

CHAPTER 60-40
PUBLIC SCHOOL SYSTEM PROCUREMENT RULES AND REGULATIONS

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Chapter Authority: CNMI Const., art. XV; [1 CMC §§ 2251-2273](#); [3 CMC §§ 1101-1192](#).

Chapter History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 44 Com. Reg. 48665 (July 28, 2022); Amdts Proposed 44 Com. Reg. 42853 (Mar. 28, 2022); Amdts Adopted 43 Com. Reg. 47033 (July 28, 2021); Amdts Proposed 43 Com. Reg. 46078 (May 28, 2021); Amdts Adopted 43 Com. Reg. 47033 (July 28, 2021); Amdts Proposed 43 Com. Reg. 46078 (May 28, 2021); Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Amdts Adopted 39 Com. Reg. 39769 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39666 (May 28, 2017); Amdts Adopted 36 Com. Reg. 35897 (Dec. 28, 2014); Amdts Proposed 36 Com. Reg. 35657 (Oct. 28, 2014); Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997); Amdts Proposed 18 Com. Reg. 14484 (Nov. 15, 1996);* Amdts Adopted 16 Com. Reg. 12466 (Oct. 15, 1994); Amdts Proposed 16 Com. Reg. 11669 (Feb. 15, 1994); Amdts Adopted 16 Com. Reg. 11672 (Feb. 15, 1994);* Amdts Proposed 15 Com. Reg. 10994 (Oct. 15, 1993); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

*The notice of adoption for the February 1994 amendments appears at pages 11671-72 and 11679-80. The adoption notice only partially adopted the proposed amendments. A notice of adoption for the 1996 amendments was never published.

Commission Comment: Title 3, division 1 of the Commonwealth Code contains the education laws of the Commonwealth. [PL 6-10](#), the “Education Act of 1988,” codified as amended at [1 CMC §§ 2251-2273](#) and [3 CMC §§ 1101-1192](#), took effect on October 25, 1988. [PL 6-10](#) § 1 created the Public School System as a nonprofit corporation within the Commonwealth government, headed by the Board of Education. See [1 CMC §§ 2251](#) and 2261. The Board of Education is empowered to formulate policy and exercise control over the Public School System and to establish rules, regulations and policies for the operation of the Public School System. See [1 CMC § 2268\(b\)](#).

[PL 6-10](#) repealed and reenacted [PL 3-43](#) (effective Jan. 19, 1983), a comprehensive revision of the Commonwealth’s education laws. See the commission comment to [3 CMC § 1101](#).

Prior to October 25, 1988, the Commonwealth government included a Department of Education and Board of Education, which are the predecessors of the current Public School System and Board of Education. See [PL 1-8](#) (effective August 10, 1978) and [PL 3-43](#). Throughout the development of education law in the Commonwealth, the Board of Education has been the entity with the authority to promulgate rules and regulations.

Part 001 - General Provisions

Subpart A - General

§ 60-40-001 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 Public School System;
 - (3) To provide increased economy in Public School System 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.
 - (6) To establish a system of procurement for the convenience of the Public School System and protection of the taxpaying public, not for the benefit and enrichment of vendors. Accordingly, nothing herein is meant to, nor shall it be interpreted to, create any substantive or procedural right of any kind.
 - (7) Nothing herein shall be interpreted to reduce or affect in any particular instance the authority, judgment, or discretion of the Board or Commissioner to control the Public School System guaranteed by the CNMI Constitution and Commonwealth Code.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-005 Authority

The regulations in this chapter are promulgated under the authority of PL 6-10 which make the Board of Education accountable and the Commissioner of Education responsible for procurement and supply in the Commonwealth of the Northern Mariana Island's Public School System.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-010 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, EDGAR, and common law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement these regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The Commission corrected “principals” to “principles” pursuant to 1 CMC § 3806(g).

§ 60-40-015 Requirement of Good Faith

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

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Public School System 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. The regulations in this subchapter do not apply to employment contracts or contracts for personal services under an excepted service.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-025 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.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-030 Validity of Contract

No Public School System contract covered by the regulations in this chapter shall be valid unless it complies with these regulations.

Modified, 1 CMC § 3806(d).

