

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



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 02
FEBRUARY 28, 2023**

COMMONWEALTH REGISTER

VOLUME 45 NUMBER 02 FEBRUARY 28, 2023

EMERGENCY

Public Notice of Adoption of Emergency Regulations Governing Procurement Northern Marianas Technical Institute	049445
---	---------------

ADOPTION

Public Notice of Certification and Adoption Of Amendments to NMIAC Chapter 15-10 To Revise DCRM's Permitting Fees Bureau of Environmental and Coastal Quality Office of the Governor	049477
--	---------------

Public Notice of Certification of Adoption Of Procurements Regulations Northern Marianas Technical Institute	049479
---	---------------

PROPOSED

Public Notice of Proposed Amendments to Rules and Regulations of the Child Care and Development Fund Department of Community and Cultural Affairs	049481
--	---------------

Public Notice of Proposed Adoption Of Procurement Regulations Northern Marianas Technical Institute	049517
--	---------------

ORDERS

PUA No.	21-0142	
Subject:	Administrative Order	
In the Matter of:	Jose Quitano v. CNMI Dept. of Labor Division of Employment Services-PUA	
Department of Labor		049552
Labor Case No.	22-0212	
Subject:	Administrative Order	
In the Matter of:	Cameron Covarrubias v. CNMI Dept. of Labor, Division of Employment Services-PUA	
Department of Labor		049566
PUA Case No.	22-0215	
Subject:	Administrative Order	
In the Matter of:	Solomon S. Castro v. CNMI Dept. of Labor Division of Employment Services-PUA.	
Department of Labor		049573
PUA Case No.	22-0218	
Subject:	Administrative Order Granting Parties' Request for Dismissal	
In the Matter of:	Fernando San Pedro v. CNMI Dept. of Labor, Division of Employment Services-PUA	
Department of Labor		049588
PUA Case No.	22-0219	
Subject:	Administrative Order	
In the Matter of:	Ashley Norma Fritz . CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049589
DUA Case No.	22-017	
Subject:	Administrative Order	
In the Matter of:	Jennifer A. Sagana v. CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049603



Board of Trustees:
Catherine Attao
Chairperson

PUBLIC NOTICE
ADOPTION OF EMERGENCY REGULATIONS
GOVERNING PROCUREMENT
THE NORTHERN MARIANAS TECHNICAL INSTITUTE

Irene Holl
Vice- Chairperson

Carmelita
Rabauliman-Faisao
Treasurer

Ana Maria S.
Mendiola
Secretary

Keith Stewart
Trustee

Zenn Tomokane
Trustee

Jodina C. Attao
CEO

NOTICE OF EMERGENCY ADOPTION: The Northern Marianas Technical Institute (NMTI), a public corporation of the Commonwealth of the Northern Mariana Islands hereby adopts, upon the concurrence of the Governor, the attached rules and regulations on an emergency basis for the reasons stated below. 1 CMC § 9105(b)(2).

AUTHORITY: NMTI is empowered by the Legislature under its enabling statute to adopt rules and regulations pertaining to procurement matters. 3 CMC § § 12142(d).

A government agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

(b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this Section [9104]. 1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The emergency rules and regulations provide for the regulatory structure and procedures for expenditure of NMTI funds to procure goods and services for NMTI.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations were formulated pursuant to NMTI's authority to promulgate its own procurement regulations pursuant to 3 CMC § § 12142(d).

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Secretary has followed the procedures of 1 CMC § 9104(b) to adopt the Regulations on an emergency basis for 120 days.

REASONS FOR EMERGENCY ADOPTION: NMTI finds that the public interest requires adoption of these regulations on an emergency basis to provide safeguards for a procurement system of quality and integrity, and to ensure the proper and timely expenditure by NMTI of



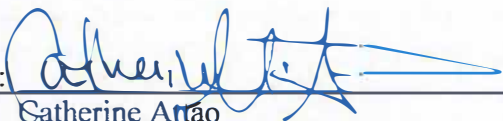
federal grant funding for its southern campus facility that must be constructed and completed within a specific time period.

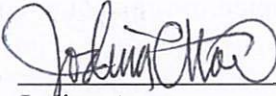
DIRECTIONS FOR FILING AND PUBLICATION: These Rules and Regulations shall be published in the Commonwealth Register in the sections on emergency regulations (see 1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district. 1 CMC §§ 9102(a)(1) and 9104(a)(1). NMTI shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them. 1 CMC § 9105(b)(2).

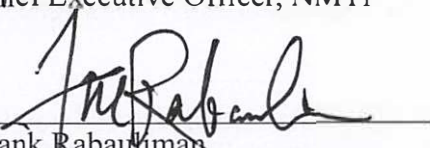
IMMEDIATE EFFECT: These emergency regulations will become effective immediately upon the concurrence of the Governor and which upon his signature shall be filed with the Commonwealth Register. 1 CMC § 9105(b)(2). NMTI has found that immediate adoption is required by the public interest or is necessary because of imminent peril to the public health, safety, or welfare. *Id.*

TO PROVIDE COMMENTS No comments are required for these emergency rules and regulations.

The attached emergency regulations were approved by the Northern Marianas Technical Institute (NMTI) on July 18, 2022.

Submitted by:  2/7/2023
Catherine Attao
Chairperson
Board of Trustees, NMTI
Date


 2/7/2023
Jodina Attao
Chief Executive Officer, NMTI
Date

Received by:  2/8/2023
Frank Rabautiman
Acting Governor's Special Assistant for Administration
Date

Concurred by:  2/10/23
Arnold I. Palacios
Governor
Date




Filed and
Recorded by:


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

2.15.2023
Date

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

Dated the 14 day of February, 202~~2~~³.


EDWARD MANIBUSAN
Attorney General

CHAPTER ____ - 3000

NORTHERN MARIANAS TECHNICAL INSTITUTE

PROCUREMENT RULES AND REGULATIONS

Part 001 General Provisions

Subpart A General

§ 3000-001 Purpose

§ 3000-005 Authority

§ 3000-010 Supplementary General Principles of Law Applicable

§ 3000-015 Requirement of Good Faith

§ 3000-020 Application of Regulations

§ 3000-025 Severability

§ 3000-030 Validity of Contract

§ 3000-035 Remedy Against Employee

Subpart B Definitions

§ 3000-040 Definition

Subpart C Public Access

§ 3000-045 Public Access to Procurement Information

§ 3000-050 Use of Electronic Media

Part 100 Procurement Organization

Subpart A Procurement Officer

§ 3000-101 Creation of Procurement and Supply Division

§ 3000-105 Procurement Officer

§ 3000-110 Duties of the Officer

§ 3000-115 Contract Oversight

§ 3000-120 Split Contracts

§ 3000-125 Acceptance of Gratuities by Procurement Officer and Supply Division Employees

Subpart B Procurement Function

§ 3000-130 Procurement Services

§ 3000-135 Centralized Procurement of Supplies

Part 200 Source Selection and Contract Formation

Subpart A Source Selection

§ 3000-201 Methods of Source Selection

§ 3000-205 Competitive Sealed Bidding

§ 3000-210 Small Purchases

§ 3000-215 Sole Source Procurement

§ 3000-220 Emergency Procurement

§ 3000-225 Competitive Sealed

§ 3000-230 Competitive Selection

Subpart B Cancellation of Invitation for Bids or Request for Proposals

§ 3000-235 Cancellation

Subpart C Qualifications and Duties

§ 3000-240 Responsible of Bidders and Duties

§ 3000-245 Pre-qualification of Contractors

Subpart D Types of Contracts

§ 3000-250 Types of Contracts

§ 3000-251 Change Orders

Subpart E Inspection and Audit

§ 3000-255 Right to Inspect Place of Business

§ 3000-260 Right to Audit Records

Subpart F Reports and Records

§ 3000-265 Report of Anti-competitive or Deceptive Practices

§ 3000-270 Retention of Procurement Records

Part 300 Procurement of Construction and Architect-Engineer Services

§ 3000-301 Construction Procurement

§ 3000-305 Architect-Engineer Services

§ 3000-310 Two-Phase Design-Build Selection

Part 400 Protests and Disputes

§ 3000-401 Protests to the Chief Executive Officer Education's Decisions to the Board

§ 3000-410 Remedies

§ 3000-415 Effective Date

§ 3000-420 Disputes

§ 3000-425 Appeal Committee

Part 500 Ethics in Public Contracting

§ 3000-501 Definitions of Terms

Subpart A Standards of Conduct

§ 3000-505 Policy

§ 3000-510 General Standards

§ 3000-515 Employee Disclosure Requirements

§ 3000-520 Employee Conflict of Interest
§ 3000-525 Gratuities and Kickbacks
§ 3000-530 Prohibition Against Contingent Fees
§ 3000-535 Contract Clauses
§ 3000-540 Restrictions on Employment of Present and Former Employees

§ 3000-545 Use of Confidential Information
§ 3000-550 Collusion by Bidders
§ 3000-555 Penalties
§ 3000-560 Authority to Debar or Suspend
Part 600 Miscellaneous
§ 3000-601 Severability

Part 001 - General Provisions

Subpart A - General

§ 3000-001 Purpose

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

§ 3000-005 Authority

The regulations in this chapter are promulgated under the authority of PL 20-92 which make the Board of Trustees accountable and the Chief Executive Officer responsible for procurement and supply in Northern Marianas Technical Institute.

§ 3000-010 Supplementary General Principles of Law Applicable

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

§ 3000-015 Requirement of Good Faith

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

§ 3000-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Northern Marianas Technical Institute funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.

§ 3000-025 Severability

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

§ 3000-030 Validity of Contract

No Northern Marianas Technical Institute contract covered by the regulations in this chapter shall be valid unless it complies with these regulations.

§ 3000-035 Remedy Against Employee

Any procurement action of an employee of the Northern Marianas Technical Institute in violation of the regulations in this chapter is an action outside the scope of his or her employment. The Northern Marianas Technical Institute 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.

Subpart B - Definitions

§ 3000-040 Definitions

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

- (a) “Legal counsel” means an assistant attorney general designated by the Attorney General to serve as counsel for the Northern Marianas Technical Institute or a private attorney hired by the Board of Trustees with the consent of the Attorney General.
- (b) “Board of Trustees” means the Board of Trustees of the Northern Marianas Technical Institute.
- (c) “Chief Executive Officer” means the executive officer appointed by the Board of Trustees to administer the Northern Marianas Technical Institute who has full charge and control of the administration and business affairs of the Northern Marianas Technical Institute.
- (d) “Construction” means the process of building, altering, repairing, improving or demolishing 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.
- (e) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (f) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for cost which are allowable and allocable in accordance with the contract terms and these regulations, and a fee, if any.

- (g) “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.
- (h) “Employee” means an individual receiving a salary from the Northern Marianas Technical Institute, including appointive and elective officials and non-salaried individuals, including those on honorarium, performing personal services for the Northern Marianas Technical Institute. This definition extends to Board of Trustees and members of their staff. Consultants, independent contractors and part-time workers shall be considered employees.
- (i) “Goods” means all property, including but not limited to equipment, materials, supplies, food items and commodities and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property.
- (j) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (i) “NMTI” is the Northern Marianas Technical Institute.
- (l) “Official with expenditure authority” means the chief state officer who may extend, obligate, ear mark, encumber or otherwise commit public funds under the Planning and Budgeting Act, as amended, or under any annual appropriation act.
- (m) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.
- (n) “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.
- (o) “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.
- (p) “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.
- (q) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all materials respects to the invitation for bids.
- (r) “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.
- (s) “Electronic” means electrical, digital or any other similar technology.

(t) “Contractor” means any person or company that is contracted to provide materials or labor to perform a service or job.

Subpart C - Public Access

§ 3000-045 Public Access to Procurement Information

Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper bidding procedures. This decision shall be made only by the Board of Trustees.

§ 3000-050 Use of Electronic Media

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the CNMI’s applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Part 100 - Procurement Organization

Subpart A – Procurement Officer

§ 3000-101 Creation of Procurement and Supply Division

There is hereby created in the Northern Marianas Technical Institute a Division of Procurement and Supply under the management of the Chief Executive Officer in the execution of those duties authorized under Public Law 20-92, or under any annual appropriations act.

§ 3000-105 Procurement Officer

The Chief Executive Officer shall appoint a Procurement Officer to administer and supervise the day-to-day activities of the division.

§ 3000-110 Duties of the Officer

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

- (a) Oversee that these regulations are observed in all Northern Marianas Technical Institute procurement;
- (b) Hear all appeals of protests and disputes;
- (c) Conduct bidding, procurement, negotiation or administration of Northern Marianas Technical Institute contracts upon request of the official with expenditure authority;
- (d) Provide advanced planning for the centralized purchase of Northern Marianas Technical Institute supplies;

- (e) Exercise general supervision and control over all inventories of supplies belonging to the Northern Marianas Technical Institute;
- (f) Establish and maintain programs for the inspection, testing and acceptance of supplies;
- (g) Exercise general supervision and control over the employees of this division.

§ 3000-115 Contract Oversight

- (a) The Procurement Officer is responsible for certifying the correctness of all contracts according to the Northern Marianas Technical Institute policies;
- (b) The contract shall then be approved by the Finance Department (Accountant) or his designee for certification of funds;
- (c) The contract shall be approved by the Chief Executive Officer for expenditure authority;
- (d) The contract shall then be approved by the Chairman of the Board of Trustees;
- (e) The Northern Marianas Technical Institute's legal counsel shall certify the form and legal capacity of every Northern Marianas Technical Institute contract, change order, or purchase order. No contract for personal services or employment shall be approved if it is retroactive for more than thirty days.
- (f) The Personnel Officer shall approve all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a non-employment status.
- (g) A contract may be referred back to the Chief Executive Officer for further review based on additional evidence that it may not comply with the regulations in this chapter. If the Chief Executive Officer withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.
- (h) It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the official with expenditure authority.
- (i) No contract is effective against the Northern Marianas Technical Institute until all the Northern Marianas Technical Institute officials whose signatures appear on the contract form have signed the contract. A contract shall contain a right to audit records clause.

§ 3000-120 Split Contracts

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

§ 3000-125 Acceptance of Gratuities by Procurement Officer and Division Employees

- (a) In addition to the restrictions found in § 3000-525, the Chief and the employees of the Procurement and Supply Division shall be subject to these additional restrictions to avoid the appearance of impropriety.
- (b) The Chief or his employees cannot accept from any person any gift of value given to them with the intent to influence their business judgement.

Subpart B - Procurement Function

§ 3000-130 Procurement Services

Upon request of any official with expenditure authority, the Procurement Officer shall provide assistance or conduct the bidding, procurement, negotiation or administration of a particular contract.

§ 3000-135 Centralized Procurement of Supplies

The Procurement Officer may, with the approval of the Chief Executive Officer, purchase supplies in large quantities to be relied upon by all departments, agencies, offices and branches when in the best interest of the Northern Marianas Technical Institute. No separate contract or purchase order for these supplies will be approved.

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 3000-201 Methods of Source Selection

Unless otherwise authorized by law or by regulation, all Northern Marianas Technical Institute contracts \$50,001.00 and above subject to § 3000-210 shall be awarded by competitive sealed bidding, except as provided in:

- (a) § 3000-210 (Small Purchases);
- (b) § 3000-215 (Sole Source Procurement);
- (c) § 3000-220 (Emergency Procurement);
- (d) § 3000-225 (Competitive Sealed Proposals);
- (e) § 3000-230 (Professional Services);
- (f) § 3000-305 (Architect-Engineer Services).

§ 3000-205 Competitive Sealed Bidding

- (a) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:
 - (1) An invitation for bids number;

- (2) Date of issuance;
- (3) Name, address and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions; and
- (10) Any bonding requirements.

(b) **Public Notice.** Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice shall be on the school website over a continuous period of four weeks shall be deemed to be adequate notice.

(c) **Bidding Time.** A bidding time of at least four weeks shall be provided, unless the Procurement Officer determines in writing that a shorter period is necessary.

(d) **Bid Receipt.** All bids shall be submitted to the Procurement Office. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office. 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 Procurement Officer. No information contained in the bid shall be disclosed prior to the bid opening. The Procurement Officer shall cause the opened bid to be placed into the sealed receptacle.

(e) **Bid Opening.**

(1) The bid opening shall be conducted by the Procurement Officer at the Office of the Chief Executive Officer. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(2) The Procurement Officer shall be present at the bid opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Procurement Officer shall prepare a written summary of the bid opening.

(f) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended.

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

(1) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;

(2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the Northern Marianas Technical Institute. For example, bids shall be rejected in which the bidder:

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

(ii) Fails to state a price and indicates that price shall be the price in effect at the time of delivery;

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

- (iv) Limits the rights of the Northern Marianas Technical Institute.
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder.

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

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

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

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

(i) **Notice of Intent to Award.** After bid evaluation, a notice of intent to award the contract to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter shall be issued to all bidders. The notice of intent to award is not a promise or guarantee of award, and the intended bidder should not incur any costs based on either the notice of intent to award or reliance of a contract.

(j) **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. The contract cannot be awarded less than five business days after the issuance of a notice of intent to award pursuant to subsection (i). Unsuccessful bidders shall also be promptly notified.

(2)(i) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a Northern Marianas Technical Institute contract is written and has been approved by all the officials required by law and regulation.

(ii) Northern Marianas Technical Institute contract shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required Northern Marianas Technical Institute officials.

(3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five per cent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Chief Executive Officer

may authorize the Procurement Officer to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

(4) Warranties. Any contract awarded by NMTI must state a warranty of goods, services or construction for a minimum of one year.

§ 3000-210 Small Purchases

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

(a) Purchases that use Government-sourced funds (local funds), or any combination of both local and federal funds, may be made according to the small purchase procedures of this subsection:

(1) For purchases that do not exceed \$5,000 at least one price quote shall be obtained. However, the Procurement Officer may require the expenditure authority to obtain more than one price quote.

(2) A blanket purchase order may be used to make purchases without securing a price quote when the purchases do not exceed \$5000. The goods or services that may be purchased under a blanket purchase order must be defined (i.e. office supplies) and shall not be used for equipment. The expenditure authority shall promptly submit to the Procurement Officer copies of receipts for all purchases made under a blanket-purchase order. The Procurement Officer may instruct the expenditure authority to explain the need for the goods or services and how the prices paid were reasonable.

(3) For purchases that exceed \$5,000, but which are less than or equal to \$50,000, a minimum of three vendors shall be solicited to submit written or electronic quotations. The quotations shall be recorded and placed in the procurement file. If fewer than three vendors submit quotations, the expenditure authority shall certify, in writing, to the Procurement Officer that fewer than three vendors responded and shall provide written proof of the request. If fewer than three of the solicited vendors submit quotes, the Procurement Officer may either approve the request or instruct the expenditure authority to solicit additional quotes.

(b) Purchases from the United States General Services Administration (GSA) may be made according to the small purchase procedures of this subsection:

(1) At least one quote shall be obtained when making purchases, including purchases that exceed \$250,000.

(c) A purchase order may be used as authorization for any of the small purchase procedures of this section.

(d) Purchase orders may also be utilized instead of contracts for purchasing instructional materials, books, and publications.

(e) This section shall not apply to lease or purchase of vehicles, machinery and equipment or to the purchase of professional services.

(f) Construction & Design/Build services may be procured by obtaining three price quotations from qualified contractors & design/builders. Procurement under this subsection shall be limited to renovations of existing structures, repairs, maintenance, materials, and construction equipment. No new buildings or structures shall be built using this subsection. Contracts procured hereunder shall not exceed \$30,000 and shall be accompanied by a justification, in writing, and agreed to and signed by the Chief Executive Officer.

§ 3000-215 Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when the Procurement Officer determines in writing that there is only one source for the required supply, service or construction item.

(b) The written determination shall be prepared by the official with expenditure authority and shall contain the following information:

(1) The unique capabilities required and why they are required and the consideration given to alternative sources.

§ 3000-220 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this chapter, emergency procurement procedures may be used where:

(1) An unusual and compelling urgency precludes full and open competition, and

(2) Delay in award of a contract would result in serious injury, financial or other to the Northern Marianas Technical Institute. An emergency procurement must be as competitive as practicable under the circumstances.

(b) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority. The justification must include:

(1) Description of the action being approved.

(2) Description of the supplies or services required to meet the needs, including the estimated value.

(3) A description of the efforts made to ensure that offers are solicited from as many potential sources as is practicable.

(4) A determination that the anticipated cost to NMTI will be fair and reasonable, and

(5) Data, estimated cost, or other rationale as to the extent and nature of the harm to NMTI.

(c) The justification must be approved by the Procurement Officer and the Chief Executive Officer.

§ 3000-225 Competitive Sealed Proposals

(a) Condition for Use. When the Chief Executive Officer determines in writing upon the advice of the legal counsel that the use of a competitive sealed bidding is either not practical or not advantageous to the Northern Marianas Technical Institute, a contract may be entered into by competitive sealed proposals.

(b) Request for Proposals. Proposals shall be solicited through a request for proposals.

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

(d) **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.

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

(f) **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) **Notice of Intent to Award.** After proposal evaluation, a notice of intent to award the contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Northern Marianas Technical Institute, taking into consideration price and the evaluation factors set forth in the request for proposals, shall be issued to all offerors. The notice of intent to award is not a promise or guarantee of award, and the intended offeror should not incur any costs based on either the notice of intent to award or reliance of a contract.

(h) **Award.** Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Northern Marianas Technical Institute taking into consideration price and the evaluation factors set forth in the request for proposals. The award cannot be made less than five business days after the issuance of a notice of intent to award pursuant to subsection (g). No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

§ 3000-230 Competitive Selection Procedures for Professional Services

(a) **Procurement Method.** The services of accountants shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, sole-source procurement or non-employment services contracts.

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

(c) **Public Announcement and Form of Request for Proposals.** Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals. The request for proposals shall describe the services required, list the type of

information and data required of each offeror and state the relative importance of particular qualifications.

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

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

§ 3000-235 Cancellation

An invitation for bids or request for proposals may be cancelled and any and all bids or proposals may be rejected, when such action is determined by the Procurement Officer and approved by the Chief Executive Officer to be in the best interests of the Northern Marianas Technical Institute based on:

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

Subpart C - Qualifications and Duties

§ 3000-240 Responsible Bidders and Duties

- (a) Awards shall be made only 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;
 - (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) Be otherwise qualified and eligible to receive award under applicable laws and rules; and
- (8) Submit a valid original business license and other certification as may be required.

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

(c) **Right of Non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Chief Executive Officer, the Procurement Officer, and legal counsel or any involved Northern Marianas Technical Institute Employee without prior consent by the bidder or offeror.

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

§ 3000-245 Pre-qualification of Contractors

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

Subpart D - Types of Contracts

§ 3000-250 Types of Contracts

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

(b) Northern Marianas Technical Institute contracts shall utilize a firm fixed priced unless use of a cost reimbursement contract is justified under subsection (c).

(c) A cost reimbursement contract may be used when the official with expenditure authority determines in writing which is attached to the contract that:

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

§ 3000-251 Change Orders

(a) A change order will 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 by either party. However, no change order resulting in an increase in contract cost, or time shall be allowed when it is the direct result of either party's inexperience, inefficiency, or competence.

(b) Before adding significant new work to existing contracts, the Procurement and Supply officer shall thoroughly assess whether it would be more prudent to seek competition. This assessment shall be in writing and will articulate the specific need for the good or service, the reason(s) it should not be competitive, and any circumstances that led to her decision. All change orders which increase the original contract price by 25% shall automatically be procured through competitive procedures except when there is an emergency or when there is a sole source procurement. At no time shall more than two change orders be allowed to a contract for services where the additional services are trainings or other professional services.

(c) Change orders for construction contracts shall be exempt from subsection (b) as it relates to the automatic prohibition on change orders that increase the price by 25%. A change order for a construction contract may be increased by more than 25%, and not automatically procured through competitive procedures, if:

(1) The Capital Improvements Projects office determines, in writing, that the change order is in the best interest of the Northern Marianas Technical Institute because:

(i) Utilizing a competitive process will unreasonably delay construction; or

(ii) Utilizing a competitive process will not result in cost savings to the Northern Marianas Technical Institute; or

(iii) The project is necessary to protect the health and welfare of the students and staff of the Northern Marianas Technical Institute.

(2) The Chief Executive Officer must approve, in writing, any change order processed under this section.

(d) Contractors shall not be allowed to continue working beyond the expiration term of a contract in the absence of an approved new contract or change order. Change orders shall be processed under the procedures for processing new contracts.

Subpart E - Inspection and Audit

§ 3000-255 Right to Inspect Place of Business

The Board of Trustees and the Chief Executive Officer, 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 Northern Marianas Technical Institute.

§ 3000-260 Right to Audit Records

As required by section 404 of Public Law 3-91, 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 a Northern Marianas Technical Institute 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 Northern Marianas Technical Institute contracts and obligations.

Subpart F - Reports and Records

§ 3000-265 Report of Anti-competitive or Deceptive Practices

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

- (1) Unfair methods of competition;
- (2) Deceptive acts; or
- (3) Unfair business practices.

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

§ 3000-270 Retention of Procurement Records

(a) All procurement records shall be retained by the Board of Trustees, the Chief Executive Officer and the Procurement Officer.

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

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

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

Part 300 - Procurement of Construction, Design/Build and Architect-

Engineer Services § 3000-301 Construction Procurement

(a) Invitation for Bids

(1) Deposit. The official with expenditure authority 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 § 60-40-205(a). In addition, the following items shall be included in the invitation for bids.

- (i) Notice to Bidders. General information regarding the project;
- (ii) Instruction 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 on construction contracts where the price is estimated by the Chief Executive Officer to exceed \$25,000.00 or when the Chief Executive Officer determines it is in the interest of the Northern

Marianas Technical Institute. Bid security shall be on a bid bond, in cash, by certified check, cashier's check or other form acceptable to the Northern Marianas Technical Institute. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Northern Marianas Technical Institute legal counsel.

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

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

(c) Contract Performance and Payment Bonds

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

(1) Performance bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, in an amount equal to one hundred per cent of the price specified in the contract; and

(2) A payment bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(3) Bonding Requirement. Any bonds secured by the contractor must have an AM's Best rating or higher through an agency deemed satisfactory by the Chief Executive Officer.

(d) Suits on Payment Bonds.

(1) Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person 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 materials 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.

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

§ 3000-305 Architect-Engineer Services

(a) **Procurement Method.** Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase or emergency procurement.

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

(c) **Selection.** The Chief Executive Officer and the Northern Marianas Technical Institute's Procurement office shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirements for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required.

(d) **Negotiation.** The Chief Executive Officer shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the Northern Marianas Technical Institute. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, the office with expenditure authority shall then select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

§ 3000-310 Two-Phase Design-Build Selection Process

(a) The two-phase design-build selection process procedures shall be used when the procurement officer determines that this method is appropriate, based on the following:

1. Three or more *offers* are anticipated.

2. Design work must be performed by *offerors* before developing price or cost proposals, and *offerors* will incur a substantial amount of expense in preparing *offers*.
 3. The following criteria have been considered:
 - i. The extent to which the project requirements have been adequately defined.
 - ii. The time constraints for delivery of the project.
 - iii. The capability and experience of potential contractors.
 - iv. The suitability of the project for use of the two-phase selection method.
 - v. The capability of the agency to manage the two-phase selection process.
 - vi. Other criteria established by the Chief Executive Officer.
- (b) Scope of work. NMTI shall develop, either in-house or by contract, a scope of work that defines the project and states the requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements.
- (c) Procedures. One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which *offerors* will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.
1. Phase One.
 - i. Phase One of the solicitation(s) shall include:
 1. The scope of work;
 2. The phase-one evaluation factors, including:
 - a. Technical approach (but not detailed design or technical information)
 - b. Technical qualifications, such as-
 - i. Specialized experience or technical competence;
 - ii. Capability to perform'
 - iii. Past performance of the offeror's team (including architect-engineer and construction members); and
 - iv. Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase-One)
 - c. Phase-Two Evaluation factors; and
 - d. A statement of the maximum number of *offerors* that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the procurement officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The procurement officer shall document this determination in the contract file. For acquisitions greater than \$4.5 million, the determination shall be approved by the Chief Executive Officer.
 - e. After evaluating phase-one proposals, the procurement officer shall select the most highly qualified *offerors* (not to exceed the maximum number specified in the solicitation) and request that only those *offerors* submit phase-two proposals.
 2. Phase-Two:
 - i. Phase-two of the solicitations shall be prepared and include phase-two evaluation factors developed. Examples of phase-two technical evaluation factors include design concepts, management approach, key personnel and proposed technical solutions.

- ii. Phase-two of the solicitation(s) shall require submission of technical and price proposals which shall be evaluated separately.

Part 400 - Protests and Disputes

§ 3000-401 Protests to the Chief Executive Officer

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved or will be aggrieved in connection with the solicitation or award of a contract may protest to the Chief Executive Officer no later than five (5) days after the issuance of a Notice of Intent to Award. The protest shall be received by the Chief Executive Officer in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to 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 protests 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 Chief Executive Officer. Proof of notice is required by the protesting party to other bidders or proposers within two days of filing its protest. These persons may submit their views and relevant information to the Chief Executive Officer within five days after receiving notice by the protesting party. The Chief Executive Officer may extend the period of time to submit views and relevant information if the Chief Executive Officer certifies that he/she believes the complexity of the matter requires a longer period of time. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information which is relevant and necessary for the determination of the protest.

