

TITLE 90: MARIANAS VISITORS AUTHORITY

CHAPTER 90-20 PROCUREMENT RULES AND REGULATIONS

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Chapter Authority: [4 CMC § 2106](#) (repealed by [PL 11-15](#)); [4 CMC § 2128](#).

Chapter History: Amdts Adopted 39 Com. Reg. 39758 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39326 (Mar. 28, 2017); Amdts Adopted 38 Com. Reg. 39038 (Dec. 28, 2016); Amdts Proposed 38 Com. Reg. 38598 (Sept. 28, 2016); Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: [PL 11-15](#) (effective June 17, 1998), the “Marianas Visitors Authority Act of 1998,” codified as amended at [4 CMC §§ 2101-2145](#), created the Marianas Visitors Authority (MVA) as the successor to the Marianas Visitors Bureau. The Marianas Visitors Bureau had existed in accordance with title 4, div. 2, ch. 1 of the Commonwealth Code since February 11, 1976. [PL 11-15](#) § 23 repealed title 4, div. 2, ch. 1 and enacted new statutory provisions creating the Marianas Visitors Authority and charging MVA with promoting tourism in the Commonwealth. See [4 CMC §§ 2102](#) and [2103](#); see also the commission comment to [4 CMC § 2101](#).

[PL 11-15](#) § 22 also vacated Executive Order 94-3 § 302(b). Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. Executive Order 94-3 § 302(b) allocated the Marianas Visitors Bureau to the Department of Commerce for purposes of administration and made changes to the structure of the Bureau’s Board of Directors. The full text of Executive Order 94-3 is set forth in the commission comment to [1 CMC § 2001](#).

[PL 11-15](#) §§ 17-21, [4 CMC §§ 2141-2145](#), provide for the transition of property, personnel and authority from the Marianas Visitors Bureau to the MVA.

[PL 11-15](#) § 15, [4 CMC § 2128](#), authorizes MVA to adopt rules and regulations necessary to implement the provisions of the act. [4 CMC § 2124](#)(d) specifically authorizes MVA to adopt its own procurement and supply regulations consistent with those of the CNMI government.

[PL 17-54](#) (Sept. 26, 2011) changed the composition of the Marianas Visitors Authority’s board of directors.

The Marianas Visitors Bureau promulgated the Procurement Rules and Regulations codified in this chapter pursuant to the authority of former [4 CMC § 2106](#).

Part 001 - General Provisions

§ 90-20-001 Authority

The regulations in this chapter are promulgated under the authority of [4 CMC § 2106](#)(q) for the use of the Marianas Visitors Bureau.

Modified, [1 CMC § 3806](#)(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-005 Purposes

The underlying purposes and policies of the regulations in this chapter are:

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

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-010 Requirement of Good Faith

The regulations in this chapter require all parties involved in the negotiation, bidding, performance or administration of Bureau contracts to act in good faith.

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-015 Application of Regulations

- (a) The regulations in this chapter apply to every expenditure of Bureau funds. These regulations do not apply to contracts between the Bureau and the government or its political subdivisions or other governments. Nothing in these regulations shall be

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construed to prevent the Bureau from complying with the terms and conditions of any grant, cooperative agreement or memorandum of understanding.

(b) These regulations do not apply to employment contracts.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-020 Severability

If any provision of the regulations in this chapter or any application thereof to any person or circumstances 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 these regulations are declared to be severable.

