  09.12.11  
ESTHER M. SAN NICOLAS  
Commonwealth Registrar  
Ráil

Sáangi bwángil 1 CMC § 2153 (e) ( Ebwe angúungú sáangi AG reel pomwol fféerúl allégh kkaal bwe ebwe fil me 1 CMC -~ 9104 (a)(3) ( Ebwe angúungú sáangi Bwulasiyool AG) pomwol fféerúl allégh kka e apasch fengáall me rebwe amwuri fischiiy ngare me angúungú bwe ebwe tabweey ngare e fisch bwe e attbweey allegh sáangi CNMI Attorney

E ffeér llól ráálil ye 10 maram ye JUNE, 2011

  
EDWARD T. BUCKINGHAM  
ATTORNEY GENERAL



NORTHERN MARIANAS DESCENT AFFIDAVIT OF REGISTRATION APPLICATION

I am currently registered to vote on (if applicable):

- Island of Saipan - Election District:
Island of Tinian - Election District 6
Island of Rota -

IMPORTANT: PLEASE PRINT CLEARLY IN BLACK INK. FAILURE TO COMPLETE ALL ITEMS MAY PREVENT ACCEPTANCE OF THIS APPLICATION.

CMC OFFICE USE ONLY
Affidavit No.
NMDR

I HEREBY SWEAR (OR AFFIRM) THAT THE FOLLOWING INFORMATION IS TRUE AND CORRECT:

Form with fields for Social Security Number, Date of Birth, Gender, Full Legal Last Name, First Name, Middle, Physical Residence Address, Mailing Address, Telephone Contact Information, Oath, Signature, Date, Witness Signature, Witness Address/Contact Information, Date.

Warning Any person who knowingly falsifies information may be guilty of a Class C Felony, punishable by up to 5 years of imprisonment and/or \$10,000 fine.

Notice: The office at which a person registers to vote is confidential. A person's declination to register to vote is also confidential and is used for voter registration purposes only as mandated by the National Voter Registration Act of 1993.



# COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT

P.O. BOX 501055, SAIPAN, MP 96950-1055

Phone: (670) 237-6500/1 • Fax: (670) 234-5962

E-mail Address: cpa.admin@pticom.com

Website: www.cpa.gov.mp

## PUBLIC NOTICE

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

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

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority publishes the following revised procurement regulations for the agency and its intended action to become the complete operative procurement regulations for the agency.

**AUTHORITY:** At its Regular Board meeting on August 12, 2011, the Board of Directors, vested with authority as the governing body, approved the proposed revisions for publication and notice in the Commonwealth Register. The authority for the promulgation of regulations for the Commonwealth Ports Authority is set forth in 2 CMC § 2122(j) as an autonomous agency of the Commonwealth of the Northern Mariana Islands. 2 CMC § 2111(b)

The following proposed revised regulations have been fully reviewed and approved by the CPA Board of Directors as a comprehensive republication and revision of the CPA Rules and Regulations set for in the Commonwealth Register and NMI Administrative Code set forth at Chapter 40-50. The Board hereby approves for the publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and as administered by the CNMI Law Revision Commission and for approval by the Attorney General pursuant to 1 CMC § 2153(e).

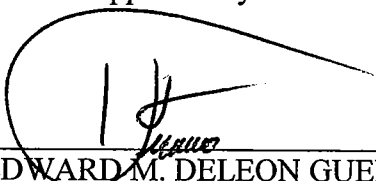
**THE TERMS AND SUBSTANCE:** The proposed amendment sets forth the Chapter 40-50, Commonwealth Ports Authority Procurement Rules and Regulations.

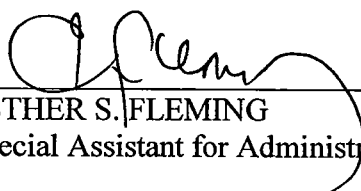
**THE SUBJECTS AND ISSUES INVOLVED:** The revised regulations update the existing regulations particularly to establish a Procurement Section; to address the handling of abandoned property and salvaged property; to address procurement during an emergency or calamity; to update the provisions regarding Requests for Proposals; to clarify provisions relating to Invitations for Bids; to clarify provisions relating to public records and the manner of their disclosure inclusive of the Open Government Act; and other minor or technical revisions.

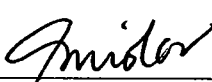
**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local governments in each senatorial district,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

**TO PROVIDE COMMENTS:** Persons or entities wishing to submit comments may submit written comments to: Mr. Edward M. Deleon Guerrero, Executive Director, Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; or via hand delivery to the Saipan International Airport Administration Office; or via facsimile at (670) 237-5962. **All written comments shall be submitted so as to be received on or before NOVEMBER 30, 2011.**

These regulations were approved by the CPA Board of Directors on August 12, 2011.

Submitted by:  \_\_\_\_\_ Date 9/6/11  
EDWARD M. DELEON GUERRERO  
Executive Director, CPA

Received by:  \_\_\_\_\_ Date 9/26/11  
ESTHER S. FLEMING  
Special Assistant for Administration

Filed and  
Recorded by:  \_\_\_\_\_ Date 9.26.11  
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 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 this 26 day of September, 2011.

 \_\_\_\_\_  
EDWARD BUCKINGHAM  
Attorney General

## COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT  
P.O. Box 501055, Saipan, M.P. 96950-1055  
Tel: (670)237-6500/1 Fax: (670)234-5962  
E-mail Address: [cpa.admin@pticom.com](mailto:cpa.admin@pticom.com)  
Website: [www.cpa.gov.mp](http://www.cpa.gov.mp)

### NUTISIAN PUPBLIKU

#### **I Manmaproponi na Amendasion siha para i Areklamentu yan Regulasion Procurement siha gi Commonwealth Ports Authority**

I Direktot Eksakatibu gi Commonwealth Ports Authority guini ha nutisia i pupbliku na i Commonwealth Ports Authority ha intensiona para u cho'gui i amendasion siha gi iyon i Procurement na Areklamentu yan Regulasion siha.

**I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI SIHA I MANMAPROPO NI NA AREKLAMENTU YAN REGULASION SIHA:** I nutisia guini ha nã'i sigun gi 1 CMC § 9104(a) gi Åktun i Administrative Procedure na i Commonwealth Ports Authority ha pupblika i sigienti ni manmaribisa na regulasion procurement para i ahensia yan i intension-ña na aksion para u mana'kumplidu i operative procurement na regulasion siha para i ahensia.