(3) The Chief Executive Officer shall decide the protest within five calendar days after the protest is filed unless the Chief Executive Officer certifies that the complexity of the matter requires a longer time, in which event the Chief Executive Officer shall specify the appropriate longer time. If the Chief Executive Officer fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the State Board of Trustees by filing such Notice of Appeal with the Chairperson through the Board Secretary at the State Board of Trustees Office.

(4) When a protest has been appealed to the Appeal Committee, as provided in these procedures, the Chief Executive Officer shall submit a report, and the Chief Executive Officer should include with his/her 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;
- (iv) The solicitation, including the specifications on portions relevant to the protest;
- (v) the abstract of offers or relevant portions;
- (vi) Any other documents that are relevant to the protest; and
- (vii) The Chief Executive Officer'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 Chief Executive Officer's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Chief Executive Officer 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 Chief Executive Officer's decision has been taken to the Appeal Committee, the Chief Executive Officer shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protest

(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 Chief Executive Officer determines that:

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

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

(iii) A prompt award will otherwise be advantageous to the Northern Marianas Technical Institute.

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

(c) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this subpart are deemed to be working days of the Northern Marianas Technical Institute. 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.

§ 3000-405 Appeals of Chief Executive Officer's Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Chief Executive Officer may be taken provided that the party taking the appeal has first submitted a written protest to the Chief Executive Officer and otherwise fully complied with § 3000-401, and the Chief Executive Officer has denied the protest or has failed to act on the protest within the time provided.

(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 an Appeal. An appeal from the Chief Executive Officer's decision must be received by the Appeal Committee not later than five days after the appellant received the decision of the Chief Executive Officer, or, in the event that the Chief Executive Officer has not decided the protest, within three days from the date that the Chief Executive Officer should have decided the protest pursuant to § 3000-401. 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 Northern Marianas Technical Institute should be appeal be considered.

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

(1) The Chairperson of the Appeal Committee, immediately upon appointment by the Board Chairperson, shall notify the Chief Executive Officer in writing within one day of appointment, requesting the Chief Executive Officer to give notice of the appeal to all bidders or proposers who appear to have a reasonable prospect of receiving an award if the appeal is denied (hereinafter in this section, "noticed parties"). The Chief Executive Officer shall furnish copies of the protest and appeal documents to such noticed parties with instructions to communicate further directly with the Appeal Committee.

(2) The Appeal Committee shall request the Chief Executive Officer to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within thirty calendar days) in accordance with § 3000-401(a)(3) and (4) and to furnish a copy of the report to the appellant and noticed parties.

(3) Comments on the Chief Executive Officer's report shall be filed by the protesting party and any noticed party with the Appeal Committee within five days after the Appeal Committee's receipt of the report, with a copy to the Chief Executive Officer, other noticed parties, and appellant, as applicable. The Appeal Committee may extend the period of time to submit comments if the Appeal Committee certifies that it believes the complexity of the matter requires a longer period of time. The Appeal Committee may, at its discretion, allow the protesting party, noticed parties, and the Chief Executive Officer to submit rebuttals to the comments on the Chief Executive Officer's report submitted by the protesting party and noticed parties. If rebuttals are permitted, the Appeal Committee may set deadlines for their submission. All rebuttal submissions must be forwarded by the rebutting party to the Chief Executive Officer, protesting party, and other noticed parties.

(4) The failure of an appellant or any noticed 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, award shall not be made until the appeal is resolved, unless awarded is done in a manner consistent with § 3000-401(b)(2).

(f) Submission of Additional Information. Any questions posed or additional information requested by the Appeal Committee shall be furnished as expeditiously as possible. The Appeal Committee may set a reasonable deadline for the submission of information or responses to questions. Any questions or requests, along with corresponding responses or submissions shall be made, upon request, available to any other interested party, except to the extent that the withholding of information is permitted or required by law. The Appeal Committee may allow for interested parties to comment on any answers or information submitted pursuant to this subsection in a manner and timeframe it deems reasonable.

(g) Conference. The Appeal Committee may conduct a conference on the merits of the appeal with the appellant and Chief Executive Officer. Alternatively, either party may request such a conference to be held at the discretion of the Appeal Committee. The Appeal Committee has the discretion to include other parties at the conference.

(h) Time for Decision; Notice of Decision: The Appeal Committee shall, if possible, issue a decision on the appeal within thirty 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 Chief Executive Officer.

§ 3000-410 Remedies

(a) Remedies Prior to Award. If prior to award the Chief Executive Officer 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 Chief Executive Officer or the Appeal Committee determines that 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 Northern Marianas Technical Institute; 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 Northern Marianas Technical Institute, without prejudice to the Northern Marianas Technical Institute's right 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 Appeal Committee's determination as an agency decision under the CNMI Administrative Procedure Act and applicable rules of administrative procedure with the CNMI Superior Court.

§ 3000-415 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of the Northern Marianas Technical Institute 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, offeror, or contractor who is aggrieved.

§ 3000-420 Disputes

(a) Any dispute between the Northern Marianas Technical Institute and a contractor relating to the performance, interpretation of, or compensation due under a contract, which is the subject of this chapter, must be filed in writing with the Chief Executive Officer within ten 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 Chief Executive Officer 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 its 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 Chief Executive Officer 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/she obtains a waiver of this provision by the Chief Executive Officer or Appeal Committee.

§ 3000-425 Appeal Committee

The Appeal Committee is comprised of three members of the Board of Trustees appointed by the Board Chairperson to hear any appeal under these provisions. The Board Chairperson shall designate one of the three members as the Appeal Committee Chairperson.

Part 500 - Ethics in Public Contracting

§ 3000-501 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 Northern Marianas Technical Institute 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:
 - a. 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
 - b. 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.

Subpart A - Standards of Conduct

§ 3000-505 Policy

Public employment is a public trust. In Northern Marianas Technical Institute contracting, public Employees shall discharge their duties impartially so as to:

- (a) Insure fair competitive access to Northern Marianas Technical Institute procurement by reasonable contractors; and
- (b) Conduct themselves in a manner as to foster public confidence in the integrity of the Northern Marianas Technical Institute.

§ 3000-510 General Standards

- (a) Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employee must meet the requirements of this chapter.
- (b) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this chapter is also a breach of ethical standards.

§ 3000-515 Employee Disclosure Requirements

- (a) Disclosure of benefit received from contract. Any Employee who has, or obtains any benefit from any Northern Marianas Technical Institute contract with a business in which the Employee has financial interest, shall report such benefit to the Chief Executive Officer.
- (b) Failure to disclose benefit received. Any Employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

§ 3000-520 Employee Conflict of Interest

- (a) Conflict of interest. It is a breach of ethical standards for any Employee to participate directly or indirectly in a procurement when the employee knows that:
 - (1) The Employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business or organization with whom the employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an Employee shall promptly file with the Chief Executive Officer a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

§ 3000-525 Gratuities and Kickbacks

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

(a) **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 than subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

§ 3000-530 Prohibition Against Contingent Fees

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

(b) **Representation of contractor.** Every person, before being awarded a Northern Marianas Technical Institute 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.

§ 3000-535 Contract Clauses

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

§ 3000-540 Restrictions on Employment of Present and Former Employees

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

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

- (1) Judicial or other proceeding, application request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while an employee, where the Northern Marianas Technical Institute is a party or has a direct or substantial interest.

§ 3000-545 Use of Confidential Information

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

§ 3000-550 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Chief Executive Officer may declare the contract void if he 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 Northern Marianas Technical Institute.

§ 3000-555 Penalties

(a) Northern Marianas Technical Institute employees. A Northern Marianas Technical Institute employee who violates the provisions of the rules and regulations in this chapter is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of Northern Marianas Technical Institute money, or criminal prosecution.

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

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

§ 3000-560 Authority to Debar or Suspend

(a) Authority.

(1) 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 Chief Executive Officer after consultation with the Northern Marianas Technical Institute legal counsel, shall have authority to debar a person for cause from consideration for award of contracts.

(2) The debarment shall not be for a period of more than three years. The Chief Executive Officer, after consultation with Northern Marianas Technical Institute legal counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

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

(1) Conviction for commission of a criminal offense is an incident of 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 Northern Marianas Technical Institute contractor;

(3) Conviction under Commonwealth or federal antitrust statutes arising out of the submission of bids or proposals such as in chapter 2 of division 5 of title 4 of the Commonwealth Code;

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

(5) 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;

(6) Any other cause that the Chief Executive Officer determines to be so serious and compelling as to effect responsibility as a Northern Marianas Technical Institute contractor, including debarment by another Northern Marianas Technical Institute entity; and

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

(c) Decision. The Chief Executive Officer 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.

Part 600 - Miscellaneous

§ 3000-601 Severability

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



Eli D. Cabrera
Administrator

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
P.O. Box 501 304, Saipan, MP 96950
Tel: (670) 664-8300; Fax: (670) 664-8315
www.dcrm.gov.mp



Richard V. Salas
Director, DCRM

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF
AMENDMENTS TO NMIAC CHAPTER 15-10
TO REVISE DCRM'S PERMITTING FEES**

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies HEREBY ADOPT AS PERMANENT amendments to the Division of Coastal Resources Management (DCRM) Coastal Resource Management Rules and Regulations at NMIAC Chapter 15-10 pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9101 *et seq.* and 2 CMC § 1531 of the Coastal Resources Management Act, 2 CMC §§ 1501 *et seq.*

These amendments revise NMIAC § 15-10-205 and § 15-10-610 by:

1. Deleting the fee waiver for government agencies engaging in government projects;
2. Retaining a flat fee for minor development APC permits but setting the fee for standard APC activity permits based upon appraisal of construction costs;
3. Adding a fee for each resubmission of a standard APC or minor development APC application, and for each resubmission of a major siting application;
4. Adding an administrative fee for extension requests, name changes, and other permit changes not requiring a formal permit amendment;
5. Increasing the fees for standard APC and major siting permits based on appraisal of construction costs; and
6. Adding a fee for untimely requests to extend the time for construction specified in the permit.

I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced proposed regulations, and that they are being adopted without modification.

PRIOR PUBLICATION: These regulations were published as proposed regulations in Volume 44, Number 10, pp 049098-049108 of the Commonwealth Register dated October 28, 2022.

ATTORNEY GENERAL APPROVAL: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register pursuant to 1 CMC § 2153(e).

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

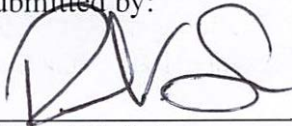
AUTHORITY: These amendments are promulgated under the authority of the CRM Regulatory Agencies to adopt new regulations under 1 CMC § 1531(d). On December 15, 2022, the CRM Regulatory Agencies adopted the regulations as final and authorized the DCRM Director to promulgate the final regulations.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments 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 publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: No written comments regarding the proposed regulations were submitted during the 30-day comment period. DCRM will, if requested to do so by any interested person within 30 days of this adoption of the amendments, issue a concise statement of the principal reasons for and against its adoption.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on the date indicated below at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by:



Richard V. Salas
Director, Division of Coastal Resources Management

2/13/23

Date

Filed and Recorded by:



Ms. Esther R.M. San Nicolas
Commonwealth Registrar

02.15.2023

Date



Board of Trustees:

Catherine M. Attao
Chair

Irene Holl
Vice-Chair

Carmelita
Rabauliman-Faisao
Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF
PROCUREMENT REGULATIONS FOR
THE NORTHERN MARIANAS TECHNICAL INSTITUTE**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS
PROPOSED REGULATIONS**

VOLUME 44, NUMBER 22, PP 049290-049327, DECEMBER 28, 2022

ACTION TO ADOPT THESE PROPOSED REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a), the Northern Marianas Technical Institute (NMTI) HEREBY ADOPTS AS PERMANENT the proposed Procurement Regulations which were published in the Commonwealth Register at the above referenced pages. NMTI announced that it intended to adopt them as permanent, and now does so.

I also certify by signature below that as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations for NMTI and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The proposed regulations were published as Volume 44, Number 22, pp 049290-049327, of December 28, 2022 of the Commonwealth Register.

COMMENTS, MODIFICATION, AND AGENCY CONCISE STATEMENT, IF ANY: During the 30-day comment period, NMTI received no comments regarding the proposed regulations as referenced above. No individual requested a concise statement of the principal reasons for or against of the proposed regulations.

AUTHORITY: The proposed regulations have been fully reviewed by NMTI's Board of Trustees, which exercises all powers vested in the Northern Marianas Technical Institute. During the Board of Trustees' meeting held on December 05, 2022, the Board approved the proposed regulations for publication in the Commonwealth Register for notice and comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). NMTI has the authority to promulgate these regulations pursuant to 3 CMC §12142(d).


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

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS: The adopted regulations were approved for promulgation by the

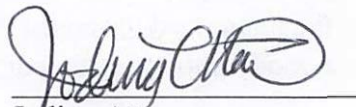
Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations except as otherwise provided by law.). As such, further approval is not required.

I DECLARE under penalty and perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of January, 2023, at Saipan, Commonwealth of the Northern Mariana Islands.


Certified and ordered by:


Catherine Attao
Chairwoman, Board of Trustees

01/30/23
Date


Jodina Attao
Chief Executive Officer

01/30/23
Date

Filed and
Recorded by: 
Esther San Nicolas
Commonwealth Registrar

2.15.2023
Date



Commonwealth of the Northern Mariana Islands
Department of Community and Cultural Affairs

Caller Box 10007
Saipan, Mariana Islands 96950
Tel. (670) 664-2587 Fax (670) 664-2571



Commonwealth of the Northern Mariana Islands
Department of Community and Cultural Affairs -
Child Care and Development Fund Program
Vivian T. Sablan, Acting DCCA Secretary- vsablan@dys.gov.mp
Department of Community and Cultural Affairs, Child Care and Development Fund Program
Caller Box 10007
Bldg. No. 1344 Ascension Drive Saipan, MP 96950
Tel: 670.664.2587; Fax: 670.664.2571

**PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS
WHICH ARE AMENDMENTS TO THE RULES AND REGULATIONS OF THE
DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS,
CHILD CARE AND DEVELOPMENT FUND**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Community and Cultural Affairs, Child Care and Development Fund Program (CCDF) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Department of Community and Cultural Affairs (DCCA) is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing activities over which the department has jurisdiction 1CMC §§ 2354

THE TERMS AND SUBSTANCE: The Rules and Regulations provide for the regulation of all participants and providers under the Child Care and Development Fund.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations shall be:

See attached marked copy

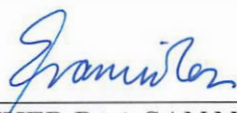
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district,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

TO PROVIDE COMMENTS: Send or deliver your comments to Vivian T. Sablan, Acting DCCA Secretary, Attn: Updated Child Care and Development Fund Rules and Regulations, at the above address, fax or email address, with the subject line "Updated Child Care and Development Rules and Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Acting DCCA Secretary on January 31, 2023.

Submitted by: 
VIVIAN T. SABLAN
Acting DCCA Secretary


1/31/2023
Date

Filed and Recorded by: 
ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

2.8.2023
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 7th day of February, 2023 ^{per}


EDWARD MANIBUSAN
Attorney General



Commonwealth gi Sankattan na Islas Mariãnas Dipãttamentun Asuntun Komunidãt yan Kuttura

Caller Box 10007
Saipan, Mariana Islands 96950
Tel. (670) 664-2587 Fax (670) 664-2571



Commonwealth gi Sankattan na Islas Mariãnas
Dipãttamentun Asuntun Komunidãt yan Kuttura -
Inadahin Pãtgun yan Prugrãman Dibelopmentun Fondu
Vivian T. Sablan, Acting DCCA Sekretãria- vsablan@dys.gov.mp
Dipãttamentun Asuntun Komunidãt yan Kuttura, Inadahin Pãtgun yan Prugrãman
Dibelopmentun Fondu
Caller Box 10007
Bldg. No. 1344 Ascension Drive Saipan, MP 96950
Tel: 670.664.2587; Fax: 670.664.2571

NUTISIAN PUBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA NI MANMA'AMENDA GI AREKLAMENTU YAN REGULASION NU I DIPãTTAMENTUN ASUNTUN KOMUNIDãT YAN KUTTURA, GI INADAHIN PãTGUN YAN DIBELOPMENTUN FONDU

I AKSIÓN NI MA'INTENSIONA PARA U ADãPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sankattan na Islas Mariãnas, i Dipãttamentun Asuntun Komunidãt yan Kuttura, i Inadahin Pãtgun yan Prugrãman Dibelopmentun Fondu (CCDF) ha intensiona para u adãpta komu petmanienti na regulasion i mañechettun na Manmapropo ni na Regulasion siha, sigun gi maneran nu i Åkton Administrative Procedure, 1 CMC § 9104(a). I Regulasion siempru umifektibu dies (10) dihas dispues di adãptasi3n yan publikasi3n gi halum Rehistran Commonwealth. (CMC § 9105(b))

ÅTURIDãT: I Dipãttamentun Asuntun Komunidãt yan Kuttura (i DCCA) ma'aturisa ni Lehislatura para hu adãpta i areklamentu yan regulasion siha para i atministrasi3n yan i implimentasi3n i lai ni gumubebietna i aktibidãt siha nu i dipãttamentu ni gai aturidãt 1 CMC §§ 2354.

I TEMA YAN I SUSTãNSIAN I PALãBRA SIHA: I Areklamentu yan i Regulasion siha prumubeni para i regulasion nu todú i mañãosãonão yan i man mamumulan gi pãpa' i Inadahin Pãtgun yan Dibelopmentun Fondu.


I SUHETU YAN I ASUNTU NI TINEKKA: Esti na areklamentu yan regulasion siha debi na: Atan i mamátka gi mañechettun na kopia

DIREKSION PARA U MAPO`LU YAN MAPUPBLIKA: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona ni maproponi yan mannuebu na manma`adápta na regulasion siha (1 CMC § 9102(a)(1)) mapega hálum gi kumbinienti na lugát gi halum civic center yan gi halum ufisinan gubietnamentu gi kada distritun senadot, parehu Inglis yan i prinsipát na lingguáhin natibu. I CMC § 9104(a)(I).

PARA U MAPRIBENIYI UPIÑON SIHA: Na`hanáo pat intrega hálum i upiñom-mu guatu as Vivian T. Sablan, Acting Sekretárian DCCA, Attn: Mamprisenti na Areklamentu yan Regulasion i Inadahin Pátgun yan Dibelopmentun Fondu, gi sanhilu` na address, fax osino email address, yan i suhetu na rãya “Mamprisenti na Areklamentu yan Regulasion i Inadahin Pátgun yan Dibelopmentun Fondu”. I upiñon siha debi na u fanhálum gi halum trenta (30) dihas ginen i fetchan publikasióon esti na nutisia. Put fabot na`hálum infotmasiún yan kinentestan kinentrãm-mu siha. (1 CMC § 9104(a)(2))

Esti i Manmaproponi na regulasion siha ginen maninaprueba ni i Acting Sekretárian DCCA gi Ineru 31, 2023.

Nina`hálum as:



VIVIAN T. SABLAN
Acting Sekretárian DCCA

1/31/2023
Fetcha

Pine`lu yan
Ninota as:



ESTHER R. MASAN NICOLAS
Rehistran Commonwealth

2-28-2023
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugådu Hiniråt inaprueba i regulasion siha na para u macho'gui komu fotma) yan i 1 CMC § 9104(a)(3) (hentan inapruedan Abugådu Hiniråt) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligåt ginin i CNMI Abugådu Hiniråt yan debi na u mapublika, 1 CMC § 2153(f) (publikasi3n areklamentu yan regulasion siha).

Mafetcha gi diha 7 gi February, 2023.



EDWARD MANIBUSAN
Abugådu Hiniråt



Commonwealth Téél Falúw kka Efäng Llól Marianas
Bwulasiyol Ammwelil Sóóbw me Kko

Caller Box 10007
Saipan, Mariana Islands 96950
Tel. (670) 664-2587 Fax (670) 664-2571



Commonwealth Téél Falúw kka Efäng Llól Marianas
Bwulasiyol Ammwelil Sóóbw me Kko -
Child Care and Development Fund Program
Vivian T. Sablan, Acting DCCA Sekkretóoriya- vsablan@dys.gov.mp
Bwulasiyol Ammwelil Sóóbw me Kko, Child Care and Development Fund Program
Caller Box 10007
Bldg. No. 1344 Ascension Drive Saipan, MP 96950
Tel: 670.664.2587; Fax: 670.664.2571

**ARONGORONGOL TOULAP REEL PPWOMMWOL ALLÉGH ME
MWÓGHUTUGHUTUL IKKA E LO BWE LIIWEL NGÁLI ALLÉGHÚL ME
MWÓGHUTUGHUTUL BWULASIYOL AMMWELIL SÓÓBW ME KKO,
PROGRÓOMAL CHILD CARE ME DEVELOPMENT FUND**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADDÓPTÁÁLI PPWOMMWOL ALLÉGH ME MWÓGHUTUGHUT KKAAL: Commonwealth Téél Falúw kka Efäng loll Marianas, Bwulasiyol Ammwelil Sóóbw me Kko, Progróomal Child Care me Development Fund (CCDF) re mángemángil rebwe adóptááli mwóghutughut ikka e appasch bwe aa ffataló Ppwommwol Mwóghutughut, sángi mwóghutughutul Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló mwóghutughut kkaal seigh ráal mwiril aal akkatééwow me llól Commonwealth Register. 1 CMC § 9105(b))

BWÁNGIL: Re aiti ngáli bwángil Bwulasiyol Ammwelil Sóóbw me Kko sángi Legislature reel rebwe adóptááli allégh me mwóghutughut ngáli mwóghutughut me lemelemil mwóghut iye e lo bwe bwal llól bwángil bwulasiyo 1 CMC §§ 2354

KKAPASAL ME WEEWEL: Allégh me Mwóghut e ayoora mwóghutughut ngáli alongeerd schóo kka re tuutá me school angaang ngáre “provider” ikka re lo faal Progróomal Child Care me Development Fund.

KKAPASAL ME AUTOL: E lo bwe allégh me mwóghutughut kkaal ebwe: Amwuri pappid imwu e appasch me aa yoor ghikkillil


AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Ppwommwol Mwóghutughut me loll Commonwealth Register me llól táil ppwommwol me ffél mwóghut ikka ra adóptáali (1 CMC § 9102(a)(1)) me ebwe appaschetá llól civic center me bawl llól bwulasiyol gobetnameento, fengál reel English me mwályaasch. (1 CMC § 9104(a)(1))


REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngá li Vivian T. Sablan, Acting DCCA Sekkretóoriya, Attn: Liiwelil Allégh me Mwóghutughut ngáli Child Care me Development Fund, reel féléfél iye e lo weiláng, fengál wóól subject line bwe “Updated Child Care and Development Rules and Regulations”. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angiingi. (1 CMC § 9104(a)(2))

Aa átirow mwóghutughut kkaal sáangi Acting DCCA Sekkretóoriya wóól Schoow 31, 2023.

Isáliyalong: 
VIVIAN T. SABLAN
Acting DCCA Sekkretóoriya



Ráál

Ammwelil: 
ESTHER R.N. SAN NICOLAS
Commonwealth Registrar


Ráál

Sáangi 1 CMC § 2153(e) (mwiril aal átirow mwóghutughut kkaal sáangi AG bwe aa lléghló reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel ppwommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiy me átirow me legal sufficiency sáangi Soulemelemil Allégh Lapalpal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Aghikkilátiw 7 wóól February ráálil, 2023.


EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

CHAPTER 55-60: CHILD CARE AND DEVELOPMENT FUND RULES AND REGULATIONS

Part 001 General Provisions

- § 55-60-001 Purpose**
- § 55-60-005 Definitions**
- § 55-60-010 Confidentiality**
- § 55-60-015 Geographical Location**
- § 55-60-020 Scope**

Part 100 Application to Child Care Program

- § 55-60-101 Application Process**
- § 55-60-105 Priority Applications**
- § 55-60-110 Notice of Application Disposition**

Part 200 Eligibility

- § 55-60-201 Eligibility Requirements for Child Care Services**
- § 55-60-205 Income Considered in Eligibility Determination**
- § 55-60-210 Excluded Monthly Income**
- § 55-60-215 Treatment of Income**

Part 300 Child Care Payment

- § 55-60-301 Method of Computing Child Care Payment**
- § 55-60-305 Child Care Payments**

Part 400 Other Requirements

- § 55-60-401 Reporting Changes**
- § 55-60-405 Re-determination of Eligibility**

Part 500 Adverse Actions

- § 55-60-501 Denial, Suspension or Termination of Child Care**

- § 55-60-505 Notice of Adverse Action**

§ 55-60-510 Administrative Appeal Requests

§ 55-60-515 Overpayment and Recoupment

§ 55-60-520 Termination for Insufficient Funds

Part 600 Adverse Actions against Providers

§ 55-60-601 Denial, Suspension, Revocation of CCDF Provider's Certificate, and Hearings

Chapter History: Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Chapter Comment: The Department first issued Child Care and Development Fund regulations as emergency regulations in 2009. 31 Com. Reg. 29608 (June 22, 2009).

The Department designated these regulations as Chapter 50 of Title 55. The Commission previously reserved Chapter 50 for regulations regarding the Garapan Street Market, and re-designated this chapter as Chapter 60.

Part 001 - General Provisions

§ 55-60-001 Purpose

The purpose of these Administrative Rules is to provide guidance for determining eligibility requirements, benefit amounts, and method of determining child care payments for the child care program in compliance with the rules governing the administration and implementation of the Child Care and Development Fund block grant as authorized part of the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-58, Section 5082 and as amended by PRWORA, Pub. L. No. 104-193, Section 9598.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission changed the phrase "Public Law 104-193 Section 9598" to "Pub. L. No. 104-193, Section 9598." pursuant to 1 CMC § 3806 (g).

§ 55-60-005 Definitions

(a) "Activity" means employment, education, job search or job training, vocational or employment training.

(b) “After-School Care” means a child care program provided after the close of the regular school day during the academic year for children who are enrolled in public or private elementary schools.

(c) “Application” means the written action by which an individual applies on behalf of his/her family to receive child care services on a form prescribed by the Child Care Program. The application requests information on the total monthly family income, size of the family, ages of family members, employment status or education or training or a combination thereof of the parent applicant or applicants and requires attachments that evidence monthly family income, education, or training status, employment status, and proof, usually birth certificates or passports, of age and citizenship of the applicants.

Add: “Authorized Representative” means an individual or organization under a contract or with formal agreement with the Child Care Program to implement its various activities. Activities may include, but is not limited to quality activities, monitoring check ins, training, and technical assistance.

(d) “Before-School Care” means a child care program provided before the opening of the regular school day during the academic year for children who are enrolled in public or private elementary schools.

(e) ~~“Budget Month”~~ **add: Service month** means the calendar month from which the Child Care Program shall use the child care payment form to calculate the reimbursable payment for the month.

(f) “Center-Based Child Care Provider” means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child ~~in a non-residential setting~~

(g) “Child” means any person who has not reached the age of thirteen.

(h) “Child Care” means those situations in which a child care provider has agreed to assume the responsibility for the child’s supervision, development, and guidance, apart from and in the absence of the child’s parent, for any part of a 24-hour day.

(i) “Child Care Program” means the CNMI Department of Community and Cultural Affairs that shall administer and implement the Child Care Development Fund (CCDF) activities and provide assistance in compliance with the requirements of federal regulations.

(j) “Child Care Provider” means any person, 18 years and older, or an agency, or organization and their employees who provide direct care, supervision, and guidance to children apart from and in the absence of the child’s parent(s). Child care providers are regulated by the Child Care Licensing Program of the Department of Community and Cultural Affairs to provide child care or are legally exempt from licensure or registration by the same licensing program.

(k) “Child Care Services” means the care given to an eligible child by an eligible child care provider.

(l) "Child experiencing homelessness" means a child who is homeless add: as defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S. C. 11434a).

(l) "Director" means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider which may serve children from birth to kindergarten entry and children in school-age child care. Add: Directors must meet the Pre-Service Training Topics and annual training and technical assistance hours, including completion timeframes as described in these rules and regulations.

(l) "Educational Program" means a curriculum-based or add: philosophy-based education program established by a school, agency, or business for the purpose of the development of skills and/or academic study necessary for an occupation.

(m) "Employed" means the parent or legal guardian is engaged in an activity in exchange for wages or salary for at least 30 hours per week.

(n) "English as a Second Language" (ESL) means the condition where the child and/or the parent (see definition on "parent") have limited English proficiency.

Add:

(o) "Enrollment" means a child's participation on a child care program, whether in a licensed center and family home or license-exempt family home. The child's approved participation will be based on the parent/s' eligibility certification.

(p) "Excessive Absence" means a child who does not participate in a child care program for more than 50% of authorized care.

(o) "Family Child Care Provider" means an individual who provides child care services ~~to 5 or more children~~ for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence.

Add: "Family, Friend, and Neighbor (FFN) provider include grandparents, aunts, uncles, (remove: elders), older siblings, (Add: older cousins friends), or neighbors who help families by providing child care.