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

§ 90-20-025 Validity of Contract

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

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-030 Remedy Against Employee

Any procurement action of an employee of the Bureau in violation of this chapter is an action outside the scope of his or her employment. The Bureau 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 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

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§ 90-20-035 Definitions

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

- (a) “Appeal committee” means the special committee of the Board authorized to hear appeals.
- (b) “Attorney” means the legal counsel of the Bureau.
- (c) “Bureau” means the Marianas Visitors Bureau.
- (d) “Board” means the Board of Directors of the Bureau.
- (e) “Construction” means the process of building, altering, repairing, improving or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.
- (f) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (g) “Contracting officer” means the Managing Director, or any other individual authorized by the Board to execute contracts.
- (h) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the regulations in this chapter, and a fee, if any.
- (i) “Destination enhancement” means a project to maintain or beautify a tourist site, a major roadway, or a pedestrian mall.
- (j) “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.
- (k) “Employee” means an individual receiving a full time salary from the Bureau. Consultants, independent contractors and part-time workers shall not be considered employees.
- (l) “Managing Director” means the Managing Director of the Bureau or his designee.
- (m) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature.

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- (n) “Government” means the Commonwealth of the Northern Mariana Islands government which includes the executive, legislative, and judicial branches.
- (o) “Invitation for bids” means a solicitation by the Bureau to the public to make an offer to enter into a contract in which the contract will be awarded to the lowest responsive bid by a responsible bidder.
- (p) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.
- (q) “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.
- (r) “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.
- (s) “Request for proposal” means a solicitation by the Bureau to the public to make a proposal to enter into a contract.
- (t) “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.
- (u) “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.
- (v) “Service” means the furnishing of time, labor or effort by a person, other than an employee, and not involving the delivery of a specific end product other than reports, plans and incidental documents. It does not include professional, advisory, or technical services.

Modified, [1 CMC § 3806](#)(a), (d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 39758 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39326 (Mar. 28, 2017); Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: In the opening paragraph, the Commission changed “meaning” to “meanings,” and in subsection (e), the Commission changed “at” to “as” to correct manifest errors. The Commission inserted commas after the words “association” in subsection (o), “goods” in subsection (p), and “services” in subsection (q) pursuant to [1 CMC § 3806](#)(g).

With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

In codifying 39 Com. Reg. 39758, the Commission renumbered (i)–(u) pursuant to [1 CMC 3806](#)(a).

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§ 90-20-040 Public Access to Procurement Information

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Part 100 - Procurement Organization

§ 90-20-101 Managing Director

The Managing Director shall enforce the regulations in this chapter.

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

§ 90-20-105 Duties of the Contracting Officer

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

- (a) Oversee that the regulations in this chapter are observed in all Bureau procurement;
- (b) Conduct bidding, procurement, negotiation or administration of Bureau contracts;
- (c) Provide advanced planning for the centralized purchase of Bureau supplies;
- (d) Exercise general supervision and control over all inventories of supplies belonging to the Bureau;
- (e) Establish and maintain programs for the inspection, testing and acceptance of supplies; and
- (f) Receive protests from aggrieved parties in connection with the solicitation or award of a contract and to decide the merits of the protest.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-110 Contract Oversight

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- (a) The contracting officer shall review all contracts for construction, the procurement of goods, leases, the sale of goods and for services by an independent contractor to insure compliance with the regulations in this chapter, that the contract is for a Bureau purpose, and does not constitute a waste or abuse of Bureau funds.
- (b) The attorney shall certify the form and legality of every applicable contract.
- (c) Upon approval as to form and legal sufficiency by the attorney, the contracting officer shall execute the contract.
- (d) It is the responsibility of the contracting officer to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the contracting officer.
- (e) No contract is effective against the Bureau until all of the officials whose signatures are required on the contract form have signed the contract.
- (f) Nothing in this chapter shall be construed to limit or prevent the Bureau's duty and power to enter into agreements with the government, its departments and agencies for the rendering and purchase of services.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-115 Acceptance of Gratuities

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-120 Right to Audit

A contract shall contain a right to audit records clause.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Part 200 - Source Selection and Contract Formation

§ 90-20-201 Methods of Source Selection

All Bureau contracts shall be awarded by competitive sealed bidding, except as provided in:

- (a) [§ 90-20-210](#) (Small Purchases);
- (b) [§ 90-20-215](#) (Sole Source Procurement);
- (c) [§ 90-20-220](#) (Emergency Procurement);
- (d) [§ 90-20-225](#) (Competitive Sealed Proposals);
- (e) [§ 90-20-230](#) (Professional, Advisory, or Technical Services);
- (f) [§ 90-20-235](#) (Marketing Proposals); and
- (g) [§ 90-20-240](#) (Destination Enhancement Projects).