**ÅTURIDÅT:** Gi Regulåt na huntan Kuetpu gi Agostu 12, 2011, i Kuetpun Direktot siha, ma-vested i åturidåt kumu ginibebetna i tatåtåt, inaprueta i maproponi na rinibisa siha para i pupplikasion yan nutisia gi halum i Rehistran Commonwealth. I åturidåt ni para u macho'gui i regulasion siha para i Commonwealth Ports Authority mapega mo'na gi 2 CMC § 2122(j) kumu autonomous agency gi Commonwealth gi Sangkattan na Islas Marianas siha. 2 CMC § 2111(b)

I sigienti ni manmaproponi ni manmaribisa na regulasion siha manmaribisa yan manma'aprueta ginin i CPA Kuetpun Direktot siha kumu comprehensive republication yan maribisa gi Areklamentu yan Regulasion CPA siha ni mapega gi Rehistran Commonwealth yan i NMI Administrative Code ni mapega mo'na gi Kapitulo 40-50. I Kuetpu guini ha aprueta para i pupplikasion gi halum i Rehistran Commonwealth para Nutisia yan Upiñon sigun gi para i Åktun Administrative Procedure yan kumu ma'-administered ginin i CNMI Law Revision Commission yan para inaprueta ginin i Abugådu Heneråt sigun gi 1 CMC § 2153(e).

**I SUSTÅNSIAN I PALÅBRA SIHA:** I manmaproponi na amendasion mapega mo'na gi Kapitulo 40-50, gi Commonwealth Ports Authority gi Areklamentu yan Regulasion i Procurement siha.

**SUHETU NI MASUMÅRIA YAN ASUNTU NI TINEKKA:** I maribisa na regulasion siha ma'-update i present na regulasion siha pattikulåtmenti para u ma'istapblesi i Seksionan Procurement; para u ma'-address i mamanehan propiedåt ni ma'abandona yan u ma-salvaged i propiedåt; para u ma-address i procurement gi duråntin i emergency pat calamity; para u ma'-update i probinsion siha sigun i Finaisin para i Propositu siha; para mana'klåru i probinsion siha ni u ma'achuli' gi para i Invitations for Bids; para u mana'klåru i probinsion siha ni u ma'achuli' para i public records yan i manera gi iyon-ña

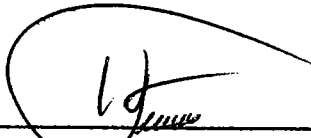


disclosure inclusive gi Åktun i Open Government; yan ottru minor pat technical revisions.

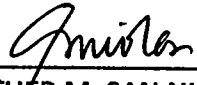
**DIREKSION PARA U MAPO'LU YAN PARA PUBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Manmaproponi yan Nuebu na Ma'adapta na Regulasion siha, 1 CMC § 9102(a)(1), yan u mapega gi kumbinienti na lugat siha gi halum i civic center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

**PARA U MAPRIBENIYI UPIÑON SIHA:** Petsona siha pat entities ni ha diseseha para u na'halum upiñon siha siña ha na'halum tinigi' upiñon siha guatu gi as: Siñot Edward M. Deleon Guerrero, Direktot Eksakatibu, gi Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; pat u machuli' guatu gi Saipan International Airport Ufisinan Atministrasion; pat via facsimile gi (670) 237-5962. **Todu tinigi' upiñon siha debi na u mana'halum ni para u marisibi gi pat antis di Nubembri 30, 2011.**

Esti i manmaproponi na regulasion siha manma'aprueba ginin i CPA Kuetpun Direktot siha gi Agostu 12, 2011.

Nina'halum as:   
EDWARD M. DELEON GUERRERO  
Direktot Eksakatibu, CPA  
Fetcha 9/13/11

Rinisibi as:   
ESTHER S. FLEMING  
Ispisiat Na Ayudanti Para I Atministrasion  
Fetcha 9/26/11

Pine'lu yan  
Ninota as:   
ESTHER M. SAN NICOLAS  
Rehistran Commonwealth  
Fetcha 9.26.11

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

Mafetcha guini gi diha 26, di Septembri, 2011

  
EDWARD BUCKINGHAM  
Abugadu Henerat

**COMMONWEALTH PORTS AUTHORITY**

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Website: [www.cpa.gov.mp](http://www.cpa.gov.mp)

**ARONGORONGOL TOULAP**

**Pommwol Lliwel rel alleghul Procurement llól Commonwealth Ports Authority.**

Executive Direkktol Commonwealth Ports Authority ekke aronga toulap rel siwel kka ebwe fféer rel alleghul Procurement llól Commonwealth Ports Authority.

**MANGEMANGIL MWÓGHUT YEEL BWE EBWE ADAPTALI POMMWOL ALLEGH KKAAL**

Sengi 1CMC § 9104(a)rel Administrative Procedure Act, Commonwealth Ports Authority ebwe akkatewow lliwel rel allegh kkal bwe ebwele iyeel bwungul alleghul yaar procurement.

**BWAANGIL**

Rel yaar Regular Board meeting wóol Augusto 12, 2011, Board of Directors , ngare iir mille schól abwungubwung nge ra bwungo llól lliwel kkal nge ebwe le appasch llong me abwari llól Commonwealth Register. Atiridóódul Commonwealth Ports Authority rel yaal ebwe akkatowo allegh kkal a lo llól 2 CMC § 2122 (j) ngare autonomous agency llól Commonwealth of the Northern Marianas Islands. 2CMC §2111(b).

Pommwol lliwel rel allegh kkal ra amwuri fiischi nge ra bwunguw llól rel CPA Board of Directors bwe iyeel welewelil akkasiwel kka ebwe appaschalong me siweli CPA Rules and Regulations lol Commonwealth Register me NMI Adminstrative Code rel Chapter 40-50. Board ra bwunguwlo bwe ebwe apaaschlong lol Commonwealth Register rel arongorong me mangemang sengi Administrative Procedure Act me bwal CNMI Law Revision Commission nge ebwe bwal bwunguló merel Sowbwungul Allegh Lapalap sengi 1 CMC §2153(e)

**KKAPASAL ME AWEEWEL**

liwel rel allegh kkal ebwe Chapter 40-50, Commonwealth Ports Authority Procurement Rules and Regulations.

**KKAPASAL ME ÓUTOL:**

Allegh kkal ebwe update lli allegh kkewe afaasil lo nge ebwe ayoora peighil Procurement: rel ebwe address lil mwoghutul abandoned me salvaged propriety. Rel ebwe address li procurement rel emergency ngare calamity. Rel bwe update li provisions rel tingor me Proposals; ebwe affat provision rel Invitations for Bids; ebwe affat provisions rel public records rel pomwol me ebwe bwa inclusive rel Open Government Act; me akkaw minor me technical revisions.