(p) "Family" means one or more adults and their minor children, if any, related by blood, marriage, adoption, or judicial decree, who resides in the same household add: including court appointed guardians.

Add: "Guardian" means a court appointed individual for legal guardianship of the person of the minor child other than spouses.

(q) "Federal Poverty Index (FPI) Guidelines" means the official federal statistical definition of poverty which is issued yearly in the Federal Register by the Secretary of the Child Care Program of the Health* and Human Services under the authority of 42 U.S.C. 8621†, OBRA of 1981. It is a simplification of the U.S. Census Bureau's poverty threshold, which is issued for administrative purposes.

(r) "Full-Time Care" means child care provided for 30 hours or more per week. ~~This does not apply to before-school care, after-school care, and intercession* care.~~

(s) "Gross Income" means any benefit in cash which is received by the individual as a result of current or past labor or services, business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies.

(t) ~~"Guardian" means a court appointed legal guardian of the person of the minor child.~~

(u) "Homelessness" means an individual add: family or child/ren who lack a fixed, regular, and adequate nighttime residence which include children and youths who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and who are migratory children who live in one of the above circumstances.

(v) "In Home Care Provider" means any individual who provides care in the home of the child.

(w) ~~"Intercession* Care" means child care provided at breaks during the academic year for children who are enrolled in public or private elementary schools, including summer care and holidays.~~

(x) "Job Search" is defined as an activity that demonstrates an individual is actively seeking potential employment. Qualifying job search activities include (but is not limited to) completing job applications in person; completing on-line computer applications at employment agencies and/or community agencies, engaging in interviews, registration at the CNMI Labor Office, and phone inquiries about possible job openings with potential employers. Job search is not to exceed three months add: per occurrence within a parent/s' eligibility.

(y) "Job Training, Vocational or Employment Training" means an organized training program (including community college and university education) established by an institution, agency, or business for the purpose of the development of an occupation.

(z) "License-Exempt Care" means child care to less than 5 children which is exempt from licensure pursuant to CNMI law and the current state plan and is ~~registered-add: certified~~ by the Child Care Program.

(aa) "Licensing Agency" means the department within the CNMI government that approves or disapproves child care licensing in accordance with CNMI law. ~~and the Day Care Rules and Regulations Add: Child Care Administrative Code, specifically the Department of Community and Cultural Affairs (DCCA),~~

Add:

~~(bb) "Non traditional hour of care" means care provided outside of the hours of 7:00a.m. to 6:00p.m. including weekends. Care may be provided in a licensed center program or a license-exempt family home care provider. Any parent wishing to avail of such care must provide documentation of need, such as but is not limited to a work schedule.~~

~~(cc) "Memorandum" is an official policy document providing clarification or updates related to the CCDF Rules and Regulations. A memorandum may provide specific clarification for complying with a rule or regulation.~~

(bb) "Parent" means a birth, foster or adoptive parent, guardian, a person acting in the place of a parent, step-parent, or relative who is related to the child by blood, marriage, or adoption, who resides with and is legally responsible for the care, education, and financial support of a child. That designation may remain even when the child or parent is temporarily absent from the home as long as the parent continues to maintain responsibility for the care, education, and financial support of the child. In cases of split custody, it is the parent with whom the child resides with more than 50% of the time. In cases where each parent has custody of the child for an equal amount of time, then both parents must jointly qualify for the program.

(cc) "Part-Time Care" means child care provided for less than 30 hours per week. This excludes before-school, after-school care and intercession* care.

(dd) "Payment Month" means the calendar month in which the Child Care Program shall issue the child care payment.

(ee) "Physician" means an individual licensed by the CNMI for the practice of medicine.

Add:

~~(ff) "QRIS" means quality rating and improvement system. A Quality Rating and Improvement System (QRIS) is a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs. In order for continued receipt of CCDF funds, a child care provider must meet all the requirements as described in the QRIS standards and the current CNMI CCDF Plan.~~

~~(ff) "Registered" means children, parent, parents, and service providers who are registered with the DCCA Child Care Program and who benefit from the DCCA Child Care Program.~~

(gg) "Relative" means related by blood, marriage, or adoption.

(hh) "Relative Care" means child care provided by legal grandparents, great-grandparents, great aunts, 1st and 2nd cousins, aunts, uncles, and siblings living in a separate residence **add: or private residence** who are at least 18 years old. Relative child care providers caring for 5 or more children must be licensed.

(ii) "Sliding Fee Scale" means a system of cost sharing by a family based on income and size of the family in accordance with 45 CFR Subpart 98.42.

(jj) "School Age" means the chronological age of children enrolled in elementary and junior high school below the age of 13.

(kk) "Special Needs Child" means a child who is physically or mentally incapable of caring for himself or herself as determined by a health care provider, **add: physician, or a Public School System**) or certified psychologist. **Add: A child with special needs will have a current Individualized Family Service Plan (IFSP) or an individualized educational plan (IEP).**

(ll) "State Plan" means the official document submitted to the federal government by the Child Care Program describing the administration of child care services in the CNMI under the Child Care and Development Fund.

(mm) "Very Low Income" means income that is at or below the 85% of State Median Income Guideline.

Add:

(nn) "Volunteer" individuals who have routine contact with children and assist staff in the facility. If these individuals are left alone with the children, considered in the staff to child ratios, or given supervisory or disciplinary control over the children, they shall be considered staff and must meet the requirements of provider/personnel as described under the CNMI Child Care Licensing Program Administrative Code. All volunteers must meet training requirements for all age groups (i.e. infant, toddler, preschool, and before/afterschool).

(oo) "recurring" means consistent or occurring again periodically or repeatedly.

(pp) "excessive absence" means a child who does not participate in child care for more than 50% of the approved service for the month.

(qq) "intentional program violation" means purposely giving false or misleading information, hiding information in order to get benefits that one is not eligible for, not reporting a change that would reduce or end benefits, or not paying co-payment as scheduled and as indicated in the parent's child care certificate of confirmation.

* So in original.

† So in original. See Commission Comment.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the capitalization of “child care” in subsections (h) and (j), “federal” in subsection (q), “court” and “legal guardian” in subsection (u), “law” in subsection (z), and “government” in subsection (aa) pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words “agency” in subsection (l), “adoption” in subsection (p), and “agency” in subsection (y) pursuant to 1 CMC § 3806(g). The Commission inserted a close parenthesis after the word “parent” in subsection (n) pursuant to 1 CMC § 3806(g). The Commission corrected “provide’s” to “provides” in subsection (v) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase “but is” to “but are” in subsection (x) pursuant to 1 CMC § 3806(g). The Commission corrected “parent’s” to “parents” in subsection (bb) pursuant to 1 CMC § 3806(g). The Commission corrected the spelling of the word “government” in subsection (aa) pursuant to 1 CMC § 3806(g).

The reference to 42 U.S.C. 8621 in subsection (q) appears to be incorrect. This section describes home energy grants.

§ 55-60-010 Confidentiality

Family income data, employment records, and other family and child records and monthly data reported to the federal government on families receiving subsidized child care services shall remain confidential and saved in locked data files. (This applies to both computerized and paper files.)

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a comma after the word “records” pursuant to 1 CMC § 3806(g). The Commission inserted a period after the word “files” and moved the final period inside the parentheses pursuant to 1 CMC § 3806(g).

§ 55-60-015 Geographical Location

All child care is made available to eligible clients on a CNMI-wide basis.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

§ 55-60-020 Scope

Child care services, irrespective of setting, must include:

- (a) Supervision to assure the child's safety, comfort, and health;
- (b) Personal care as appropriate to the child's age and developmental maturity;
- (c) Educational and recreational activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
- (d) Health and nutritional services which may include breakfast, lunch, dinner, and snacks; health and nutritional education to the child, as well as to the parents or parents; monitoring of health problems; and where appropriate, arranging for medical or psychological screening and consultation.

Add:

(e) Must be offered in a facility, program, or home that meets the requirements of quality as defined in the CNMI's QRIS and/or in the current State Plan.

Part 100 - Application to Child Care Program

§ 55-60-101 Application Process

- (a) Requests for child care services shall be submitted in writing on a form prescribed by the Child Care Program.
- (b) The form shall be dated and signed under penalty of perjury that all the information requested by the Child Care Program to establish eligibility for child care services, as stated on the form, is accurate.
- (c) The form shall be signed by the parent. Applicants are required to submit copies of documents **Add: including but not limited** to an employment verification stating hours and hourly rate, paycheck stubs with business name, hours worked, ~~and hourly rate~~, birth certificates, school and/or training documents, (remove: 1040 tax return), notarized affidavit of living arrangement, and employment contract, Statement of Assets, developmental screening, if applicable. for verification. It is the responsibility of the applicant to provide the necessary documentation for verification.
- (d) Applicants shall provide verification of the cost of the selected child care arrangement.

(e) The date of application shall be the **(add: date when all supporting documents have been received by the Child Care Program. The application must be signed. signed form and all supporting documents are received by the Child Care Program)**.

(f) The date of eligibility shall be determined by the Child Care Program once all required documentation is received and verified and the Child Care Program determines that the family is eligible for subsidized care.

(g) For applicants determined eligible, child care subsidized payments shall be initiated or **add: child care arranged within 60 days from the date of eligibility (remove: as soon as possible, but not later than 30 days from receipt of the payment invoice from the service provider, which is signed by the parent and the provider.)** Child Care services shall be denied when the applicant does not complete the process of application/determination of eligibility, including but not limited to verification, or withdraws the application or is otherwise ineligible.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

§ 55-60-105 Priority Applications

The following sets forth the priorities for serving eligible children:

- (a) Low-income families with special needs children
- (b) Homeless families with children
- (c) Families with very low income

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

§ 55-60-110 Notice of Application Disposition

(a) The Child Care Program shall notify applicants about the applicant's eligibility for child care service within **(remove: fifteen days) add: 60 days** after submission of a complete application with all required attachments.

(b) Applicants determined not eligible shall be sent a written notice that contains a statement of the action taken, the reason for the action, the specific rules supporting the action, and the right to appeal the action of the Child Care Program through established administrative appeal procedures.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission struck the figure "15" in subsection (a) pursuant to 1 CMC § 3806(e).

Part 200 - Eligibility

§ 55-60-201 Eligibility Requirements for Child Care Services

Depending upon availability of funds, children who qualify for child care payments shall meet the following requirements:

- (a) Reside with the parent who is working, attending a job training or an educational program and who has a monthly CNMI gross income that does not exceed Federal Poverty Income Guideline (FPIG) or 85% of the SMI for a family of the same size; and
- (b) Be under the age of 13; and
- (c) All parents shall be eligible for child care under this subchapter provided the parents meet the following conditions:
 - (1) Have a monthly gross income that does not exceed the Federal Poverty Income Guideline (FPIG) or 85% of the SMI for a family of the same size; and
 - (2) Residency: The family must be living in the CNMI with the intention of making the CNMI their home permanently. Acceptable documentation includes, but is not limited to, (remove: utility payment receipts, house rental/mortgage receipts, etc) check stubs, CNMI government issued IDs,
 - (3) Citizenship: Only the citizenship and immigration status of the child, who is the primary beneficiary of the child care service, is required for eligibility purposes. The child must be a U.S. citizen or a qualified alien, as defined in Personal Responsibility Work Opportunity Act (PRWORA), to be eligible for childcare assistance. Acceptable documentation includes, but is not limited to, birth certificate or passport.
 - (4) Gainfully employed 30 hours per week or scheduled to start work in 2 weeks; or
 - (5) Need child care for up to 90 calendar days during a break in employment, if employment is scheduled to resume within 90 calendar days; or
 - (6) Job Search: Need child care for up to 90 calendar days during a break in employment and is actively seeking employment;
 - (7) Are enrolled in a job training ~~and educational program~~ for at least (add: 10) hours per week or attending an education program on a full-time add: basis as defined by the institution (Remove: 12 hours per semester for the college and five classes per day for the PSS).

(8) For parents who are in the final semester of a program and who need less than 12 credits to graduate, they will be considered to be attending full-time for that final semester if in fact they are taking all the credits needed to graduate.

(9) Are a two-parent family household where one parent is in an approved activity (working, attending job training or an educational-program) and the other parent is determined to have a disability which prevents the parents from providing care for their own children. In such cases, proof of disability and inability to provide child care shall be verified by the written report of a physician, psychologist, psychiatrist, or a territory-licensed care provider. The written report shall be reviewed every ~~two months~~ (add: re-determination) , and is valid when one parent is participating in an approved activity.

(10) Eligibility may be re-established for periods not less than 12 months.

(11) Participation in a mandatory orientation

(d) Child care providers shall meet the following conditions in order that child care payments may be authorized:

(1) For licensed center based and ~~add: licensed~~ family child care providers:

(i) Is 18 years old or older;

(ii) Afford parents unlimited access to their children during normal hours of provider operation and whenever the children are in the care of the provider;

(iii) Completes an application packet (and renewed* annually) and submits the following documents:

(A) W-9.

(B) Current Business License

(C) DCCA Child Care License (remove: Certificate)

(D) Center Rate

(E) Center Program Policy/Parent Handbook ~~which include at a minimum the following areas~~ with further guidance as specified by DCCA's ~~CCP (add: Child Care Program)~~ using the Caring for our Children ~~Basics and/or Caring for our Children 3rd edition or~~ latest edition.

~~(I) — Admission and Enrollment;~~

~~(II) — Supervision;~~

~~(III) — Emergency Evacuation Plan, Drills, and Closing;~~

~~(IV) — Sanitation and Hygiene;~~

~~(V) — Sleeping Position;~~

~~(VI) — Food Handling, Feeding and Nutrition;~~

~~(VII) — Staff Schedule and supervision;~~

~~(VIII) — Smoking Policy;~~

~~(IX) — Evening and Night Care Plan (as applicable).~~

~~(F)~~ **Add: Pediatric First Aid/CPR Certificate;**

- (iv) Submits to a **(add: minimum announced)** initial and annual ~~inspection~~ **(add: observation visits)** and approval and unannounced ~~monitoring~~ **(add: observation)** visits at least once annually;
 - (v) Must meet at a minimum 35 square footage of indoor learning space per child;
 - (vi) Must meet at a minimum 33% of facility capacity at 75 square footage of outdoor playground space per child.
 - (vii) Subject to DCCA Child Care Program Staff **(add: or its authorized representative)** announced and unannounced **(add: observation)** visits.
- (2) For licensed-exempt family home providers, including in-home providers:
- (i) Is 18 years or older;
 - (ii) Afford parents unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever the children are in the care of the provider;
 - (iii) Completes an application packet (and renewed annually) and submits the following documents:
 - (A) W-9;
 - (B) Rate that will be charged parents;
 - (C) Current Business License;
 - (D) Police Clearance, **(add: to include other adult members in the home);**
 - (E) Health Clearance with a TB check;
 - (F) **(add: Pediatric)** First Aid/CPR Certificate.
 - (G) **(Add: Completed and verified Health and Safety Self-Certification Checklist)**
 - (iv) Submits to an **(add: announced)** initial and annual ~~inspection~~ **(Add: observation visits)** and **(add: unannounced-monitoring (Add: observation) visit at least once annually)** approval;
 - (v) Subject to DCCA Child Care Program staff **(add: or its authorized representative)** announced and unannounced **(add: observation)** visits;
- (e) All types of providers will:
- (1) Have no known history of child abuse or neglect, physical or psychological/psychiatric problems, or criminal convictions that may adversely affect or interfere with the care of children.
 - (2) Provide consent to conduct an FBI Finger Print Check, National and Local Sex Offender Registry, child abuse record check and criminal history record check. A child care provider must not have criminal history that poses a risk to children; these include but are not limited to:
 - (i) Murder, as described in Section 1111 of Title 18, United States Code;
 - (ii) Crimes against children including child pornography;
 - (iii) Violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury, such as physical assault or battery, including spousal abuse;

- (iv) Sexually violent offenses, such as, rape or sexual assault, as defined by CNMI law or other similar offenses in other jurisdictions;
- (v) Kidnapping;
- (vi) Arson;
- (vii) Criminal sex offense against a minor as defined by CNMI law or other similar offenses in other jurisdictions;
- (viii) Child abuse or neglect as defined by CNMI law or similar offenses in other jurisdictions;
- (ix) Violations of the CNMI Minor Children Firearms Control Act or similar offenses in other jurisdictions;
- (x) Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions; and
- (xi) Any drug related offense committed during the preceding 5 years or has been convicted of a (add: violent) misdemeanor (add: committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault,) or of a misdemeanor involving child pornography

(vii) All other criminal histories (add: such as domestic abuse, etc.) will be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation.

- (3) Is free of tuberculosis as indicated by a skin test or chest x-ray completed within the last 24 months;
- (4) Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency preparedness and (add) response plan that meets the prescribed CCDF requirements.
- (5) Shall attend training and technical assistance activities as a condition of receipt of funds to enhance their personal growth and professional development in order to improve the quality of child care services. All (add: licensed) child care service providers must annually participate in at least 30 hours of annual training and technical assistance (remove: for License center). (add: All licensed-exempt Family home care programs must complete at least 15 hours of annual and technical assistance) as approved by the Child Care Program. This may include workshops, seminars, conference, ~~etc.~~ on health and safety, nutrition, first aid, child abuse and detection, and caring for children with special needs as scheduled and approved by the Child Care Program. (add) All providers must meet the required annual health and safety training topics specific to their roles and the required occurrence, whether yearly, every other year, etc.

~~(6) All new providers must complete a minimum of 10 hours of Pre-Service Trainings in the following topics, not less than 1 hour of training per topic: Prevention and control of infectious diseases (including immunization), Prevention of sudden infant death syndrome and use of safe sleeping practices, Administration of medication, consistent with standards for parental consent, Prevention of and response to emergencies due to food and allergic reactions, Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic, Prevention of shaken baby syndrome and abusive head trauma, Emergency Preparedness, Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants, Pre-cautions in transporting children, First Aid and Infant/child Cardiopulmonary Resuscitation, Child Development and Child Abuse and Neglect. Pre-service trainings should be completed within the first 90 days of employment and while the provider is completing their training, may not be left alone with the children.~~

Add:

(6) All new providers and directors shall complete all 12 Pre-Service Training topics within 90 days of approval from the Child Care Licensing Program for licensed program and once receipt of approval to operate for license exempt home based providers. The 12 Pre-Service Training topics should not be less than 1 hour in length. The CCDF Program may allow for replacements of the training topics, but replacements shall be approved by CCDF. The following topics must be

included: (1) Prevention and control of infectious diseases (including immunization); (2) Prevention of sudden infant death syndrome and use of safe sleeping practices; (3) Administration of medication, consistent with standards for parental consent; (4) Prevention of and response to emergencies due to food and allergic reactions; (5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; (6) Prevention of shaken baby syndrome and abusive head trauma; (7) Emergency Preparedness and Response Plan; (8) Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants; (9) Pre-cautions in transporting children; (10) Pediatric First Aid and Pediatric Infant/child Cardiopulmonary Resuscitation; (11) Child Development; and (12) Child Abuse and Neglect. While the provider is completing the training, he/she is not allowed to be left alone with the children and shall not be counted in ratio and assigned an age-group. Any provider who does not meet the required Pre-Service Training Topics within the prescribed timeframe shall be immediately removed from the classroom and shall not be allowed to access the free training and/or technical assistance offered by the CCDF Program.

(7) All providers including family members living in the provider's home 18 years and older shall be checked against the Sex Offenders Registry and Notification Act (SORNA) with the Department of Public Safety (DPS). In the event that a family member living in the prospective provider's home is identified as included in the registry, that provider's application is disapproved.

(8) All providers must have a working telephone land line within the building Add: or home. In the absence of a working telephone landline, a working cellular unit with a contract must be available. Pre-paid cellular services shall not be allowed.

Add:

(9) All homebased providers and center directors or designee must complete a mandatory orientation annually.

(10) All CCDF providers must participate in the CNMI's quality rating and improvement system or QRIS and meet the minimum star level as required in the CNMI CCDF State Plan or QRIS document/s. All providers must meet the minimum star level as prescribed and/or described in the CCDF State Plan or QRIS documents in order to receive CCDF funding. Participation will mean adherence to policies and procedures related to QRIS including limits to the number of years as prescribed for each Star Level as well as any QRIS prescribed official documentations, communications and/or as described in the current CNMI CCDF State Plan.

(11) All providers shall complete a CCDF approved developmental screening (e.g. Ages and Stages Questionnaire and it's latest edition) within 45 days of a child's enrollment to the program. All providers shall rescreen/monitor as necessary.

(12) All providers shall be subjected to audits as scheduled by the CCDF Program.

(13) All providers shall be current in any and all mandated vaccinations as recognized by US Federal or local government and provide official record. All providers must have their complete vaccinations with at least one booster at the time of the approval to be a CCDF provider.

(f) Child care providers shall not be one of the following:

- (1) Parents, biological or legal;
- (2) Step-parent living in the household;
- (3) Legal guardians;

(4) Providers who are not in compliance with territory regulatory requirements (add: or CCDF requirements, including QRIS requirements);

(5) Individuals under the age of 18 years; and

(6) Other individuals determined by the licensing agency and/or the Child Care Program to pose a risk to the health and safety of a child.

(g) The Child Care Program shall:

(1) Verify that the children and parents meet the eligibility requirements as described in these regulations;

(2) Determine that the provider selected by the parent is appropriate following the regulations of the licensing agency and the Child Care Program (add: including CNMI QRIS requirements); and

(3) Review eligibility no less frequently than every 12 months.

(4) Require a family member to certify that the family assets do not exceed \$1,000,000.00

History: Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: This section was largely unpunctuated in the original regulation. The Commission inserted punctuation as appropriate pursuant to 1 CMC § 3806(g). The original regulation skips from subsection (c) to subsection (e). The Commission re-designated subsection (e) as subsection (d) and re-designated subsection (f) as subsection (e) pursuant to 1 CMC § 3806(a). The 2014 amendments purported to amend sections (7) and (10). The only subsections numbered (7) and (10) were subsections (c)(7) and (c)(10). The Commission codified the amendments at subsections (c)(7) and (c)(10).

§ 55-60-205 Income Considered in Eligibility Determination

(a) Monthly gross income shall be used to determine eligibility.

(b) Monthly gross income means non-excluded monthly sums of income received from sources such as but not limited to:

(1) "Gross income" means any benefit in cash which is received by the individual as a result of current or past labor or services (before deductions), business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies, such as:

(i) Wages; and

(ii) Salary.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a period at the end of subsection (a) and at the end of subsection (b)(1)(ii), and a semicolon in subsection (b)(1)(i) pursuant to 1 CMC § 3806(g).

§ 55-60-210 Excluded Monthly Income

The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments;

- (a) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self employed income;
- (b) Withdrawals of bank deposits;
- (c) Loans;
- (d) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (e) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
 - (1) Income tax refunds, rebates, credits;
 - (2) Retroactive lump sum Social Security, SSI, or unemployment compensation benefits;
 - (3) Retroactive annual adjustment payments in the Veterans' Administration's (VA) disability pensions;
 - (4) Lump sum inheritance or insurance payments;
- (f) Refunds of security deposits on rental property or utilities;
- (g) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break,
- (h) Capital gains;
- (i) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
- (j) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;

- (k) Home produce utilized for home consumption;
- (l) The value of coupon allotment under the Food Stamp Act of 1977, as amended;
- (m) The value of USDA donated or surplus foods;
- (n) The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 U.S.C. § 1771-1789) and the special food service program for children under the National School Lunch Act, as amended;
- (o) Benefits received from the special supplemental food program for women, infants, and children (WIC) (Pub. L. No. 92-443*);
- (p) Allowances and payments to participants in programs, other than on-the-job training, under the Work Investment Act (WIA) of 1998 (20 U.S.C. § 9201);
- (q) The earned income of individuals participating in on-the-job training program under the Job Training Partnership Act (JTPA) of 1982 (25 U.S.C. § 640d-640d-28*) who are between 18 and 19 years of age and under the parental control of another household member;
- (r) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (s) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
- (t) Payments or allowances under any federal or local laws for the purpose of energy assistance;
- (u) Assistance payments received as a result of a declared federal major disaster or emergency from the Federal Emergency Management Agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;
- (v) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange (Pub. L. No. 101-201);

(w) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4636);

(x) Payments received under the Radiation Exposure Compensation Act (Pub. L. No. 101-426) to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;

(y) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older American Act of 1965 (Pub. L. No. 100-175);

(z) Payments to volunteers derived from the volunteer's participation in the following program authorized by the Domestic Volunteer Service Act of 1973 (42 U.S.C. '§ 5011, 4951-4958):

(1) Foster grandparent program;

(2) Senior companion program; and

(3) Volunteers in service to America (VISTA) and AmeriCorps program.

(aa) Military re-enlistment bonus;

(bb) Any other payments made in accordance with territory and federal laws that preclude the payments from being counted as income.

(cc) **(Add: SSI and Child Support)**

* So in original. See Commission Comment.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word "payments" and inserted semicolons at the ends of subsections (g), (h), and (s) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of "Social Security" in subsection (e)(2) and of "Federal Emergency Management Agency" in subsection (u) pursuant to 1 CMC § 3806(f). The Commission corrected the phrase "veteran administration's" in subsection (e)(3) to "Veteran's Administration's" pursuant to 1 CMC § 3806(f) and (g).

The reference to Pub. L. No. 92-443 in subsection (o) appears to be in error. That public law concerns the National Society of the Daughters of the American Revolution. The reference to 25 U.S.C. 640d in subsection (q) appears to be in error. That code section concerns Navajo and Hopi land rights.

- (a) All non-excluded income available to the family within a given month shall be considered.
- (b) Eligibility determination based on income status shall be supported by documentation.
- (c) Failure to provide necessary information to verify amount or source of income shall disqualify the family.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Part 300 - Child Care Payment

§ 55-60-301 Method of Computing Child Care Payment

- (a) The family shall provide verification of the child care provider and the child care to the program.
- (b) The Child Care Program will compute the monthly projected cost of the care based on:
 - (1) the parent's eligible work, school, and/or training activities
 - (2) full time or part time need
- (3) The parent's share of the cost of child care in accordance with the Sliding Fee Scale as set forth in the current state plan.
- (c) The projected child care payment rate shall be calculated by:
 - (1) Counting the number of employment, education, or job, or vocational or employment training hours to be engaged in* by the parent for the month (full time or part time)
 - (2) Using the current child care rate table to identify the type of child care for each qualifying child and the payment rate for that type of child care
 - (3) The child care amount to be paid each month of eligibility shall be the child care rate on the child care rate table for full time or part time or
 - (4) (add: When necessary, CCDF may pay for the full time care of an eligible child regardless of absence for the month but will be subjected to termination of the child in the event the absences are deemed excessive.

* So in original.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: As the intended punctuation for subsections (c)(1) through (c)(4) is unclear, the Commission let the original punctuation stand.

§ 55-60-305 Child Care Payments

- (a) The payment rate shall be established by the current State Plan.
- (b) Child care payments shall be an expense that is reimbursed to the child care provider.
- (c) The parent's co-payment shall be established by the current Sliding Fee Scale as set forth in the current State Plan.
- (d) The Child Care Program shall issue a Payment Invoice and an attendance form for parent and provider to sign and submit for a reimbursable payment for child care services rendered the previous month. The attendance form must show the number of hours the child is in the care of the service provider. Failure to submit a completed and signed payment invoice and/or an attendance form shall result in none payment.
- (3) A completed signed payment invoice and/or attendance form must be received by the Child Care Program within the first work day of the month. Invoices received after the 1st work day of the month will be considered late and will not be processed until the following month. The Child Care Program may only reimburse up to the past 60 days of invoice.
- (g) The family shall pay its portion of the child care cost. **(add: Failure of a family to pay its portion of the child care cost will be considered as an intentional program violation.)**
- (h) Effective Oct. 1, 2009, all parents will pay their co-payments directly to the CNMI Treasury.
- (i) The family shall be responsible for any child care costs in excess of the maximum child care rates as set forth in the current CNMI plan.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Part 400 - Other Requirements

§ 55-60-401 Reporting Changes

A parent who is a recipient of subsidized child care services shall be responsible to report in writing in a prescribed form to the Child Care Program within 10 calendar days of the occurrence of any changes in:

- (1) Monthly gross income and the source of the income;
- (2) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to;
- (3) Changes in employment, educational program, or job, vocational or employment training;
- (4) Anticipated changes in the individual's situation that may affect the individual's eligibility for continued child care assistance;
- (5) Add: Attendance: Parent shall provide a written document for any absence that is more than 50% of the approved service for the particular month.**

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission capitalized the word "Contact" and inserted a period at the end of subsection (b)(3) pursuant to 1 CMC § 3806(f) and (g). The Commission inserted a semicolon at the end of subsection (c) pursuant to 1 CMC § 3806(g). The Commission corrected the word "individuals" to "individual's" in subsection (f)(3) pursuant to 1 CMC § 3806(g).