Modified, [1 CMC § 3806\(c\)](#).

History: Amdts Adopted 39 Com. Reg. 39758 (July 28, 2017); Amdts Proposed 39 Com. Reg. 39326 (Mar. 28, 2017); Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-205 Competitive Sealed Bidding; Invitation for Bid

- (a) The purchase of all supplies and materials and all construction works when the expenditure exceeds \$25,000 shall be by contract let to the lowest responsible bidder.
- (b) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:
 - (1) An invitation for bids number;
 - (2) Date of issuance;
 - (3) Name, address, and location of issuing office;
 - (4) Specific location where bids must be submitted;
 - (5) Date, hour, and place of bid opening;
 - (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to respond properly.
 - (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.

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(c) **Public Notice.** Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice in a newspaper of general circulation in the Commonwealth once in each week over a period of thirty calendar days shall be deemed to be adequate notice. For those islands within the Commonwealth where there are no newspapers of general circulation, the posting of invitations to bid and requests for proposals in public places designated by the contracting officer shall be deemed adequate notice. A bidding time of at least thirty calendar days shall be provided, unless the contracting officer determines a shorter period is reasonable and necessary.

(d) **Bid Receipt.** All bids shall be submitted to the main office of the Bureau at the Saipan International Airport. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at the office. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set in the invitation for bids and must be received within seven working days of that date. Bidders outside the Commonwealth must notify the contracting officer in writing of their intent to bid in order to receive this additional seven days for receipt of the actual documents. This notice of intent to bid may be made by any mode of written communication including telex, facsimile or other electronic transmission.

(e) **Bid Opening.** The bid opening shall be conducted by the contracting officer at the main office of the Bureau at the Saipan International Airport. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid; together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. The contracting officer shall prepare a written summary of the bid opening.

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

(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 Bureau;
- (3) Unreasonableness as to price; or
- (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 contracting officer in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Bureau or fair competition shall be allowed. Whenever a

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bid mistake is suspected, the Bureau shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the Bureau shall only permit correction of the bid or withdrawal of the bid in accordance with subsections (h)(1) or (h)(2) or* this section.

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

(i) An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors on addition or the obvious misplacement of a decimal point; or

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

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

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

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

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

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

*So in original; probably should be “of.”

(i) Award.

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

(2) 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. No acceptance of an offer shall occur nor shall any contract be formed until a Bureau contract is written and has been approved by the officials required by law and regulation. Bureau contracts 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 Bureau officials.

(j) Re-advertise. The Board may reject any and all bids and re-advertise at its discretion. If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

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

History: Amdts Adopted 38 Com. Reg. 39038 (Dec. 28, 2016); Amdts Proposed 38 Com. Reg. 38598 (Sept. 28, 2016); Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter. The Commission inserted commas after the words “address” in subsection (b)(3), “hour” in subsection (b)(5), and “place” in subsection (b)(8) pursuant to 1 CMC § 3806(g).

§ 90-20-210 Small Purchases

(a) Any procurement not exceeding \$25,000 may be made in accordance with this section. Procurement requirements shall not be artificially divided as to constitute a small purchase.

(b) Small Purchases of \$5,000 or Less.

(1) The Chair of the MVA Board delegates the expenditure authority for purchases of \$5,000 or less to the Managing Director.

(2) The Managing Director may make small purchases of \$5,000 or less by any commercially reasonable method and shall exercise best efforts to ensure responsible expenditure of MVA funds. Purchase orders may be used for such transactions. Procurement requirements shall not be artificially divided so as to constitute a small purchase of \$5,000 or less.