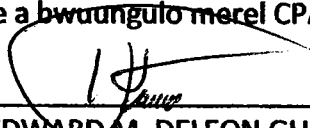
**AFALAFAL REEL AMWELIL ME AKKATEEL**

Liwel rel allegh kkal ebwe apasch llól Commonwealth Register llól section iye Proposed and Newly Adopted Regulations (1 CMC § 9102(a)(1)) me ebwe apasch fetal llól leeliy ikka elo llól Civic center me bwal llól bwulasiyo llól eew senatorial district nge ebwe llól English me mwaliyasch. (1 CMC § 9104(a)(1))

**ISIISILONGOL MWALIILI**

Aramas kka re tipeli rebwe akkatolong ngare ischilong yaar mángmáng rebwe iisch ngáli: Mr. Edward M. Deleon Guerrero, Executive Director, Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; ngare bwughiló rel Saipan International Airport Administration Office, ngare fax ngeli (670) 237-5962. Alongal ischilongul mangmang ebwe akkatalong wóól ngare mesemwal **NOVEMBER 30, 2011.**


Allegh kkal nge a bwuungulo mereel CPA Board of Directors wóól August 12, 2001.

lisaliyallong:   
EDWARD M. DELEON GUERRERO  
Executive Director, CPA

9/13/11  
Ráál

Mwiir sangi:   
ESTHER S. FLEMING  
Sów Alilisil Sów Lemelem

09/29/11  
Ráál

Amwel sangi:   
Esther M. San Nicolas  
Commonwealth Register

9.26.11  
Ráál

Sangi allegh ye 1CMC § 2153(e) allegh kkaal aa lleghlo mereel AG bwe ebwe akkatewow reel feerul me 1 CMC § 9104(a)(3)(Aa bweibwogh alleghul sáangi AG) pomwol allegh kka aa apaschlong aa takkal amwuri fischiy me a bwuungu ló deerol me legal sufficiency sáangi CNMI Soubwungul Allegh lapalap me ebwele akkatewow(1CMC § 2153(f) (akkateel allegh kkal)

Ráálil yey 26 Settembre 2011

  
EDWARD BUCKINGHAM  
Soubwungul Allegh Lapalap

## CHAPTER 40-50: CPA PROCUREMENT RULES AND REGULATIONS

Chapter Authority: 2 CMC § 2122(j).

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

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

Part 001 - General Provisions

§ 40-50-001 Authority

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

§ 40-50-005 Purposes

The underlying purposes and policies of this chapter are:

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

§ 40-50-010 Requirement of Good Faith

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

§ 40-50-015 Application of Regulations

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

§ 40-50-020 Severability

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

§ 40-50-025 Validity of Contract

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

§ 40-50-030 Remedy Against Employee

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

§ 40-50-035 Definitions

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

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

- (d) “Board” means the Board of Directors of the Authority.
- (e) “Construction” means the process of building, altering, repairing, improving or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.
- (f) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (g) “Contracting officer” means the person the Chairman of the Authority Board of Directors or authorized person designated in such acting capacity authorized by the Board through the Chairman to execute and supervise the administration of all contracts and who shall have authority to review and approve any Change Orders to contracts so long as such change orders do not require any reprogramming of funds or exceed the authorized budget for such a contract.
- (h) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter, and a fee, if any.
- (i) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.
- (j) “Employee” means an individual receiving a salary from the Authority. Consultants, independent contractors and part-time workers shall not be considered employees.
- (k) “Executive Director” means the Executive Director of the Authority, or his designee.
- (l) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of personal property, and sale or other disposal of personal property.
- (m) “Government” means the Commonwealth of the Northern Mariana Islands government which includes the executive, legislative and judicial branches.
- (n) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (o) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.
- (p) “Procurement” means buying, purchasing, renting, leasing or acquiring construction, goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources,

preparation and award of contract, and all phases of contract administration. It also includes procurement of professional, advisory, or technical services.

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

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

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

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

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

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

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

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

Procurement information, whenever practical, shall be a matter of public record and shall be available for public inspection pursuant to the CNMI Open Government Act at 1 CMC 9901-9918 et. seq.. Procurement information may be kept confidential when necessary to insure proper bidding procedures or to protect private; confidential; financial or technical data; trade secrets; or other proprietary information submitted by a proposing party or bidder or any other applicable exemption under the Open Government Act. This decision shall be made only by the Executive

Director or the Authority designated Procurement Officer or authorized designee.

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

Part 100 - Procurement Organization

§ 40-50-101 Executive Director and Procurement Officer

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

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

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

- (a) Oversee that this chapter is observed in all Authority procurement. The Executive Director shall provide for full and open competition for goods and services under this chapter through use of the competitive procedure that is best suited to the circumstances of the contract action. However, the Executive Director may appoint and designate a Procurement Officer to carry out the provisions of this chapter and all related duties and responsibilities of procurement. The Procurement Officer shall be within the Comptroller's Office/Accounting for purposes of administration and oversight since procurement requires coordination with the Comptroller as to expenditures and certification of funds available for all procurement;
- (b) Conduct bidding, procurement, negotiation or administration of Authority contracts including, but not limited to, receiving requests for procurement/proposals/bids from Authority managers or personnel; determining availability of funds for procurement in consultation with the Comptroller; preparing and issuing publications soliciting proposals, qualification statements, or other bids; assembling the record of submissions; preparing the criteria for review of proposals; developing the relevant procurement forms; and establishing a uniform set of Standard Operating Procedures for procurement within the Authority;

(1) The Executive Director may direct the establishment of Standard Operating Procedures for Procurement which shall contain the developed and approved forms and



procedures consistent with this chapter;

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

- (c) Provide advanced planning for the centralized purchase of Authority supplies;
- (d) Exercise general supervision and control over all inventories of supplies belonging to the Authority including, but not limited to, developing procedures and forms for cost controls and accounting; and
- (e) Establish and maintain programs for the inspection, testing and acceptance of supplies.
- (f) Sell, auction, trade, transfer, convey, release or otherwise dispose of surplus or abandoned property found on Authority property or left on Authority premises; or any other property belonging to and no longer needed by the Authority as certified by the manager or supervisor with oversight or control over such property in the following manner:

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

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

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

(4) As to any salvaged property of the Authority, the Executive Director may conduct a public auction to sell any property and such funds shall be accounted for and received by the

Comptroller. Alternately and at its discretion, the Authority through the Executive Director may retain such abandoned property including vehicles for its use if doing so is deemed in the best interest of the Authority or the Authority Executive Director may donate such property to any government agency, public school or private non-profit organization and set conditions for such donation without any liability of the Authority and so long as any such donated property contains no hazardous materials.

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

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

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

(a) The Executive Director has responsibility for contract review and oversight of all Authority contracts. The Board Chairman or his designee or such person in Acting Chairman capacity is the Contracting Officer. The Executive Director shall first review all contracts for construction, the procurement of goods, leases, the sale of goods and for services by an independent contractor to insure compliance with this chapter, that the contract is for an Authority purpose, and does not constitute a waste or abuse of Authority funds. All contracts must first be prepared by the Procurement Officer who shall certify compliance with this chapter and any applicable federal statutory or regulatory provisions or requirements; that the proposed contract is for a public purpose; and that the contract does not constitute a waste or abuse of Authority funds regardless of source. All contract documents must be complete including attachments and exhibits if they are incorporated into the contract by reference. If there are any defects with any contract or there were defects in the procurement process, the Procurement Officer shall report the defects to the Executive Director who shall not execute such contract until the Procurement Officer certifies correction of such defects

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

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

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

A contract shall contain a right to audit records clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 40-50-203 [RESERVED]

§ 40-50-204 [RESERVED]

§ 40-50-205 Invitation for Bids

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

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

- (1) An invitation for bids number or "CPA Project No." designation
- (2) Date of issuance;
- (3) Name, address and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions;
- (10) Any bonding requirements;
- (11) A valid CNMI Business License and Taxpayer Identification Number unless exempted by the Authority or applicable Federal law or regulation; and
- (12) A reasonable administrative fee for costs/handling for an IFB such as for scanning, duplication, or preparation depending on the nature or complexity of the IFB, the sum of which shall be set forth in the IFB solicitation.