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History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-035 Remedy Against Employee

Any procurement action of an employee of the Public School System in violation of the regulations in this chapter is an action outside the scope of his or her employment. The Public School System 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.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Subpart B - Definitions

§ 60-40-040 Definitions

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

- (a) “Legal counsel” means the attorney hired by the Board of Education.
- (b) “Board of Education” means the elected head body as provided by the constitution and public law.
- (c) “Commissioner of Education” means the chief state school officer appointed by the Board of Education to administer the Public School System.
- (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 Public School System, including appointive and elective officials and non-salaried individuals, including those on

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honorarium, performing personal services for the Public School System. This definition extends to Board of Education 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) “Governor” means the Governor of the Northern Mariana Islands.

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

(l) “Official with expenditure authority” means the chief state officer who may extend, obligate, earmark, encumber or otherwise commit public funds under Public Law 3-68, 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 material 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.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

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Commission Comment: In subsection (b), the Commission changed “provide” to “provided” to correct a manifest error. In subsection (d), the Commission moved the period after “improvements” inside of the closing quotation mark. The Commission corrected the capitalization of “officer” in subsection (c) pursuant to 1 CMC § 3806(f).

Subpart C - Public Access

§ 60-40-045 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 ensure proper bidding procedures. This decision shall be made only by the Board of Education.

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Part 100 - Procurement Organization

Subpart A - Chief of Procurement and Supply

§ 60-40-101 Creation of Procurement and Supply Division

There is hereby created in the Public School System a Division of Procurement and Supply under the management of the Commissioner of Education in the execution of those duties authorized under Public Law 3-63, or under any annual appropriations act.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-105 Chief of Procurement and Supply

The Commissioner of Education shall appoint a Chief of Procurement and Supply to administer and supervise the day-to-day activities of the division.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-110 Duties of the Chief

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

- (a) Oversee that these regulations are observed in all Public School System procurement;
- (b) Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the Public School System;

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- (c) Conduct bidding, procurement, negotiation or administration of Public School System contracts upon request of the official with expenditure authority;
- (d) Provide advanced planning for the centralized purchase of Public School System supplies;
- (e) Exercise general supervision and control over all inventories of supplies belonging to the Public School System;
- (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.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-115 Contract Oversight

- (a) The Chief Procurement and Supply is responsible for certifying the correctness of all contracts according to the Public School System policies;
- (b) The contract shall then be approved by the comptroller or his designee for certification of funds;
- (c) The contract shall be approved by the Commissioner of Education for expenditure authority;
- (d) The contract shall then be approved by the Chairman of the Board of Education;
- (e) Upon his own initiative or upon the request of the Public Auditor, the Chief may refer any contract to the Public Auditor for a recommendation before he approves or disapproves the contract.
- (f) The Public School System's legal counsel shall certify the form and legal capacity of every Public School System contract, change order, or purchase order.
- (g) The Personnel Officer shall approve contracts for services by an independent contractor in a non-employment status.
- (h) A contract may be referred back to the Commissioner of Education for further review based on additional evidence that it may not comply with the regulations in this chapter. If the Commissioner of Education withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.
- (i) 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.

(j) No contract is effective against the Public School System until all the Public School System officials whose signatures appear on the contract form have signed the contract. Officials may withhold signing the contract for any reason deemed in the best interest of the Public School System. A contract shall contain a right to audit records clause.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-120 Split Contracts

If the Chief 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 Chief 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.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The Commission corrected the spelling of “competitively.”

§ 60-40-125 Acceptance of Gratuities by Chief of Procurement and Supply Division Employees

(a) In addition to the restrictions found in § 60-40-525, 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.

Modified, 1 CMC § 3806(c).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Subpart B - Procurement Function

§ 60-40-130 Procurement Services

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

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-135 Centralized Procurement of Supplies

The Chief may, with the approval of the Commissioner of Education purchase supplies in large quantities to be relied upon by all departments, agencies, offices and branches when in the best interest of the Public School System. No separate contract or purchase order for these supplies will be approved.