§ 55-60-405 Re-determination of Eligibility

- (a) The Child Care Program shall re-determine income and program eligibility for continued child care payments;
 - (1) When information is obtained that there are anticipated changes in the individual's or family's situation;
 - (2) Promptly, not to exceed 30 days, after information is received that changes have occurred in the individual's or family's circumstances which may result in ineligibility;
 - (3) Not less frequently than every 12 months from the month eligibility was determined.
- (b) Redetermination of eligibility shall be made in the same manner as the disposition of an application including signing and dating a form prescribed by the Child Care Program.
- (c) Child care shall be terminated for recipients when they do not complete the process of re-determination of eligibility which include attending a mandatory orientation.

History: Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word “ineligibility” in subsection (a)(2) pursuant to 1 CMC § 3806(g). The 2014 amendments purported to amend § 55-50-405(a)(4). As no such section exists, the Commission codified the amendment at § 55-60-405(a)(4).

Part 500 - Adverse Actions

§ 55-60-501 Denial, Suspension or Termination of Child Care

Child care payments shall be denied, suspended, or terminated when:

- (a) The parent does not submit the signed payment invoice; or
- (b) The payment invoice prescribed by the Child Care Program is not signed and dated; or
- (c) The child no longer meets the eligibility requirements; or
- (d) The parent no longer meets the eligibility requirements; or
- (e) The provider no longer meets the licensing requirements, or
- (f) Conditions initially present in the family situation have changed and child care is no longer needed or any listing/registration requirements for exempt care;
- (g) When the child care provider is no longer meeting licensing and/or subsidy requirements as applicable;
Add: When the child care provider is no longer meeting the CNMI Quality Rating and Improvement System (QRIS) requirements;
- (h) The parent(s) voluntarily requests in writing discontinuance of child care services; or
- (i) The parent(s) and the child are unable to use child care; or
- (j) The parent (s) cannot be located; or
- (k) The family fails to provide the required verification for redetermination or to support the reported changes; or

(1) When recipients do not complete the process of redetermination or eligibility; or

(m) When the Child Care Program determines that there are insufficient funds to maintain all children receiving care. Priorities for eligibility will be determined pursuant to section **55-60-105** of these regulations.

(n) When the parent does not pay their contribution to the cost of child care at the minimum percentage fee (co-payment).

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word "care" in subsection (f), after the word "applicable" in subsection (g), and after the word "care" in subsection (i) pursuant to 1 CMC § 3806(g). The Commission changed the cite to "section 55-50-105" in subsection (m) to "section 55-60-105" pursuant to 1 CMC § 3806(d).

§ 55-60-505 Notice of Adverse Action

(a) Prior to any action to reduce, deny, suspend, or terminate any childcare service specified in these regulations, the Child Care Program shall provide the parent with timely and adequate notice before the adverse action is taken.

(b) The notice of adverse action shall be considered timely when the Child Care Program provides the notice at least 10 calendar days prior to the effective date of action.

(c) In order to be adequate, the notice shall contain the following information:

(1) The proposed action and the reason for the proposed action; and

(2) A citation to the Child Care Program rules supporting the proposed action;

(3) The name and telephone number of the person to contact for additional information;

(4) The family's right to appeal the Child Care Program's decision to the Secretary, Department of Community and Cultural Affairs.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The subsections were originally designated as subsections (a), (c), and (c). The Commission changed them to (a), (b), and (c) pursuant to 1 CMC § 3806(a). The Commission inserted semicolons at the ends of

subsections (c)(1) and (c)(2) and converted the period at the end of subsection (c)(3) to a semicolon pursuant to 1 CMC § 3806(g).

§ 55-60-510 Administrative Appeal Requests

(a) A parent may file a written request for an administrative appeal when the family is dissatisfied with the Child Care Program's adverse action of denying, reducing, terminating, suspending, and assistance*. The family shall have an opportunity to:

- (1) Examine the case record as well as all documents and records to be used at the appeal hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (2) Present the case independently or with the aid of legal counsel;
- (3) Bring witnesses, including an interpreter if non-English speaking;
- (4) Establish all pertinent facts and circumstances;
- (5) Advance any arguments appropriate to the issue being heard without undue interference; and
- (6) Question or refute any testimony or evidence, and to confront and cross-examine any witness.

(b) The appeal request shall be in writing delivered to the Department of Community and Cultural Affairs Office of the Secretary within 10 calendar days of the date on which the notice informing the family of a child care program's decision was delivered to the family and shall refer to the following:

- (1) The request is for an administrative appeal;
- (2) The specific action identified in the notice that is being appealed; and
- (3) Whether continuation of benefits at the current level are being requested with the understanding that the family will be required to pay back the total value of benefits

(received pending the decision) if the DCCA decision is upheld.

(c) If the request is not filed within 10 calendar days of the date the notice was provided to the family, the request shall be denied and the Office of the Attorney General shall provide notice of denial to the family.

(d) The Attorney General or designee shall preside over a hearing within 30 days of timely appeal request.

(1) The hearing shall be informal where strict rules such as the exclusion of hearsay evidence do not apply. However, the evidence presented must be relevant.

(2) The family and the Child Care Program shall have an opportunity to present evidence, including witness testimony and documents. Each party shall also have the right of cross-examination.

(3) The hearing shall be audio-recorded.

(4) The Attorney General or designee shall issue a written decision to the Child Care Program and the family within 30 days after the hearing.

(e) In the event that an appeal decision is rendered in favor of the family, benefits shall be restored as appropriate.

* So in original.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the phrase "and interpreter" in subsection (a)(3) to "an interpreter" pursuant to 1 CMC § 3806(g). The Commission corrected the period at the end of subsection (b)(1) to a semicolon pursuant to 1 CMC § 3806(g).

§ 55-60-515 Overpayment and Recoupment

(a) Failure to provide the Child Care Program notice of a change in circumstances could result in an overpayment. An overpayment may occur when a Child Care Provider receives payments to which the provider is not entitled, including but not limited to:

- (1) Administrative errors, such as a parent is not charged the appropriate payment amount;
- (2) Parent errors, such as unintentional errors in payment invoices or fraud; and
- (3) Provider errors, such as failure to immediately inform of a child's absences; or fraud.

(b) An overpayment made to a provider shall be recovered through:

- (1) A reduction of the amount payable to the provider in subsequent months until the entire amount of overpayment is recovered. The parent is responsible for the difference and must pay the difference to the provider;
- (2) Repayment in full or in part, by the provider to the Child Care Program.

(c) Parents subject to recovery of overpayment shall be provided written notice by the Child Care Program stating:

- (1) Reasons, dates, and the amount of the overpayment;
- (2) The proposed method by which the overpayment shall be recovered; and
- (3) The parent's right to request and* administrative appeal if the individual disagrees with the Child Care Program's proposed action.

(d) When there is both an overpayment and an underpayment to the parent, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(e) Overpayment to parents may be recovered from the family that was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family.

(f) When recouping child care overpayments, overpayment may be recovered only from child care benefits, provided the parent continues to receive such benefits.

(g) Recovery of child care overpayments to parents who formerly received child care benefits shall be referred to the Child Care Program's investigation office for collection action.

(h) If a parent for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the Child Care Program may refer debts exceeding twenty-five dollars to the comptroller of the State for tax set off.

(i) If the DCCA Child Care Program underpays a provider, the DCCA Child Care Program will reimburse the provider by paying back the underpaid amount.

* So in original.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the semicolon at the end of subsection (b) to a colon, the period at the end of subsection (b)(1) to a semicolon, and the semicolon at the end of subsection (b)(2) to a period pursuant to 1 CMC § 3806(g). The Commission inserted a semicolon after the word "overpayment" in subsection (c)(1) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase "and overpayment" in subsection (d) to "an overpayment" pursuant to 1 CMC § 3806(g).

§ 55-60-520 Termination for Insufficient Funds

(a) The Child Care Program may suspend or terminate benefits, reduce benefits, or refuse to take new applications for certain or all classes of beneficiaries as set forth in Section 1006, the Child Care Program determines, at its discretion, that insufficient funds will be available to pay for child care services at current amounts through the end of the fiscal year.

(b) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month is less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.

(c) When the Child Care Program determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving subsidies in any given month. This determination is entirely within the Child Care Program's discretion.

(d) Case termination, suspension or reduction of benefits, or refusal to take application will be prioritized as set forth in section 60-10-105.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: "Section 1006," referenced in subsection (a), is not defined in the original regulation.

Part 600 - Adverse Actions against Providers

§ 55-60-601 Denial, Suspension, Revocation of CCDF Provider's Certificate, and Hearings

- (a) The conditions for denial, suspension, or revocation of a child care provider's eligibility to participate in the Child Care Development Fund (CCDF) program and the action to be taken by the CCDF are as follows:
- (1) CCDF may deny, suspend, or revoke the provider's eligibility to participate in the program if the provider does not comply with the rules of the CCDF for the providers and their facilities;
 - (2) CCDF may revoke the provider's CCDF certificate if the provider has a violation and has been suspended at least once previously;
 - (3) A provider whose CCDF certificate is about to be denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the CCDF application or CCDF certificate.
 - (4) The notice shall contain a statement of the reasons for the proposed action and shall inform the provider of the right to appeal the decision to the Office of the Secretary of the Department of Community and Cultural Affairs, no later than 20 days after receipt of the notice of proposed action.
 - (5) The provider has twenty days from receipt of the notice of proposed action to make a written request for a hearing. Upon receipt of appeal the Secretary of DCCA shall give written notice to the provider of a time and place for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision as to whether the provider's certificate shall be denied, suspended, or revoked; and
 - (6) If no timely written request for a hearing is made, processing of the application shall end or the certificate shall be suspended or revoked as of the termination of the twenty-day period.
 - (7) The CCDF program will notify the parents or legal guardians of each child who is provided care in the provider's home or facility of the suspension or revocation.
 - (8) At any hearing provided for by this section, the provider may be represented by counsel and has the right to call, examine, and cross examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties by certified or registered mail to the last known address as is shown on the application or CCDF certificate. The Administrative Procedure Act (1 CMC §§ 9101 et seq.) shall also be applicable at any hearing.

History: Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Proposed 36 Com. Reg. 34783 (Feb. 28, 2014).

Commission Comment: The Commission corrected the capitalization of the word "certificate" in subsections (a)(2), (a)(3), and (a)(8) pursuant to 1 CMC § 3806(f). The Commission corrected the spelling of the word "and" in subsection (a)(4) pursuant to 1 CMC § 3806(g).



Board of Trustees:

PUBLIC NOTICE OF PROPOSED ADOPTION OF

Catherine M. Attao
Chair

**PROCUREMENT REGULATIONS FOR
THE NORTHERN MARIANAS TECHNICAL INSTITUTE**

Irene Holl
Vice-Chair

*Carmelita
Rabauliman-Faisao*
Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: the Commonwealth of the Northern Mariana Islands, Northern Marianas Technical Institute (NMTEch) intends to adopt as permanent regulations the attached Procurement Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a). The regulations will become effective thirty (30) days after adoption and publication in the Commonwealth Register. (1 CMC §9105(b)).

AUTHORITY: The proposed Procurement Regulations are promulgated under the Authority of 3 CMC §§12142(d). NMTEch is empowered by the Legislature under its enabling statute to adopt rules and regulations pertaining to procurement matters.

TERMS AND SUBSTANCE: The proposed Procurement Regulations are set forth to provide the regulations and procurement of goods and services by NMTEch.

THE SUBJECTS AND ISSUES INVOLVED: The proposed Procurement Regulations set forth the procedural guidelines for NMTEch Procurement of goods and services.

DIRECTIONS FOR FILING AND PUBLICATION: These proposed Procurement 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)).

COMMENTS: Interested parties may submit written comments on the proposed adoption of the NMTEch Procurement Regulations to Ms. Jodina Attao, Chief Executive Officer, Northern Marianas Technical Institute, at P.O. Box 504880 Saipan, MP 96950 or to email address admin@nmtechenmi.org. Comments, data, views, or arguments are due within 30 days from the date of publication of this notice (1 CMC § 9104(a)(1)).

These proposed regulations were approved by the Chairwoman of the Board of Trustees on December 05, 2022.



Submitted by Catherine Attao
Catherine Attao
Chairwoman, Board of Trustees

2/7/2023
Date

Jodina Attao
Jodina Attao
Chief Executive Officer

2/7/2023
Date

Received by: Frank Rabautiman
Frank Rabautiman
Acting Special Assistance for Administration

2/8/2023
Date

Filed and
Recorded by: Esther San Nicolas
Esther San Nicolas
Commonwealth Registrar

2.15.2023
Date

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

Edward Manibusan
EDWARD MANIBUSAN
Attorney General

February 14, 2023
Date





Board of Trustees:

Catherine M. Attao
Chair

Irene Hall
Vice-Chair

Carmelita Rabauliman-Faisao
Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**ARONGORONGOL TOULAP REEL PPWOMMWOL
MWÓGHUTUGHUTÚL PROCUREMENT IKKA REBWE
ADÓPTÁÁLI NGÁLI
NORTHERN MARIANAS TECHNICAL INSTITUTE**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMMWOL MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efǎng llól Marianas, Northern Marianas Technical Institute (NMTEch) re mángemángil rebwe adóptááli mwóghutughut ikka e appasch bwe ebwe lléghló bwe Mwóghutughutúl Procurement, sáangi mwóghutughutúl Administrative Procurement Act, 1 CNMC §9104(a). Ebwe bwunguló mwóghutughut kkaal eliigh (30) ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC §9105(b)).

BWÁNGIL: Ebwe arongowow ppwommwol Mwóghutughutúl Procurement kkaal faal Bwángil 3 CMC §§12142(d). Eyoor bwángiir NMTEch sáangi Legislature rebwe adóptááli allégh me mwóghutughut ikka e súllúngáli mwóghutughutúl procurement.

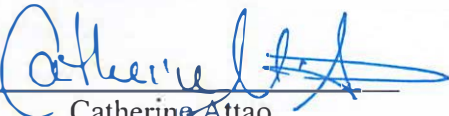
KKAPASAL ME WEEWEEEL: Ppwommwol Mwóghutughutúl Procurement aa ffat aar afal reel mwóghutughut ngáli akkaméél me alillis (setbisiu) sáangi NMTEch.

KKAPASAL ME AUTOL: Ppwommwol Mwóghutughutúl Procurement aa ffat ngáli afal reel mwóghutughut ngáli NMTEch akkaméél me alillis (setbisiu).

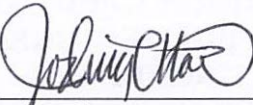
AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow ppwommwol Mwóghutughutúl Procurement me llól Commonwealth Register me llól tállil ppwommwol me ffél mwóghut ikka ra adóptááli (1 CMC § 9102(a)(1)) me ebwe appaschetá me llól civic center me bwal llól bwulasyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC §9104(a)(1)).

KKAPAS: Schóó kka re mwuschel isiisilong ischil kkapas wóól ppwommwol adóptáál “NMTEch Procurement Regulations” rebwe isch ngáli Ms. Jodina Attao, Chief Executive Officer, Northern Marianas Technical Institute, me P. O. Box 504880 Saipan, MP 96950 ngáre email-li ngáli admin@nmtechenmi.org. Kkapas, data, me ángiingi ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel (1 CMC § 9104(a)(1)).

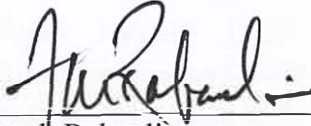
Aa átirow ppwommwol mwóghutughut kkaal sáangi Chairwoman-il Board of Trust of Trustees wóól December 05, 2022.

Isáliyalong: 
Catherine Attao
Chairwoman, Board of Trustees


2/7/2023
Ráál


Jodina Attao
Chief Executive Officer

2/7/2023
Ráál


Bwughiyal: 
Frank Rabauliman
Special Assistance ngáli Administration

2/8/2023
Ráál

Ammwelil: 
Esther San Nicolas
Commonwealth Registrar

2.15.2023
Ráál

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


EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

February 14, 2023
Ráál



Board of Trustees:

Catherine M. Attao
Chair

Irene Holl
Vice-Chair

Carmelita
Rabauliman-Faisao
Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**NUTISIAN PUBLIKU PUT I MANMAPROPONI NA
ADAPTASIÓ N U REGULASIÓ N I PROCUREMENT
GI NORTHERN MARIANAS TECHNICAL INSTITUTE**

I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I MANMAPROPONI NA REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariãnas, i Northern Marianas Technical Institute (NMTech) ha intensiona para u adapta komu petmanienti na regulasió n siha i mañechettun na Regulasió n Procurement, sigun gi manera siha gi Akton Administrative Procedure, I CNMC §9104(a). I regulasió n siha umifektibu siempre gi halum trenta (30) dihas dispues di adaptasion yan publikasió n gi halum Rehistran Commonwealth. (I CMC §9105(b)).

ATURIDÁT: I mapropoconi na Regulasió n Procurement manmacho'gui gi pápa' i Áturidát nu 3 CMC §§12142(d). I NMTech manma'aturisa ginen i Lehislatura para u makátga huyung i ubligasió n-ñiha ni para u ma'adapta i areklamentu yan regulasió n siha manasosiát para i asunto nu procurement siha.

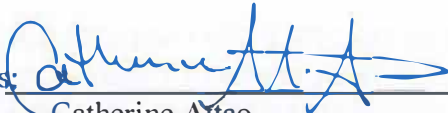
I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I manmapropoconi na Regulasió n Procurement manmapega mo'na para u pribeni i regulasió n yan i procurement nu fektus yan setbisiu siha ginen i NMTech.

SUHETU YAN ASUNTU NI TINEKKA: I manmapropoconi na Regulasió n Procurement mapega para i ginihidan manera para i NMTech Procurement nu fektus yan setbisiu siha.

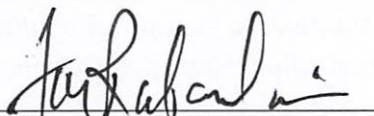
DIREKSIÓ N PARA U MAPO'LU YAN MAPUPBLIKA: Esti i manmapropoconi na Regulasió n Procurement debi na u mapupblika gi halum Rehistran Commonwealth hálum i seksiona gi mapropoconi yan nuebu na ma'adapta na regulasió n siha (I CMC § 9102 (a)(1)) yan u mapega gi halum kumbinienti na lugát gi halum i civic center yan gi halum ufisinan gubietnamentu siha gi kada distritun senadot, parehu gi finu' Inglis yan i dos na lingguáhin natibu (I CMC § 9104(a)(1)).


I UPIÑON SIHA: I manintires na pattida siña mana'hálum gi tinigi' upiñon siha gi manmapropoconi na adaptasion nu i Regulasió n Procurement i NMTech para as Siñorita Jodina Attao, Kabesiyu Eksakatibun Ufisiát, Northern Marianas Technical Institute, gi P.O. Box 504880 Saipan, MP 96950 osino para email address admin@nmtechcnmi.org. I upiñon, infotmasiun, pat agumentu siha debi na u fan hálum gi halum 30 dihas ginen i fetcha nu publikasió n esti na nutisia (I CMC § 9104(a)(1)).

Esti i manmaproponi na regulasi3n siha maninaprueba ginen i Kabesiyu nu Board of Trustees gi December 5, 2022.

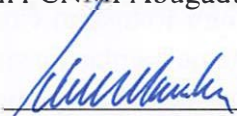
Nina'h3lum as:  2/7/2023
Catherine Attao
Kabesiyu, Board of Trustees
Fetcha

 2/7/2023
Jodina Attao
Kabesiyu Eksakatibu Ufisi3t
Fetcha

Received by:  2/8/2023
Frank Rabauliman
Ispisi3t na Ayud3nti para i Atministrasion
Fetcha

Filed and Recorded by:  2.15.2023
Esther San Nicolas
Rehistran Commonwealth
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3), i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba komu fotma yan sufisienti lig3t ginen i CNMI Abug3du Hinir3t yan debi na u mapublika. 1 CMC § 2153(f).

 February 14, 2023
EDWARD MANIBUSAN
Abug3du Hinir3t
Fetcha

CHAPTER ____ - 3000

NORTHERN MARIANAS TECHNICAL INSTITUTE

PROCUREMENT RULES AND REGULATIONS

Part 001 General Provisions

Subpart A General

§ 3000-001 Purpose

§ 3000-005 Authority

§ 3000-010 Supplementary General Principles of Law Applicable

§ 3000-015 Requirement of Good Faith

§ 3000-020 Application of Regulations

§ 3000-025 Severability

§ 3000-030 Validity of Contract

§ 3000-035 Remedy Against Employee

Subpart B Definitions

§ 3000-040 Definition

Subpart C Public Access

§ 3000-045 Public Access to Procurement Information

§ 3000-050 Use of Electronic Media

Part 100 Procurement Organization

Subpart A Procurement Officer

§ 3000-101 Creation of Procurement and Supply Division

§ 3000-105 Procurement Officer

§ 3000-110 Duties of the Officer

§ 3000-115 Contract Oversight

§ 3000-120 Split Contracts

§ 3000-125 Acceptance of Gratuities by Procurement Officer and Supply Division Employees

Subpart B Procurement Function

§ 3000-130 Procurement Services

§ 3000-135 Centralized Procurement of Supplies

Part 200 Source Selection and Contract Formation

Subpart A Source Selection

§ 3000-201 Methods of Source Selection

§ 3000-205 Competitive Sealed Bidding

§ 3000-210 Small Purchases

§ 3000-215 Sole Source Procurement

§ 3000-220 Emergency Procurement

§ 3000-225 Competitive Sealed

§ 3000-230 Competitive Selection

Subpart B Cancellation of Invitation for Bids or Request for Proposals

§ 3000-235 Cancellation

Subpart C Qualifications and Duties

§ 3000-240 Responsible of Bidders and Duties

§ 3000-245 Pre-qualification of Contractors

Subpart D Types of Contracts

§ 3000-250 Types of Contracts

§ 3000-251 Change Orders

Subpart E Inspection and Audit

§ 3000-255 Right to Inspect Place of Business

§ 3000-260 Right to Audit Records

Subpart F Reports and Records

§ 3000-265 Report of Anti-competitive or Deceptive Practices

§ 3000-270 Retention of Procurement Records

Part 300 Procurement of Construction and Architect-Engineer Services

§ 3000-301 Construction Procurement

§ 3000-305 Architect-Engineer Services

§ 3000-310 Two-Phase Design-Build Selection

Part 400 Protests and Disputes

§ 3000-401 Protests to the Chief Executive Officer Education's Decisions to the Board

§ 3000-410 Remedies

§ 3000-415 Effective Date

§ 3000-420 Disputes

§ 3000-425 Appeal Committee

Part 500 Ethics in Public Contracting

§ 3000-501 Definitions of Terms

Subpart A Standards of Conduct

§ 3000-505 Policy

§ 3000-510 General Standards

§ 3000-515 Employee Disclosure Requirements

§ 3000-520 Employee Conflict of Interest
§ 3000-525 Gratuities and Kickbacks
§ 3000-530 Prohibition Against Contingent
Fees
§ 3000-535 Contract Clauses
§ 3000-540 Restrictions on Employment of
Present and Former Employees

§ 3000-545 Use of Confidential Information
§ 3000-550 Collusion by Bidders
§ 3000-555 Penalties
§ 3000-560 Authority to Debar or Suspend
Part 600 Miscellaneous
§ 3000-601 Severability

Part 001 - General Provisions

Subpart A - General

§ 3000-001 Purpose

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

§ 3000-005 Authority

The regulations in this chapter are promulgated under the authority of PL 20-92 which make the Board of Trustees accountable and the Chief Executive Officer responsible for procurement and supply in Northern Marianas Technical Institute.

§ 3000-010 Supplementary General Principles of Law Applicable

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

§ 3000-015 Requirement of Good Faith

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

§ 3000-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Northern Marianas Technical Institute funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.

§ 3000-025 Severability

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

§ 3000-030 Validity of Contract

No Northern Marianas Technical Institute contract covered by the regulations in this chapter shall be valid unless it complies with these regulations.

§ 3000-035 Remedy Against Employee

Any procurement action of an employee of the Northern Marianas Technical Institute in violation of the regulations in this chapter is an action outside the scope of his or her employment. The Northern Marianas Technical Institute 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.

Subpart B - Definitions

§ 3000-040 Definitions

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

- (a) “Legal counsel” means an assistant attorney general designated by the Attorney General to serve as counsel for the Northern Marianas Technical Institute or a private attorney hired by the Board of Trustees with the consent of the Attorney General.
- (b) “Board of Trustees” means the Board of Trustees of the Northern Marianas Technical Institute.
- (c) “Chief Executive Officer” means the executive officer appointed by the Board of Trustees to administer the Northern Marianas Technical Institute who has full charge and control of the administration and business affairs of the Northern Marianas Technical Institute.
- (d) “Construction” means the process of building, altering, repairing, improving or demolishing 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.
- (e) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (f) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for cost which are allowable and allocable in accordance with the contract terms and these regulations, and a fee, if any.

- (g) “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.
- (h) “Employee” means an individual receiving a salary from the Northern Marianas Technical Institute, including appointive and elective officials and non-salaried individuals, including those on honorarium, performing personal services for the Northern Marianas Technical Institute. This definition extends to Board of Trustees and members of their staff. Consultants, independent contractors and part-time workers shall be considered employees.
- (i) “Goods” means all property, including but not limited to equipment, materials, supplies, food items and commodities and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property.
- (j) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (i) “NMTI” is the Northern Marianas Technical Institute.
- (l) “Official with expenditure authority” means the chief state officer who may extend, obligate, ear mark, encumber or otherwise commit public funds under the Planning and Budgeting Act, as amended, or under any annual appropriation act.
- (m) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.
- (n) “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.
- (o) “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.
- (p) “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.
- (q) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all materials respects to the invitation for bids.
- (r) “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.
- (s) “Electronic” means electrical, digital or any other similar technology.

(t) “Contractor” means any person or company that is contracted to provide materials or labor to perform a service or job.

Subpart C - Public Access

§ 3000-045 Public Access to Procurement Information

Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper bidding procedures. This decision shall be made only by the Board of Trustees.

§ 3000-050 Use of Electronic Media

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the CNMI’s applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Part 100 - Procurement Organization

Subpart A – Procurement Officer

§ 3000-101 Creation of Procurement and Supply Division

There is hereby created in the Northern Marianas Technical Institute a Division of Procurement and Supply under the management of the Chief Executive Officer in the execution of those duties authorized under Public Law 20-92, or under any annual appropriations act.

§ 3000-105 Procurement Officer

The Chief Executive Officer shall appoint a Procurement Officer to administer and supervise the day-to-day activities of the division.

§ 3000-110 Duties of the Officer

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

- (a) Oversee that these regulations are observed in all Northern Marianas Technical Institute procurement;
- (b) Hear all appeals of protests and disputes;
- (c) Conduct bidding, procurement, negotiation or administration of Northern Marianas Technical Institute contracts upon request of the official with expenditure authority;
- (d) Provide advanced planning for the centralized purchase of Northern Marianas Technical Institute supplies;

- (e) Exercise general supervision and control over all inventories of supplies belonging to the Northern Marianas Technical Institute;
- (f) Establish and maintain programs for the inspection, testing and acceptance of supplies;
- (g) Exercise general supervision and control over the employees of this division.

§ 3000-115 Contract Oversight

- (a) The Procurement Officer is responsible for certifying the correctness of all contracts according to the Northern Marianas Technical Institute policies;
- (b) The contract shall then be approved by the Finance Department (Accountant) or his designee for certification of funds;
- (c) The contract shall be approved by the Chief Executive Officer for expenditure authority;
- (d) The contract shall then be approved by the Chairman of the Board of Trustees;
- (e) The Northern Marianas Technical Institute's legal counsel shall certify the form and legal capacity of every Northern Marianas Technical Institute contract, change order, or purchase order. No contract for personal services or employment shall be approved if it is retroactive for more than thirty days.
- (f) The Personnel Officer shall approve all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a non-employment status.
- (g) A contract may be referred back to the Chief Executive Officer for further review based on additional evidence that it may not comply with the regulations in this chapter. If the Chief Executive Officer withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.
- (h) It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the official with expenditure authority.
- (i) No contract is effective against the Northern Marianas Technical Institute until all the Northern Marianas Technical Institute officials whose signatures appear on the contract form have signed the contract. A contract shall contain a right to audit records clause.

§ 3000-120 Split Contracts

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

§ 3000-125 Acceptance of Gratuities by Procurement Officer and Division Employees

- (a) In addition to the restrictions found in § 3000-525, the Chief and the employees of the Procurement and Supply Division shall be subject to these additional restrictions to avoid the appearance of impropriety.
- (b) The Chief or his employees cannot accept from any person any gift of value given to them with the intent to influence their business judgement.

Subpart B - Procurement Function

§ 3000-130 Procurement Services

Upon request of any official with expenditure authority, the Procurement Officer shall provide assistance or conduct the bidding, procurement, negotiation or administration of a particular contract.

§ 3000-135 Centralized Procurement of Supplies

The Procurement Officer may, with the approval of the Chief Executive Officer, purchase supplies in large quantities to be relied upon by all departments, agencies, offices and branches when in the best interest of the Northern Marianas Technical Institute. No separate contract or purchase order for these supplies will be approved.