(13) Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall adequately set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill the Authority's minimum requirements;

(14) The bid solicitation shall accurately reflect the Authority requirement. It shall adequately state what is to be done or what is to be delivered to the Authority in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Bids which fail this provision shall be deemed non-responsive.

(c) Public Notice.

(1) The Executive Director or Procurement Officer or authorized designee shall publicize all invitation for bids in order to increase competition and broaden industry participation. A bidding period of at least thirty (30) calendar days shall be provided unless the Executive Director or authorize designee certifies that a shorter time period is reasonable and necessary. However, the bidding period notice shall never be less than fourteen (14) calendar days. Further, the Executive

Director or authorized designee may extend the bidding period for up to an additional ninety (90) calendar days considering the degree of urgency; the complexity of the contract requirements; the anticipated need for and extent for subcontracting; the geographical distribution of bidders; and the normal transmittal time for invitations and bids.

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

(d) Bid Receipt.

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

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

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

(f) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the

requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended. A bid may only be considered by the Authority if the bidder accepts all material terms and conditions of the invitation, and any future award based upon the bid, if accepted by the Authority, would result in a binding contract with terms and conditions which follow and do not vary from the requirements of the invitation.

(g) Bid Rejection.

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

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

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

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

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

(i) An obvious clerical mistake is clearly evident from examining, the bid document.

Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point;

or

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

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

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

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

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

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

(I) Award.

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders shall also be promptly notified.

(2) Notice of an award shall only be made in writing.

(3) Notice of an award shall only be made by the presentation of a contract with all the required signatures to the bidder. No acceptance of an offer shall occur nor shall any contract be formed until a contract is written and has been approved by all required personnel of the Authority under this chapter.

#### § 40-50-210 Small Purchases

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

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

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

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

(e) The Executive Director or Procurement Officer must obtain written price and quotations from at least three vendors for any procurement valued from \$250.00 to \$25,000.00.



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

§ 40-50-215 Sole Source Procurement

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

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

§ 40-50-220 Emergency Procurement

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

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

§ 40-50-225 Request for Proposals

- (a) Conditions for use. The purchase of all services, goods, supplies and materials and all construction work, when the expenditure or procurement by the Authority exceeds \$25,000.00 may be made through a Request for Proposal as set forth in this section when the Executive Director, in the exercise of his/her discretion, determines in writing that the use of an Invitation for Bid is either not practical or not advantageous to the Authority, a contract or procurement may be obtained through a Request for Proposals. However, nothing shall limit or restrict the Authority, through the Executive Director or an authorized designee, from soliciting a Request for Proposals for any procurement for a service or contract for less than \$25,000 should it be in the best interest of the Authority, on discretion of the Executive Director, to do so.
- (b) Request for proposals. Proposals shall be solicited through a Request for Proposals or "RFP".
- (c) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.
- (d) Receipt of sealed proposals. Proposals shall be submitted in sealed envelopes and unopened so as to avoid disclosure of contents to competing proposers during the process of negotiation. Proposals shall be restricted to the members of the Evaluation Committee and shall not be disclosed nor discussed to anyone outside of the Evaluation Committee until after the completion of the evaluation and ranking of proposals. Proposals may be prepared and opened for public inspection after contract award.
- (e) Evaluation factors.
- (1) The request for proposals shall state the relative importance of price; project requirements; quantity of materials; scope of services; experience required; insurance requirements; sufficiency of workers or materials needed; the timeline for project completion; the deliverables required; and other evaluation factors relevant and necessary to describe the project requirements.
- (2) Before conducting an evaluation of proposals pursuant to an RFP, the Authority through the Procurement Officer shall develop, and the Executive Director shall approve, an evaluation plan which at a minimum shall include:
- (i) A statement of the evaluation factors and any significant subfactors and their importance;
- (ii) A description of the evaluation process; the point system to be used as to the criteria for evaluation; the methodology; and the techniques to be used; and
- (iii) Documentation requirements.
- (f) Discussion with responsible proposers and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible proposers who submit

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

(g) Evaluation Committee: The Executive Director or his designee shall convene an Evaluation Committee comprising of a representative of the following Authority sections/divisions in order to have as representative and wide range of perspectives and experience: Accounting Section; Administration Section; Engineering Section; Ports Police; Airport Aircraft Rescue & Firefighting (AARF); Operations Section; and Maintenance Section. There shall be no less than three (3) members up to five (5) members. Whenever practical, members of the Evaluation Committee should have some training, familiarity, or experience with the proposal being reviewed. As a matter of policy, the Authority should strive to afford in-service training, whenever possible, to its employees as to procurement procedures and standards so that their participation in the evaluation process is productive and helpful to the Authority and fair to all proposers. The Executive Director shall, by Memorandum, direct the Evaluation Committee to convene as soon as practical following the close of the period for submission of proposals. The Evaluation Committee shall deliberate and apply the evaluation criteria in this section to determine the most responsible and most responsive proposer by rank.

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

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

§ 40-50-301 Cancellation

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

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

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

Part 400 - Qualifications and Duties

§ 40-50-401 Responsibility of Bidders and Proposers

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

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Be able to comply with the required delivery or performance schedule;
- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics including a current tax clearance; no adverse record relating to employment matters including but not limited to matters before the CNMI Department of Labor, Federal Immigration Laws, Davis Bacon Act, the CNMI Division of Environmental Quality or the U.S. Environmental Protection Agency, U.S. Department of Labor, U.S. Department of Commerce, the Federal Aviation Administration; the Federal Maritime Commission; the United States Coast Guard and the United States Equal Employment Opportunity Commission; or the U.S. Internal Revenue Service;
- (5) Have the necessary organization, experience and skills, (or the ability to obtain them), required to successfully perform the contract;

- (6) Have the necessary production, construction and technical equipment facilities, or the ability to obtain them;
- (7) When required by the Authority, have a valid CNMI Business License and may, whenever practical, an office on the island where the construction work or service is to be performed; and
- (8) Be otherwise qualified and eligible to receive an award under applicable laws and rules.
- (9) The above factors are not to be deemed exclusive.

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

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

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

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

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

#### Part 500 - Types of Contracts Allowed and Types of Contracts Prohibited

##### § 40-50-501 Types of Contracts

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

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

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

(1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;

(2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by the Authority for contingencies that never occur; or

(3) Use of a cost reimbursement contract is likely to be less costly to the Authority than any other type due to the nature of the work to be performed under the contract.