(3) The Managing Director shall maintain a small purchase log. For each small purchase, the log shall contain:

- (i) The date of the purchase;
- (ii) The name of the vendor;
- (iii) The goods or services purchased; and
- (iv) The purpose of the purchase.

(4) The Managing Director shall provide the small purchase log to any board member upon request.

(c) Small Purchases between \$5,000.01 and \$25,000.

(1) The Chair of the MVA Board is the expenditure authority for small purchases between \$5,000.01 and \$25,000.

(2) Insofar as it is practical for small purchases of goods or services between \$5,000.01 and \$25,000, no less than three businesses shall be solicited to submit written, electronic, or oral quotations that are recorded and placed in the procurement file. If fewer than three businesses submit quotations, the Managing Director shall certify, in writing, that there are fewer than three vendors available. Award shall be made to the business offering the lowest acceptable quotation.

(3) The names of the businesses solicited to submit quotations, the names of the businesses submitting quotations, and the date and amount of each quotation shall be recorded and maintained as a public record.

(4) Purchase orders may be used for procurement under this section.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 38 Com. Reg. 39038 (Dec. 28, 2016); Amdts Proposed 38 Com. Reg. 38598 (Sept. 28, 2016); Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

§ 90-20-215 Sole Source Procurement

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

(b) A contract may be awarded when the supplies or services to be rendered are unique and the Managing Director determines it is in the best interest of the Bureau to procure the supplies or services without competitive bidding. A written justification for the sole source procurement shall be prepared by the contracting officer and the written determination shall state the unique capabilities required and why they should be procured without competition bidding.

(c) The Board shall approve all sole source procurement.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter. The Commission inserted a comma after the word “service” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 90-20-220 Emergency Procurement

In case of any major public calamity, or whenever it is in the interest of tourist safety, or necessary to keep the designated tourist sites operable by the Bureau, the Managing Director may determine that the public interest and necessity demand the immediate expenditure of funds to keep the Northern Marianas open to tourists or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provision requiring contracts, bids or notices. The Board may issue continuing authorizations for the expenditure of funds described in this section, placing therein the conditions which will give rise to such special expenditures.

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-225 Competitive Sealed Proposals; Request for Proposals

(a) **Conditions for Use.** When the contracting officer determines in writing that the use of a competitive sealed bidding is either not practical or not advantageous to the Bureau, a contract may be entered by competitive sealed proposals.

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

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- (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 contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.
- (e) Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.
- (f) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure* full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (g) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Bureau taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

* So in original.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-230 Competitive Selection Procedures for Professional, Advisory, or Technical Services

- (a) Procurement Method. The services of accountants, physicians, or lawyers shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement, or sole-source procurement.
- (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 Managing Director shall maintain files of current statements of qualifications of professional advisory, and technical firms. Persons engaged in providing professional advisory or technical services may submit statements of qualifications and expressions of interest providing such types of services. Persons may amend these statements at any time by filing a new statement.

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(c) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the contracting officer through a request for proposals. The request for proposals shall describe the services required, list the type of information and date required of each offeror and state the relative importance of particular qualifications.

(d) Discussions. The contracting officer may conduct discussions with any offeror who has submitted a proposal to determine such offerors qualification for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award. Award shall be made to the offeror determined in writing by the contracting officer 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 selection 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 the 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), (g).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: In subsection (e), the Commission changed “a” after “ranked” to “as” to correct a manifest error.

§ 90-20-235 Selection Procedures for Marketing Proposals

(a) Proposal for Joint Participation. Any proposal made to the Bureau to promote an activity to foster tourism in the CNMI that seeks joint participation with the Bureau may be accepted by the Managing Director if it is in the best interests of the Bureau to participate in the activity.