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 3000-201 Methods of Source Selection

Unless otherwise authorized by law or by regulation, all Northern Marianas Technical Institute contracts \$50,001.00 and above subject to § 3000-210 shall be awarded by competitive sealed bidding, except as provided in:

- (a) § 3000-210 (Small Purchases);
- (b) § 3000-215 (Sole Source Procurement);
- (c) § 3000-220 (Emergency Procurement);
- (d) § 3000-225 (Competitive Sealed Proposals);
- (e) § 3000-230 (Professional Services);
- (f) § 3000-305 (Architect-Engineer Services).

§ 3000-205 Competitive Sealed Bidding

- (a) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:
 - (1) An invitation for bids number;

- (2) Date of issuance;
- (3) Name, address and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions; and
- (10) Any bonding requirements.

(b) **Public Notice.** Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice shall be on the school website over a continuous period of four weeks shall be deemed to be adequate notice.

(c) **Bidding Time.** A bidding time of at least four weeks shall be provided, unless the Procurement Officer determines in writing that a shorter period is necessary.

(d) **Bid Receipt.** All bids shall be submitted to the Procurement Office. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office. 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 Procurement Officer. No information contained in the bid shall be disclosed prior to the bid opening. The Procurement Officer shall cause the opened bid to be placed into the sealed receptacle.

(e) **Bid Opening.**

(1) The bid opening shall be conducted by the Procurement Officer at the Office of the Chief Executive Officer. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(2) The Procurement Officer shall be present at the bid opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Procurement Officer shall prepare a written summary of the bid opening.

(f) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended.

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

(1) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;

(2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the Northern Marianas Technical Institute. For example, bids shall be rejected in which the bidder:

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

(ii) Fails to state a price and indicates that price shall be the price in effect at the time of delivery;

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

- (iv) Limits the rights of the Northern Marianas Technical Institute.
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder.

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

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

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

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

(i) Notice of Intent to Award. After bid evaluation, a notice of intent to award the contract to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter shall be issued to all bidders. The notice of intent to award is not a promise or guarantee of award, and the intended bidder should not incur any costs based on either the notice of intent to award or reliance of a contract.

(j) 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. The contract cannot be awarded less than five business days after the issuance of a notice of intent to award pursuant to subsection (i). Unsuccessful bidders shall also be promptly notified.

(2)(i) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a Northern Marianas Technical Institute contract is written and has been approved by all the officials required by law and regulation.

(ii) Northern Marianas Technical Institute contract shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required Northern Marianas Technical Institute officials.

(3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five per cent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Chief Executive Officer

may authorize the Procurement Officer to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

(4) Warranties. Any contract awarded by NMTI must state a warranty of goods, services or construction for a minimum of one year.

§ 3000-210 Small Purchases

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

(a) Purchases that use Government-sourced funds (local funds), or any combination of both local and federal funds, may be made according to the small purchase procedures of this subsection:

- (1) For purchases that do not exceed \$5,000 at least one price quote shall be obtained. However, the Procurement Officer may require the expenditure authority to obtain more than one price quote.
- (2) A blanket purchase order may be used to make purchases without securing a price quote when the purchases do not exceed \$5000. The goods or services that may be purchased under a blanket purchase order must be defined (i.e. office supplies) and shall not be used for equipment. The expenditure authority shall promptly submit to the Procurement Officer copies of receipts for all purchases made under a blanket-purchase order. The Procurement Officer may instruct the expenditure authority to explain the need for the goods or services and how the prices paid were reasonable.
- (3) For purchases that exceed \$5,000, but which are less than or equal to \$50,000, a minimum of three vendors shall be solicited to submit written or electronic quotations. The quotations shall be recorded and placed in the procurement file. If fewer than three vendors submit quotations, the expenditure authority shall certify, in writing, to the Procurement Officer that fewer than three vendors responded and shall provide written proof of the request. If fewer than three of the solicited vendors submit quotes, the Procurement Officer may either approve the request or instruct the expenditure authority to solicit additional quotes.

(b) Purchases from the United States General Services Administration (GSA) may be made according to the small purchase procedures of this subsection:

- (1) At least one quote shall be obtained when making purchases, including purchases that exceed \$250,000.

(c) A purchase order may be used as authorization for any of the small purchase procedures of this section.

(d) Purchase orders may also be utilized instead of contracts for purchasing instructional materials, books, and publications.

(e) This section shall not apply to lease or purchase of vehicles, machinery and equipment or to the purchase of professional services.

(f) Construction & Design/Build services may be procured by obtaining three price quotations from qualified contractors & design/builders. Procurement under this subsection shall be limited to renovations of existing structures, repairs, maintenance, materials, and construction equipment. No new buildings or structures shall be built using this subsection. Contracts procured hereunder shall not exceed \$30,000 and shall be accompanied by a justification, in writing, and agreed to and signed by the Chief Executive Officer.

§ 3000-215 Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when the Procurement Officer determines in writing that there is only one source for the required supply, service or construction item.

(b) The written determination shall be prepared by the official with expenditure authority and shall contain the following information:

(1) The unique capabilities required and why they are required and the consideration given to alternative sources.

§ 3000-220 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this chapter, emergency procurement procedures may be used where:

(1) An unusual and compelling urgency precludes full and open competition, and

(2) Delay in award of a contract would result in serious injury, financial or other to the Northern Marianas Technical Institute. An emergency procurement must be as competitive as practicable under the circumstances.

(b) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority. The justification must include:

(1) Description of the action being approved.

(2) Description of the supplies or services required to meet the needs, including the estimated value.

(3) A description of the efforts made to ensure that offers are solicited from as many potential sources as is practicable.

(4) A determination that the anticipated cost to NMTI will be fair and reasonable, and

(5) Data, estimated cost, or other rationale as to the extent and nature of the harm to NMTI.

(c) The justification must be approved by the Procurement Officer and the Chief Executive Officer.

§ 3000-225 Competitive Sealed Proposals

(a) Condition for Use. When the Chief Executive Officer determines in writing upon the advice of the legal counsel that the use of a competitive sealed bidding is either not practical or not advantageous to the Northern Marianas Technical Institute, a contract may be entered into by competitive sealed proposals.

(b) Request for Proposals. Proposals shall be solicited through a request for proposals.

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

(d) **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.

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

(f) **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) **Notice of Intent to Award.** After proposal evaluation, a notice of intent to award the contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Northern Marianas Technical Institute, taking into consideration price and the evaluation factors set forth in the request for proposals, shall be issued to all offerors. The notice of intent to award is not a promise or guarantee of award, and the intended offeror should not incur any costs based on either the notice of intent to award or reliance of a contract.

(h) **Award.** Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Northern Marianas Technical Institute taking into consideration price and the evaluation factors set forth in the request for proposals. The award cannot be made less than five business days after the issuance of a notice of intent to award pursuant to subsection (g). No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

§ 3000-230 Competitive Selection Procedures for Professional Services

(a) **Procurement Method.** The services of accountants shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, sole-source procurement or non-employment services contracts.

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

(c) **Public Announcement and Form of Request for Proposals.** Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals. The request for proposals shall describe the services required, list the type of

information and data required of each offeror and state the relative importance of particular qualifications.

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

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

§ 3000-235 Cancellation

An invitation for bids or request for proposals may be cancelled and any and all bids or proposals may be rejected, when such action is determined by the Procurement Officer and approved by the Chief Executive Officer to be in the best interests of the Northern Marianas Technical Institute based on:

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

Subpart C - Qualifications and Duties

§ 3000-240 Responsible Bidders and Duties

- (a) Awards shall be made only 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;
 - (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) Be otherwise qualified and eligible to receive award under applicable laws and rules; and
- (8) Submit a valid original business license and other certification as may be required.

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

(c) **Right of Non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Chief Executive Officer, the Procurement Officer, and legal counsel or any involved Northern Marianas Technical Institute Employee without prior consent by the bidder or offeror.

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

§ 3000-245 Pre-qualification of Contractors

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

Subpart D - Types of Contracts

§ 3000-250 Types of Contracts

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

(b) Northern Marianas Technical Institute contracts shall utilize a firm fixed priced unless use of a cost reimbursement contract is justified under subsection (c).

(c) A cost reimbursement contract may be used when the official with expenditure authority determines in writing which is attached to the contract that:

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

§ 3000-251 Change Orders

(a) A change order will 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 by either party. However, no change order resulting in an increase in contract cost, or time shall be allowed when it is the direct result of either party's inexperience, inefficiency, or competence.

(b) Before adding significant new work to existing contracts, the Procurement and Supply officer shall thoroughly assess whether it would be more prudent to seek competition. This assessment shall be in writing and will articulate the specific need for the good or service, the reason(s) it should not be competitive, and any circumstances that led to her decision. All change orders which increase the original contract price by 25% shall automatically be procured through competitive procedures except when there is an emergency or when there is a sole source procurement. At no time shall more than two change orders be allowed to a contract for services where the additional services are trainings or other professional services.

(c) Change orders for construction contracts shall be exempt from subsection (b) as it relates to the automatic prohibition on change orders that increase the price by 25%. A change order for a construction contract may be increased by more than 25%, and not automatically procured through competitive procedures, if:

(1) The Capital Improvements Projects office determines, in writing, that the change order is in the best interest of the Northern Marianas Technical Institute because:

(i) Utilizing a competitive process will unreasonably delay construction; or

(ii) Utilizing a competitive process will not result in cost savings to the Northern Marianas Technical Institute; or

(iii) The project is necessary to protect the health and welfare of the students and staff of the Northern Marianas Technical Institute.

(2) The Chief Executive Officer must approve, in writing, any change order processed under this section.

(d) Contractors shall not be allowed to continue working beyond the expiration term of a contract in the absence of an approved new contract or change order. Change orders shall be processed under the procedures for processing new contracts.

Subpart E - Inspection and Audit

§ 3000-255 Right to Inspect Place of Business

The Board of Trustees and the Chief Executive Officer, 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 Northern Marianas Technical Institute.

§ 3000-260 Right to Audit Records

As required by section 404 of Public Law 3-91, 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 a Northern Marianas Technical Institute 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 Northern Marianas Technical Institute contracts and obligations.

Subpart F - Reports and Records

§ 3000-265 Report of Anti-competitive or Deceptive Practices

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

- (1) Unfair methods of competition;
- (2) Deceptive acts; or
- (3) Unfair business practices.

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

§ 3000-270 Retention of Procurement Records

(a) All procurement records shall be retained by the Board of Trustees, the Chief Executive Officer and the Procurement Officer.

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

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

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

Part 300 - Procurement of Construction, Design/Build and Architect-

Engineer Services § 3000-301 Construction Procurement

(a) Invitation for Bids

(1) Deposit. The official with expenditure authority 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 § 60-40-205(a). In addition, the following items shall be included in the invitation for bids.

- (i) Notice to Bidders. General information regarding the project;
- (ii) Instruction 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 on construction contracts where the price is estimated by the Chief Executive Officer to exceed \$25,000.00 or when the Chief Executive Officer determines it is in the interest of the Northern

Marianas Technical Institute. Bid security shall be on a bid bond, in cash, by certified check, cashier's check or other form acceptable to the Northern Marianas Technical Institute. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Northern Marianas Technical Institute legal counsel.

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

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

(c) Contract Performance and Payment Bonds

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

(1) Performance bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, in an amount equal to one hundred per cent of the price specified in the contract; and

(2) A payment bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(3) Bonding Requirement. Any bonds secured by the contractor must have an AM's Best rating or higher through an agency deemed satisfactory by the Chief Executive Officer.

(d) Suits on Payment Bonds.

(1) Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person 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 materials 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.

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

§ 3000-305 Architect-Engineer Services

(a) **Procurement Method.** Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase or emergency procurement.

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

(c) **Selection.** The Chief Executive Officer and the Northern Marianas Technical Institute's Procurement office shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirements for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required.

(d) **Negotiation.** The Chief Executive Officer shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the Northern Marianas Technical Institute. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, the office with expenditure authority shall then select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

§ 3000-310 Two-Phase Design-Build Selection Process

(a) The two-phase design-build selection process procedures shall be used when the procurement officer determines that this method is appropriate, based on the following:

1. Three or more *offers* are anticipated.

2. Design work must be performed by *offerors* before developing price or cost proposals, and *offerors* will incur a substantial amount of expense in preparing *offers*.
 3. The following criteria have been considered:
 - i. The extent to which the project requirements have been adequately defined.
 - ii. The time constraints for delivery of the project.
 - iii. The capability and experience of potential contractors.
 - iv. The suitability of the project for use of the two-phase selection method.
 - v. The capability of the agency to manage the two-phase selection process.
 - vi. Other criteria established by the Chief Executive Officer.
- (b) Scope of work. NMTI shall develop, either in-house or by contract, a scope of work that defines the project and states the requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements.
- (c) Procedures. One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which *offerors* will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.
1. Phase One.
 - i. Phase One of the solicitation(s) shall include:
 1. The scope of work;
 2. The phase-one evaluation factors, including:
 - a. Technical approach (but not detailed design or technical information)
 - b. Technical qualifications, such as-
 - i. Specialized experience or technical competence;
 - ii. Capability to perform'
 - iii. Past performance of the offeror's team (including architect-engineer and construction members); and
 - iv. Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase-One)
 - c. Phase-Two Evaluation factors; and
 - d. A statement of the maximum number of *offerors* that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the procurement officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The procurement officer shall document this determination in the contract file. For acquisitions greater than \$4.5 million, the determination shall be approved by the Chief Executive Officer.
 - e. After evaluating phase-one proposals, the procurement officer shall select the most highly qualified *offerors* (not to exceed the maximum number specified in the solicitation) and request that only those *offerors* submit phase-two proposals.
 2. Phase-Two:
 - i. Phase-two of the solicitations shall be prepared and include phase-two evaluation factors developed. Examples of phase-two technical evaluation factors include design concepts, management approach, key personnel and proposed technical solutions.

- ii. Phase-two of the solicitation(s) shall require submission of technical and price proposals which shall be evaluated separately.

Part 400 - Protests and Disputes

§ 3000-401 Protests to the Chief Executive Officer

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved or will be aggrieved in connection with the solicitation or award of a contract may protest to the Chief Executive Officer no later than five (5) days after the issuance of a Notice of Intent to Award. The protest shall be received by the Chief Executive Officer in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to 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 protests 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 Chief Executive Officer. Proof of notice is required by the protesting party to other bidders or proposers within two days of filing its protest. These persons may submit their views and relevant information to the Chief Executive Officer within five days after receiving notice by the protesting party. The Chief Executive Officer may extend the period of time to submit views and relevant information if the Chief Executive Officer certifies that he/she believes the complexity of the matter requires a longer period of time. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information which is relevant and necessary for the determination of the protest.

(3) The Chief Executive Officer shall decide the protest within five calendar days after the protest is filed unless the Chief Executive Officer certifies that the complexity of the matter requires a longer time, in which event the Chief Executive Officer shall specify the appropriate longer time. If the Chief Executive Officer fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the State Board of Trustees by filing such Notice of Appeal with the Chairperson through the Board Secretary at the State Board of Trustees Office.

(4) When a protest has been appealed to the Appeal Committee, as provided in these procedures, the Chief Executive Officer shall submit a report, and the Chief Executive Officer should include with his/her 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;
- (iv) The solicitation, including the specifications on portions relevant to the protest;
- (v) the abstract of offers or relevant portions;
- (vi) Any other documents that are relevant to the protest; and
- (vii) The Chief Executive Officer'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 Chief Executive Officer's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Chief Executive Officer 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 Chief Executive Officer's decision has been taken to the Appeal Committee, the Chief Executive Officer shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protest

(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 Chief Executive Officer determines that:

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

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

(c) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this subpart are deemed to be working days of the Northern Marianas Technical Institute. 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.

§ 3000-405 Appeals of Chief Executive Officer's Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Chief Executive Officer may be taken provided that the party taking the appeal has first submitted a written protest to the Chief Executive Officer and otherwise fully complied with § 3000-401, and the Chief Executive Officer has denied the protest or has failed to act on the protest within the time provided.

(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 an Appeal. An appeal from the Chief Executive Officer's decision must be received by the Appeal Committee not later than five days after the appellant received the decision of the Chief Executive Officer, or, in the event that the Chief Executive Officer has not decided the protest, within three days from the date that the Chief Executive Officer should have decided the protest pursuant to § 3000-401. 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 Northern Marianas Technical Institute should be appeal be considered.

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

(1) The Chairperson of the Appeal Committee, immediately upon appointment by the Board Chairperson, shall notify the Chief Executive Officer in writing within one day of appointment, requesting the Chief Executive Officer to give notice of the appeal to all bidders or proposers who appear to have a reasonable prospect of receiving an award if the appeal is denied (hereinafter in this section, "noticed parties"). The Chief Executive Officer shall furnish copies of the protest and appeal documents to such noticed parties with instructions to communicate further directly with the Appeal Committee.

(2) The Appeal Committee shall request the Chief Executive Officer to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within thirty calendar days) in accordance with § 3000-401(a)(3) and (4) and to furnish a copy of the report to the appellant and noticed parties.

(3) Comments on the Chief Executive Officer's report shall be filed by the protesting party and any noticed party with the Appeal Committee within five days after the Appeal Committee's receipt of the report, with a copy to the Chief Executive Officer, other noticed parties, and appellant, as applicable. The Appeal Committee may extend the period of time to submit comments if the Appeal Committee certifies that it believes the complexity of the matter requires a longer period of time. The Appeal Committee may, at its discretion, allow the protesting party, noticed parties, and the Chief Executive Officer to submit rebuttals to the comments on the Chief Executive Officer's report submitted by the protesting party and noticed parties. If rebuttals are permitted, the Appeal Committee may set deadlines for their submission. All rebuttal submissions must be forwarded by the rebutting party to the Chief Executive Officer, protesting party, and other noticed parties.

(4) The failure of an appellant or any noticed 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, award shall not be made until the appeal is resolved, unless awarded is done in a manner consistent with § 3000-401(b)(2).

(f) **Submission of Additional Information.** Any questions posed or additional information requested by the Appeal Committee shall be furnished as expeditiously as possible. The Appeal Committee may set a reasonable deadline for the submission of information or responses to questions. Any questions or requests, along with corresponding responses or submissions shall be made, upon request, available to any other interested party, except to the extent that the withholding of information is permitted or required by law. The Appeal Committee may allow for interested parties to comment on any answers or information submitted pursuant to this subsection in a manner and timeframe it deems reasonable.

(g) **Conference.** The Appeal Committee may conduct a conference on the merits of the appeal with the appellant and Chief Executive Officer. Alternatively, either party may request such a conference to be held at the discretion of the Appeal Committee. The Appeal Committee has the discretion to include other parties at the conference.

(h) Time for Decision; Notice of Decision: The Appeal Committee shall, if possible, issue a decision on the appeal within thirty 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 Chief Executive Officer.

§ 3000-410 Remedies

(a) Remedies Prior to Award. If prior to award the Chief Executive Officer 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 Chief Executive Officer or the Appeal Committee determines that 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 Northern Marianas Technical Institute; 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 Northern Marianas Technical Institute, without prejudice to the Northern Marianas Technical Institute's right 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 Appeal Committee's determination as an agency decision under the CNMI Administrative Procedure Act and applicable rules of administrative procedure with the CNMI Superior Court.

§ 3000-415 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of the Northern Marianas Technical Institute 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, offeror, or contractor who is aggrieved.

§ 3000-420 Disputes

(a) Any dispute between the Northern Marianas Technical Institute and a contractor relating to the performance, interpretation of, or compensation due under a contract, which is the subject of this chapter, must be filed in writing with the Chief Executive Officer within ten 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 Chief Executive Officer 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 its 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 Chief Executive Officer 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/she obtains a waiver of this provision by the Chief Executive Officer or Appeal Committee.

§ 3000-425 Appeal Committee

The Appeal Committee is comprised of three members of the Board of Trustees appointed by the Board Chairperson to hear any appeal under these provisions. The Board Chairperson shall designate one of the three members as the Appeal Committee Chairperson.

Part 500 - Ethics in Public Contracting

§ 3000-501 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 Northern Marianas Technical Institute 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:
 - a. 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
 - b. 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.

Subpart A - Standards of Conduct

§ 3000-505 Policy

Public employment is a public trust. In Northern Marianas Technical Institute contracting, public Employees shall discharge their duties impartially so as to:

- (a) Insure fair competitive access to Northern Marianas Technical Institute procurement by reasonable contractors; and
- (b) Conduct themselves in a manner as to foster public confidence in the integrity of the Northern Marianas Technical Institute.

§ 3000-510 General Standards

- (a) Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employee must meet the requirements of this chapter.
- (b) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this chapter is also a breach of ethical standards.

§ 3000-515 Employee Disclosure Requirements

- (a) Disclosure of benefit received from contract. Any Employee who has, or obtains any benefit from any Northern Marianas Technical Institute contract with a business in which the Employee has financial interest, shall report such benefit to the Chief Executive Officer.
- (b) Failure to disclose benefit received. Any Employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

§ 3000-520 Employee Conflict of Interest

- (a) Conflict of interest. It is a breach of ethical standards for any Employee to participate directly or indirectly in a procurement when the employee knows that:
 - (1) The Employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business or organization with whom the employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an Employee shall promptly file with the Chief Executive Officer a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

§ 3000-525 Gratuities and Kickbacks

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

(a) **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 than subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

§ 3000-530 Prohibition Against Contingent Fees

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

(b) **Representation of contractor.** Every person, before being awarded a Northern Marianas Technical Institute 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.

§ 3000-535 Contract Clauses

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

§ 3000-540 Restrictions on Employment of Present and Former Employees

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

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

- (1) Judicial or other proceeding, application request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while an employee, where the Northern Marianas Technical Institute is a party or has a direct or substantial interest.

§ 3000-545 Use of Confidential Information

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

§ 3000-550 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Chief Executive Officer may declare the contract void if he 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 Northern Marianas Technical Institute.

§ 3000-555 Penalties

(a) Northern Marianas Technical Institute employees. A Northern Marianas Technical Institute employee who violates the provisions of the rules and regulations in this chapter is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of Northern Marianas Technical Institute money, or criminal prosecution.

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

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

§ 3000-560 Authority to Debar or Suspend

(a) Authority.

(1) 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 Chief Executive Officer after consultation with the Northern Marianas Technical Institute legal counsel, shall have authority to debar a person for cause from consideration for award of contracts.

(2) The debarment shall not be for a period of more than three years. The Chief Executive Officer, after consultation with Northern Marianas Technical Institute legal counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

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

(1) Conviction for commission of a criminal offense is an incident of 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 Northern Marianas Technical Institute contractor;

(3) Conviction under Commonwealth or federal antitrust statutes arising out of the submission of bids or proposals such as in chapter 2 of division 5 of title 4 of the Commonwealth Code;

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

(5) 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;

(6) Any other cause that the Chief Executive Officer determines to be so serious and compelling as to effect responsibility as a Northern Marianas Technical Institute contractor, including debarment by another Northern Marianas Technical Institute entity; and

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

(c) Decision. The Chief Executive Officer 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.

Part 600 - Miscellaneous

§ 3000-601 Severability

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

In Re Matter of:)	PUA Case No. 21-0142
)	
Jose Quitano,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 9, 2022 at approximately 9:00 a.m. Due to witness' availability and conflicts in schedule, the matter was continued and heard on May 25, 2022 at approximately 9:00 a.m. All hearings were held at the Administrative Hearing Office, Saipan. Appellant Jose Quitano ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Department") was present and represented by PUA Supervisor Zachary Taitano, Labor Certification Worker Dennis Cabrera, and Benefit Payment Control Unit ("BPC") PUA Coordinators Caitlin King and Jaime Itibus.¹ The only other witness that provided testimony at the hearing was the General Manager for Appellant's former employer Star Marianas Air, Inc., Donna Lyn Cabrera. A list of the documents admitted into evidence are added at the end of this Order.

For the reasons stated below, the Department's two Determinations, dated July 7, 2021 and November 5, 2021, are both **AFFIRMED**. Appellant is not eligible for benefits for the period of February 9, 2020 to September 4, 2021. The CNMI Department of Labor's Notice of Overpayment dated November 3, 2021 is also **AFFIRMED**. Appellant was overpaid in the total amount of **\$22,080.00** and Appellant is not entitled to a waiver for repayment. Appellant is **ORDERED** to report

¹ Department's Labor Certification Officer Dennis Cabrera and PUA Coordinator Jaime Itibus observed at the March 9, 2022 Administrative Hearing.

1 to the Department's BPC to discuss options for repayment or offsetting the overpayment, in
2 accordance with the applicable rules.

3 II. JURISDICTION

4 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020
5 was signed into law creating new temporary federal programs for unemployment benefits called
6 Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation
7 ("FPUC").³ On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
8 ("Continued Assistance Act") amended and created new provisions of said federal unemployment
9 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
10 2021.⁴ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs
11 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
12 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁵ The
13 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
14 appeals of agency decisions.

15 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
16 review of Appellant's application and supporting documents, the Department issued two
17 Disqualifying Determinations, dated July 7, 2021 and November 5, 2021, and a Notice of
18 Overpayment, dated November 3, 2021. On July 23, 2021, Appellant filed via email the present
19 appeal, which was received on the next business day, July 26, 2021. Thereafter, this matter was
20 scheduled for an Administrative Hearing. As stated in the Notice of Hearing, the issues on appeal are:
21 (1) whether this appeal is timely filed; (2) whether Appellant is eligible for PUA benefits; and
22 (3) whether an overpayment occurred and funds should be returned.

23 Upon review of the records, the appeal of the July 7, 2021 Disqualifying Determination is not
24 timely filed and jurisdiction is not established. Therefore, the July 7, 2021 Disqualifying
25 Determination is final. However, upon review of the records, the appeal of the Notice of Overpayment
26 (dated November 3, 2021) and Disqualifying Determination (dated November 5, 2021) are both
27

28 ² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

29 ³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

30 ⁴ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for
Unemployed Workers Act of 2020" or "Continued Assistance Act").

31 ⁵ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 timely and jurisdiction over the appeal over this Notice of Overpayment and this Disqualifying
2 Determination is established.

3 **III. FINDINGS OF FACT**

4 In consideration of the evidence provided and credibility of witness testimony, the undersigned
5 issues the following findings of fact:

- 6 1. Prior to the COVID-19 pandemic, Appellant, a U.S. Citizen,⁶ was employed as a Customer
7 Service Specialist at Star Marianas Air, Inc. (“Employer”), located at the Tinian Airport, on
8 Tinian Island, CNMI.⁷ As a full-time employee, Appellant worked 40 hours a week and he
9 was paid \$8.65 hourly.⁸
- 10 2. On February 15, 2020, Appellant voluntarily resigned from Employer.⁹ Appellant’s last day
11 of employment with Employer was on February 15, 2020.¹⁰
- 12 3. During the prior week, from February 9, 2020 to February 15, 2020, Appellant worked and
13 earned his normal, customary wages,¹¹
- 14 4. Due to the economic impact of the COVID-19 pandemic, Employer implemented cost-cutting
15 measures. Specifically, Employer temporarily closed its operations and furloughed staff
16 because of cancellation of flights. However, these cost-cutting measures did not directly affect
17 Appellant’s employment because Appellant voluntarily resigned *prior* to these measures
18 being implemented by Employer.¹² Employer also certified that Appellant’s separation from
19 employment was not due to any COVID-19 qualifying reasons.¹³
- 20 5. On June 23, 2020, Appellant submitted an application¹⁴ for unemployment assistance under
21 the PUA and FPUC programs administered by the Department. In this initial application,¹⁵
22 Appellant self-certified under penalty of perjury that:
 - 23 a. Appellant’s employment was directly affected by COVID-19 when: (1) he was unable
24 to reach his place of employment because of a quarantine imposed as a direct result
25 of the COVID-19 public health emergency; (2) his place of employment closed as a

26 _____
27 ⁶ See Exhibit 12.

28 ⁷ Exhibit 1.

29 ⁸ *Id.*

30 ⁹ Exhibit 18.

31 ¹⁰ Exhibit 16.

¹¹ Exhibits 20-21.

¹² See Exhibit 18 (corrected). *Compare with* Exhibits 14-17.

¹³ Exhibit 19. *See also* Exhibits 14-15.

¹⁴ Exhibit 1.

¹⁵ *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

direct result of COVID-19 public health emergency; and (3) other reason not listed here; and

b. Appellant’s employment was affected since February 15, 2020.

6. Subsequently, on March 9, 2021, Appellant submitted an application¹⁶ for continued benefits and, in this application, he self-certified under penalty of perjury that:

- a. Appellant’s employment was directly affected by COVID-19 when his place of employment closed as a direct result of the COVID-19 public health emergency; and
- b. Appellant’s employment was affected since February 15, 2020.

7. In both applications for benefits, Appellant selected email as his preferred method of service.¹⁷

8. Appellant also submitted weekly certifications¹⁸ to claim continued benefits from February 9, 2020 to November 7, 2020. In each weekly certification, Appellant reported that:

- a. Appellant’s employment was still affected by COVID-19 because his place of employment was closed as a direct result of the COVID-19 public health emergency;
- b. Appellant is able and available for work during the claimed week; and
- c. Appellant had no earnings during each of the claimed week because he did not work.