#### Part 600 - Inspection and Audit

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

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

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

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

#### Part 700 - Reports and Records

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

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

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

(1) Each contractor's name;

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

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

#### Part 800 - Procurement of Construction Services

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

###### (a) Invitation for Bids.

- (1) Deposit. The Executive Director shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.
- (2) Contents. The invitation for bids shall be prepared in accordance with § 40-50-205(b). In addition, the following items shall be included in the invitation for bids:
  - (I) Notice to Bidders. General information regarding project;
  - (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
  - (iii) General Conditions. Standard contract clauses governing the performance of work;
  - (iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
  - (v) Technical Specifications. Specifications governing the technical aspects of the work to be performed.

###### (b) Bid Security.

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

###### (c) Contract Performance and Payment Bonds.

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

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

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

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

(I) A current license from the bonding company showing that it has authority to issue bonds; and  
(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of the bond issued to the selected contractor in favor of the Authority;

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

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

(e) Suits on Payment Bonds; Where and When Brought. Every suit instituted upon a payment



bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

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

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

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

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

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

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

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

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

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

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

Other types of payments are as follows:

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

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

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

(d) The primary responsibility for ensuring compliance in contracting rests with the Executive Director. The Executive Director must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting

the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.

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

(f) Contract Monitoring.

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

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

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

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

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

(h) Evaluating Results.

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

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

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

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

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

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

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

Part 900 - Protests and Disputes

§ 40-50-901 Protests to the Executive Director

(a) General

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

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

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

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

(i) The protest;

(ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iii) The solicitation, including the specifications on portions relevant to the protest;

(iv) The abstract of offers or relevant portions;

(v) Any other documents that are relevant to the protest; and

(vi) The Executive Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the

validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Executive Director's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Executive Director shall be considered the complete Administrative Record on appeal to the Appeal Committee unless the Appeal Committee supplements the record with additional testimony or evidence.

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

(b) Protests Before Award

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

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

(i) The materials and services to be contracted for are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will be advantageous to the Authority.

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

(c) Protests After Award

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

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Authority. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

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

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

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

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

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

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

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

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

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

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

(4) The failure of an appellant or any interested party to comply with the time limits stated in

this section may result in resolution of the appeal without consideration of the comments untimely filed.

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

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

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

(h) **Conference.**

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

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

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

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

(I) **Request for Reconsideration.**

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

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

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

#### § 40-50-910 Remedies

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

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

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

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
  - (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or
  - (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
  - (i) The contract may be declared null and void; or
  - (ii) The contract may be ratified and affirmed if such action is in the best interests of the Authority, without prejudice to the Authority's rights to such damages as may be appropriate.

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

#### § 40-50-915 Effective Date

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



§ 40-50-920 Disputes

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

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

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

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

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

§ 40-50-925 Appeal Committee

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

Part 1000 - Ethics in Contracting

§ 40-50-1001 Definitions of Terms

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

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

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

(d) “Financial interest” means:

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

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

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

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

#### § 40-50-1005 Policy

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

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

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

#### § 40-50-1010 General Standards

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

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

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

(a) No Board member shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such Board member owns less than five percent of the entire capital stock. To this end, the

Authority shall require that corporate bidders submit the names of all of its stockholders and the percentage of their ownership.

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

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

Commission Comment: The original paragraphs of subsection (b) were not designated. The Commission designated subsections (b)(1) and (b)(2).

In subsection (b)(2), the Commission changed “offices” to “officer” and “portion” to “position” to correct manifest errors.

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

(a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any Board member or employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.

\*So in original.

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

#### § 40-50-1025 Prohibition Against Contingent Fees

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

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

#### § 40-50-1030 Contract Clauses

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

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

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

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

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

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

#### § 40-50-1045 Collusion by Bidders

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

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

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for

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

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

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

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

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

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

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

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

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

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

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

**Commonwealth of the Northern Mariana Islands  
Office of the Governor, Division of Environmental Quality**

Frank M. Rabauliman, Director  
Gualo Rai, on Middle Road across from "Subway"  
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**PUBLIC NOTICE OF PROPOSED REGULATIONS**

**INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Office of the Governor, Division of Environmental Quality intends to adopt as permanent regulations the attached Proposed Voluntary Response Program Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104 (a) or (b). (1 CMC § 9105(b))

**AUTHORITY:** The Director of DEQ is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the Commonwealth Environmental Protection Act. 2 CMC § 3122.

**THE TERMS AND SUBSTANCE:** The proposed regulations provide for a voluntary response program for the cleanup of hazardous substances and petroleum products by property holders under the supervision of the Division of Environmental Quality, without incurring liability under local law.


**THE SUBJECTS AND ISSUES INVOLVED:**

1. The regulations would allow property holders with contaminated property to secure assistance from DEQ with the cleanup of the property; and
2. The regulations would help property holders obtain liability protection if the site cleanup were completed and approved by DEQ.

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

TO PROVIDE COMMENTS: Send or deliver your comments to Ray Masga, SAR Branch Manager, *Re: Voluntary Response Program Regulations*, at the above address or to the above fax number. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Director on August \_\_\_\_, 2011.

Submitted by:   
Frank M. Rabauliman  
Director, CNMI Division of Environmental Quality  
Date 9/20/11

Received by:   
ESTHER S. FLEMING  
Governor's Special Assistant for Administration  
Date 9/26/11

Filed and Recorded by:   
ESTHER M. SAN NICOLAS  
Commonwealth Register  
Date 9.26.11

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

Dated the 26 day of ~~August~~<sup>Sept</sup> \_\_\_\_, 2011.

  
EDWARD T. BUCKINGHAM  
Attorney General

Commonwealth gi Sangkattan na Islas Marianas Siha  
**UFISINAN GUBIETNU, Dibision Environmental Quality**

Frank M. Rabauliman, Direktot  
Gualu' Rai, gi Middle Road across ginin "Subway"  
Saipan, MP 96950  
tel: 670.664.8500; fax: 670.664.8540  
[raymasga@deq.gov.mp](mailto:raymasga@deq.gov.mp)

**NUTISIAN PUBLIKU GI MANMAPROPONI NA REGULASION SIHA**

**I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I MANMAPROPONI NA REGULASION SIHA:**  
I Commonwealth gi Sangkattan na Islas Marianas siha, gi Ufisanan i Gubietnu, Dibision i Environmental Quality ha intensiona para u adapta kumu petmanenti na regulasion siha ni mañechettun i Manmaproponi na Voluntary Response Program Regulations, sigun gi manera siha gi Aktun i Administrative Procedure 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halu i dies(10) dihas dispues di makumpli i 1 CMC §§ 9102 yan i 9104 (a) pat (b). (1 CMC § 9105(b))

**Åturidåt:** I Lehislatura ha nã'i fuetsa Direktot i DEQ na para u adapta i areklamentu yan regulasion siha para i atministrasion yan enforcement gi Åktun Environmental Protection gi Commonwealth. 2 CMC § 3122.

**I TEMA YAN I SUSTANSIAN I PALÅBRA SIHA:** I manmaproponi na regulasion siha ha pribeniyi para i voluntary response program para i nina'gãsgas i hazardous substances yan pruduktun pitoliu siha ginin i manggai siti siha gi papa' i supervision i Dibision Environmental Quality, sin incurring liability ginin i papa' i local law.