(b) Sanction by A & P Committee. Any participation by the Bureau in a joint marketing activity entered into by the Managing Director shall require the approval of the Advertising and Promotions Committee.

(c) Advertising Proposals. Any proposal made to MVB by advertising agencies or publishers of tourist industry pamphlets, magazines, or newspapers shall be evaluated and selected by the Managing Director.

(d) Report to A & P Committee. Any advertising to foster tourism in the CNMI shall be reported to the Advertising and Promotions Committee.

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-240 Destination Enhancement Projects

(a) Any contract for destination enhancement of \$25,000 or less may be conducted pursuant to this section.

(b) The Chair of the MVA Board is the expenditure authority for destination enhancement purchases of \$15,000.01 or greater. The Chair of the MVA Board delegates the expenditure authority for destination enhancement purchases of \$15,000 or less to the Managing Director.

(c) MVA may make destination enhancement purchases of \$15,000 or less by any commercially reasonable method and shall exercise best efforts to ensure responsible expenditure of MVA funds. If the destination enhancement purchase is for \$5,000 or less, MVA may use a purchase order for the transaction. Procurement requirements shall not be artificially divided so as to constitute a destination enhancement purchase under this section.

(1) The Managing Director shall maintain a destination enhancement purchase log. For each destination enhancement purchase of \$15,000 or less, the log shall contain:

- (i) The date of the purchase;
- (ii) The name of the vendor;
- (iii) The goods or services purchased; and
- (iv) The purpose of the purchase.

(2) The Managing Director shall provide the destination enhancement purchase log to any board member upon request.

(3) For destination enhancement purchases of between \$5,000.01 and \$15,000, at least one business shall be solicited to submit written, electronic, or oral quotations that are recorded and placed in the procurement file. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses solicited to submit quotations, the names of the businesses submitting quotations, and the date and amount of each quotation shall be recorded and maintained as a public record.

(d) Insofar as it is practical for destination enhancement purchases of between \$15,000.01 and \$25,000, no less than three businesses shall be solicited to submit written, electronic, or oral quotations that are recorded and placed in the procurement file. If fewer than three businesses submit quotations, the Managing Director shall certify, in writing, that there are fewer than three responsive vendors available. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses solicited to submit quotations, the names of the businesses submitting quotations, and the date and amount of each quotation shall be recorded and maintained as a public record.

History: Adopted 39 Com. Reg. 39758 (July 28, 2017); Proposed 39 Com. Reg. 39326 (Mar. 28, 2017).

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

§ 90-20-301 Cancellation

(a) An invitation for bids or request for proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined by the contracting officer including, but not limited to, the following:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) Specifications which have been revised;
- (3) Goods or services being procured which are no longer required;
- (4) Inadequate consideration given to all factors of costs to the Bureau in the solicitation;
- (5) Bids or proposals received indicate that the needs of the Bureau can be satisfied by a less expensive good or service.
- (6) All offers with acceptable bids or proposals received are at unreasonable prices;
- (7) Bids were collusive;
- (8) Non-responsive bids or proposals were submitted; or
- (9) Cancellation is determined to be in the best interest of the Bureau.

(b) The contracting officer shall have the right to cancel an award without liability to the bidder or offeror, except the return of any deposit, guarantee or other security, at any time before a contract had been fully executed by all parties.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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

Part 400 - Qualification and Duties

§ 90-20-401 Responsibility of Bidders and Offerors

(a)(1) Awards shall be made to responsible contractors. To be determined responsible, a prospective contractor must:

- (i) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (ii) Be able to comply with the required delivery or performance schedule;
- (iii) Have a satisfactory performance record;
- (iv) Have a satisfactory record of integrity and business ethics;
- (v) Have the necessary organization, experience, and skills, for* the ability to obtain them, required to perform successfully the contract;
- (vi) Have the necessary production, construction and technical equipment facilities, or the ability to obtain them;
- (vii) Have an office in the island where the construction work is to be performed; and

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

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

(b) **Obtaining Information.** Prior to award, the Bureau 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 the bidder or offeror promptly to supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or offeror.