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 60-40-201 Methods of Source Selection

Unless otherwise authorized by law or by regulation, all Public School System contracts above \$10,001.00 subject to § 60-40-210 shall be awarded by competitive sealed bidding, except as provided in:

- (a) § 60-40-210 (Small Purchases);
- (b) § 60-40-215 (Sole Source Procurement);
- (c) § 60-40-220 (Emergency Procurement);
- (d) § 60-40-225 (Competitive Sealed Proposals);
- (e) § 60-40-230 (Professional Services);
- (f) § 60-40-305 (Architect-Engineer Services).

Modified, 1 CMC § 3806(c), (g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsections (b) and (c), the Commission inserted the final semi-colons to ensure consistent punctuation.

§ 60-40-205 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;

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- (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.

(1) 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 Public School website over a continuous period of four weeks shall be deemed to be adequate notice.

(2) If the Chief determines that a shorter advertisement period is reasonable and necessary, such shortened time is allowable. Such shortened period shall allow vendors a reasonable opportunity to respond considering the circumstances of the procurement, such as its complexity and urgency. The advertisement period shall never be less than 7 calendar days.

(3) The Chief may extend an advertisement period by not more than 60 calendar days should circumstances warrant, considering factors such as the degree of urgency, complexity, expected increase of vendor participation, anticipated extent of subcontracting, the geographic distribution of vendors, and the like.

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

(d) Bid Receipt. All bids shall be submitted to the Office of the Chief of the Division of Procurement and Supply. 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 Chief. No information contained in the bid shall be disclosed prior to the bid opening. The Chief shall cause the opened bid to be placed into the sealed receptacle.

(e) Bid Opening.

(1) The bid opening shall be conducted by the Chief of Procurement and Supply at the Office of the Commissioner of Education. 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 Chief 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 Chief 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.

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(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 Public School System. 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 Public School System.
- (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 Chief in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Public School System or fair competition shall be allowed. Whenever a bid mistake is suspected, the Commissioner of Education shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the Commissioner of Education 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

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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 Public School System contract is written and has been approved by all the officials required by law and regulation.

(ii) Public School System 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 Public School System 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 Commissioner of Education may authorize the Chief 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.

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

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Amdts Adopted 36 Com. Reg. 35897 (Dec. 28, 2014); Amdts Proposed 36 Com. Reg. 35657 (Oct. 28, 2014); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: [Historical codification comments removed.]

§ 60-40-210 Small Purchases

(a) 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.

(b) Purchases not exceeding \$1,000.00 may be made without securing bids or price quotations if the Chief of Procurement and Supply considers the price reasonable. Such determination shall be made in writing and shall indicate:

- (1) the reason why price quotations were not sought;
- (2) the utility of the purchase;
- (3) an explanation of why the price is reasonable under the circumstances.

(c) The Capital Improvements Projects office shall be permitted to make small purchases according to subsection (b), but a small purchase shall be considered \$1,000.

(d) Bidding is not required but is encouraged for procurement under \$25,000. Price quotations from at least three vendors must be obtained and the selection based on competitive price and quality for procurement valued at under \$25,000. Any price quotations obtained must be written, documented, and submitted to the Chief for approval. However, if it is an emergency and three

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price quotations are not practicable, the purchase shall function as an emergency procurement and follow [§ 60-40-220](#).

(e) Purchase orders may be utilized for small purchases in subsections (b) and (c) only. Purchase orders may also be utilized instead of contracts for purchasing instructional materials, books, and publications.

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

(g) Construction services may be procured by obtaining three price quotations from qualified contractors. 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 \$50,000 and shall be accompanied by a justification, in writing, by the Capital Improvements Projects office and agreed to and signed by the Commissioner of Education.

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 44 Com. Reg. 48665 (July 28, 2022); Amdts Proposed 44 Com. Reg. 42853 (Mar. 28, 2022); Amdts Adopted 43 Com. Reg. 47033 (July 28, 2021); Amdts Proposed 43 Com. Reg. 46078 (May 28, 2021); Amdts Adopted 39 Com. Reg. 39769 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39666 (May 28, 2017); Amdts Adopted 36 Com. Reg. 35897 (Dec. 28, 2014); Amdts Proposed 36 Com. Reg. 35657 (Oct. 28, 2014); Amdts Proposed 18 Com. Reg. 14484 (Nov. 15, 1996); Amdts Adopted 16 Com. Reg. 12466 (Oct. 15, 1994); Amdts Proposed 16 Com. Reg. 11669 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 10994 (Oct. 15, 1993); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The notice of adoption for the 1993 proposed amendments did not adopt the proposed changes to this section. See 16 Com. Reg. 11672 (Feb. 15, 1994). Therefore, the Commission has not incorporated the proposed changes.