**I SUHETU NI MASUMÅRIA YAN ASUNTU NI MANTINEKKA:**

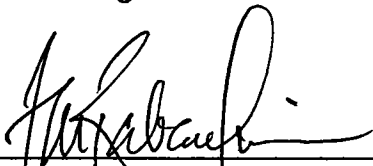
1. I regulasion siha para u sedi i manggai siti siha na i siti siha ni mannina'yi binenu para u mana'siguru inasistencia ni ginin i DEQ ni nina'gãsgas i siti ; yan
2. I regulasion siha para u inayuda i manggai siti siha u ma-obtain liability protection yanggin i lugåt ni mana'gãsgas mangkumplidu yan ma'aprueba ginin i DEQ.

**DIREKSION NI PARA U MAPO'LU YAN PUBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapubliku gi halum i Rehistran Commonwealth gi halum i seksiona gi manmaproponi yan nuebu na ma'adapta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi kumbinienti na lugåt siha gi halum i civic center yan gi ufisanan gubietnamentu siha gi kada distritun senadot, parehu English yan i lingguånhin natibu. (1 CMC § 9104(a)(1))

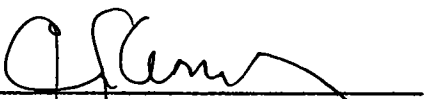
**PARA U MAPRIBENIYI UPIÑON SIHA:** Na'hãnao pat intrega i opiñon-mu siha guatu gi as Siñot Ray Masga, SAR Branch Manager, *Re: Voluntary Response Program Regulations*, gi sanhilu' na address, pat gi sanhilu' na numirun fax. Todu opiñon u mana'fanhalum trenta(30) dihas ginin i fetchan i publikasion esti na nutisia. Put fabot na'hãlum i imfetmasion, opiñon, pat testamoñon kinentesta siha. (1 CMC § 9104(a)(2))



Esti i manmaproponi na regulasion siha manma'apueba ginin i Direktot gi Agosto \_\_\_\_\_, 2011.

Nina'hålum as:   
Frank M. Rabauliman  
Direktot, Dibision Environmental Quality CNMI

9/20/11  
Fetcha

Rinisibi as:   
Esther S. Fleming  
Ispisiât Na Ayudânti Para I Atministrasion Gubietnu

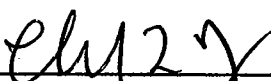
09/20/11  
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Pine'lu yan  
Ninota as:   
ESTHER M. SAN NICOLAS  
Rehistran Commonwealth

9.26.11  
Fetcha

Sigun i 1 CMC § 2153(e) (Inapueban Abugâdu Henerât na para u macho'gui i regulasion siha kumu fotma yan i 1 CMC § 9104(a)(3) ( hinentan inapueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ya manmaribisa yan manma'apueba kumu sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapublika, 1 CMC § 2153(f) (publikasion i areklamentu yan i regulasion siha).

Mafetcha gi diha 26 <sup>set</sup> di Agosto, 2011

  
EDWARD T. BUCKINGHAM  
Abugâdu Henerât

**Commonwealth Mellól Téél Falúw Kka Falúwasch Marianas  
Bwulasiyol Sóulem, Division of Environmental Quality**

**Frank M. Rabauliman, Director**

**Gualo Rai, on Middle Road across from "Subway"**

**Seipél MP 96950**

**Tilifon 670.664.8500; fax 670.664.8540**

**raymasga@deq.gov.mp**

**ARONGORONGOL TOULAP REEL POMWOL ALLÉGH KKAAL**

**MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁLI POMWOL ALLÉGH KKAAL:** Commonwealth mellól Téél Falúw Kka Falúwasch, bwulasiyol Sóulem, Division of Environmental Quality e tipáli ebwe ipighil adaptáli allégh kka aa appasch bwe Pomwol Alléghúl Voluntary Response Program, sáangi mwóghutul Administrative Procedure Act, 1 CMC § 9104(a). Allégh kkaal ebwe kkamaló llól seigh (10) ráll mwiiril igha e atabweey 1 CMC §§ 9102 me 9104 (a) ngare (b). (1 CMC § 9105(b))

**BWÁÁNGIL:** Legislature e ngáleeey bwáángil Samwoolul DEQ bwe ebwe adaptáli allégh kkaal ngáli administration me enforcement reel Commonwealth Environmental Protection Act. 2 CMC § 3122.

**KKAPASAL ME AWEEWEL:** Pomwol allégh kkaal e ayoora ngáli voluntary response program reel limálimil hazardous substances me petroleum products reer schóókka falúwer falúw nge llól aar supervision Division of Environmental Quality, essóbw yoor incurring liability llól local law.

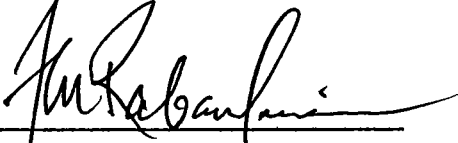
**KKAPASAL ME OUTOL:**

1. Allégh kkaal nge ebwe mweitingáliir schóókka e contaminated falúwer bwe rebwe ghoomw ngáliir DEQ bwe rebwe alisiir reel ebwe limálim falúwer; me
2. Allégh kkaal ebwe alisiir schóókka falúwer falúw bwe rebwe bweibwogh liability protection ngare bwuley we e limálim aa takkló me alléghló mereel DEQ.

**AFALAFAL REEL AMWELIL ME AKKATÉÉL:** Pomwol Allégh kkaal ebwe akkatéélong llól Commonwealth Register llól tánil ye pomw me allégh ffé kka aa adaptaló (1 CMC § 9102(a)(1)) me ebwe appaschtá llól bwuley kka llól civic center me bwulasiyol government kka llól senatorial district, reel kkapasal English me vernacular. (1 CMC § 9104 (a)(1))

**Isiisilongol Mwáliili:** Afanga ngáre bwughiló yóomw mwáliili reel Ray Masaga, SAR Branch Manager, Re: Voluntary Response Program Regulations, reel address ye elo mmwal weiláng ngáre fax liiló reel number ye elo mmwal. Mwáliili kkaal nge ebwe toolong eliigh (30) ráll mwiiril akkatééwowul arongorong yeel. Aw issiilong yáami aghiyágh, mángemáng ngare angiingi. (1 CMC § 9104(a)(2))

Pomwol allégh kkaal aa lléghló mereel Samwool(Director) wóól Elúwel (August)\_\_\_\_, 2011.

lisáliyállong:   
Frank M. Rabauliman  
Director, CNMI Division of  
Environmental Quality

9/20/11  
Ráll

Mwiir sáangi:   
ESTHER S. FLEMING  
Aillisil Soulem


9/26/11  
Ráll

Amwel sáangi:   
ESTHER M. SAN NICOLAS  
Commonwealth Register

9.26.11  
Ráll

Sáangi 1CMC § 2153(e) ( allégh kkaal aa lléghló mereel AG bwe ebwe akkatééwow reel féerúl) me 1 CMC § 9104(a)(3) (aa bweibwogh alléghúl sáangi AG) pomwol allégh kka aa appaschlong aa takkal amwuri fischiy me angúúngú ló féerúl me legal sufficiency sáangi CNMI Sóubwungúl Allégh Lapalap me ebwele akkatééwow, 1 CMC § 2153(f) (akkatéél allégh kkaal).