(c) **Right of Non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Bureau 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 contracting officer stating the basis for the determination and this shall be placed in the contract file.

(e) **Preference for MVB Members.** Whenever possible, preference in awarding contracts shall be to a member of MVB as long as the member complies with the criteria of this subsection and it is determined that such award is in the best interest of MVB.

* So in original.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: The original paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(1) and (a)(2). The Commission corrected the spelling of “offerors” in the section title pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “experience” in subsection (a)(1)(v) pursuant to 1 CMC § 3806(g).

With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-405 Pre-qualification of Contractors

Prospective suppliers of goods or services maybe pre-qualified for particular types of construction, goods and services when determined necessary by the Bureau. 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 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

Part 500 - Types of Contracts

§ 90-20-501 Types of Contracts

- (a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.
- (b) Bureau contracts shall utilize a firm fixed price unless use of a cost-reimbursement contract is justified under subsection (c).
- (c) A cost-reimbursement contract may be used when the contracting officer determines in writing which is attached to the contract that:
- (1) Uncertainties in the work to be performed make the cost performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
 - (2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by the Bureau for contingencies that never occur; or
 - (3) Use of a cost-reimbursement contract is likely to be less costly to the Bureau than any other type due to the nature of the work to be performed under the contract.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

Part 600 - Inspection and Audit

§ 90-20-601 Right to Inspect Place of Business

The Bureau 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 Bureau.

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-605 Right to Audit Records

As required by 1 CMC § 7845, the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data or papers relevant to a Bureau contract or grant for a period of three years after the final payment under the contract or grant. All Bureau contracts and awards shall include a clause giving the Public Auditor the right and access to all contract records.

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Modified, 1 CMC § 3806(e).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-610 Split Contract

If the contracting officer, Managing Director, and/or Board 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 in a contract to increase the contract price where a contract has been bid and awarded to the lowest responsible and responsive bidder, then they 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(f), (g).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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

Part 700 - Reports and Records

§ 90-20-701 Retention of Procurement Records

(a) All procurement records shall be retained by the Bureau for at least three years after the final payment under a contract or grant.

(b) The Managing Director shall maintain a record listing all contracts made under sole source procurement, emergency procurement, or professional, advisory, or technical services for a minimum of six years. The record shall contain:

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

(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 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter. The Commission inserted a comma after the word “services” in subsection (b)(3) pursuant to 1 CMC § 3806(g).

Part 800 - Procurement of Construction Services

§ 90-20-801 Construction Procurement

(a) Invitation for Bids.

(1) Deposit. The contracting officer 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 § 90-20-205(b). In addition, the following items shall be included in the invitation for bids;

(i) Notice to Bidders. General information regarding 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 construction contracts where the price is estimated by the contracting officer to exceed \$25,000.00 or when the contracting officer determines it is in the interest of the Bureau. Bid security shall be on a bid bond, in cash, by certified check, cashier's check or other form acceptable to the Bureau.

(2) Amount. Bid security shall be an amount equal to at least ten percent of the amount of the bid or other amount as specified in the invitation for bids.

(3) Rejection of Bids. 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 Bureau and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the Bureau, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Bureau, in an amount equal to one hundred percent of the price specified in the contract; and

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

(d) Suits on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in

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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 not 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 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

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

(f) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior approval by the Board; 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).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter. The Commission inserted an apostrophe in the phrase “cashier’s check” in subsection (b)(1) pursuant to 1 CMC § 3806(g).

Part 900 - Protests and Disputes

§ 90-20-901 Protests to the Managing Director

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Managing Director. The protest shall be received by the Managing Director in writing within ten

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days after such aggrieved person who knows or should have known of the facts giving rise thereto. Managing Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. The written protest shall state fully the factual and legal grounds for the protests;

(2) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. These persons shall also be advised that they may submit their views and relevant information to the Managing Director within a specified period of time. Normally, the time specified will be one week;

(3) The Managing Director shall decide the protest within fifteen calendar days after all interested parties have submitted their views unless he or she certifies that the complexity of the matter requires a longer time, in which event he or she shall specify the appropriate longer time;

(4) When a protest, before or after award, has been appealed to the appeal committee, as provided in these procedures, and the Managing Director is requested to submit a report, the Managing Director should include with his report a copy of:

(i) The protest;

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

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

(iv) The abstract of offers or relevant portions;

(v) The Managing Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Managing Director's report will include the determination prescribed in subsection (b)(3) below.

(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 Managing Director's decision has been taken to the appeal committee, the Managing Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protests Before Award

(1) When a proper protest against the making of an award is received, the award will 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 contracting officer determines that:

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

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

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

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

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also shall give written notice to the protestor and others concerned of the decision to proceed with the award.

(c) **Protests After Award**

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

(d) **Computation of Time**

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Bureau. 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 be not included.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-905 Appeals of Managing Director's Decision to the Board

(a) **Jurisdiction; Exhaustion of Remedies.** A written appeal to the appeal committee from a decision by the Managing Director may be taken provided that the party taking the appeal has first submitted a written protest to the Managing Director as provided in § 90-20-901 of this chapter, and the Managing Director has denied the protest or has failed to act on the protest within the time provided for in § 90-20-901(a)(3) above.

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

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

(c) **Time for Filing Appeal.** An appeal from the Managing Director's decision must be received by the appeal committee not later than ten days after the appellant receives the decision of the Managing Director, or, in the event that the Managing Director has not decided the protest within ten days from the date that he should have decided the protest pursuant to § 90-20-901(a)(3) above. Any appeal received after these time limits shall not

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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 Bureau should the appeal be considered.

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

(1) The appeal committee shall notify the Managing Director in writing within one day of the receipt of an appeal, requesting the Managing Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The Managing Director shall be requested to furnish, in accordance with § 90-20-901(a)(2) of this chapter, copies of the protest and appeal documents to such parties with instructions to communicate further directly with the appeal committee.

(2) The appeal committee shall request the Managing Director to submit a complete report on the appeal to the appeal committee as expeditiously as possible (generally within 25 working days) in accordance with § 90-20-901(a)(4) of this chapter and to furnish a copy of the report to the appellant and other interested parties as defined in § 90-20-901(a)(2).

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

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

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

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

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

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(h) Conference.

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

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

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

(i) Time for Decision; Notice of Decision. The appeal committee shall, if possible, issue a decision on the appeal within twenty-five 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 Managing Director.

(j) Request for Reconsideration.

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

(2) Request for reconsideration of a decision for the appeal committee shall be filed not later than ten days after the decision. The term “filed” as used in this section means receipt by the appeal committee.

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

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: The Commission inserted a comma after the word “report” in subsection (d) pursuant to 1 CMC § 3806 (g). In subsection (f), the Commission corrected the spelling of “ten.” In subsection (g), the Commission changed “an” to “any” to correct a manifest error.

§ 90-20-910 Remedies

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

(1) Cancelled; or

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- (2) Revised to comply with law or regulation.
- (b) Remedies After an Award. If after an award the Managing Director or the appeal committee determines that a solicitation or award of a contract is in violation of law or regulation, then:
- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
- (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Bureau, or
- (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination.
- (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 Bureau, without prejudice to the Bureau's rights to such damages as may be appropriate.
- (c) Finality of Findings of Fact by the Appeal Committee. A determination of an issue of fact by the appeal committee under this chapter shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-915 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of Bureau to contract with a business after bidding, or the cancellation of bids which may or may not be the subject of lawsuit but have not reached final judgment as of the effective date of the regulations in 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.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-920 Disputes

- (a) Any dispute between the Bureau and a contractor relating to the performance, interpretation of a compensation due under a contract, which is the subject of the

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regulations in this chapter, must be filed in writing with the Managing Director within ten calendar days after knowledge of the facts surrounding the dispute.

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

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

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

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

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

Part 1000 - Ethics in Contracting

§ 90-20-1001 Definition 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 Bureau 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 standards, rendering of advice, investigation, auditing or in any other advisory capacity.

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(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 proposed, unless consideration of substantially equal or greater value is received.

(f) “Immediate family” means spouse, children, parents, brothers, and sisters.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter. The Commission inserted a comma after the word “print” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 90-20-1005 Policy

The employees of the Bureau shall discharge their duties impartially so as to:

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

* So in original.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1010 General Standards

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

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

Modified, 1 CMC § 3806(d), (g).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: In subsection (b), the Commission inserted the final period.

With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1015 No Financial Interests

(a) All Board members and employees shall disclose to the Board any financial interest, direct or indirect, in any company which has submitted a proposal or bid being considered for award by the Board.

(b) No Board member shall vote for the award of any contract in which the member has an ownership interest in the company to which the contract may be awarded.

(c) No employee of the Bureau shall participate in the negotiations for sale, purchase, contract, transaction entered into by the Bureau if the employee may receive a direct benefit therefrom.

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1020 Gratuities and Kickbacks

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

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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

§ 90-20-1025 Prohibition Against Contingent Fees

(a) Contingent Fees. It shall be a breach of ethical standards for a person to be retained or to retain a person to solicit or secure Bureau 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 Bureau contract, shall represent, in writing that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the reference to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1030 Contract Clauses

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

§ 90-20-1035 Restrictions on Employment of Present and Former Board Members or Employees

(a) Present Board Members or Employees. It shall be a breach of ethical standards for any Board member or employee to participate in the decision to award a contract to a person and be the employee or agent of that person seeking to contract with the Bureau.

(b) Restrictions on Former Board Members or Employees in Matters Connected with their Former Duties.

It shall be a breach of ethical standards for any former Board member or employee knowingly to act as a principal or as an agent for anyone other than the Bureau, 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 Board member or employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while a Board member or employee, where the Bureau is a party or has a direct or substantial interest.

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Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1040 Use of Confidential Information

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

§ 90-20-1045 Collusion by Bidders

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: With respect to the references to the Marianas Visitors Bureau, see the general comment to this chapter.

§ 90-20-1050 Authority to Debar or Suspend

(a) Bureau. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under part 900 of this chapter the Managing Director after consultation with the Board and the attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Managing Director, after consultation with the Board and the attorney, shall have authority to suspend a person from consideration for award of contracts if there is cause for suspension. The suspension shall not be for a period exceeding three months.

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

- (1) Conviction for commission of a criminal offense in an incident to obtain 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

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a lack of business integrity or business honesty which currently, seriously, and directly affects its responsibility as a government contractor;

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

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

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

(4) Any other cause that the Managing Director determines to be so serious and compelling as to affect responsibility as Bureau contractor, including debarment by any other governmental entity; and

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

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

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

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

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

Commission Comment: The Commission inserted a comma after the word “seriously” in subsection (b)(2) pursuant to 1 CMC § 3806(g). In subsection (b)(4), the Commission changed the final colon to a semi-colon for consistency in the section.

§ 90-20-1055 Civil and Administrative Remedies

In addition to existing remedies provided by law, any person who violates any of the provisions of the regulations in this chapter may be subject to one or more of the following:

(a) Board members and employees.

(1) A Board member or 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.

(2) This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government 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 or reprimand, the termination of the contract or suspension from being a contractor or subcontractor under a Bureau contract in addition to other penalties prescribed by law.

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

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14082 (Apr. 15, 1996); Proposed 16 Com. Reg. 12616 (Dec. 15, 1994).

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