9. The answers provided in Appellant’s applications and weekly certifications were submitted under penalty of perjury.¹⁹ It is Appellant’s responsibility to provide true, accurate, and complete answers. Moreover, it is Appellant’s responsibility to be informed about the PUA program by reading the PUA Benefit Rights Information Handbook (“Handbook”) and other official, published written materials regarding PUA program.

10. In his applications²⁰ and weekly certifications,²¹ Appellant misrepresented information and did not provide complete, accurate, and truthful information. First, Appellant’s separation from employment was not because of any of the reasons listed in his applications or weekly certifications: Second, during the applicable claim period, Appellant was not unable to reach his place of employment because Appellant was not subject to any specific quarantine orders imposed as a direct result of the COVID-19 public health emergency. Third, Appellant’s unemployment effective February 15, 2020 was not due to his place of employment being closed as a direct result of COVID-19 public health emergency. Finally, Appellant’s

¹⁶ See Exhibit 2.
¹⁷ See Exhibits 1-2.
¹⁸ See Exhibit 4.
¹⁹ See Exhibits 1, 2, and 3.
²⁰ Exhibits 1-2.
²¹ Exhibit 4.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Employer verified that Appellant’s employment was not because of any other reason not listed in the applications.

11. Due to the misrepresentations provided by Applicant in his applications and weekly certifications, Appellant’s claim was systematically reviewed and processed for payment by the Department’s online portal.

12. As demonstrated by an internal audit²² and confirmed with the Department of Finance,²³ Appellant received a total amount of \$22,080.00 in federal unemployment benefits by direct deposit.²⁴

13. On July 7, 2021, the Department issued a Determination²⁵ disqualifying Appellant from PUA and FPUC benefits from February 16, 2020 to September 4, 2021 because the Department found that Appellant had voluntarily resigned from his position with his Employer and was not due to any of the qualifying COVID-19 related reasons.

14. The Department served the Determination to Appellant via his online portal, email and mail.²⁶

15. The Department provided Appellant with instructions on how to file his appeal and his deadline. Specifically, appeal instructions could be found in the Determination, the Handbook, and the Request to File an Appeal form, and through press releases posted through newspaper publications. Specifically, the Determination stated that the appeal **“must be received or postmarked by 07/17/2021.”**²⁷

16. On Friday, July 23, 2021, after business hours, Appellant filed his appeal via email to the Administrative Hearing Office.²⁸

17. On the next business day, Monday, July 26, 2021, the Administrative Hearing Office received Appellant’s appeal and scheduled the matter for an Administrative Hearing.²⁹

18. In his Request to Appeal form³⁰ and during the hearing, Appellant had no explanation for why his appeal was filed late, past the 10-day deadline, of July 17, 2021.

19. While this appeal was pending, on November 3, 2021, the Department’s BPC issued an Initial

²² Exhibit 28.
²³ Exhibit 26.
²⁴ Exhibits 26 and 28.
²⁵ Exhibit 5.
²⁶ See Exhibit 23.
²⁷ Exhibit 5.
²⁸ Exhibit 6.
²⁹ Exhibits 6-7.
³⁰ Exhibit 6.

1 Notice of Overpayment³¹ for the total amount of \$22,080.00 in federal unemployment benefits
2 for the weeks ending February 15, 2020 to November 7, 2020. Specifically, this amounted to
3 \$12,090.00 in PUA benefits, \$9,180.00 in FPUC benefits, and \$810.00 in Lost Wages
4 Assistance (“LWA”).³²

5 20. On November 5, 2021, the Department issued a second Determination³³ disqualifying
6 Appellant from PUA and FPUC benefits from February 9, 2020 to February 15, 2020 because
7 during that week Appellant earned his normal, customary wages, which was 40 hours or more.

8 21. As discussed during the hearing and stated in his appeal statement,³⁴ Appellant is appealing
9 the Department’s two Determinations and Notice of Overpayment because he claims that in
10 late January 2020 his Employer had informed and advised him and several employees that
11 because of slowing business they would be released from employment and rather than being
12 terminated he should submit a resignation, which he did and so did several of his colleagues.³⁵

13 22. Appellant has found other work and his necessary monthly expenses do not exceed his
14 income. Appellant has spent a majority of the benefits. The Department contests a waiver.

15 IV. CONCLUSIONS OF LAW

16 In consideration of the above-stated findings and applicable law, the undersigned issues the
17 following conclusions of law:

18 **1. Appellant’s appeal of the Determination issued on July 7, 2021 was not timely filed.**

19 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
20 or served to the claimant. However, the Department may extend the period to thirty days by a showing
21 of good cause.³⁶ Good cause means: (1) illness or disability; (2) keeping an appointment for a job
22 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
23 a reasonable person from complying as directed.³⁷

24 Here, Appellant failed to file his appeal of the Determination within the 10-day deadline.
25 Specifically, on July 7, 2021, the Department issued a Determination disqualifying Appellant from
26 PUA and FPUC benefits, effective February 16, 2020 to September 4, 2021. The Department served
27 the Determination to Appellant via email, his online portal, and mail. In his applications, Appellant

28 ³¹ Exhibit 11.

29 ³² *Id.*

30 ³³ Exhibit 10.

31 ³⁴ Exhibit 6.

³⁵ See Exhibit 6.

³⁶ HI. Rev. Statute § 383-38(a).

³⁷ HAR § 12-5-81(j).

1 selected as his preferred method of service email. The Department clearly stated that Appellant had
2 10 calendar days after the date on the Determination to file his an appeal, which means that the “appeal
3 **must be received or postmarked by 07/17/2021.**” However, Appellant filed via email the present
4 appeal on Friday, July 23, 2021 after business hours, which was not received by the Administrative
5 Hearing Office until the next business day, on Monday, July 26, 2021. On the Appeal form, Appellant
6 did not include an explanation as to why his appeal was filed more than ten calendar days after the
7 date of the Determination. When asked at the Administrative Hearing why he filed the appeal late,
8 Appellant had no explanation for why his appeal was filed late, past the 10-day deadline of July 17,
9 2021. Therefore, there is no good cause for the deadline to be extended because there are not cause
10 for which a reasonable person would have been prevented from complying as instructed. Accordingly,
11 based on the evidence presented and applicable law, the Appellant’s appeal of the July 7, 2021
12 Determination is untimely, and the Administrative Hearing Office does not have jurisdiction to review
13 the Determination. The Determination is final and Appellant is not eligible for PUA and FPUC
14 benefits from February 16, 2020 to September 4, 2021.

15 **2. Appellant’s appeal of the November 3, 2021 Notice of Overpayment and**
16 **November 5, 2021 Determination were timely.**

17 Similarly, an appeal of a Notice of Overpayment should be filed within ten calendar days after the
18 Notice was issued or served to the claimant. The filing deadline may also be extended to thirty days
19 by a showing of good cause, as defined above.

20 Here, on November 3, 2021, while the Appellant’s Appeal of the July 7, 2021 Determination was
21 pending, Department’s BPC issued an Initial Notice of Overpayment from week ending
22 February 15, 2020 to week ending November 7, 2020. Subsequently, on November 5, 2021, the
23 Department issued a second Determination disqualifying Appellant from benefits, effective from
24 February 9, 2020 to February 15, 2020. Since the Notice of Overpayment and this Determination were
25 both issued to Appellant while this Appeal was still pending, and because Appellant marked and
26 submitted to the Department on November 3, 2021 that he is requesting an appeal of the Notice of
27 Overpayment, the undersigned finds that his appeal of the Notice of Overpayment (dated
28 November 3, 2021) and the Determination (dated November 5, 2021) were timely.

29 **3. Appellant’s employment was not affected as a direct result of COVID-19.**

30 In accordance with the CARES Act and Continued Assistance Act, PUA and FPUC benefits are
31 available to “covered individuals.” A “covered individual” is someone who: (1) is not eligible for
regular compensation or extended benefits under State or Federal law or pandemic emergency

1 unemployment compensation under Section 2107 of the CARES Act, including an individual who
2 has exhausted all rights to regular unemployment or extended benefits under State or Federal law or
3 Pandemic Emergency Unemployment Compensation under Section 2107;³⁸ (2) self-certifies³⁹ that the
4 individual is unemployed, partially unemployed, or unable or unavailable to work⁴⁰ as a direct result⁴¹
5 of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides
6 required documentation of employment/self-employment within the applicable period of time.⁴²

7 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
8 specifically identifies the COVID-19 qualifying reasons⁴³ as:

- 9 (aa) The individual has been diagnosed with COVID-19 or is
10 experiencing symptoms of COVID-19 and is seeking a medical
11 diagnosis;
- 12 (bb) A member of the individual's household has been diagnosed with
13 COVID-19;
- 14 (cc) The individual is providing care for a family member or a member of
15 the individual's household who has been diagnosed with COVID-19;
- 16 (dd) A child or other person in the household for which the individual has
17 primary caregiving responsibility is unable to attend school or
18 another facility that is closed as a direct result of the COVID-19
19 public health emergency and such school or facility care is required
20 for the individual to work;
- 21 (ee) The individual is unable to reach the place of employment because
22 of a quarantine imposed as a direct result of the COVID-19 public
23 health emergency;
- 24 (ff) The individual is unable to reach the place of employment because
25 the individual has been advised by a health care provider to
26 quarantine due to concerns related to COVID-19;
- 27 (gg) The individual was scheduled to commence employment and does
28 not have a job or is unable to reach the job as a direct result of the
29 COVID-19 public health emergency;

30 ³⁸ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
31 unemployment insurance programs in the CNMI.

³⁹ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
perjury.

⁴⁰ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. *See* HAR § 12-5-35.

⁴¹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

⁴² Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she
files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other
relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

⁴³ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of COVID-19;
- (jj) The individual’s place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)⁴⁴, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
- (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, Appellant submitted his initial application for PUA and FPUC benefits, self-certifying under penalty of perjury, that his employment was affected as a direct result of COVID-19 pandemic since February 15, 2020 because: (1) Appellant was unable to reach his place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency; (2) Appellant’s place of employment closed as a direct result of COVID-19 public health emergency; and (3) Other reason not listed in the application. In his subsequent application for continued benefits, dated March 9, 2021, Appellant self-certified under penalty of perjury that his employment was directly affected by COVID-19 on February 15, 2020 when his place of employment closed as a direct result

⁴⁴ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 of the COVID-19 public health emergency. Finally, in his weekly certifications, Appellant self-
2 certified and represented that his place of employment closed as a direct result of the COVID-19
3 public health emergency.

4 Based on evidence and testimony provided by the Appellant and Employer’s witness, the
5 undersigned finds that Appellant did not meet the COVID-19 qualifying reasons. First, Appellant
6 testified that he was not quarantined or advised to be quarantined during the claimed weeks. Second,
7 although Employer temporarily closed and furloughed employees, the temporary closure was after
8 Appellant’s voluntary resignation on February 15, 2020. Appellant testified and argued that his direct
9 supervisor told him to resign rather than wait to be terminated due to the COVID-19 pandemic.
10 However, the representative for the Employer testified that Employer did not advise Appellant or any
11 other employees to resign and although the company closed during the pandemic, Appellant
12 voluntarily resigned *prior* to the closure. Employer also provided written and oral testimony that
13 Appellant’s separation was not due to any COVID-19 qualifying reasons.⁴⁵ Third, Appellant earned
14 his normal, customary wages from February 9, 2020 to February 15, 2020. Finally, in reviewing each
15 of the above-listed COVID-19 qualifying reasons, Appellant testified in the negative and, therefore,
16 Appellant did not satisfy any of the other COVID-19 qualifying reasons. Accordingly, based on the
17 evidence and the applicable law, Appellant does not meet any of the COVID-19 qualifying reasons
18 and his employment was not affected as a direct result of COVID-19 pandemic and Appellant is not
19 eligible to received PUA and FPUC benefits from February 9, 2020 to September 4, 2021.

20 **4. Appellant is overpaid and is not entitled to a waiver.**

21 “Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
22 or appeal.”⁴⁶ However, “[a]ny individual who has received any amount as benefits . . . to which the
23 individual was not entitled shall be liable for the amount unless the overpayment was received without
24 fault on the part of the recipient and its recovery would be against equity and good conscience.”⁴⁷

25 Fault⁴⁸ is defined as:

26 _____
27 ⁴⁵ Exhibit 19.

28 ⁴⁶ HRS § 383-43.

29 ⁴⁷ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
30 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
31 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

⁴⁸ HRS 12-5-83.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,⁴⁹ the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant, as required ...
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.⁵⁰

Considering the foregoing discussions, Appellant was not eligible to receive unemployment benefits and should not have been paid benefits under the PUA and FPUC programs. Appellant does not contest the amount listed in the Notice of Overpayment and he confirmed receiving the total sum of \$22,080.00. Therefore, it is clear that the overpayment occurred.

As a preliminary matter, it is important to note that in order to determine eligibility for the PUA and FPUC benefits the Department relies heavily on claimants’ self-certification and representations in their applications and weekly certifications. As provided for in the Appellant’s applications and weekly certifications, it is the Appellant’s responsibility to read the PUA Benefit Rights and Information Handbook and other published materials regarding the PUA and FPUC programs. Moreover, it is Appellant’s responsibility to provide true, accurate, and complete information.

Upon review, the undersigned finds that Appellant is not eligible for a waiver to repay the overpayment in PUA and FPUC benefits. The overpayment occurred, in part, as a result of Appellant’s own fault when he misrepresented information in his applications and weekly certifications. Appellant was not entirely forthcoming about the circumstances surrounding his unemployment and he misrepresented that his employment was a direct result of COVID-19 public health emergency. In the claimed week immediately prior to his resignation – February 9, 2020 to February 14, 2020 –

⁴⁹ *Id.*
⁵⁰ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

1 Appellant earned his normal, customary wages. However, in his weekly certification for this claimed
2 week, Appellant misrepresented that he had no earnings and that he did not work at all during this
3 week.⁵¹ As explained above, Appellant also misrepresented information in his applications and other
4 weekly certifications. First, Appellant's separation from employment was not because of any of the
5 reasons listed in his application: Second, Appellant was not unable to reach his place of employment.
6 Appellant was not subject to quarantine orders imposed as a direct result of the COVID-19 public
7 health emergency. Third, Appellant's unemployment was not due to his place of employment being
8 closed as a direct result of COVID-19 public health emergency because he voluntarily resigned prior
9 to his place of employment closing. Finally, Appellant's employment was not because of any other
10 reason not listed in the applications that is a direct effect of COVID-19 public health emergency. Due
11 to the misrepresentations provided by Applicant in his applications and weekly certifications,
12 Appellant's claim was systematically reviewed and processed for payment by the Department's online
13 portal.

14 Accordingly, the undersigned assigns some fault on the Appellant for the overpayment. Since
15 some fault is assigned to the Appellant, Appellant is not entitled to a waiver of repaying the
16 overpayment amount and Appellant is liable to repay the entire overpayment of \$22,080.00.

17 V. DECISION

18 For the reasons stated above, it is ORDERED that:

- 19 1. The CNMI Department of Labor's Disqualifying Determinations, dated July 7, 2021 and
20 November 5, 2021, are both **AFFIRMED**;
- 21 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 9, 2020
22 to September 4, 2021;
- 23 3. The CNMI Department of Labor's Notice of Overpayment, November 3, 2021 is also
24 **AFFIRMED**;
- 25 4. Appellant was overpaid in the total amount of **\$22,080.00** and is not entitled to a waiver for
26 repayment; and
- 27 5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
28 discuss options for repayment or offsetting the overpayment, in accordance with the
29 applicable rules.

30
31

⁵¹ Exhibit 4.

1 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
2 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
3 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
4 written request must be submitted to the Administrative Hearing Office, either in person at Building
5 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

6 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
7 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
8 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
9 Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and
10 filing deadlines for judicial review will be as established by the applicable law and court rule.

11 So ordered this 7th day of February, 2023.

12 /s/
13 **CATHERINE J. CACHERO**
14 Administrative Hearing Officer

15 **LIST OF DOCUMENTS ADMITTED AS EVIDENCE**

- 16 1. Exhibit 1: Copy of Appellant's Application Snapshot (new), filed June 23, 2020;
- 17 2. Exhibit 2: Copy of Appellant's Application Snapshot (reopen), filed March 9, 2021;
- 18 3. Exhibit 3: Copy of Appellant's Northern Mariana Islands Portal – UI Application, printed on
19 October 13, 2021;
- 20 4. Exhibit 4: Copies of Appellant's Weekly Certifications, from February 9, 2020 to November 7,
21 2020;
- 22 5. Exhibit 5: Copy of Department's Disqualifying Determination, dated July 7, 2021, effective
23 February 16, 2020 to September 4, 2021;
- 24 6. Exhibit 6: Copy of Appellant's Request to File an Appeal, including supporting documents, all
25 filed via email on July 23, 2021 and received on July 26, 2021;
- 26 7. Exhibit 7: Copy of the Notice of Hearing, issued July 26, 2021;
- 27 8. Exhibit 8: Copy of Sua Sponte Amended Notice of Hearing, issued on November 5, 2021;
- 28 9. Exhibit 9: Copy of Second Amended Notice of Hearing, issued on November 10, 2021;
- 29 10. Exhibit 10: Copy of Department's Disqualifying Determination, dated November 5, 2021,
30 effective February 9, 2020 to February 15, 2020;
- 31 11. Exhibit 11: Copy of Department's Initial Notice of Overpayment, dated November 3, 2021;
12. Exhibit 12: Copy of Appellant's U.S. passport;

- 1 13. Exhibit 13: Copy of Star Marianas Inc.'s ("Employer") Personnel Action Form, submitted on
- 2 February 5, 2020 for February 10-12, 2020;
- 3 14. Exhibit 14: Copy of Appellant's Letter of Resignation to Star Marianas Air, Inc. effective
- 4 February 15, 2020;
- 5 15. Exhibit 15: Copy of Emails between Department and Employer, dated June 11, 2021 and June 16,
- 6 2021, including attachment;
- 7 16. Exhibit 16: Copy of Separation Notice, signed and dated June 15, 2020;
- 8 17. Exhibit 17: Copy of Separation Notice, signed and dated June 16, ;
- 9 18. Exhibit 18: Copy of Letter from Employer to Department (corrected Separation Notice), dated
- 10 October 14, 2021;
- 11 19. Exhibit 19: Copy of Letter from Employer to Department, dated October 27, 2021;
- 12 20. Exhibit 20: Copies of Appellant's Time Sheets for January 20, 2020 to February 9, 2020;
- 13 21. Exhibit 21: Copies of Appellant's Final Pay Check, dated February 18, 2020;
- 14 22. Exhibit 22: Copy of Employer Personnel Action Form, submitted on February 15, 2020,
- 15 referencing resignation letter effective on February 15, 2020;
- 16 23. Exhibit 23: Copy of Northern Mariana Islands Portal Screenshot and Preview Messages, printed
- 17 March 21, 2022;
- 18 24. Exhibit 24: Copy of Northern Mariana Islands Portal Document List Screenshot;
- 19 25. Exhibit 25: Copies of Emails between the BPC and Employer and between the Department and
- 20 Appellant, dated October 5, 2021, October 12, 2021, October 14, 2021, October 15, 2021, October
- 21 18, 2021, October 21, 2021, October 28, 2021, November 2, 2021, November 3, 2021 and
- 22 November 5, 2021;
- 23 26. Exhibit 26: Copy of Emails between BPC and CNMI Department of Finance, dated
- 24 December 1, 2021, December 9, 2021, and December 17, 2021;
- 25 27. Exhibit 27: Copies of Department's Case Notes, dated August 19, 2020, October 16, 2020,
- 26 May 18, 2021, July 26, 2021, October 12, 2021, October 15, 2021, November 1, 2021,
- 27 November 4, 2021, November 5, 2021, November 10, 2021, February 25, 2022, March 1, 2022,
- 28 and March 14, 2022; and
- 29 28. Exhibit 28: Copy of BPC's Audit Summary.
- 30
- 31

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



1			
2			
3			
4	In Re Matter of:)	PUA Case No. 22-0212
5	Cameron Covarrubias,)	
6)	
7	Appellant,)	ADMINISTRATIVE ORDER
8	v.)	
9	CNMI Department of Labor,)	
10	Division of Employment Services-PUA,)	
11	Appellee.)	
12)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 28, 2022 and January 20, 2023, both hearings held at approximately 9:00 a.m. Due to the parties being on the Island of Rota, the Administrative Hearing was held online via Zoom. Appellant Cameron Covarrubias (“Appellant”) was present and self-represented at the hearing held on December 28, 2022, but Appellant failed to appear at the hearing on January 20, 2023. Appellee CNMI Department of Labor Division of Employment Services–Pandemic Unemployment Assistance program (“Department”) was present and represented by the Department’s PUA Coordinator Peter Maratita. No other witnesses provided testimony at the hearings. A list of the admitted evidence is added to the end of this Order.

For the reasons stated below, the Department’s Disqualifying Determination dated March 28, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from July 4, 2021 to August 28, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment Compensation (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

1 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
2 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
3 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended the programs
4 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
5 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
6 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
7 appeals of agency decisions.

8 Upon review of the records, this appeal is not timely filed. Accordingly, jurisdiction is not
9 established.

10 III. PROCEDURAL BACKGROUND & ISSUES

11 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
12 March 28, 2022, the Department issued a Disqualifying Determination (“Re-Determination”). On
13 April 12, 2022, Appellant filed the present appeal and the matter was scheduled for an Administrative
14 Hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal was
15 timely filed; (2) whether Appellant was eligible for PUA; and (3) whether an overpayment occurred
16 and funds should be returned.

17 IV. FINDINGS OF FACT

18 In consideration of the evidence provided and credibility of witness testimony, the undersigned
19 issues the following findings of fact:

- 20 1. From January 2021 to June of 2021, Appellant, a U.S. citizen, was working part-time hours
21 as cook at Da Waves Restaurant (“Da Waves”), located on the Island of Rota, CNMI.⁵ Da
22 Waves paid Appellant \$10.00 per hour based on his schedule and timesheets.⁶ However,
23 contrary to his self-certifications in his application, Appellant was not a lawful employee of
24 Da Waves.
- 25 2. Da Waves did not issue any pay stubs, Form W-2 to Appellant, Form 1099 or any other proof
26 of payments to Appellant.

27
28
29 _____
30 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for
Unemployed Workers Act of 2020” or “Continued Assistance Act”).

31 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
32 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

33 ⁵ Exhibits 9-10.

⁶ See Exhibit 9-10.

- 1 3. On July 7, 2021, Appellant submitted an initial application⁷ for unemployment assistance
2 under the PUA and FPUC programs. In this application,⁸ Appellant self-certified under
3 penalty of perjury that:
- 4 a. He was an employee of “DA’WAVE”;
 - 5 b. His type of employment was “Temporary” and “Part Time (Less than 30 hours);
 - 6 c. He began working for Da Waves on January 4, 2021;
 - 7 d. His hours were reduced or he was laid off as a direct result of COVID-19; and
 - 8 e. He was affected since February 3, 2021.
- 9 4. The Department reviewed and investigated Appellant’s claims and requested that Appellant
10 timely provide supporting documents to support his claims.⁹
- 11 5. On December 29, 2021, the Department issued a Determination¹⁰ disqualifying Appellant
12 from benefits effective, July 4, 2021 to August 28, 2021, because Appellant did not submit
13 required supporting documents to substantiate his claims within the reasonable time that he
14 was given to do so.¹¹
- 15 6. Subsequently, on January 19, 2022, the Department issued two Determinations.¹² One
16 Determination disqualified Appellant from benefits effective August 7, 2021 to August 28,
17 2021, because Appellant failed to meet the minimum three work search contacts each week.¹³
18 The second Determination disqualified Appellant from benefits effective July 4, 2021 to
19 August 28, 2021 because the employment certification that Appellant provided by Da Waves
20 did not indicate an interruption in employment as a direct result of the COVID-19 pandemic.¹⁴
- 21 7. On or about March 14, 2022, Appellant filed a request for reconsideration by filing a typed
22 written letter¹⁵ in which both the Appellant signed and the Da Waves Manager Lucia
23 Manglona signed, stated that, due to the pandemic, Appellant was not gainfully employed
24 from February 28, 2021 to May 30, 2021 and from June 27, 2021 to October 12, 2021.¹⁶
- 25 8. On March 14, 2022, Appellant requested reconsideration because he uploaded a letter from
26
27

28 ⁷ Exhibit 1.

29 ⁸ *Id.*

30 ⁹ *See* Exhibit 13.

31 ¹⁰ Exhibit 2.

32 ¹¹ *Id.* *See also* Exhibits 12-13.

33 ¹² Exhibit 3

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Exhibit 4. *See also* Exhibit 13.

¹⁶ Exhibit 4.

- 1 Da Waves stating lack of work was due to the pandemic.¹⁷
- 2 9. On March 28, 2022, after a review of Appellant's Request for Reconsideration, the
- 3 Department issued a Disqualifying Determination ("Re-Determination"),¹⁸ effective from
- 4 July 4, 2021 to August 28, 2021 because Appellant was advised by the Department to submit
- 5 supporting documents such as employment contract, check stubs, W2 and social security card
- 6 to substantiate his claims, but Appellant was unable to do so because he was not a lawful
- 7 employee.¹⁹
- 8 10. The Department provided Appellant with instructions on how to file his appeal. Appeal
- 9 instructions could be found in the Re-Determination,²⁰ the PUA Benefits Rights Information
- 10 Handbook,²¹ the Request to File an Appeal Form, and through press releases published
- 11 through newspaper publications.²² Specifically, the Re-Determination stated that the appeal
- 12 "**must be received or postmarked by 04/07/2022.** If you do not make the deadline you lose
- 13 the right to appeal this determination."²³
- 14 11. On April 12, 2022, Appellant filed his Request to File an Appeal of the Re-Determination in
- 15 person at the Department's Rota office.²⁴ Appellant did not provide any explanation on the
- 16 Request to Appeal form or submit any documents or evidence to explain why his appeal was
- 17 filed five days after the deadline. As stated in Appellant's Request to Appeal form,²⁵ he is
- 18 appealing the Re-Determination because he believes that he has provided proof of
- 19 employment in multiple ways and the Department even verified with his employer²⁶
- 20 12. On April 12, 2022, upon receiving the Request for Appeal form, the Administrative Hearing
- 21 Office scheduled the matter for an Administrative Hearing.²⁷
- 22 13. On December 5, 2022, Appellant submitted a written request to reschedule the hearing to a
- 23 later date because he will be travelling on the scheduled hearing date and would not be able
- 24
- 25
- 26

27 ¹⁷ Exhibit 5.

28 ¹⁸ Exhibit 6.

29 ¹⁹ *Id.*

30 ²⁰ *Id.*

31 ²¹ Exhibit 17.

32 ²² Exhibit 15.

33 ²³ Exhibit 6 (emphasis in original).

²⁴ Exhibit 7.

²⁵ *See id.*

²⁶ *Id.*

²⁷ Exhibit 8.

1 to participate at the hearing, and Department agreed to the request. On the same day, the
2 undersigned granted the request and continued the hearing for December 28, 2022.²⁸

3 14. On December 28, 2022, the matter was heard, all parties appeared, but Appellant was still
4 travelling off-island and the hearing was continued to January 20, 2023 at 9:00 a.m., which is
5 a date and time that Appellant confirmed at the hearing that he would be back to the CNMI
6 and able to attend and participate.²⁹ The undersigned issued an Order Continuing the Hearing
7 and all parties were properly served with the Order.³⁰

8 15. Appellant failed to appear at the hearing on January 20, 2023.

9 16. Appellant submitted a “Record of Contacts Made for Work” form, but it was incomplete,
10 lacking a date for the one work search contact that he claimed he completed.³¹

11 17. In Appellant’s application,³² Appellant acknowledged that it is his responsibility to read the
12 PUA Benefit Rights Information Handbook (“BRI Handbook”)³³ and any other official
13 written material provided. Notably, the BRI Handbook was publicly available throughout the
14 program and included important information regarding program requirements and
15 processes—including appeals process. Moreover, the Department issued a number of press
16 releases to clarify the appeals process³⁴ and directed claimants to the BRI Handbook and
17 applicable forms. Additionally, the Department issued a number of press releases to clarify
18 the work search contact requirement.³⁵

19 18. With respect to the overpayment issue, the Department conducted further review and
20 confirmed with the Department’s Benefit Payment Control Unit (“BPC”) that no overpayment
21 occurred in this case.³⁶

22 V. CONCLUSIONS OF LAW

23 In consideration of the above-stated findings and applicable law, the undersigned issues the
24 following conclusions of law:

25 1. Appellant’s appeal of the Redetermination was not timely filed.

26 Generally, an appeal should be filed within ten days after the Disqualifying Determination was
27

28 ²⁸ Exhibit 8.

29 ²⁹ See Exhibit 8.

30 ³⁰ Exhibit 8.

31 ³¹ See Exhibit 11.

32 ³² Exhibit 1.

33 ³³ Exhibit 17.

34 ³⁴ See Exhibit 15.

35 ³⁵ See Exhibit 16.

36 ³⁶ Exhibit 14.