Ráll ye 26 Elúwel <sup>5<sup>er</sup></sup> (August), 2011.

  
EDWARD T. BUCKINGHAM  
Sóubwungúl Allégh Lapalap

# VOLUNTARY RESPONSE PROGRAM REGULATIONS

## PART 1 GENERAL

### 1.1 AUTHORITY AND SCOPE:

The Division of Environmental Quality (DEQ) is responsible for protecting, preserving and enhancing the environmental quality of water, air and land of the Commonwealth of the Northern Mariana Islands (CNMI).

These regulations are promulgated by the Division of Environmental Quality pursuant to the Commonwealth Environmental Protection Act, codified as amended 2 CMC §§ 3101 to 3134, and the Commonwealth Solid Waste Management Act of 1989, codified as amended at 2 CMC §§ 3511-3521. These regulations and technical provisions shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

### 1.2 PURPOSE

These regulations specify the criteria a person must meet in order to qualify for liability protection from action by the DEQ for the release or threatened release of a harmful substance as defined under the DEQ Harmful Substance Cleanup Regulations. The program will collect permit fees to generate income to enable the program to be self-sufficient and monies collected will be used for program purposes.

### 1.3 PROHIBITIONS

Facilities that are not eligible to enter this program include:

- (1) A facility that is subject to a planned or ongoing Federal removal action under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 (CERCLA);
- (2) A facility that is listed on the CERCLA National Priorities List or is proposed for listing; and
- (3) A facility that is subject to a unilateral administrative order, a court order, and an administrative order on consent or judicial consent decree issued or entered into by EPA or DEQ.

## PART 2 DEFINITIONS

2.1 Days shall mean calendar days, including weekends and holidays.

2.2 Environmental remedial cleanup means a remedial action at an affected site undertaken and financed by a person, which remedial action is subject to the oversight

and approval by the DEQ, and with respect to which remedial action the person agrees to pay the DEQ's site specific costs incurred in administration and oversight.

2.3 Hazardous substance means any hazardous substance specified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601(14)(A)-(F), as amended (CERCLA), petroleum and petroleum products, and any hazardous waste as defined by the CNMI hazardous waste regulations, or as defined by the CNMI Harmful Substance Cleanup Regulations, NMIAAC, § 65-40-0109(w), as amended. The terms hazardous substance and harmful substance shall mean the same thing under these regulations.

2.4 Nonresidential property means any real property currently or previously used for industrial or commercial purposes, or both.

2.5 Participation fee means the following: one hundred dollars (\$100) for non-commercial application fee, two hundred dollar (\$200) for commercial application fee, and the assessment and cleanup permit fee of five thousand dollars (\$5000) and all additional oversight cost reimbursements in an amount to be determined by DEQ pursuant to Part 5. Oversight cost means any response cost, as defined by CERCLA, 42 U.S.C. §§ 9601-9675, incurred by DEQ with respect to an applicant's remedial actions under the Agreement. The assessment and cleanup permit fees shall be waived for non-commercial applicants, if no viable and potentially liable commercial entity exists.

2.6 Person means any individual, partnership, co-partnership, firm, company, public or private corporation, association, joint stock company, trust estate, political subdivision, or any agency, board, or any other legal entity recognized by law as the subject of rights and duties.

2.7 Phase I Environmental Site Assessment (ESA) means a noninvasive physical assessment of the real property and a records review conducted by a qualified Environmental Professional in accordance with American Society for Testing and Materials (ASTM) Standard E 1527-05, or as subsequently amended. A Phase I ESA report must be prepared following the format in Appendix X4 with the addition of a specific section on data gaps as defined in Section 12.7 of the ASTM E 1527-05 Standard.

2.8 Phase II Environmental Site Assessment means an invasive sampling investigation by a technical consultant or the environmental professional in accordance with American Society for Testing and Materials (ASTM) Standard E 1903 -97 (Reapproved 2002) of those areas of concern, or recognized environmental conditions, identified in the Phase I ESA report for the site. Phase II investigations must be approved by the US Environmental Protection Agency.

2.9 Remediation or remedial action means all appropriate actions taken to clean up contaminated real property, including but not limited to removal, remedial actions, and response actions as such terms are defined by CERCLA.

## **PART 3      STAGE 1**

3.1 Any person, including but not limited to a person acquiring, disposing of or possessing a lien hold or leasehold interest on real property, or other circumstances as may be established by rule involving real property that is known to be or suspected to be contaminated by harmful substances, may apply to remediate the real property with oversight by the DEQ. Such application shall be made on forms provided by the DEQ and shall include the location of the real property, the legal description of the real property, a general description of the nature of the operations and activities and the dates, if known, that such activities occurred on the real property, the names of known past and present owners or operator of the real property, a description of the nature and extent of known or suspected contamination and an application fee for either a non-commercial or a commercial application.

3.2 Application forms may be submitted at any time from the completion of an ASTM E1527-05 Phase I environmental site assessment up through the development, but not including the implementation of a remedial action plan. The applicant shall submit copies of all reports prepared concerning the results of any site assessments, investigations, sample collections and sample analyses completed to date with the application.

3.3 The DEQ will review the application forms for completeness. The DEQ will return any form deemed incomplete to the person for completion. Upon receipt of all requested information, the DEQ will notify the person that the application form is complete.

3.4 Following the approval of an application, the applicant shall complete a Phase II ESA in accordance with the ASTM E 1903-97 (Reapproved 2002) Standards. The complete Phase II ESA shall be submitted to DEQ within one hundred eighty (180) days following approval of the application.

3.5 The DEQ shall review the reports submitted and comment, within thirty (30) days, on the completeness of the report and nature and extent of any additional required environmental site assessments to be conducted on the real property. The applicant shall complete all required additional work required by DEQ.

3.6 Once the Phase II ESA is complete, as documented by the DEQ's acceptance of the report, the DEQ shall determine if remedial action is necessary. If the DEQ determines that no remedial action is required, the DEQ will issue a Letter of Completion with respect to the specific Phase II ESA investigation. If the DEQ determines that remediation is required, the applicant may apply to enroll in Stage 2.

3.7 An applicant may withdraw from the program at any time with written notification to DEQ. The application fee is non refundable.

3.8 DEQ reserves all rights to require investigation and remediation by potential liable parties under CNMI law, including but not limited to the CNMI Harmful Substance Cleanup Regulations.

#### **PART 4 STAGE 2**

4.1 Any person completing the Phase II ESA process Part 3 may apply to continue in the DEQ's Voluntary Response Program by completing an application available from the DEQ.