The 1994 amendments readopted and republished this section in its entirety with numerous amendments.

A notice of adoption for the 1996 amendments was never published and, therefore, the Commission has not incorporated the proposed changes.

In December 2014, the Commission changed (i), (ii) and (iii) in subsection (b) to (1), (2) and (3) and inserted the colon, semi-colons, and period. In subsection (c), the Commission, struck out the number “(3)” where it appeared merely a repetition of the written word pursuant to 1 CMC § 3806(e). The Commission inserted a comma after the word “documented” in subsection (c) pursuant to [1 CMC § 3806\(g\)](#).

In codifying 39 Com. Reg 39769, the Commission changed “subparagraph” to “subsections” in (e) pursuant to [1 CMC § 3806\(g\)](#).

§ 60-40-215 Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when:

(1) The Chief determines in writing that there is only one source for the required supply, service or construction item.

(2) The purpose is to obtain expert witnesses for litigation;

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- (3) The purpose is to obtain legal services;
 - (4) The purpose is to obtain the services provided by lecturers, speakers, trainers, or facilitators when the vendor uses specialized training methods or techniques or has expertise in the subject matter; or
 - (5) The purpose is to purchase registration or workshop fees for conferences or training.
- (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.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-220 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 Public School System. 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 PSS will be fair and reasonable, and
 - (5) Data, estimated cost, or other rationale as to the extent and nature of the harm to PSS.
- (c) The justification must be approved by the Chief of Procurement and Supply and the Commissioner of Education.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 16 Com. Reg. 11672 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 10994 (Oct. 15, 1993); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The 1994 amendments added new subsections (b) and (c) and readopted and republished the section in its entirety.

The notice of adoption for the February 1994 amendments appears at pages 11671-72 and 11679-80. The adoption notice is irregular in that the adoption of the amendments to this section is mentioned only in the certification and not in the text of the adoption notice. See 16 Com. Reg. at 11672 and 11679.

In subsection (b)(1), the Commission corrected the spelling of “description.”

§ 60-40-225 Competitive Sealed Proposals

(a) **Condition for Use.** When the Commissioner of Education determines in writing upon the advise of the legal counsel that the use of a competitive sealed bidding is either not practical or not advantageous to the Public School System, 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 ensure full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) **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 Public School System, 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 Public School System 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.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-230 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 such as special education related services.

(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 Chief 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.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

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

§ 60-40-235 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 Chief Procurement & Supply and approved by the Commissioner of Education to be in the best interests of the Public School System 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 Public School System in the solicitation;
- (e) Bids or proposals received indicated that the needs of the Public School System can be certified by a less expensive good or service;
- (f) All offers with acceptable bids or proposals received are at unreasonable prices;
- (g) Bids were collusive; or
- (h) Any other reason cancellation is determined to be in the best interest of the Public School System.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Subpart C - Qualifications and Duties

§ 60-40-240 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.

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(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 Commissioner of Education, the Chief Procurement Officer, and legal counsel or any involved Public School System 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.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In the title of this section, the Commission removed “of” between “Responsible” and “Bidders” to correct a manifest error.

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

§ 60-40-245 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 Chief. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening.

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Subpart D - Types of Contracts

§ 60-40-250 Types of Contracts

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

(b) Public School System 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;

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- (2) Use of a firm fixed price contract could seriously effect the contractor's financial stability or result in payment by the Public School System for contingencies that never occurred; or
- (3) Use of a cost reimbursement contract is likely to be less costly to the Public School System than any other type due to the nature of the work to be performed under the contract.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsection (c), the Commission corrected the spelling of "official" and "occurred."

§ 60-40-251 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 Public School System because:

- (i) Utilizing a competitive process will unreasonably delay construction; or
- (ii) Utilizing a competitive process will not result in cost savings to the Public School System; or
- (iii) The project is necessary to protect the health and welfare of the students and staff of the Public School System.