1 issued or served to the claimant. However, the Department may extend the period to thirty days by a
2 showing of good cause.³⁷ Good cause means: (1) illness or disability; (2) keeping an appointment for
3 a job interview; (3) attending a funeral of a family member; and (4) any other reason which would
4 prevent a reasonable person from complying as directed.³⁸

5 Here, Appellant failed to file his appeal of the Redetermination within the 10-day deadline.
6 Specifically, the Department issued the Re-Determination on March 28, 2022.³⁹ The Re-
7 Determination clearly stated that Appellant had 10 days to file an appeal: “This means your appeal
8 **must be received or postmarked by 04/07/2022.**”⁴⁰ Also, the BRI Handbook and other available
9 published materials included appeal instructions and discussed the 10-day deadline. Appellant did not
10 file his appeal until April 12, 2022 in-person at the Department’s Rota Office. In his Request to Appeal
11 form, Appellant did not explain why he filed his Appeal late. Additionally, based on Appellant’s
12 failure to appear and participate in the Administrative Hearing scheduled on January 20, 2023, after
13 he had confirmed at the earlier hearing that he would be able to attend, there is no explanation or
14 evidence showing good cause for an extension of the filing deadline. Accordingly, Appellant’s appeal
15 is not timely filed and jurisdiction is not established. Since the Administrative Hearing Office does
16 not have jurisdiction to review the Department’s Re-Determination, the Re-Determination dated
17 March 28, 2022 shall be deemed final.

18 VI. DECISION

19 For the reasons stated above, it is ORDERED that:

- 20 1. The CNMI Department of Labor’s Disqualifying Re-Determination, dated March 28, 2022, is
21 **AFFIRMED**; and
- 22 2. Appellant is **NOT ELIGIBLE** to receive PUA benefits from July 4, 2021 to August 28, 2021.

23 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
24 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
25 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
26 written request must be submitted to the Administrative Hearing Office, either in person at Building
27 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

28 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
29 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
30

31 ³⁷ HI. Rev. Statute § 383-38(a).

32 ³⁸ HAR § 12-5-81(j).

33 ³⁹ Exhibit 6.

⁴⁰ *Id.*

1 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
2 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
3 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
4 court rule.

5 So ordered this 8th day of February, 2023.

6 /s/

7 **CATHERINE J. CACHERO**
8 Administrative Hearing Officer

9 **LIST OF DOCUMENTS ADMITTED EVIDENCE**

- 10 1. Exhibit 1: Copy of Appellant's Application Snapshot, filed on July 7, 2021;
11 2. Exhibit 2: Copy of Department's Disqualifying Determination dated December 29, 2021;
12 3. Exhibit 3: Copies of Department's Disqualifying Determinations, dated January 19, 2022;
13 4. Exhibit 4: Copy of Appellant's January 21, 2022 Letter Requesting Reconsideration;
14 5. Exhibit 5: Copy of Appellant's Request for Reconsideration, dated March 14, 2022;
15 6. Exhibit 6: Copy of the Department's Re-Determination, dated March 28, 2022, effective
16 July 4, 2021 to August 28, 2021;
17 7. Exhibit 7: Copy of Appellant's Request to File an Appeal form and supporting documents, filed
18 April 12, 2022;
19 8. Exhibit 8: Copies of the Notice of Hearing, issued on April 12, 2022, and Orders Continuing
20 Hearing, issued August 4, 2022, December 5, 2022, and December 28, 2022;
21 9. Exhibit 9: Copy of Appellant's Certification of Employment, signed by Da Waves on
22 October 29, 2021;
23 10. Exhibit 10: Copies of Appellant's Time Sheets for weeks ending January 16, 2021, January 29,
24 2021, February 13, 2021, February 27, 2021, June 12, 2021, June 26, 2021;
25 11. Exhibit 11: Copy of Appellant's Record of Contacts Made for Work form, undated;
26 12. Exhibit 12: Copy of NMI Portal Preview Message, dated November 23, 2021;
27 13. Exhibit 13: Copies of Department's Case Notes, dated December 29, 2021, January 19, 2022,
28 January 11, 2022, March 14, 2022, and March 28, 2022;
29 14. Exhibit 14: Copy of Department BPC's Email Communication, dated November 10, 2022;
30 15. Exhibit 15: Copies of Newspaper Articles Regarding Work Search Requirement posted on
31 Marianas Variety and Saipan Tribune on July 22, 2021;
32 16. Exhibit 16: Copy of Department's Press Release FAQ re: Work Search Requirement; and
33 17. Exhibit 17: Copy of Department's Benefits Rights Information Handbook.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



1			
2			
3			
4	In Re Matter of:)	PUA Case No. 22-0215
5	Solomon S. Castro,)	
6)	
7	Appellant,)	ADMINISTRATIVE ORDER
8	v.)	
9	CNMI Department of Labor,)	
10	Division of Employment Services-PUA,)	
11	Appellee.)	
12	_____)		

I. INTRODUCTION

This matter came before the undersigned for an in-person Administrative Hearing on December 29, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan, CNMI. Appellant Solomon S. Castro (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinators Chloe Manalo and Emelda Camacho. Appellant’s common law wife, Jolene Muña, observed and assisted Appellant with submitting supporting documents. A list of the documents admitted into evidence are added to the end of this Order.

For the reasons stated below, the Department’s Determination dated April 25, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from August 1, 2021 to September 4, 2021. Moreover, the CNMI Department of Labor’s Notice of Overpayment dated December 22, 2022 is **AFFIRMED**. Appellant was overpaid in the total amount of **\$40,060.00**. However, Appellant is entitled to a full waiver of repayment because Appellant is not at fault for the overpayment and it would be contrary to equity and good conscience to recover the overpaid benefits from Appellant.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called

1 Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment Compensation
2 (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
3 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
4 insurance programs, which, among other things, extended the PUA and FPUC programs to
5 March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended
6 the programs to September 6, 2021. The Department is responsible in administering the programs in
7 the CNMI in accordance to applicable law.⁴ The Department’s Administrative Hearing Office has
8 been designated to preside over appeals of agency decisions.

9 Here, Appellant filed a claim for unemployment benefits under the PUA and FPUC programs.
10 Upon review of Appellant’s application and supporting documents, the Department issued a
11 Disqualifying Determination on April 25, 2022. On April 30, 2022, Appellant appealed the
12 Determination via e-mail and attached supporting documents. On May 10, 2022, Appellant filed his
13 Request to Appeal form, after returning from off-island travel for work, and this matter was scheduled
14 for an Administrative Hearing.

15 As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed;
16 (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should
17 be returned. Upon review of the records, the undersigned finds that this appeal is timely filed.
18 Accordingly, jurisdiction is established.

19 III. FINDINGS OF FACT

20 In consideration of the evidence provided and credibility of witness testimony, the undersigned
21 issues the following findings of fact:

- 22 1. On June 2013, Appellant, a U.S. Citizen,⁵ separated from his employment with the CNMI
23 government for personal reasons.
- 24 2. Prior to the pandemic, Appellant searched and applied for work with various employers.⁶
- 25 3. On or around March 13, 2020, Appellant interviewed for an Enforcement Technician position

26
27
28

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

29 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

30 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for
Unemployed Workers Act of 2020” or “Continued Assistance Act”).

31 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁵ Exhibit 12.

⁶ Exhibit 8.

1 at CNMI Zoning Board (“Zoning”).⁷ However, due to the impact of COVID-19 pandemic, the
2 CNMI government (including Zoning) implemented cost cutting measures such as reduction
3 in hours and restrictions on hiring.⁸ Appellant did not receive an offer of employment from
4 Zoning, and Appellant was not scheduled to commence employment with Zoning or any other
5 employer prior to the COVID-19 public health emergency.

6 4. On December 14, 2020, Appellant submitted an application⁹ for unemployment assistance
7 under the PUA and FPUC programs administered by the Department. In his initial
8 application,¹⁰ Appellant self-certified under penalty of perjury that:

9 a. Appellant’s employment was directly affected by COVID-19 public health emergency
10 through “[o]ther reason not listed here [in the application]”; and

11 b. Appellant’s employment was affected since March 13, 2020.

12 5. On February 19, 2021, Appellant submitted an additional application for PUA and FPUC
13 benefits.¹¹ Just like in his initial application, Appellant self-certified in this application that:

14 a. Appellant’s employment was directly affected by COVID-19 through “[o]ther reason
15 not listed here [in the application]”; and

16 b. Appellant’s employment was affected since March 13, 2020.¹²

17 6. Appellant also submitted weekly certifications¹³ for continued benefits for March 8, 2020 to
18 June 12, 2021. In each weekly certification, Appellant self-certified that:

19 a. Appellant’s employment was directly affected by COVID-19 public health emergency
20 through “[o]ther reason not listed”;

21 b. Appellant explained that the COVID-19 reason is that, on March 13, 2020, he
22 completed the interview process for employment with Zoning; however, due to the
23 CNMI Governor’s Directive for austerity and as a result of the COVID-19 pandemic,
24 on March 15, 2020, the hiring agency (Zoning) was unable to fill the vacancy that
25 Appellant interviewed for and although he applied for various other vacancies since
26 then, he has not been able to gain employment since the start of the COVID-19
27 pandemic; and

28
29
30 ⁷ See Exhibit 13.

⁸ *Id.*

⁹ Exhibit 1.

¹⁰ *Id.*

¹¹ See Exhibit 2.

¹² *Id.*

¹³ See Exhibits 3 and 4.

1 c. Appellant submitted thru his PUA portal supporting documentation to confirm his
2 applications for work and the results of those applications.¹⁴

3 7. The answers provided in Appellant's applications and weekly certifications were submitted
4 under penalty of perjury. It is Appellant's responsibility to provide true, accurate, and
5 complete answers. Moreover, it is Appellant's responsibility to be informed about the PUA
6 program by reading the PUA Benefit Rights Information Handbook¹⁵ and other official,
7 published written materials regarding the program. Appellant provided true, accurate, and
8 complete answers in his applications and weekly certifications.

9 8. Based on the answers on Appellant's applications and weekly certifications, Appellant's claim
10 was systematically adjudicated and processed for payment by the Department. More
11 specifically:

12 a. For PUA Round 1, the Department did not review Appellant's explanation or
13 clarifying statement in his weekly certifications on the "other reason not listed here",
14 including the supporting documents that explained his interview with Zoning and why
15 he was not hired because of the Governor's Directive and how COVID-19 pandemic
16 affected his job search.

17 b. On March 30, 2021, the adjudicator assigned to review Appellant's claim requested
18 additional documents from Appellant, including certification of employment, check
19 stubs, or timesheets to support Appellant's claims for benefits.¹⁶ Appellant did not
20 submit these types of supporting documents because he did not have a job offer from
21 Zoning or any other employer and he was not scheduled to commence employment
22 with any other employer prior to the COVID-19 pandemic. However, Appellant did
23 submit the letter from Zoning explaining that he was interviewed, but due to COVID-
24 19 pandemic, the Governor issued a Directive that implemented austerity measures
25 including reduction in hours and hiring freeze.¹⁷

26 9. As demonstrated by an internal audit¹⁸ and confirmed by Appellant and the Department,
27 Appellant received a total of \$40,060.00 in federal unemployment benefits.¹⁹

28
29
30 ¹⁴ See Exhibit 8. In his weekly certifications for December 27, 2020 to February 13, 2021, Appellant manually
submitted the same explanation for other reason not listed. See Exhibit 4.

31 ¹⁵ Exhibit 16.

¹⁶ See Exhibit 12.

¹⁷ See Exhibit 13.

¹⁸ See Exhibits 19-20 (audit sheets); Exhibit 21 (payment summary).

¹⁹ See Exhibits 19-20; Exhibit 21.

- 1 10. In April 2021, Appellant applied for an opening at Bureau of Environmental and Coastal
2 Management's ("BECQ's") Division of Environmental Quality's ("DEQ") Solid Waste
3 management Branch.²⁰
- 4 11. On July 27, 2021, Appellant accepted a job offer from BECQ for a Solid Waste Management
5 – Environmental Specialist position, which was expected to begin on August 23, 2021.²¹
6 However, due to delays in the contract routing and approval process, Appellant's start date
7 was changed and he did not begin employment with BECQ until September 27, 2021.²²
- 8 12. On April 25, 2022, the Department issued a Determination²³ disqualifying Appellant from
9 benefits, effective August 1, 2021 to September 4, 2021, because the Department found that
10 Appellant failed to comply with the requirement to conduct three work search contacts for
11 each claimed week.²⁴
- 12 13. On April 30, 2022, Appellant emailed the Administrative Hearing Office appealing the
13 Determination and sending copies of supporting documents.²⁵
- 14 14. Appellant correctly filed his Request to Appeal form on May 10, 2022. Appellant did not file
15 the form until May 10, 2022 because he was travelling off-island performing work duties from
16 May 1, 2022 to May 8, 2022.²⁶
- 17 15. Appellant is appealing the Determination because he was aware of the work search
18 requirement, but when inquiring to the Department's PUA Call Center regarding the work
19 search requirement, he was informed to continue submitting his weekly certifications and
20 explain his situation in the submissions. Appellant followed and relied on those instructions.²⁷
21 For his weekly certifications for August 1, 2021 to September 4, 2021, Appellant included a
22 detailed explanation that, on July 27, 2021, he was offered and he accepted a position with
23 BECQ – DEQ, but the initial expected start date of August 23, 2021 was changed to September
24 27, 2021 due delays in his contract routing and approval process.²⁸

25
26
27
28 ²⁰ See Exhibit 6 (Job Vacancy Announcement).

29 ²¹ See Exhibit 6 (Excepted Service Employment Contract and Request for Personnel Action, dated July 26, 2021).

30 ²² *Id.*

31 ²³ Exhibit 5.

²⁴ Exhibit 5.

²⁵ See Exhibit 6.

²⁶ See Exhibit 6.

²⁷ See Exhibit 21 (NMI PUA Portal screenshots of submitted documents).

²⁸ See Exhibits 6, 9, 10, 11, and 16.

- 1 16. The Department demonstrated that they published information and instructions to claimants
2 on the requirement for the three work search contacts for each claimed week in August 1,
3 2021 to September 4, 2021, including the requirement to keep accurate records.²⁹
- 4 17. Appellant did not submit any record of work search contacts because he did not conduct any
5 work search contacts from August 1, 2021 to September 4, 2021. Appellant performed a
6 limited number of activities that were related to the job offer from BECQ such as signing
7 paperwork, receiving emails on the status of his contract routing, and receiving training
8 materials. However, Appellant performed most of these activities prior to August 1, 2021 or
9 after September 4, 2021, and Appellant did not keep any record or log of these activities.
- 10 18. On December 22, 2022, while this appeal was pending, the Department's Benefit Payment
11 Control Unit ("BPC") issued a Notice of Overpayment³⁰ for the total amount of 40,060.00 in
12 federal unemployment benefits for the period from March 8, 2020 to September 4, 2021.
13 Specifically, this overpayment amount was \$21,700.00 in PUA benefits, \$17,550.00 in FPUC
14 benefits, and \$810.00 in Lost Wages Assistance ("LWA").
- 15 19. As discussed during the hearing, Appellant is appealing the Notice of Overpayment and
16 requesting a full waiver from repaying the overpayment amount claiming that the
17 overpayment occurred without his fault. Although Appellant has found work, his expenses
18 currently exceed his household income.³¹ Since Appellant has spent all of the benefits,
19 Appellant is unable to repay the overpayment without incurring a financial hardship.
- 20 20. Notably, the Department does not contest a partial waiver of the total overpayment.
21 Specifically, at the Administrative Hearing, the Department agreed to waive the overpayment
22 for PUA Rounds 1 and 2 because the overpayment for this claimed period were not due to
23 Appellant's fault, but were the fault of the Department, and it would be against equity and
24 good conscience to require repayment.

25 IV. CONCLUSIONS OF LAW

26 In consideration of the above-stated findings and applicable law, the undersigned issues the
27 following conclusions of law:

28 **1. Appellant's appeal is timely filed.**

29 Generally, an appeal should be filed within ten days after the Determination was issued or served
30
31

²⁹ See Exhibits 14-16.

³⁰ Exhibit 19.

³¹ See Exhibit 17.

1 to the claimant. However, the Department may extend the period to thirty days by a showing of good
2 cause.³² Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview;
3 (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable
4 person from complying as directed.³³

5 Here, on April 25, 2022, the Department issued the Determination to Appellant. On
6 April 30, 2022, Appellant emailed the Administrative Hearing Office appealing the Determination,
7 including typed statements on the basis of his appeal and attaching copies of supporting documents.
8 Appellant was informed to file a Request to Appeal form, but because Appellant was travelling off-
9 island for work, Appellant did not correctly file his Request to Appeal form until he returned to Saipan,
10 May 10, 2022. While the Appellant did not correctly file his completed Request to Appeal form until
11 after the ten-day deadline, there is good cause to extend the deadline by 30 days because Appellant
12 was travelling for work and could not submit the signed, completed Request to Appeal form until he
13 returned to the CNMI. Accordingly, because Appellant filed his appeal and supporting documents via
14 email within ten days of the Determination being issued and because he had good cause to explain the
15 delay in complying as directed with completing and submitting a Request to Appeal form, which was
16 his travel off island for work, the undersigned finds that the Appellant's appeal is timely.

17 **2. Appellant's employment was not affected as a direct result of COVID-19.**

18 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC
19 benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not
20 eligible for regular compensation or extended benefits under State or Federal law or pandemic
21 emergency unemployment compensation under Section 2107 of the CARES Act, including an
22 individual who has exhausted all rights to regular unemployment or extended benefits under State or
23 Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;³⁴ (2) self-
24 certifies³⁵ that the individual is unemployed, partially unemployed, or unable or unavailable to work³⁶
25 as a direct result³⁷ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
26

27 ³² HI. Rev. Statute § 383-38(a).

28 ³³ HAR § 12-5-81(j).

29 ³⁴ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
unemployment insurance programs in the CNMI.

30 ³⁵ The PUA program utilizes initial and weekly applications (certifications) where claimants self-certify and report
under penalty of perjury.

31 ³⁶ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. See HAR § 12-5-35.

³⁷ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

1 (3) provides required documentation of employment/self-employment within the applicable period of
2 time.³⁸

3 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
4 specifically identifies the COVID-19 qualifying reasons³⁹ as:

- 5 (aa) The individual has been diagnosed with COVID-19 or is
6 experiencing symptoms of COVID-19 and is seeking a medical
7 diagnosis;
- 8 (bb) A member of the individual's household has been diagnosed with
9 COVID-19;
- 10 (cc) The individual is providing care for a family member or a member of
11 the individual's household who has been diagnosed with COVID-19;
- 12 (dd) A child or other person in the household for which the individual has
13 primary caregiving responsibility is unable to attend school or
14 another facility that is closed as a direct result of the COVID-19
15 public health emergency and such school or facility care is required
16 for the individual to work;
- 17 (ee) The individual is unable to reach the place of employment because
18 of a quarantine imposed as a direct result of the COVID-19 public
19 health emergency;
- 20 (ff) The individual is unable to reach the place of employment because
21 the individual has been advised by a health care provider to
22 quarantine due to concerns related to COVID-19;
- 23 (gg) The individual was scheduled to commence employment and does
24 not have a job or is unable to reach the job as a direct result of the
25 COVID-19 public health emergency;
- 26 (hh) The individual has become the breadwinner or major support for a
27 household because the head of the household has died as a direct
28 result of COVID-19;
- 29 (ii) The individual has to quit his or her job as a direct result of COVID-
30 19;
- 31 (jj) The individual's place of employment is closed as a direct result of
the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)⁴⁰, above, includes:

- (1) The individual is an independent contractor who is unemployed (total
or partial) or is unable or unavailable to work because of the COVID-

³⁸ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

³⁹ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

⁴⁰ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- 19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
 - (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
 - (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, Appellant separated from the CNMI work force for personal reasons in June 2013, years before the COVID-19 pandemic. Prior to the COVID-19 pandemic, Appellant searched and applied for work with various employers. On March 13, 2020, Appellant interviewed for a job with Zoning. However, Zoning cancelled the vacancy because of the COVID-19 pandemic and the Governor’s Directive that resulted in the reduction of work hours and a hiring freeze. Appellant was interviewed by Zoning, but Appellant did not receive a job offer from Zoning or any other employer, and Appellant was never scheduled to commence work for Zoning or any other employer prior to the COVID-19 public health emergency. Moreover, Appellant also confirmed that he did not meet any of the other COVID-19 qualifying reasons listed above. Accordingly, based on the testimony and evidence presented, Appellant’s employment was not affected as a direct result of the COVID-19 public health emergency.

3. Appellant was not available to work in the CNMI from August 1, 2021 to September 4, 2021 because he failed to meet the work search contact requirement.

In accordance with the CARES Act, an individual must be able and available to work in the CNMI during the week that benefits are claimed. “An individual shall be deemed able and available for work . . . if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed.”⁴¹ “An

⁴¹ HAR § 12-5-35(a)

1 individual shall be deemed *able* to work if the individual has the physical and mental ability to perform
2 the usual duties of the individual’s customary occupation or other work for which is the individual is
3 reasonably fitted by training and experience.”⁴² “An individual shall be deemed *available* for work
4 only if the individual is ready and willing to accept employment for which the individual is reasonably
5 fitted by training and experience. The individual must intend and wish to work, and there must be no
6 undue restrictions either self-imposed or created by force of circumstances which prevent the
7 individual from accepting employment.”⁴³

8 Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA program
9 claimants. Specifically, “[a]n individual may be considered *available* for work any week in which the
10 individual has met the work search requirement.”⁴⁴ Because the CNMI follows Hawaii state law with
11 respect to unemployment benefits, CNMI claimants must “make a minimum of three work search
12 contacts each week, unless⁴⁵ otherwise provided” to demonstrate availability.⁴⁶ With respect to work
13 search contacts, “the [claimant] shall maintain a record of all work search contacts and may be
14 required to submit such records upon request by the Department.”⁴⁷ Activities that are considered
15 “work search contacts” include: (1) registering for work at the Department, other employment agency,
16 or work placement program; (2) apply for work, submitting resumes, or interviewing with potential
17 employers; (3) attending job search seminars or relevant employment seminars; or (4) other similar
18 work search activities which are generally made by individuals in a similar occupation who are
19 genuinely interested in obtaining work. Ultimately, a claimant who fails to make a minimum of three
20 work search contacts each week is considered to be unavailable for work and may be held ineligible
21 for benefits.⁴⁸

22 Here, the Department demonstrated that all claimants were provided with information and
23 instructions on the work search requirement, including keeping accurate records of the three work
24 search contacts for each claimed week. Appellant testified that he was aware of the work search
25 requirement, but he sought clarification from the Department about the work search requirement
26 because he received and accepted a job offer from BECQ on July 27, 2021, and the expected start
27 date was initially on August 23, 2021. According to Appellant, the Department instructed him to
28

29 _____
30 ⁴² HAR § 12-5-35(a)(1) (emphasis added).
31 ⁴³ HAR § 12-5-35(a)(2) and (b) (emphasis added).
⁴⁴ HAR § 12-5-35(c) (emphasis added).
⁴⁵ See HAR §12-5-35(c)(4).
⁴⁶ HAR §12-5-35(c)(1).
⁴⁷ HAR §12-5-35(c)(2).
⁴⁸ HAR §12-5-35(c)(5).

1 continue submitting his weekly certifications with an explanation on his circumstances. Appellant
2 followed the Department's instructions by submitting weekly certifications that included the
3 explanation on his job offer from BECQ, but the Department did not tell him to conduct the three
4 work search contact for each claimed week.⁴⁹

5 Although Appellant had received a job offer from BECQ, Appellant was still required to make
6 three work search contacts for each claimed week because his expected start date was approximately
7 four weeks away from his acceptance of the offer and there was a routing process for his contract to
8 be approved. As stated in the press releases published by the Department, any activity related to a
9 pending job offer would have been considered a work search contact. Examples provided in the press
10 releases included attending a training, undergoing a physical, or submitting to a drug test. The
11 Appellant testified to performing activities related to his job offer from BECQ such as signing
12 paperwork, receiving emails on the status of his contract routing, and receiving training materials.
13 However, the dates of most of these activities that Appellant could recall performing were not within
14 the claimed weeks of August 1, 2021 to September 4, 2021 and, more importantly, Appellant did not
15 keep any accurate records, log or notes of these activities, as required under applicable regulations.
16 Accordingly, Appellant failed to meet the work search requirement from August 1, 2021 to
17 September 4, 2021, and Appellant is considered unavailable during this period.

18 **4. Appellant was overpaid and Appellant is entitled to a full waiver of the overpayment.**

19 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
20 or appeal."⁵⁰ However, "[a]ny individual who has received any amount as benefits . . . to which the
21 individual was not entitled shall be liable for the amount unless the overpayment was received without
22 fault on the part of the recipient and its recovery would be against equity and good conscience."⁵¹

23 Fault⁵² is defined as:

24 (A) A material statement made by the individual which the individual
25 knew or should have known to be incorrect; or

26
27 ⁴⁹ As stated above, due to delays in routing the contract and getting all approvals needed, Appellant did not begin until
28 September 27, 2021.

29 ⁵⁰ HRS § 383-43.

30 ⁵¹ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
31 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

⁵² HRS 12-5-83.

- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,⁵³ the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant, as required ...
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.⁵⁴

Considering that Appellant’s employment was not directly affected by the COVID-19 pandemic and he was not available because he failed to comply with the work search requirement, the benefits that Appellant received were in fact overpayments. However, the undersigned finds that the overpayment were not Appellant’s fault because Appellant provided accurate, true and complete answers including clarifying statements in his weekly certifications and supporting documents, including the letter from Zoning and an explanation on his job offer from BECQ.

The Department is at fault for the overpayment to claimant because it failed to institute controls for adjudication of claims and payment of benefits. The Department systematically adjudicated Appellant’s claims for PUA Round 1 without reviewing the “[o]ther reason” that Appellant submitted in his applications for unemployment assistance. Appellant submitted an accurate, true and complete explanation in his weekly certifications that, on March 13, 2020, Appellant completed the interview process for employment with Zoning, but due to CNMI Governor’s Directive for austerity and as a result of the COVID-19 pandemic, on March 15, 2020, Zoning was unable to fill the vacancy that Appellant interviewed for and he was not able to gain employment since the start of the COVID-19 pandemic. Appellant believed that he fit the “other reasons” for how COVID-19 directly affected his unemployment. Despite these clarifying statement and supporting documents, Appellant was paid benefits because the Department auto-adjudicated the application.

⁵³ *Id.*

⁵⁴ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

1 Similarly, for PUA Rounds 2 and 3, Appellant was not at fault for the overpayment because he
2 provided truthful, accurate, and complete responses, including clarifying statements on his
3 circumstances and supporting documents. On March 30, 2021, the adjudicator assigned to Appellant's
4 claim requested additional documents from Appellant, including certification of employment, check
5 stubs, or timesheets to support Appellant's claims for benefits. Despite submitting the same COVID-
6 19 self-certification of "[o]ther reason not listed here" and the same explanation that he had a job
7 interview with Zoning, but the vacancy was not filled because of the Governor's Directive,
8 Appellant's claims were adjudicated and Department authorized payment of benefits to the Appellant
9 for PUA Rounds 2 and 3. Additionally, for August 1, 2021 to September 4, 2021, Appellant sought
10 clarification from the Department on the work search requirement because of the job offer from
11 BECQ, but he was not told that he should still conduct three work search contacts per claimed week
12 or that he should submit a log of his work activities relating to the job offer. Rather, Appellant was
13 instructed by the Department to continue submitting his weekly certification with an explanation of
14 his circumstances, which he followed. While the undersigned recognizes that it is Appellant's
15 responsibility to read and understand the program requirements as listed in the PUA Benefit Rights
16 Information Handbook and other materials published by the Department, the Handbook and published
17 materials did not clearly explain or detail the "[o]ther reason not listed here". Similarly, the press
18 releases were not explicit about how the work search requirement applied for those with job offers
19 starting in about four weeks, like the Appellant.

20 In addition to Appellant not being at fault for the overpayment, requiring repayment would be
21 contrary to equity and good conscience. First, Appellant has spent all of the PUA and FPUC benefits
22 that he received on paying for necessities, bills, outstanding debt and loans, and in support of his
23 dependents. Second, although Appellant is employed, Appellant's household expenses exceeds his
24 total household income. Appellant's personal expenses include transportation, minor children's
25 education and child care expenses, food, utilities, and repayment of loans and debts. Finally, at the
26 Administrative Hearing, the Department agreed that Appellant is eligible for partial waiver of
27 repayment of benefits received for PUA Rounds 1 and 2. Accordingly, the undersigned finds that
28 Appellant is entitled to a full wavier of the total overpayment because the overpayment did not occur
29 due to Appellant's fault and repayment would be contrary to equity and good conscience.