4.2 Following the approval of an application, the applicant and DEQ shall execute an oversight agreement to be incorporated in the DEQ assessment and cleanup permit. The DEQ shall require the applicant to post a deposit, not to exceed five thousand (\$5,000) dollars for the permit, which shall be used to cover the site-specific oversight costs to the DEQ.

4.3 The applicant shall submit a remedial action plan to the DEQ for review and approval for any contamination identified in the Phase II ESA report. The applicant shall develop the remedial action plan following DEQ VRP Guidance.

4.4 DEQ shall review the remedial action plan and notify the applicant regarding comments requiring revision to the plan or approval of the plan.

4.5 The DEQ shall review reports of any additional environmental site assessments and make a determination, within sixty (60) days, of any required remedial actions. If the DEQ determines that no remedial action is required, the applicant shall submit, if required by the director, a monitoring plan to the DEQ. Upon approval by the director, the plan, if required, shall be implemented by the applicant. If the DEQ determines that remediation is required, the applicant shall submit a revised remedial action plan to the DEQ for any contamination identified in the environmental site assessments.

4.6 The DEQ shall review the remedial action plan. Remedial action plans shall be developed following DEQ guidance and include work plans, health and safety plans, testing protocols, and an analysis of alternatives. In addition, remedial action plans shall include appropriate monitoring plans as determined necessary by the DEQ based on the Phase II ESA analytical results. The DEQ shall, within ninety (90) days, approve the plan if the plan satisfies the requirements of this section. The remedial action plan is subject to public review and comment prior to DEQ approval. The applicant shall provide public notice at its own expense in two local newspapers of the opportunity to comment on the plan, once during the week after the plan is submitted and once 4 weeks after the plan has been submitted. The deadline for comments shall be thirty (30) days from the time the first notice is published.

4.7 Following approval of the remedial action plan by the DEQ, the applicant shall implement the remedial action plan.

4.8. During the implementation of the remedial action plan, the applicant shall submit to the DEQ, on forms provided by the DEQ, quarterly progress reports of such remedial action.

4.9. The applicant shall submit to the DEQ a copy of all reports prepared concerning such remedial action.

4.10. The DEQ shall review the remedial action report conducted in accordance with the provisions of the approved remedial action plan.

4.11. Nothing in this Part shall limit the right of an applicant to terminate participation upon providing written notification to the DEQ. Upon receipt of notice of termination from the applicant, the DEQ shall refund any remaining deposit balance, after incurred costs are deducted, within sixty (60) days.

4.12. Nothing in this Part shall limit the DEQ's ability to take action, including enforcement action under CNMI law as appropriate to prevent or mitigate any potential threats to human health and the environment.

4.13. The applicant may appeal in writing any decision of the DEQ under this Part to the Director within thirty (30) days of such decision. The Director, at his discretion, may hold a hearing or may decide the matter solely on the existing record. The Director shall issue a reasoned determination in writing of the matter appealed within ten days of the submission of all evidences and arguments.

4.14. If the provisions set forth in this Part are met, and the applicant has remitted all applicable permit fees, the DEQ shall issue, to the applicant, a Letter of Completion stating that no further action need be taken at the site related to any contamination identified in the environmental assessments and for which remedial action has been taken in accordance with the approved remedial action plan. Such letter, however, shall provide that the DEQ may require the person to conduct additional environmental site assessments or remedial actions in the event that any monitoring conducted at or near the real property or any other circumstances indicate that additional contamination is present which was not identified by the environmental site assessments or for which remedial action was not taken according to the remedial action plan.

## PART 5 REIMBURSEMENT FOR DEQ COSTS

5.1. The DEQ shall be reimbursed for its site-specific costs incurred in administration and oversight of the voluntary response actions. Assessment and cleanup permit fees shall be determined by the number of hours that DEQ spends on oversight and investigation at a standard rate of \$40 per hour. The DEQ shall furnish to the applicant a complete, full and detailed accounting of the costs incurred by the DEQ for which the applicant is charged. The DEQ shall initially draw down its charges against the permit fee, and additional payments shall be remitted within sixty (60) days of the receipt of an invoice from DEQ, where costs exceed \$5,000. Timely remittance of reimbursements, as provided in subsection 5.3 of this section, to the DEQ is a condition of continuing participation. The applicant may appeal any charge to the Director within thirty (30) days



of receipt of the bill. Appeal to the Director shall stay the required payment date until thirty (30) days following the rendering of the written decision of the Director. If, after the conclusion of the remedial action, a balance remains from the initial permit fee collected, the DEQ shall refund that amount within sixty (60) days. If the DEQ fails to render any decision or take any action within the time period specified in these regulations, then the applicant shall not be required to reimburse the DEQ for costs incurred for DEQ's time associated with the missed deadline.

5.2. All funds remitted by the participant conducting the voluntary response action shall be deposited into a separate account for oversight costs for each participant and shall be used by the DEQ for its administrative and oversight costs.

5.3. The DEQ may terminate participation in the program for cause. Grounds for termination include, but are not limited to:

(1) Discovery of conditions that DEQ believe warrant action pursuant to the CNMI Harmful Substances Cleanup Regulations;

(2) Failure to submit cost reimbursements within sixty (60) days following notice from the DEQ that such reimbursements are due;

(3) Failure to submit required information within ninety (90) days following notice from the DEQ that such information is required;

(4) Failure to submit a remedial action plan within ninety (90) days following notice from the DEQ that such plan is due;

(5) Failure to properly implement the remedial action plan; and

(6) Continuing noncompliance with any of the provisions of these regulations.

5.4. Upon termination of the oversight agreement, and if there is a balance in the applicant's participation fee after deducting costs incurred by the DEQ, such balance shall be refunded within sixty (60) days as specified in 5.1. Upon termination pursuant to subdivisions (2) to (5) of Part 5.3, if a balance remains in the applicant's participation fee, such balance shall be forfeited and deposited in the fund.

## PART 6 SEVERABILITY

Should any provision of these regulations or its application to any person or circumstance be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining portion of the regulations and/or application of the affected provision to other persons or circumstance shall not be affected thereby.

PART 7 EFFECTIVE DATE

These regulations will take effect (ten) 10 calendar days after notice of adoption is published in the Commonwealth Register.

9-26-11 Version



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

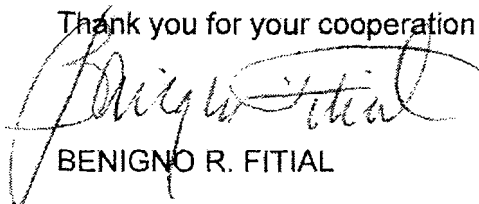
**Eloy S. Inos**  
Lt. Governor

### DIRECTIVE NO. 281

DATE : August 29, 2011  
TO : All Department & Activity Heads  
FROM : Governor  
SUBJECT : Cease in Rehiring of former Government Employees

Effective immediately, because of funding constraints, there shall be no rehiring of former government employees who have already resigned from Government service. Please ensure that all employees who are contemplating resignation are properly informed of this Directive.

Thank you for your cooperation on this matter.



BENIGNO R. FITIAL