(2) The Commissioner of Education 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.

Modified, [1 CMC § 3806](#)(a), (b), (e)-(g).

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History: Amdts Adopted 39 Com. Reg. 39771 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39671 (May 28, 2017); Adopted 36 Com. Reg. 35897 (Dec. 28, 2014); Proposed 36 Com. Reg. 35657 (Oct. 28, 2014).

Commission Comment: This section was designated § 60-40-202 in the October 2014 proposed regulations. The Commission redesignated it as [§ 60-40-251](#) pursuant to [1 CMC § 3806\(a\)](#). The Commission struck out the number “(2)” in subsection (b) pursuant to [1 CMC § 3806\(e\)](#).

Subpart E - Inspection and Audit

§ 60-40-255 Right to Inspect Place of Business

The Board of Education and the Commissioner, 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 Public School System.

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-260 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 Public School System 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 Public School System contracts and obligations.

Modified, 1 CMC § 3806(e).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Subpart F - Reports and Records

§ 60-40-265 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.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 60-40-270 Retention of Procurement Records

- (a) All procurement records shall be retained by the Board of Education, the Commissioner of Education and the Chief Procurement Officer.
- (b) The Chief 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.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Part 300 - Procurement of Construction and Architect-Engineer Services

§ 60-40-301 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 Commissioner of Education to exceed \$25,000.00 or when the Commissioner of Education determines it is in the interest of the Public School System. Bid security shall be on a bid bond, in cash, by certified check, cashiers check or other form acceptable to the Public School System. 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 Public School System legal counsel.

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(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 Public School System and shall become binding on the parties upon the execution of the contract:

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

(2) A payment bond satisfactory to the Commissioner of Education, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commissioner of Education, 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.

(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.

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(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 Commissioner of Education 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.

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

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

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

In subsection (f), the Commission corrected the spelling of “however.”

§ 60-40-305 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 Commissioner of Education and the Public School System’s capital improvement projects 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 Commissioner of Education shall negotiate a contract with the highest qualified architect- engineer firm at a price determined to be fair and reasonable to the Public School System. 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.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-310 Computer Software

(a) Notwithstanding any other provision of these regulations, commercial computer software, including documentation, warranties, subscriptions, and related component may be procured pursuant to this part.

(b) Commercial computer software, including commercial computer software documentation and cloud computing services, may be acquired under a license customarily provided to the public to the extent such license is lawful and satisfies PSS's needs.

(c) In acquiring commercial software, PSS shall not generally require contractors to:

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

(2) Transfer intellectual property rights or otherwise relinquish to, or otherwise provide, the System the rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation, except as mutually agreed to by the parties. With regard to commercial computer software and commercial software documentation, PSS shall have only those rights specified in the license therefor.

(d) Competitive bidding, or competitive procurement is not required for commercial software, including Software-as-a-Service, upon a showing that:

(1) The software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet;

(2) Proof of contemporaneous pricing which is available to CNMI purchasers is supplied in the contract package; and

(3) The prices being compared are within 10% of the pricing selected, or the selected vendor will provide support for the software of a value which compensates for the difference in price.

(e) Competitive bidding or competitive procurement is not required with respect to software for the following:

(1) Software purchased is an updated version of software previously purchased;

(2) An extension of the license for previously purchased software;

(3) An extension of maintenance services for previously purchased software; and

(4) Computer hardware maintenance agreements for existing equipment.

(f) Contracts for extensions of maintenance service agreements, license renewals, or updates to previously purchased software as provided for in § 60-40-310(e) may proceed as a new sole source contract, or small purchase, as provided for in these Regulations.

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(g) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) or CNMI Government blanket contract that was negotiated by the federal or CNMI government, is presumptively concluded to follow the competitive procurement requirements of these Regulations. This presumption applies not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023).

Part 400 - Protests and Disputes

§ 60-40-401 Protests to the Commissioner of Education

(a) General

(1) (i) 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 shall protest to the Commissioner of Education. A formal written protest to the Commissioner is a prerequisite to any appeal per § 60-40-405 or petition or complaint in the Superior Court. The protest shall be received by the Commissioner of Education 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. Any argument, claim, or theory not presented to the Commissioner or presented with insufficient factual or legal support is deemed waived and abandoned.

(ii) Protest Bond. A protest bond executed by a surety company authorized to do business in the Commonwealth, or a check payable to the CNMI Public School System, in an amount equal to at least fifteen percent of the protestor's bid price or offer, in a form and substance that is acceptable to the Commissioner shall be delivered to the Commissioner at the time of filing a protest. The protest bond shall be immediately payable to the Public School System, or the check may be cashed by the System, upon a decision by the Commissioner or Appeal Committee, if the Commissioner's decision is appealed, that a protest or appeal has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Bad Faith in this instance shall include, but is not limited to, multiple protests with a calendar year by the same vendor which are found to be without merit, protests intended to delay or mislead the Public School System, and protests by the same vendor which repeatedly do not adhere to the Public School System's Procurement Regulations. The Commissioner shall hold a protest bond for at least thirty days after the date of the final determination of 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 Commissioner of Education. 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 Commissioner of Education within five days after receiving notice by the protesting party. The Commissioner of Education may extend the period of time to submit views and relevant information if the Commissioner certifies that he/she believes the complexity of the matter requires a longer period of time. The

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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 Commissioner of Education shall decide the protest within thirty calendar days after the protest is filed unless the Commissioner certifies that the complexity of the matter requires a longer time, in which event the Commissioner shall specify the appropriate longer time. If the Commissioner of Education 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 Education by filing such Notice of Appeal with the Chairperson through the Board Secretary at the State Board of Education Office.

(4) When a protest has been appealed to the Appeal Committee, as provided in these procedures, the Commissioner of Education shall submit a report, and the Commissioner of Education 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;
- (iii) The solicitation, including the specifications on portions relevant to the protest;
- (iv) The abstract of offers or relevant portions;
- (v) Any other documents that are relevant to the protest; and
- (vi) The Commissioner of Education'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 Commissioner of Education's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Commissioner of Education 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 Commissioner's decision has been taken to the Appeal Committee, the Commissioner of Education 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 Commissioner of Education 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 Public School System.

(3) If award is made under subsection (b)(2) above, the Commissioner of Education shall document the file to explain the need for an immediate award. The Commissioner of Education

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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 Public School System. The term “file” or “submit” except as otherwise provided refers to the date of transmission.

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

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: [Historical codification comments removed.]

§ 60-40-405 Appeals of Commissioner of Education’s Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Commissioner of Education may be taken provided that the party taking the appeal has first submitted a written protest to the Commissioner of Education and otherwise fully complied with § 60-40-401, and the Commissioner of Education has denied the protest or has failed to act on the protest within the time provided. A decision from a formal written appeal to the Appeal Committee is a prerequisite to any appeal, petition, or complaint in the Superior Court.

(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 Commissioner of Education’s decision must be received by the Appeal Committee not later than ten calendar days after the appellant received the decision of the Commissioner of Education, or, in the event that the Commissioner of Education has not decided the protest, within three days from the date that the Commissioner should have decided the protest pursuant to § 60-40-401. 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 Public School System should be appeal be considered.

(d) Notice of Protest, Submission of Commissioner of Education’s Report and Time for Filing of Comments on Report.

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- (1) The Chairperson of the Appeal Committee, immediately upon appointment by the Board Chairperson, shall notify the Commissioner of Education in writing within one day of appointment, requesting the Commissioner of Education 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 Commissioner of Education 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 Commissioner of Education to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within thirty calendar days) in accordance with § 60-40-401(a)(3) and (4) and to furnish a copy of the report to the appellant and noticed parties.
- (3) Comments on the Commissioner of Education’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 Commissioner of Education, 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 Commissioner of Education to submit rebuttals to the comments on the Commissioner of Education’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 Commissioner of Education, 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 § 60-40-401(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 Commissioner of Education. 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.

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(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 Commissioner of Education.

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: [Historical codification comments removed.]

§ 60-40-410 Remedies

(a) Remedies Prior to Award. If prior to award the Commissioner of Education 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 Commissioner of Education 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 Public School System; 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 Public School System, without prejudice to the Public School System'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.

History: Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-415 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of the Public School System to contract with a business after bidding, or the cancellation of bids which may or

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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.

History: Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The Commission corrected the capitalization of the word “the” pursuant to 1 CMC § 3806(f).

§ 60-40-420 Disputes

(a) Any dispute between the Public School System 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 Commissioner of Education 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 Commissioner of Education 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 Commissioner of Education 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 Commissioner of Education or Appeal Committee.

History: Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Amdts Adopted 20 Com. Reg. 15965 (June 15, 1998); Amdts Proposed 19 Com. Reg. 15423 (Aug. 15, 1997); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The 1998 amendments readopted and republished this section in its entirety with numerous amendments.

The Commission struck the figure “10” from subsection (a) pursuant to 1 CMC § 3806(e).

§ 60-40-425 Appeal Committee

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The Appeal Committee is comprised of three members of the State Board of Education 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.

History: Amdts Adopted 41 Com. Reg. 41648 (May 28, 2019); Amdts Proposed 41 Com. Reg. 41512 (Mar. 28, 2019); Adopted 36 Com. Reg. 35009 (May 28, 2014); Proposed 36 Com. Reg. 34760 (Feb. 28, 2014);

Commission Comment: [Historical codification comments removed.]

Part 500 - Ethics in Public Contracting

§ 60-40-501 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 Public School System and is not a matter of public knowledge or available to the public on request.

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

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

(d) “Financial interest” means:

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

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

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

History: Amdts Adopted 36 Com. Reg. 35009 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34760 (Feb. 28, 2014); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: The 2014 amendments added subsection (b), removed former subsection (e), and removed the former designation of subpart A. The Commission inserted a comma after the word “print” in subsection (b) pursuant to 1 CMC § 3806(g).

Subpart A - Standards of Conduct

§ 60-40-505 Policy

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

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: Prior to the 2014 amendments, this subpart was designated as subpart B.

§ 60-40-510 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.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-515 Employee Disclosure Requirements

- (a) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from any Public School System contract with a business in which the employee has financial interest, shall report such benefit to the Commissioner of Education.
- (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.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsection (a), the Commission corrected the spelling of "Commissioner."

§ 60-40-520 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:

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- (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 Commissioner of Education 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.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsection (b), the Commission corrected the spelling of "disqualification."

§ 60-40-525 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.

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

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-530 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 Public School System 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 Public School System 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.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsection (a), the Commission corrected the spelling of “bona fide.”

§ 60-40-535 Contract Clauses

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

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-540 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 Public School System 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 Public School System, 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 Public School System is a party or has a direct or substantial interest.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-545 Use of Confidential Information

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

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-550 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 Commissioner of Education 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 Public School System.

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-555 Penalties

(a) Public School System employees. A Public School System employee is any person whether appointed, elected, excepted service or civil service. An 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 Public School System 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 Public School System contract in addition to other penalties prescribed by law.

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

Modified, 1 CMC § 3806(d), (g).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

Commission Comment: In subsection (b), the Commission corrected the spelling of “termination.”

§ 60-40-560 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 Commissioner of Education after consultation with the Public School System 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 Commissioner of Education, after consultation with Public School System 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:

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- (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 Public School System 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 Commissioner of Education to be so serious as to justify debarment action:
 - (i) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or
 - (ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment;
 - (5) Any other cause that the Commissioner of Education determines to be so serious and compelling as to effect responsibility as a Public School System contractor, including debarment by another procurement entity within the Commonwealth or federal government; and
 - (6) For violation of any of the ethical standards set forth in part 500.
- (c) Decision. The Commissioner of Education 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.

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

History: Amdts Adopted 45 Com. Reg. 50538 (Oct. 28, 2023); Amdts Proposed 45 Com. Reg. 49766 (May 28, 2023); Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

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

In subsection (a)(1), the Commission changed “Procedures” to “Procedure” to correct a manifest error. In subsection (b)(2), the Commission corrected the spelling of “destruction.”

Part 600 - Miscellaneous

§ 60-40-601 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.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6155 (Apr. 15, 1989); Proposed 11 Com. Reg. 5878 (Feb. 15, 1989).

§ 60-40-605 Imprest Fund Procedures

(a) Imprest Fund Trustee

(1) To maintain accountability of imprest funds one person (trustee) will be assigned the responsibility for each imprest fund that is established. The trustee is the designated and authorized disbursing officer and is the custodian of the fund.

(2) In addition to the trustee's duties and responsibilities as the disbursing officer, the imprest fund trustee is personally liable for all money in the fund and will be required to replace the funds if they are lost, stolen, or misappropriated. Imprest funds are public funds and should not be commingled with personal funds.

(b) Imprest Fund Transactions

The only transactions or expenditures authorized to be paid from the imprest funds are those which meet the following general criteria:

(1) Funds are certified and available to pay for the expenditure.

(2) The expenditure must be legal, proper, and responsible, and does not constitute waste or abuse of public funds.

(3) The expenditure must be approved by the trustee.

(4) The expenditure must be properly supported by pertinent documents.

(5) The maximum disbursement level for PSS imprest funds is \$1,000. Disbursements shall not be artificially divided so as to meet this requirement.

(c) Responsibilities of the Trustee

The trustee shall be held accountable for:

(1) The existence or correctness of the computations appearing in and of the facts stated in the check voucher and its supporting records;

(2) The propriety and legality of the proposed payment under the account or fund involved;

(3) The repayment of any illegal, improper, or incorrect disbursement resulting from any false, inaccurate, or misleading certificate made by the trustee.

(d) Disbursement

Expenditures authorized for payment under imprest fund are disbursed from the imprest fund checking account by the trustee. The trustee shall

(1) Disburse funds only by checks and only as provided by a check voucher certified by the trustee;

(2) Be accountable for ensuring that a check voucher is in proper form and is certified and approved;

(3) Maintain a reasonable accounting of the balance of the funds remaining or existing in the imprest fund account;

(4) Ensure that no funds are disbursed in excess of available funds;

(5) Be personally liable for charges resulting from insufficient funds charges (NSF) for overdrawn accounts;

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(6) Be responsible for establishing necessary controls to safeguard the supply of blank checks and to ensure that checks written are delivered in the most appropriate and efficient manner.

(e) Imprest Fund Reporting & Replenishment

(1) All disbursements processed through the imprest fund must be posted on the replenishment voucher sheet as soon as completed. The effect of the transaction on the imprest fund checking account must also be posted in the checkbook register.

(2) Disbursements from the imprest fund are replenished through the submission of a completed imprest fund replenishment voucher. Imprest fund replenishment vouchers shall be submitted every month prior to the 10th of the month. Imprest fund replenishment vouchers submitted must be complete and accurate replenishment voucher could result in exceptions or delayed replenishment.*

(3) The amount of money to be put in each imprest fund shall be based on school enrollment, dollars per student. When quarterly appropriation is expended no more purchases can be made until the next quarters allotment is available.

(4) Each school should be required to match the amount of funds, from the central office, in the imprest account on a one to one basis from their fund raising activity.

*So in original.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 16 Com. Reg. 12466 (Oct. 15, 1994); Amdts Proposed 16 Com. Reg. 11669 (Feb. 15, 1994).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (e).

In subsection (c)(3), the Commission replaced the final semi-colon with a period.

The following form was published after this section:

**PUBLIC SCHOOL SYSTEM
IMPREST FUND REPLENISHMENT VOUCHER**

Name of Imprest Fund _____

Bank Name _____ Account Number _____

Date of Request _____

Period Cover _____ to _____

Approved Cash Level \$ _____

Check #	Date	Description	Amount
_____ 1	_____ 1	_____ 1	_____ 1
_____ 1	_____ 1	_____ 1	_____ 1
_____ 1	_____ 1	_____ 1	_____ 1
_____ 1	_____ 1	_____ 1	_____ 1

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Total Replenishment Requested \$ _____

Requested By: _____

Imprest Fund Trustee Date

TRUSTEE ACCEPTANCE

I, _____ hereby accept and understand the duties and responsibilities of a trustee of a Public School System Imprest Fund, as well as the sanctions imposed for failure to perform or performance in contravention of the required duties and responsibilities of a trustee.

Signature Date

See 16 Com. Reg. at 11676-77 (Feb. 15, 1994).