30 ///

31 ///

V. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated April 25, 2022, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of August 1, 2021 to September 4, 2021;
3. The CNMI Department of Labor's Notice of Overpayment, dated December 22, 2022, is **AFFIRMED**;
4. Appellant was overpaid in the total amount of **\$40,060.00**; and
5. Appellant is entitled to a full waiver for repayment.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **31st** day of January, 2023.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE

1. Exhibit 1: Copy of Appellant's Application Snapshot (new), filed December 14, 2020;
2. Exhibit 2: Copy of Appellant's Application Snapshot (reopen), filed February 19, 2021;
3. Exhibit 3: Copies of Appellant's Weekly Certifications (online versions) for March 8, 2020 to December 12, 2020 and December 27, 2020 to June 12, 2021;
4. Exhibit 4: Copies of Appellant's Weekly Certifications for December 27, 2020 to February 13, 2021;

- 1 5. Exhibit 5: Copy of Department's Disqualifying Determination, dated April 25, 2022;
- 2 6. Exhibit 6: Copy of Appellant's Request to File an Appeal Form, including supporting documents,
- 3 filed May 10, 2022;
- 4 7. Exhibit 7: Copy of Notice of Hearing issued May 10, 2022; and Orders Continuing Hearing issued
- 5 August 4, 2022 and October 24, 2022;
- 6 8. Exhibit 8: Copies of Appellant's Acknowledgement Receipts of Applications from various
- 7 prospective employers, dated from September 22, 2020 to June 23, 2021;
- 8 9. Exhibit 9: Copy of BECQ Employment Contract & Request for Personnel Action, dated
- 9 July 27, 2021; (prospective effective date August 23, 2021)
- 10 10. Exhibit 10: Copy of Appellant's Email Communications with BECQ re Employment Contract
- 11 Status, dated September 2, 2021;
- 12 11. Exhibit 11: Copy of Notice of Personnel Action (NOPA), signature dated October 18, 2021,
- 13 effective September 27, 2021;
- 14 12. Exhibit 12: Copy of Emails between Appellant and Department, dated March 30, 2021 to
- 15 May 7, 2021;
- 16 13. Exhibit 13: Copy of Letter from CNMI Zoning Board, dated December 14, 2020;
- 17 14. Exhibit 14: Copy of Department's Press Release FAQ – Work Search Requirement;
- 18 15. Exhibit 15: Copies of Newspaper Articles Regarding Work Search Requirement posted on
- 19 *Marianas Variety* and *Saipan Tribune*, July 22, 2021;
- 20 16. Exhibit 16: Copy of Department's Benefits Rights Information Handbook;
- 21 17. Exhibit 17: Copies of Department's Case Notes, dated April 25, 2022, December 15, 2022,
- 22 December 16, 2022, December 19, 2022, December 20, 2022, December 21, 2022, and
- 23 December 22, 2022, including email communications referenced in case notes;
- 24 18. Exhibit 18: Copy of Department's Disqualifying Determination dated December 21, 2022;
- 25 19. Exhibit 19: Copy of Department's Notice of Overpayment; dated December 22, 2022;
- 26 20. Exhibit 20: Copy of BPC's Audit Sheet; and
- 27 21. Exhibit 21: Copy of Appellant's Portal Screenshots.

28
29
30
31

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

In Re Matter of:)	PUA Case No. 22-0219
)	
Ashley Norma Fritz,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 24, 2023 at approximately 9:20 a.m. at the Administrative Hearing Office, Saipan, CNMI. The Administrative Hearing was held in-person. Appellant Ashley Norma Fritz (“Appellant”) failed to appear at the hearing. Appellee CNMI Department of Labor Division of Employment Services–Pandemic Unemployment Assistance program (“Department”) was present and represented by the Department’s PUA Coordinators Rosalinda Ulloa and Kassandra Royal. No other witnesses provided testimony at the hearing. A list of the admitted evidence is added to the end of this Order.

For the reasons stated below, the three Disqualifying Determinations that Appellant appealed, dated July 27, 2022 and July 28, 2022, are all **AFFIRMED**. Appellant is not eligible for benefits for the following claimed period: (1) July 19, 2020 to July 25, 2020; (2) September 27, 2020 to October 3, 2020; and (3) November 8, 2020 to December 19, 2020. In addition, the CNMI Department of Labor’s Notice of Overpayment, dated January 13, 2023, is also **AFFIRMED**. Appellant was overpaid in the total amount of \$13,339.51, and Appellant is not entitled to a waiver for repayment.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment Compensation

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

1 (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
2 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
3 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
4 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended the programs
5 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
6 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
7 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
8 appeals of agency decisions.

9 Upon review of the records, Appellant’s appeal of the three Determinations were timely filed.
10 Accordingly, jurisdiction is established.

11 III. PROCEDURAL BACKGROUND & ISSUES

12 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
13 July 27, 2022, the Department issued twelve Disqualifying Determinations.⁵ On the next day,
14 July 28, 2022, the Department issued an additional three Disqualifying Determinations.⁶ On
15 August 4, 2022, Appellant filed an appeal⁷ of only three of the Disqualifying Determinations,
16 disqualifying Appellant from PUA and FPUC benefits for the following claimed periods: (1)
17 July 19, 2020 to July 25, 2020; (2) September 27, 2020 to October 3, 2020; and (3) November 8, 2020
18 to December 19, 2020.

19 Upon receipt of the appeal, the matter was scheduled for an Administrative Hearing.⁸ As stated in
20 the Notice of Hearing, the issues on appeal are: (1) whether Appellant was eligible for PUA; and
21 (2) whether an overpayment occurred and funds should be returned.⁹

22 IV. FINDINGS OF FACT

23 In consideration of the evidence provided and credibility of witnesses’ testimony, the undersigned
24 issues the following findings of fact:

25 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was working full-time hours (30
26

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for
Unemployed Workers Act of 2020” or “Continued Assistance Act”).

29 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
30 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

31 ⁵ See Exhibit 5.

32 ⁶ See Exhibit 6.

33 ⁷ See Exhibit 7.

⁸ See Exhibit 8.

⁹ *Id.*

1 hours or more) at AC Pacific, LLC, doing business as “I Love Saipan” (“Employer”), located
2 on the Island of Saipan, CNMI.¹⁰ Employer paid Appellant \$7.25 per hour.¹¹

3 2. On August 19, 2020, Appellant submitted an initial application¹² for unemployment benefits
4 under the PUA and FPUC programs. In this application,¹³ Appellant self-certified under
5 penalty of perjury that:

- 6 a. Her employment was affected as a direct result of COVID-19 public health emergency
7 because a child or other person in my household for which she has primary caregiving
8 responsibility was unable to attend school or another facility that was closed as a direct
9 result of the COVID-19 public health emergency and such school or facility care is
10 required for her to work; and
11 b. Her last day of work was March 25, 2020.

12 3. Subsequently, on September 14, 2020 and February 23, 2021, Appellant submitted
13 applications¹⁴ for continued unemployment benefits under the PUA and FPUC programs. In
14 these applications, Appellant also self-certified under penalty of perjury as follows:

- 15 a. In her September 14, 2020 application,¹⁵ Appellant self-certified that a child or other
16 person in her household for which she has primary caregiving responsibility is unable
17 to attend school or another facility that was closed as a direct result of the COVID-19
18 public health emergency and such school or facility care is required for her to work,
19 and her last day of work was March 25, 2020.
20 b. In her February 23, 2021 application,¹⁶ Appellant self-certified that her hours were
21 reduced due to COVID-19 pandemic since March 25, 2020.

22 4. Appellant also submitted weekly certifications for the relevant period of March 22, 2020 to
23 July 25, 2020 and for September 13, 2020 to December 26, 2020.¹⁷ In these weekly
24 certifications, Appellant self-certified under penalty of perjury that:

- 25 a. Her employment was affected as a direct result of COVID-19 public health emergency
26 because a child or other person in my household for which she has primary caregiving
27

28
29 ¹⁰ Exhibit 2.

30 ¹¹ *Id.* See also Exhibit 16.

31 ¹² Exhibit 1.

32 ¹³ *Id.*

33 ¹⁴ Exhibits 2-3.

¹⁵ Exhibit 2.

¹⁶ Exhibit 3.

¹⁷ Exhibit 4.

- 1 responsibility was unable to attend school or another facility that was closed as a direct
2 result of the COVID-19 public health emergency and such school or facility care is
3 required for her to work;
- 4 b. Other than this reason, Appellant was also not available to work “due to a family
5 responsibility” and the nature of responsibility is “Child Care”; and
6 c. She had zero earnings for each of the claimed week.¹⁸
- 7 5. Based on Appellant’s responses in her applications and weekly certifications, the Department
8 processed Appellant’s claims for payment. As demonstrated by the Department’s internal
9 audit,¹⁹ Appellant received a total of \$18,482.07 in PUA and FPUC benefits paid via direct
10 deposit.²⁰
- 11 6. Appellant was not entirely forthcoming in her applications and weekly certifications.
- 12 a. In her application dated February 23, 2021,²¹ Appellant self-certified that her hours
13 were reduced since March 25, 2020. However, based on Appellant’s Employer’s
14 records, for certain weeks Appellant was on voluntary personal time off (“PTO”) or
15 absent on family leave.²² Appellant did not submit documents to show that these PTO
16 and absences were due to COVID-19 qualifying reasons.
- 17 b. In her weekly certifications for weeks ending March 22, 2020 to July 25, 2020 and
18 September 13, 2020 to December 26, 2020,²³ Appellant answered “No” to the question
19 on whether she was able and available to work and she explained that it is because of
20 child care for a family member.²⁴
- 21 c. Moreover, in these same weekly certifications,²⁵ Appellant reported zero earnings.
22 However, Appellant earned equal to or more than her normal customary wages for the
23 following periods: (1) from May 31, 2020 to June 6, 2020, Appellant’s \$235.84 in
24 earnings is equal to or exceeds her normal, customary wages; (2) from September 13,
25 2020 to September 19, 2020, Appellant’s \$218.15 in earnings is equal to or exceeds
26
27
28

29 ¹⁸ Exhibit 4.

30 ¹⁹ Exhibit 10.

31 ²⁰ See Exhibit 10.

32 ²¹ Exhibit 3.

33 ²² See Exhibits 13-15.

²³ Exhibit 4.

²⁴ See Exhibit 4.

²⁵ Exhibit 4.

1 her customary wages; and (3) from November 8, 2020 to December 19, 2020,
2 Appellant earned her normal, customary wages.²⁶

3 7. The Department reviewed and investigated Appellant's claims, including requesting
4 employment records, timesheets and records, and the Employer PUA Verification of
5 Employment form to be completed. Employer verified that Appellant has been a Sales
6 Associate since October 22, 2019, her customary hours were 30 hours per week, and on
7 March 25, 2020, her hours were reduced. Employer also provided other employment records,
8 including request for leave form and time records.

9 8. On July 27, 2022, the Department issued *twelve* Disqualifying Determinations,²⁷ effective on
10 the following claim periods and for the stated reasons:

- 11 1. From March 22, 2020 to April 18, 2020, Appellant took personal time off;
- 12 2. From April 19, 2020 to April 25, 2020, Appellant took personal time off;
- 13 3. From May 17, 2020 to May 23, 2020, Appellant was absent on May 17, 2020 to
14 May 18, 2020;
- 15 4. From May 31, 2020 to June 6, 2020, Appellant's \$235.84 in earnings is equal to or
16 exceeds her normal, customary wages;
- 17 5. From June 14, 2020 to June 20, 2020, Appellant was absent on June 14, 2020,
18 June 19, 2020, and June 20, 2020;
- 19 6. From June 28, 2020 to July 4, 2020, Appellant was absent on July 2, 2020 and
20 July 4, 2020;
- 21 7. From July 19, 2020 to July 25, 2020, Appellant was absent on July 19, 2020 to
22 July 25, 2020;
- 23 8. From September 13, 2020 to September 19, 2020, Appellant's \$218.15 in earnings is
24 equal to or exceeds her customary wages;
- 25 9. From September 20, 2020 to September 26, 2020, Appellant was absent from
26 September 23, 2020 to September 24, 2020 and Appellant was on personal time off
27 on September 26, 2020;
- 28 10. From September 27, 2020 to October 3, 2020, Appellant took personal time off;
- 29 11. From October 4, 2020 to October 10, 2020, Appellant took personal time off on
30 October 4, 2020 to October 6, 2020; and
31

32 ²⁶ See Exhibits 13-14.

33 ²⁷ See Exhibit 5.

- 1 12. From October 11, 2020 to October 17, 2020, Appellant was absent on October 14,
2 2020 to October 17, 2020.
- 3 9. On the next day, July 28, 2022, the Department issued an additional *three* additional
4 Disqualifying Determinations,²⁸ effective on the following claim periods and for these
5 reasons:
- 6 i. From October 18, 2020 to October 24, 2020, Appellant was absent and on family leave
7 ii. From October 25, 2020 to October 31, 2020, Appellant was absent and on family leave
8 from October 25, 2020 to October 27, 2020; and
9 iii. From November 8, 2020 to December 19, 2020, Appellant earned her normal
10 customary wages.
- 11 10. On July 28, 2022, Appellant’s claims were referred to Department’s Benefit Payment Control
12 Unit (“BPC”) due to overpayment for PUA Round 1.²⁹ The Department reviewed and
13 investigated Appellant’s claims, including contacting Appellant’s Employer for information
14 and supporting documents relating to Appellant’s work hours and reasons for absences.³⁰
- 15 11. On August 4, 2022, Appellant filed an appeal³¹ of *only three* of the fifteen Disqualifying
16 Determinations, appealing her disqualifications that were effective for the following claimed
17 periods: (1) July 19, 2020 to July 25, 2020; (2) September 27, 2020 to October 3, 2020; and
18 (3) November 8, 2020 to December 19, 2020.
- 19 12. As stated in her Request to Appeal form³² and supporting documents,³³ Appellant is appealing
20 the three Determinations and she is asking for a waiver of repayment because she believes
21 that the overpayment was not her fault³⁴ and her income is insufficient to support herself and
22 her family.³⁵
- 23 13. On August 4, 2022, upon receiving the Request for Appeal form, the Administrative Hearing
24 Office scheduled the matter for an Administrative Hearing.³⁶
- 25 14. While this appeal was pending, on January 13, 2023, the Department issued a Notice of
26
27

28 ²⁸ See Exhibit 6.

29 ²⁹ See Exhibit 12.

30 ³⁰ See Exhibits 12-13.

31 ³¹ See Exhibit 7.

32 ³² Exhibit 7.

33 ³³ *Id.*

34 ³⁴ *Id.*

35 ³⁵ *Id.*

36 ³⁶ Exhibit 8.

1 Overpayment (Initial),³⁷ for a total overpayment amount of \$13,339.51. Specifically, this
2 amounted to \$7,399.51 in PUA benefits and \$5,940.00 in FPUC benefits.³⁸ The Department
3 found that Appellant was overpaid benefits for the following weeks:

- 4 a. For weeks ending March 28, 2020 to April 25, 2020, May 23, 2020, June 13, 2020,
5 June 20, 2020, July 4, 2020, July 25, 2020, September 26, 2020, October 3, 2020 to
6 October 31, 2020, and December 26, 2020 because Appellant's multiple voluntary
7 leaves or absences were not due to COVID-19 public health emergency; and
8 b. For weeks ending June 6, 2020, September 19, 2020, November 14, 2020 to
9 December 19, 2020, Appellant met or exceeded her normal, customary wages and was
10 not considered unemployed or affected by the COVID-19 public health emergency.³⁹

11 15. The Notice of Overpayment was mailed to the Appellant on or around January 16, 2023.⁴⁰
12 Appellant did not separately file an appeal of the Notice of Overpayment.⁴¹

13 V. CONCLUSIONS OF LAW

14 In consideration of the above-stated findings and applicable law, the undersigned issues the
15 following conclusions of law:

16 1. Appellant's employment was not directly affected by COVID-19.

17 In accordance with the CARES Act and Continued Assistance Act, PUA and FPUC benefits are
18 available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for
19 regular compensation or extended benefits under State or Federal law or pandemic emergency
20 unemployment compensation under Section 2107 of the CARES Act, including an individual who
21 has exhausted all rights to regular unemployment or extended benefits under State or Federal law or
22 Pandemic Emergency Unemployment Compensation under Section 2107;⁴² (2) self-certifies⁴³ that the
23 individual is unemployed, partially unemployed, or unable or unavailable to work⁴⁴ as a direct result⁴⁵
24

25 _____
26 ³⁷ Exhibit 9.

27 ³⁸ *Id.*

28 ³⁹ *Id.*

29 ⁴⁰ *Id.*

30 ⁴¹ *See id.*

31 ⁴² This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
32 unemployment insurance programs in the CNMI.

33 ⁴³ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
perjury.

⁴⁴ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. *See* HAR § 12-5-35.

⁴⁵ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

1 of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides
2 required documentation of employment/self-employment within the applicable period of time.⁴⁶

3 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
4 specifically identifies the COVID-19 qualifying reasons⁴⁷ as:

- 5 (aa) The individual has been diagnosed with COVID-19 or is
6 experiencing symptoms of COVID-19 and is seeking a medical
7 diagnosis;
- 8 (bb) A member of the individual's household has been diagnosed with
9 COVID-19;
- 10 (cc) The individual is providing care for a family member or a member of
11 the individual's household who has been diagnosed with COVID-19;
- 12 (dd) A child or other person in the household for which the individual has
13 primary caregiving responsibility is unable to attend school or
14 another facility that is closed as a direct result of the COVID-19
15 public health emergency and such school or facility care is required
16 for the individual to work;
- 17 (ee) The individual is unable to reach the place of employment because
18 of a quarantine imposed as a direct result of the COVID-19 public
19 health emergency;
- 20 (ff) The individual is unable to reach the place of employment because
21 the individual has been advised by a health care provider to
22 quarantine due to concerns related to COVID-19;
- 23 (gg) The individual was scheduled to commence employment and does
24 not have a job or is unable to reach the job as a direct result of the
25 COVID-19 public health emergency;
- 26 (hh) The individual has become the breadwinner or major support for a
27 household because the head of the household has died as a direct
28 result of COVID-19;
- 29 (ii) The individual has to quit his or her job as a direct result of COVID-
30 19;
- 31 (jj) The individual's place of employment is closed as a direct result of
32 the COVID-19 public health emergency; or
- 33 (kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)⁴⁸, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-

⁴⁶ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

⁴⁷ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

⁴⁸ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

- 19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
 - (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
 - (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, in Appellant's applications and weekly certifications for PUA and FPUC benefits, she self-certified under penalty of perjury, that her employment was affected as a direct result of COVID-19 pandemic since March 25, 2020. In her initial application, September 14, 2020 application, and relevant weekly certifications for continued benefits, Appellant self-certified that her employment was affected by COVID-19 pandemic because a child or other person in her household for which she has primary caregiving responsibility was unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school facility. In her February 23, 2021 application, Appellant self-certified to a different reason - that her hours were reduced due to COVID-19 pandemic. Subsequently, the Department reviewed and investigated Appellant's claims, including requesting from Appellant's Employer a PUA Verification Employment form, Appellant's leave request forms, and records of hours.⁴⁹ Employer verified that Appellant has been a Sales Associate since October 22, 2019, her customary hours were 30 hours or more per week, but on March 25, 2020, her hours were reduced.⁵⁰

Based on evidence and testimony provided by the Department and the Employer's records, the undersigned finds that Appellant did not meet any of the COVID-19 qualifying reasons that she certified in her applications and weekly certifications. First, as discussed above, Appellant's hours

⁴⁹ See Exhibit 16.

⁵⁰ See Exhibit 16.

1 and earnings were reduced because she voluntarily took PTO or was absent or on family leave.
2 Second, on certain claimed weeks, Appellant earned equal to or more than her normal, customary
3 wages. Finally, in Appellant's Request to Appeal form and supporting statements, Appellant did not
4 identify any other COVID-19 qualifying reason(s). Moreover, Appellant failed to submit documents
5 to support any COVID-19 qualifying reasons and failed to appear at the Administrative Hearing.
6 Accordingly, for all of these reasons, based on the evidence and the applicable law, Appellant does
7 not meet any of the COVID-19 qualifying reasons and her employment was not affected as a direct
8 result of COVID-19 pandemic and Appellant is not eligible to receive PUA and FPUC benefits.

9 **2. Appellant was not able and available.**

10 In accordance with the CARES Act, an individual must be able and available to work in the CNMI
11 during the week that benefits are claimed. "An individual shall be deemed able and available for work
12 . . . if the individual is able and available for suitable work during the customary work week of the
13 individual's customary occupation which falls within the week for which a claim is filed."⁵¹ "An
14 individual shall be deemed *able* to work if the individual has the physical and mental ability to perform
15 the usual duties of the individual's customary occupation or other work for which is the individual is
16 reasonably fitted by training and experience."⁵² "An individual shall be deemed *available* for work
17 only if the individual is ready and willing to accept employment for which the individual is reasonably
18 fitted by training and experience. The individual must intend and wish to work, and there must be no
19 undue restrictions either self-imposed or created by force of circumstances which prevent the
20 individual from accepting employment."⁵³

21 Here, as discussed, although Appellant's hours were reduced by Employer, for the relevant
22 claimed periods, Appellant voluntarily requested PTO, was absent, or on family leave without pay.
23 Based on the evidence and testimony available, the undersigned finds that the Appellant's reasons for
24 the requested PTO, absence and family leave without pay were not related to COVID-19, but for
25 personal reasons. Accordingly, the undersigned finds that for the relevant claimed weeks, Appellant
26 was not "able and available" to work, as defined by law.

27 **3. Appellant was overpaid and is not entitled to a waiver.**

28 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
29 or appeal."⁵⁴ However, "[a]ny individual who has received any amount as benefits . . . to which the
30

31 ⁵¹ HAR § 12-5-35(a)

32 ⁵² HAR § 12-5-35(a)(1) (emphasis added).

33 ⁵³ HAR § 12-5-35(a)(2) and (b) (emphasis added).

⁵⁴ HRS § 383-43.

1 individual was not entitled shall be liable for the amount unless the overpayment was received without
2 fault on the part of the recipient and its recovery would be against equity and good conscience.”⁵⁵

3 Fault⁵⁶ is defined as:

- 4 (A) A material statement made by the individual which the individual
5 knew or should have known to be incorrect; or
6 (B) Failure to furnish information which the individual knew or should
7 have known to be material; or
8 (C) Acceptance of a payment which the individual either knew or
reasonably could have been expected to know was incorrect.

9 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
10 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
11 good conscience,⁵⁷ the factors to consider include, but are not limited to:

- 12 (A) Whether notice of a redetermination was given to the claimant, as
13 required ...
14 (B) Hardship to the claimant that the repayment may impose; and
15 (C) The effect, if any, that the repayment will have upon the
fulfillment of the objectives of the program.⁵⁸

16 Considering the foregoing discussions, Appellant was not eligible to receive unemployment
17 benefits and should not have been paid benefits under the PUA and FPUC programs. In her Appeal,
18 Appellant does not contest the amount listed in the Notice of Overpayment and the amounts were
19 confirmed by the Department. Therefore, it is clear that the overpayment occurred.

20 As a preliminary matter, it is important to note that in order to determine eligibility for PUA and
21 FPUC benefits the Department relies heavily on claimants’ self-certification and representations in
22 their applications and weekly certifications. As provided for in the Appellant’s applications and
23 weekly certifications, it is the Appellant’s responsibility to read the Benefit Rights and Information
24

25
26
27 ⁵⁵ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
28 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
29 authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
30 authority applies to overpayments that meet this criterion at any time since the PUA program began.

31 ⁵⁶ HRS 12-5-83.

⁵⁷ *Id.*

32 ⁵⁸ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
33 and availability of funds for eligible or qualified individuals.

1 Handbook and other published materials regarding the PUA and FPUC programs. Moreover, it is
2 Appellant's responsibility to provide true, accurate, and complete information.

3 Upon review, the undersigned finds that Appellant is not eligible for a waiver to repay the
4 overpayment. The overpayment occurred, in part, as a result of Appellant's own fault when she
5 misrepresented information in her applications and weekly certifications. Appellant was not entirely
6 forthcoming about the circumstances surrounding her reduction in work hours and earnings, the
7 reasons for her absences from work and voluntary leave requests. Appellant also did not submit any
8 evidence or substantiating proof that the reduction in hours and earnings were in fact a direct result of
9 COVID-19 public health emergency. In addition, as discussed above, for some of the claimed weeks,
10 Appellant earned her normal, customary wages, but she did not report these wages in her weekly
11 certifications. Due to these misrepresentations by Appellant, her claim was systematically reviewed
12 and processed for payment by the Department's online portal. Accordingly, the undersigned assigns
13 some fault on the Appellant for the overpayment. Since some fault is assigned to the Appellant,
14 Appellant is not entitled to a waiver of repaying the overpayment and Appellant is liable to repay the
15 entire overpayment of \$13,339.51.

16 VI. DECISION

17 For the reasons stated above, it is ORDERED that:

- 18 1. The CNMI Department of Labor's Disqualifying Determinations, dated July 27, 2022 and
19 July 28, 2022, are all **AFFIRMED**; and
- 20 2. Appellant is **NOT ELIGIBLE** to receive PUA benefits from July 19 to 25, 2020, September
21 27, 2020 to October 3, 2020, and November 8, 2020 to December 19, 2020;
- 22 3. The CNMI Department of Labor's Notice of Overpayment, dated January 13, 2023, is also
23 **AFFIRMED**;
- 24 4. Appellant was overpaid in the total amount of \$13,339.51, and Appellant is not entitled to a
25 waiver for repayment; and
- 26 5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
27 discuss options for repayment or offsetting the overpayment, pursuant to applicable rules.

28 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
29 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
30 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
31 written request must be submitted to the Administrative Hearing Office, either in person at Building
32 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

33

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
2 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
3 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
4 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
5 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
6 court rule.

7 So ordered this 17th day of February, 2023.

8
9 /s/

CATHERINE J. CACHERO
Administrative Hearing Officer

10
11
12 **LIST OF DOCUMENTS ADMITTED INTO EVIDENCE**

- 13 1. Exhibit 1: Copy of Appellant's Application Snapshot (new), filed August 19, 2020;
- 14 2. Exhibit 2: Copy of Appellant's Application Snapshot (additional), filed September 14, 2020;
- 15 3. Exhibit 3: Copy of Appellant's Application Snapshot (additional), filed February 23, 2021;
- 16 4. Exhibit 4: Copies of Appellant's Weekly Certifications for March 22, 2020 to July 25, 2020 and
17 for September 13, 2020 to December 26, 2020;
- 18 5. Exhibit 5: Copies of Department's twelve Disqualifying Determinations, all dated July 27, 2022;
- 19 6. Exhibit 6: Copies of Department's three Disqualifying Determinations, all dated July 28, 2022;
- 20 7. Exhibit 7: Copy of Appellant's Request to File an Appeal and supporting documents (including
21 typed and signed statements), filed August 4, 2022;
- 22 8. Exhibit 8: Copy of Notice of Hearing and Amended Notice of Hearing, issued August 4, 2022
23 (notifying of today's hearing) and December 20, 2022 (notifying in-person hearing);
- 24 9. Exhibit 9: Copy of Notice of Overpayment, including copy of certified mail, dated
25 January 13, 2023;
- 26 10. Exhibit 10: Copy of Department's Benefit Payment Control Unit Audit Sheet;
- 27 11. Exhibit 11: Copies of Appellant's Separation Notices from Employer AC Pacific, LLC
28 ("Employer"), dated June 22, 2020 and March 1, 2021;
- 29 12. Exhibit 12: Copies of Department's Case Notes, dated April 27, 2022 and July 28, 2022;
- 30 13. Exhibit 13: Copy of Email Correspondences between Department's PUA Coordinator and
31 Employer, dated April 27, 2022;

- 1 14. Exhibit 14: Copies of Employer's Timesheets Report for March 25, 2020 to April 7, 2020, April
2 22, 2020 to July 28, 2020, and September 9, 2020 to December 29, 2020, with Department PUA
3 Coordinator's handwritten notes;
- 4 15. Exhibit 15: Copies of Appellant's Requests for the following leave of absences: (1) Paid Time
5 Off for March 2, 2020 to March 24, 2020; (2) Paid Time Off Extension for March 24, 2020 to
6 April 8, 2020; (3) Personal Leave Without Pay for September 26, 2020 to October 6, 2020; and
7 (4) Personal Leave Without Pay for October 14, 2020 to October 28, 2020;
- 8 16. Exhibit 16: Copy of Appellant's Verification of Employment completed by Employer, dated
9 January 16, 2023;
- 10 17. Exhibit 17: Copy of PUA and FPUC Benefit Rights Information Handbook;
- 11 18. Exhibit 18: Copy of Justification of Work Schedule verified and signed by Employer on
12 May 4, 2022; and
- 13 19. Exhibit 19: Copies of Email Communications between Department and Appellant, dated
14 December 30, 2022 and January 10, 2023, including attached questionnaire.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>In Re the Matter of:</p> <p>Jennifer A. Sagana,</p> <p style="padding-left: 100px;">Appellant,</p> <p style="padding-left: 100px;">v.</p> <p>CNMI Department of Labor, Division of Employment Services-DUA, Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DUA Case No. 22-017</p> <p>ADMINISTRATIVE ORDER</p>
---	--	--

On February 03, 2023, the parties filed a joint stipulation to dismiss this above-captioned case as moot when the Department re-determined Appellant eligible for DUA benefits for weeks ending November 10, 2018 through November 24, 2018 and agreed to consider additional weekly certifications. Upon review of the joint stipulation, the undersigned finds that the parties no longer wish to pursue this appeal and dismissal is warranted. Accordingly, this appeal is hereby **DISMISSED** and any pending deadlines or hearings with the Administrative Hearing Office is **VACATED.**

So ordered this 9th day of February, 2023.

/s/
JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer