

TITLE 95: NORTHERN MARIANAS COLLEGE BOARD OF REGENTS

**CHAPTER 95-50
PROCUREMENT POLICIES AND PROCEDURES**

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Chapter Authority: 3 CMC § 1316.

Chapter History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: For a complete history of the authority of the Northern Marianas College Board of Regents see the general comment to chapter 10 of this title.

PL 4-34 (effective March 28, 1985), the “Post-secondary Education Act of 1984,” codified as amended at 3 CMC §§ 1301-1331, created the Northern Marianas College as a nonprofit public corporation, under the general control and direction of the Board of Regents of the Northern Marianas College. See 3 CMC § 1304; see also 3 CMC § 1311. 3 CMC § 1316 defines the duties of the Board of Regents and provides the Board the authority to adopt rules and regulations for the implementation of the act and its duties thereunder.

The Board of Regents promulgated these regulations as Chapter 50, Subchapters 50.1 through 50.17. The Commission re-designated the subchapters as parts pursuant to 1 CMC § 3806(a). As of this date, the Board has not proposed a Chapter 40.

The Commission replaced the ampersand symbol with the word “and” throughout this chapter.

Part 001 - [reserved]

Part 100 - General Information

§ 95-50-100 Purpose

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These procurement policies and procedures have been developed to:

- (a) Define the College's procurement policies and practices,
- (b) Delineate the authority and responsibilities of College personnel involved in the acquisition of goods, services, construction, and cooperative agreements,
- (c) Establish standard procedures to effectively manage the College's purchasing and contracting activities,
- (d) Ensure compliance with Commonwealth and Federal laws, rules and regulations, as well as Board of Regents' policies,
- (e) Ensure fair and equitable treatment of all persons who deal with the procurement system of the College,
- (f) Provide increased economy in the College's procurement activities and to maximize the purchasing value of public funds entrusted to it; and
- (g) Provide safeguards for the maintenance of a procurement system of quality and integrity.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-105 Authority

CNMI Public Law 9-53 [3 CMC § 1316]. Section 6(v), authorizes Northern Marianas College to establish its own procurement policies. Public Law 9-53 specifically permits the institution “[t]o establish procurement policies for the College and to expend funds appropriated by the federal or Commonwealth government or donated to the College by any other entity.”

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission inserted the citation to the Commonwealth Code pursuant to 1 CMC § 3806(c). The Commission corrected the capitalization of the words “to” and “federal” pursuant to 1 CMC § 3806(f).

§ 95-50-110 Applicability

These policies and procedures apply to all expenditures of College funds irrespective of fund source, including federal assistance monies. It is noted however that should any conflict arise between the policies and procedures contained herein and federal procurement policies, procedures and regulations or specific conditions of a federal grant or award, the federal procurement policies, procedures and regulations and/or grant or award expectations shall prevail. These policies and procedures do not apply to contracts between the College and other government agencies or educational institutions (e.g.,

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Memorandums of Understanding and Memorandums of Agreement) or for services provided to entities within the organization by departments or units. These policies and procedures also do not apply to employment contracts.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-115 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. The Procurement and Property Manager shall make this decision in consultation with the Chief Financial and Administrative Officer.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission inserted a period at the end of the section pursuant to 1 CMC § 3806(g).

§ 95-50-120 Requirement of Good Faith

This policy requires all parties, including College employees, contractors, and suppliers, involved in the negotiation, bidding, performance or administration of College contracts, procurement of goods or services, to act in good faith.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-125 Validity of Contract

No Northern Marianas College contract (except employment contracts), shall be valid unless it complies with these policies and procedures.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

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

§ 95-50-130 Remedy Against Employee

Any procurement action of an employee of the College in violation of these policies and procedures is an action outside the scope of his/her employment. The College will seek to have any liability asserted against it by a contractor, which directly results from improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act. Deliberate actions of employees committing institutional resources beyond these policies and procedures will be considered just cause for disciplinary action including termination of employment.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-135 Inspection and Audit

(a) Right to Inspect Place of Business

The College 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 College.

(b) Right to Audit Records

As required by Section 404 of Public Law No. 3-91 (1 CMC § 7845), the contractor and subcontractor or grantee and sub-grantee 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 college 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 College contracts and obligations.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission struck the figure “3” pursuant to 1 CMC § 3806(e).

§ 95-50.1-140 Reports and Records

(a) Report of Anti-competitive or Deceptive Practices

When for any reason any person suspects the following practices are occurring among bidders, offerors, contractors, or sub-contractors, he/she shall transmit without delay a written notice of relevant facts to the Procurement and Property Manager and the Procurement and Property Manager shall forward such written notice to the Legal Counsel through the Chief Financial and Administrative Officer and the President.

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

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

(b) Retention of Procurement Records

(1) The Procurement and Property Management Office shall maintain all procurement records for a minimum of three years. Records for real property, capitalized property, selected non-capitalized property, designated non-capitalized property, shall be retained for three years after final disposition. The College official with expenditure authority shall also keep copies of all procurement records for their respective office and shall keep such records until all audits have been completed. However should an action be initiated against the College, the related records shall be maintained until such action is resolved.

(2) The Procurement and Property Management Office shall maintain a record listing all contracts for a minimum of three years. The records shall contain:

- (i) Each contractor’s name;
 - (ii) The amount and type of each contract; and
 - (iii) A listing of the supplies, services, or construction procured under each contract.
- (3) All procurement records except those designated herein as not subject to

disclosure, shall be available for public inspection.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs of subsection (b) were undesignated. The Commission designated them as subsections (b)(1) through (b)(3). The Commission struck the figure “3” in subsections (b)(1) and (b)(2) pursuant to 1 CMC § 3806(e).

§ 95-50-145 Supplementary General Principles of Law Applicability

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

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-150 Severability

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

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Part 200 - Definitions

§ 95-50-201 Definitions

The words defined in this Section shall have the meanings set forth below whenever they appear in the NMC procurement policies and procedures unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section.

(a) “Adjunct”. A person providing temporary services to the college as an instructor, administrator, manager, or administrative support staff.

(b) “Appeal”. A written request to the Public Auditor for a ruling on a decision made by the College regarding an award of a contract.

(c) “Bid”. The executed document submitted by a bidder in response to an Invitation for Bids.

(d) “Bid Security”. The legally sufficient form of security furnished by an offeror as a warranty of good faith that the offeror will enter into a contract with Northern Marianas College and supply the necessary performance and payment bonds should its offer be

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accepted and which amount will be forfeited in the event of failure or refusal of the offeror to enter into a contract.

(e) “Bid Opening”. The process of opening and reading bids at the time and place specified in the Invitation for Bids.

(f) “Bidder” or “Offeror”. Any individual, partnership, or corporation submitting directly or through a duly authorized representative or agent, a bid or proposal in response to an Invitation for Bids or a Request for Proposals.

(g) “Capital Item”. All non-consumables with a value of \$5,000.00 and above.

(h) “Check Request”. A document used to request payment for intangibles.

(i) “College”. Northern Marianas College.

(j) “Commonwealth”. The Commonwealth of the Northern Mariana Islands and its respective government.

(k) “Competitive Sealed Bidding”. A procurement method by which vendors submit sealed bids or proposals (offers) in response to an advertised solicitation.

(l) “Confidential Information”. Any information which is available to an employee only because of the employee’s status as an employee of the College and is not a matter of public knowledge or available to the public on request.

(m) “Confirming Purchase Order”. A purchase order that is prepared for goods or services already purchased without following the College’s normal procurement processes regardless of cost and type of purchases. Does not apply to exempt purchase order.

(n) “Conflict of Interest”. A situation when a College official’s responsibilities, duties, or activities conflict with the official’s private interests whether they are of a business, family, social, or other nature.

(o) “Conspicuously”. “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.

(p) “Construction”. The process of building, altering, repairing, improving or demolishing of a College structure, building, or improvement to real property. It does not include the routine maintenance of existing structures, buildings, or real property.

(q) “Consultant Contract”. A contract engaging the services of a consultant where the only (or predominant) service to be rendered is advice or counsel in either verbal or written form. Included under this definition shall be contracts engaging individuals or

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firms to perform studies or evaluations of College programs, systems, or procedures.

(r) “Contract”. A legally enforceable agreement for the procurement of goods, services, or construction between the College and a Contractor.

(s) “Contractor”. Any person or legal entity having a contract with the College.

(t) “Cost-Plus-Percentage Contract”. An agreement on a construction project in which the contractor is provided a specified percentage profit over and above the actual costs of construction.

(u) “Cost-Reimbursement Contract”. A contract under which a contractor is reimbursed for costs, which are allowable, and in accordance with the contract terms and these regulations, and a fee, if any.

(v) “Days”. Calendar days unless otherwise specified.

(w) “Designated Non-Capitalized Property”. Non-capitalized property with a purchase value of less than \$1,000.00, which is designated for control for physical accountability.

(x) “Direct or Indirect Participation”. 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.

(y) “Dispute”. 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.

(z) “Emergency”. A situation that threatens the health and safety of any person or the preservation or protection of buildings or property of the College and other situations that would cause adverse effects to College programs or activities if not remedied immediately.

(aa) “Emergency Purchase”. A purchase made without following the normal purchasing procedures in order to obtain goods, services, or construction immediately to meet an emergency.

(bb) “Employee”. An individual receiving salary and benefits from the College.

(cc) “Exempt Purchase Order”. Refer to section 90-50-415.

(dd) “Expendable Items/Supplies”. All tangible supplies which, when put to use, is consumed, loses its identity, or becomes an integral part of another property.

(ee) “Expenditure Authority”. A College official authorized to purchase goods or

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services for his/her respective program.

(ff) “Financial Interest”. “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.

(gg) “Fixed Price Contract”. A lump sum award that provides for a price to be determined in advance for specific services. The contract amount is not subject to adjustment based on the contractor’s actual costs incurred, thereby placing the risk on the contractor to perform within the fixed price. This type of contract is suitable only when definite performance requirements are available and when fair and reasonable prices can be established at the outset.

(hh) “Goods.” All property, including but not limited to equipment, materials, apparels, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or disposal of real and personal property.

(ii) “Gratuity”. 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.

(jj) “Immediate Family”. Spouse, children, parents, brothers, and sisters.

(kk) “Independent Contractor”. Any service provider having a contract with the College who is subject to the control and direction of the College for which services are performed only as to the result of the work and not as to the means. Among the most frequently used categories of independent contractors are:

- (1) “Consultant”: An individual or firm possessing expertise in a particular field for which it is engaged to give expert or professional advice or counsel in return for an established fee.
- (2) “Speaker”: an individual having specialized knowledge of a particular subject who is engaged to convey this knowledge by discourse to an audience in return for an established fee. Note: The Internal Revenue Service (IRS) has ruled that, in most cases, adjunct faculty is considered employees.
- (3) “Technical Service”: an individual or firm rendering technical service for a fee.

(ll) “Intangible”. Untouchable; not tangible such as services and bills for utilities, telephone service, subscription or registration and renewal etc.

(mm) “Invitation for Bid”. A written solicitation, including all documents, whether attached or incorporated by reference, to prospective bidders requesting bids on College requirements.

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- (nn) “Lease-Purchase Contract”. A rental contract in which the College’s periodic payments or parts thereof are applied both to fulfill the rental and as installments for eventual College-ownership of the commodity upon completion of the agreement.
- (oo) “Non-Capitalized Property”. Non-expendable item with a purchase value of less than \$5,000, which is charged to an activity expense account at the time of receipt.
- (pp) “Non-Expendable Item”. A tangible item which has continuing use as a self-contained unit, is not consumed in use, does not lose its identity when put to use, or does not ordinarily become a component of another property.
- (qq) “Offer”. Bid, proposal, or quotation.
- (rr) “Open Purchase Order”. A purchase order on which goods or services are not specified to be purchased and is for a set sum of money. Open purchase orders are for services and consumable items only.
- (ss) “Payment Bond”. The legally sufficient form of security, which guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work bonded.
- (tt) “Performance Bond”. The legally sufficient form of security, which indemnifies the College against loss resulting from the failure of the contractor to perform a contract, in particular a construction contract, in accordance with the plans and specifications.
- (uu) “Procurement”. The buying, purchasing, renting, leasing, or otherwise acquiring of goods, services, or construction including all functions that pertain to the obtaining of goods, services, or construction such as description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.
- (vv) “Professional Services”. Those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional by the laws of the Commonwealth.
- (ww) “Protest”. A complaint concerning a College procurement action or decision brought by a bidder or vendor to the appropriate College official.
- (xx) “Purchase Order”. A purchasing document used to formalize a transaction with a vendor containing statements as to the quantity, description, and price of the goods, services, or construction ordered; agreed terms as to payment, discounts, date of performance, transportation terms, and all other information pertinent to the purchase and its execution by the vendor. Written acceptance of a purchase order or shipment of all or any portion of the items or services covered by a purchase order by a vendor constitutes a

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contract.

(yy) “Quotation”. A current official vendor document indicating cost of goods and/or services.

(zz) “Request for Proposals”. A written solicitation, including all documents, whether attached or incorporated by reference, to prospective offerors requesting proposals on College requirements.

(aaa) “Responsible Bidder or Offeror”. A bidder or offeror who meets minimum or special standards as may be pre-scribed.*

(bbb) “Responsive Bidder or Offeror”. A bidder or offeror whose bid or offer conforms in all material respects to the invitation for bids or request for proposals.

(ccc) “Selected Non-Capitalized Property”. Non-capitalized property with a purchase value between \$1,000.00 and \$5,000.00, that is controlled for physical accountability.

(ddd) “Services”. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, plans, and incidental documents.

(eee) “Sale Source”. A procurement process where a contract may be awarded without competition when there is only one source for a required good, service, or construction or when the College seeks to maintain continuity with an existing vendor or contractor or other circumstances which warrant securing the services or goods from a particular vendor or service provider.

(fff) “Solicitation”. An invitation for bids, a request for proposals, or any other document issued by the College for the purpose of soliciting bids or proposals to perform a College requirement.

(ggg) “Specifications”. The directions, provisions, and requirements of the College pertaining to the method and manner of performance and to quantities and qualities of materials to be furnished under a contract.

(hhh) “Subcontractor”. An individual, partnership, firm, corporation, joint venture or other legal entity which enters into an agreement with the contractor to perform a portion of the work for the contractor.

(iii) “Tangible”. Material assets, touchable, capable of being treated as fact, real, concrete and physical.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original section did not contain subsections. The Commission designated subsections (a) through (iii). The Commission inserted quotation marks around terms defined. The Commission inserted a comma after the word “manager” in subsection (g) and a period at the end of

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subsection (eee) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “contractor” in subsection (r) pursuant to 1 CMC § 3806(f).

Part 300 - Procurement Organization

§ 95-50-301 Contracting and Expenditure Authorities

The President, or his/her designee, is the only formally recognized Contracting Officer of the College. The President has the authority to expend funds for designated purposes of the College. However, the President has delegated expenditure authority for certain funds to other College officials as indicated in the College’s “Budget and Expenditure Handbook.”

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission corrected the capitalization of “only” pursuant to 1 CMC § 3806(f). The Commission moved the final period inside the quotation mark pursuant to 1 CMC § 3806(g).

§ 95-50-305 Procurement Organization

There is established within the College a Procurement and Property Management Office (PPMO). The office has two sections: Procurement and Property Management. The Procurement section is responsible for all NMC procurement functions and the Property Management section is responsible for the inventory and accounting of all College properties. The PPMO is headed by a Procurement and Property Manager who reports directly to the Chief Financial and Administrative Officer.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-310 Procurement and Property Manager Responsibilities

The duties and responsibilities of the Procurement and Property Manager include, but are not limited to, the following:

- (a) Oversee and implement College procurement and property management policies;
- (b) Develop guidelines and procedures for areas including:
 - (1) Purchasing, receiving, and inspecting goods;
 - (2) Vendor requirements and selection;
 - (3) Bid and proposal evaluations; and
 - (4) Property management;
- (c) Conduct bidding, procurement, negotiation, or administration of College contracts upon request of the College official with expenditure authority;
- (d) Review procurement documents such as contracts and purchase orders for compliance with College policies;
- (e) Provide general oversight over capital equipment and supply inventories;

- (f) Sell, trade, or otherwise dispose of surplus physical assets;
- (g) Assist in the review and response to protests or disputes pertaining to bids, sealed quotations, or proposal evaluations.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission removed an extraneous dash from the opening paragraph, inserted semicolons at the ends of subsections (b)(1), (b)(2), and (b)(4), and converted the commas at the ends of subsections (c) through (f) to semicolons pursuant to 1 CMC § 3806(g).

Part 400 - General Principles

§ 95-50-401 Procurement Planning

All procurement of goods and services, shall, where possible, be made sufficiently in advance of the date for delivery or performance to promote maximum competition and sound resource management.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-405 Local Vendors

Whenever possible, procurement of goods, services, and supplies shall be acquired from licensed local businesses, provided that:

- (a) The quality of the purchased item(s) is equal to that of off-island vendors; and
- (b) Such acquisition will not result in the College paying an excessive price over that of off-island vendors for in stock items.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-410 Methods of Source Selection

All College purchases of \$25,000 and above, shall be awarded by competitive sealed bidding, except as provided in:

- (a) § 95-50-415 - Procurements Exempt from Procurement Policies and Procedures.
- (b) Part 600 - Small Purchases
- (c) Part 700 - Sole Source and Expedited Purchasing in Special Circumstances Procurements
- (d) Part 800 - Emergency Procurements

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- (e) SECTION TEN - Competitive Requests for Proposals* [Competitive Sealed Bidding]
- (f) SECTION ELEVEN - Contracting for Services* [12]
- (g) SECTION TWELVE - Construction and Architect-Engineer Services [14]

Every expenditure of College funds, irrespective of their source, unless exempt under Section 95-50-415, shall be made in accordance with one of the seven methods of source selection, which are discussed in detail in sections to follow.

* So in original. See Commission Comment.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

Section Ten of the original regulation is titled “Competitive Sealed Bidding” and is codified as Part 1000. Section Eleven is titled “Competitive Sealed Proposals” and is codified as Part 1100. The section entitled “Contracting for Services” is Section 12 of the original regulation and is codified as Part 1200. The section entitled “Construction and Architect-Engineer Services” is Section 14 of the original regulation and is codified at Part 1400.

§ 95-50-415 Procurements Exempt from Procurement Policies and Procedures

The following items are exempt from the College’s procurement and procedures*:

- (a) Payment of obligations, which the College is required to pay by law, including paying fees, claims, making refunds, and returning funds held by the College as trustee, custodian, or bailee;
- (b) Payment of dues or fees of professional organizations of which the College is a member;
- (c) Disbursement of funds to financial institutions for deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
- (d) Disbursement of funds to government agencies of the Commonwealth;
- (e) Procurement of goods, services, or construction from a Commonwealth government agency, federal government, a state or other type of government, or another educational institution;
- (f) Services of expert witnesses for potential or actual litigation of legal matters involving the College and its officers and employees;
- (g) Educational materials used in the classrooms, laboratories, and libraries including textbooks, workbooks, visuals, kits, guides, and tests, in print, video, audio, magnetic, or

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electronic form;

(h) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;

(i) Utility services, including but not limited to telephone, power, water, sewer, whose rates or prices are fixed by regulatory processes or agencies.

(j) Performances, including entertainment, speeches, and cultural and artistic presentations;

(k) Goods for commercial resale by the College (e.g., textbooks);

(l) Sub-grants and contracts to organizations directed by the funding agency;

(m) Used and surplus government items that are advantageous, only available on short notice, and subject to sale, such as through an auction.

(n) Professional service contracts for adjuncts.

The Procurement and Property Manager shall maintain a record of all exempt purchases made and shall report these purchases to the President through the Chief Financial and Administrative Officer on a quarterly basis.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission converted the periods at the ends of subsections (e) and (i) to semicolons pursuant to 1 CMC § 3806(g).

Part 500 - Limitations in Purchasing

§ 95-50-501 Items Not to Be Purchased

- (a) The following items will not be purchased or paid for with College funds:
- (1) Alcoholic beverages, except those purchased by the President or his/her designee for entertainment of official College guests or for special College events;
 - (2) Attaché/briefcases;
 - (3) Cigarettes and other tobacco products;
 - (4) Clothing, except those purchased for program use or by the bookstore for resale to promote the College and its programs or where such purchases are necessary for the promotion and performance of activities specific to a federal, state, or local grant;
 - (5) Coffee-making equipment including all devices for making and serving coffee;
 - (6) Contributions or donations to various causes;
 - (7) Desk clocks;
 - (8) Personal holiday cards, and office or holiday decorations;
 - (9) Library fines;

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- (10) Medication except for the first aid kit;
- (11) Personally inscribed appointment books;
- (12) Personally inscribed stationery and related supplies, except official business cards;
- (13) Personal type purchases;
- (14) Repairs to personally owned property;
- (15) Repairs to College property where the assigned employee is determined by proper authority to be at fault; and
- (16) Traffic fines.

(b) The above prohibitions apply to all funds expensed by the College unless specifically authorized otherwise by the funding agency.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs were undesignated. The Commission designated them as subsections (a) and (b). The Commission inserted a comma after the word “state” in subsection (a)(4) and corrected the periods at the ends of subsections (a)(7), (a)(9), (a)(12), and (a)(14) to semicolons pursuant to 1 CMC § 3806(g).

§ 95-50-505 Unauthorized Purchases

(a) Whenever an employee of the College procures or enters into a verbal contract to procure goods, services, or construction without such authorization or in violation of federal or Commonwealth law or established College policy, this procurement and the liability resulting there from shall not be honored by the College and the employee shall be personally liable for the cost. Deliberate actions of employees committing institutional resources beyond these policies and procedures will be considered just cause for disciplinary action including termination of employment.

(b) Although the personal purchase of goods, services, and construction by a College employee and subsequent request for reimbursement are in violation of College procurement procedures, there are occasions when this method of acquisition may be considered appropriate, e.g., postage costs for urgent mail, printing/copying costs for documents needed immediately. However, this method of acquisition should be used only when the purchase is approved in advance, in writing, by the President or the Chief Financial and Administrative Officer, in the absence of the President, after a review of availability of approve budget for the same.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs were undesignated. The Commission designated them as subsections (a) and (b). The Commission inserted commas after the word “services” in subsections (a) and (b) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of “federal” in subsection (a) pursuant to 1 CMC § 3806(f).

Part 600 - Small Purchases

§ 95-50-601 Conditions for Use

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College expenditures of less than \$25,000 for goods, services, and construction, shall be made in accordance with the small purchase procedures. Expenditures made pursuant to these procedures do not require public notice or public bid openings.

§ 95-50-605 Adequate and Reasonable Competition

(a) The College buys on a competitive basis to obtain fair and reasonable prices for quality goods, services, and construction. However, the College recognizes that due to limited stocks maintained by local vendors, it may be difficult at times to solicit quotations from a broad number of vendors for items to be procured. Nevertheless, programs should solicit quotations with the intention of obtaining adequate and reasonable competition.

(b) Quotations may be obtained via the following methods:

(1) Hard Copy - vendors may provide a hard copy of their price quotation via telephone facsimile, personal delivery, the United States Postal Service.

(2) Electronically - vendors may transmit their price quotation via telephone facsimile or electronic mail.

(3) If a project or procurement is deemed urgent, requestors may telephonically call vendors for price quotations. The following information must be written in a cost comparison/quotation worksheet:

(i) Name and telephone number of the vendor;

(ii) Name of the person representing the vendor who provided the price information;

(iii) List of the goods and/or services being sought;

(iv) Price and quantity of the goods and/or services being sought;

(v) Date and time of the call;

(vi) Name and signature of the caller.

(c) The following shall be used as a guideline for soliciting quotations:

Dollar Amount	No. of Quotations Required to be Solicited
\$0.01 - \$2,499.99	At least one written quotation should be obtained.
\$2,500 - \$24,999.99	At least three written quotations must be obtained; or two written quotations plus a written statement indicating reason(s) for not being able to obtain a third quotation or one quotation and a sole source justification.
\$25,000 or more	Formally advertised procurement (Invitation for Bids or Request for Proposals).

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs were undesignated. The Commission designated them as subsections (a) through (c). The Commission corrected the capitalization of “urgent” in subsection (b)(3) and “vendor” in subsection (b)(3)(i) pursuant to 1 CMC § 3806(f). The Commission converted the periods at the ends of subsections (b)(3)(1) through (b)(3)(v) to semicolons pursuant to 1 CMC § 3806(g). The Commission struck the figures “1,” “2,” and “3” from subsection (c) pursuant to 1 CMC § 3806(e).

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§ 95-50-610 Purchase Orders

(a) Purchasing Expenditure Authority

Each program expenditure authority is allowed to prepare and issue a purchase order to acquire goods and services in accordance with their authorized budget and the guideline above.

(b) Approval of Purchase Orders

The College official with expenditure authority must approve each purchase order for the program to indicate that the expenditure is consistent with the program it is intended to support. All purchases of \$25,000.00 and above must be approved by the President and the Chairperson of the Board of Regents.

(c) Open Purchase Orders

(1) Open purchase orders may be used to facilitate acquisition of items when:

- (i) The nature but not the precise amount of the requirement is known;
- (ii) The source of supply has been determined; and
- (iii) A number of repetitive orders are anticipated by the program during the period of time that the open purchase order is in effect.

(2) This method of purchasing should be used when the above conditions exist rather than issuing numerous individual purchase orders.

(3) An individual open purchase order may not exceed \$2,499.99 and may not be issued for a period exceeding the end of the fiscal year in which it was issued.

(4) The total amount of the open purchase order should be estimated as closely as the purchasing variables will permit. An open purchase order may be issued where the annual cumulative amount of expenditure is less than \$24,999.99 as long as the criterion set forth above in this subsection is met.

(5) Issuance of an open purchase order is subject to the approval of the College official with expenditure authority for the program.

(d) Confirming Purchase Orders

Confirming purchase orders should not be used.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The paragraphs of subsection (c) were undesignated in the original regulation. The Commission designated them as subsections (c)(1) through (c)(5).

§ 95-50-615 Receipt and Payment of Goods and Services

(a) Own Purchase Orders

The program originating the open purchase order is permitted to pick up/receive the goods charged against the open purchase order. The program should obtain an invoice/receipt from the vendor describing the goods obtained and the open purchase order number should be clearly stated on the invoice. A copy of the vendor invoice/receipt must be provided to the Procurement Property Management Office to ensure that the goods acquired are in accordance with the terms and conditions of the

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purchase order. The Procurement Property Management Office shall submit the invoice/receipt to the Finance Office for payment.

(b) Other Purchase Orders

Goods ordered through purchase orders other than open purchase orders must be received by the Procurement Property Management Office. In situations where the item ordered is highly unique or specialized and the Procurement Property Management Office is not familiar with the unique specifications of the goods ordered, the Procurement Property Management Office shall contact the program originating the order to verify the goods received. The original vendor invoice/receipt shall be received by the Procurement Property Management Office who in turn shall submit it to the Finance for payment.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Part 700 - Sole Source and Expedited Purchasing in Special Circumstances Procurements

§ 95-50-701 Conditions for Use

(a) Sole Source

A contract may be awarded for supply, service, or construction without competition when:

- (1) The particular goods, services, or construction have specific, unique feature*, characteristic or capability that is essential in order for the program to accomplish its work.
- (2) The particular goods, services, or construction having the unique feature, characteristic, or capability are available from only one supplier or source.

(b) A written sole source procurement memorandum shall be prepared by the official expenditure authority. The written justification sole source memorandum shall contain:

- (1) The specific, unique feature, characteristic, or capability of the vendor/contractor selected.
- (2) The specific reasons why such unique capabilities are required for the particular procurement;
- (3) What specific efforts were made to obtain competition, and what other specifically named sources, both on island and off-island, have been considered and why they were not selected. Generalized statements are not adequate, and documents to support the statements justifying the sole source procurement are mandatory. Examples of particular goods, services, and construction, which have a unique feature, characteristic, or capability, are:
 - (i) Proprietary items;
 - (ii) Compatibility with existing equipment; and*
 - (iii) Public utility repairs or construction that can only be provided by the utility company;
 - (iv) Contracts solely for the purpose of obtaining expert witnesses for litigation;
 - (v) Contracts for legal defense, legal advice, or legal services.

(c) Sole Source Justification

A sole source justification memorandum shall be used for such purchases deemed acceptable by the Procurement and Property Manager and/or the Chief Financial and Administrative Officer.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission inserted commas after the words “service” in subsection (a) and “characteristic” in subsection (b)(1) pursuant to 1 CMC § 3806(g). The Commission inserted a semicolon at the end of subsection (b)(3)(iii) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “sole” in subsection (c) pursuant to 1 CMC § 3806(f).

§ 95-50-705 Expedited Purchasing in Special Circumstances

When special circumstances require the expedited purchasing of goods and/or services, the College official with expenditure authority must request in writing, or electronically, the Procurement and Property Manager to approve expedited procurement without the solicitation of bids or proposals. Factors to be considered by the Procurement and Property Manager in approving or disapproving this request are:

- (a) The urgency of the College’s need for the goods or services;
- (b) The comparative costs of procuring the goods or services from a sole source or through the competitive process;
- (c) The availability of the goods or services in the Commonwealth and the timeliness in acquiring it; and
- (d) Any other factors establishing that the expedited procurement is in the best interest of the College.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission converted the period at the end of subsection (b) to a semicolon pursuant to 1 CMC § 3806(g).

§ 95-50-710 Procedures

(a) Sole Source

In order to execute a sole source purchase a written justification for sole source procurement shall be prepared by the College official with expenditure authority for the program procuring the good, service, or construction. A sole source justification memorandum may be used as deemed acceptable by the Procurement and Property Manager and/or the Chief Financial and Administrative Officer. The sole source justification memorandum shall indicate the following information:

- (1) Unique capabilities required and why they are required; and
- (2) Considerations given to alternative sources.

(b) Expedited Purchasing in Special Circumstances

(1) Upon the Procurement and Property Manager's determination that the factors in section 95-50-701(a) justify an expedited purchase, she/he shall process a sole source justification memorandum and assist the College official with the expenditure authority in procuring the required goods or services in the most efficient manner.

(2) If the Procurement and Property Manager determines that the request for the expedited procurement did not meet the criteria in section 95-50-701(a), she/he should notify the College official with expenditure authority of his/her disapproval in writing.

(3) The total amount of goods or services that may be procured under this section either by a single or by cumulative procurement shall not exceed the total amount of \$25,000.00.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs of subsection (b) were undesignated. The Commission designated them as subsections (b)(1) through (b)(3) pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of "sole" in subsections (a) and (b) and "sole source justification memorandum" in subsection (a) pursuant to 1 CMC § 3806(f). The Commission corrected the phrase "Property Manager determination" in subsection (b)(1) to "Property Manager's determination" pursuant to 1 CMC § 3806(g).

Part 800 - Emergency Procurements

§ 95-50-801 Conditions for Use

Normal procurement procedures may be suspended for the purchase of goods, services, or construction in bona fide emergency situations. Emergency procurement may be utilized only to purchase that which is necessary to cover the emergency; subsequent requirements shall be obtained using normal purchasing procedures. An emergency procurement must be as competitive as practicable under the circumstances. For this purpose, emergency procurement shall be considered only when the following conditions exist:

(a) A situation which creates a threat to public health, welfare, or safety such as may arise by reason of major natural disaster, epidemic, riot, or fire; and

(b) The existence of such condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods, the lack of which would seriously threaten the continued function of the College, the preservation or protection of property, or the health or safety of any person.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-805 Procedures

(a) A written justification, addressed to the Procurement and Property Manager, stating the basis for the emergency and for the selection of the particular vendor or

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contractor must be made by the appropriate Expenditure Authority. The written justification must contain the following information:

- (1) Nature of the emergency;
- (2) Work to be done including goods, services, or construction to be procured;
- (3) Name of vendor/contractor and reason for selection of the particular vendor/contractor; and
- (4) Estimated amount of expenditure.

(b) The Procurement and Property Manager shall indicate his/her approval or disapproval of the emergency purchase in writing. Such determination shall be made in consultation with the Chief Financial and Administrative Officer.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs were undesignated. The Commission designated subsections (a) and (b) pursuant to 1 CMC § 3806(a).

Part 900 - Purchase Order and Contract Administration

§ 95-50-901 General

(a) Purchase order and contract administration consists of the management of all facets of purchase orders and contracts to assure that the vendor's products meet purchase order requirements and that the contractor's performance is in accordance with its contractual commitments and that the obligations of the College are fulfilled. It includes the monitoring and supervision of contract actions from award of the contract to completion of the work required. It also includes, but is not limited to, the following:

- (1) Ensuring timely delivery;
- (2) Inspection and acceptance of goods;
- (3) Reconciling of invoices with orders;
- (4) Making payment (progress payments for construction);
- (5) Clarifying contract plans and drawings;
- (6) Issuing amendments or contract modifications, if necessary;
- (7) Resolving disputes;
- (8) Processing claims;
- (9) Issuing stop work orders;
- (10) Interpreting contract provisions;
- (11) Assessing liquidated damages;
- (12) Terminating contracts; and
- (13) Closing the contract file.

(b) The administration of purchase orders and contracts from their initiation to their closing is the responsibility of the appropriate College official with expenditure authority.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs were undesignated. The Commission designated subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission inserted a semicolon at the end of

subsection (a)(9) pursuant to 1 CMC § 3806(g).

Part 1000 - Competitive Sealed Bidding

§ 95-50-1001 Conditions For Use

(a) Competitive sealed bidding is a procurement method by which vendors submit sealed bids or proposals (offers) in response to an advertised solicitation. The solicitation is in the form of an Invitation for Bids or Requests for Proposals and sets forth with specificity what the College is interested in acquiring and under what terms and conditions.

(b) Unless authorized by law, all contracts of \$25,000 or more for goods, services, and construction shall be awarded by competitive sealed bidding except as provided by the other six methods of source selection, i.e., small purchases, sole source and special circumstances procurements, emergency procurements, competitive sealed proposals, contracting for services, and construction and architect-engineer services.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The paragraphs were undesignated in the original regulation. The Commission designated subsections (a) and (b) pursuant to 1 CMC § 3806(g).

§ 95-50-1005 Split Purchases

The parceling of a purchase to avoid competitive bidding requirements is strictly prohibited. If the Procurement and Property Manager 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 she/he 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.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1010 Invitation for Bids Procedures

(a) Overview

(1) Use of the Invitation for Bids precludes negotiation, and award of a contract is always made to the lowest responsive and responsible bidder. A bidder who is not financially or otherwise qualified to perform (responsibility) or who takes exception to the specifications, terms, or conditions in the Invitation for Bids (responsiveness) shall have its bid rejected. This type of procurement is generally used for large scale purchases of goods or services where it is in the best interest of the College to solicit interest from qualified vendors for the same. Examples of such purchases include construction of buildings, development of architectural plans, etc.

(2) Initiation of bidding processes must originate at the department level following

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bona fide proof of funds availability. The bid/proposal process shall be controlled by, and under the review of, the Procurement and Property Manager. Prior to notification of award, and following approved selection process, the Legal Counsel shall review the findings with the Procurement and Property Manager. No contract for goods or services, or advice of such contract, involving College funds shall be issued by other than the Procurement and Property Manager.

(3) The Requisitioner will prepare a memorandum requesting the purchase and the technical specifications.

(b) Preparing the Invitation for Bids

The Invitation for Bids is the means by which competitive bids are solicited. An Invitation for Bids shall include at the minimum:

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

(c) Public Notice

Adequate and reasonable public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publications 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 and reasonable notice, unless it is determined by the Procurement and Property Manager that a shorter period is reasonable and necessary.

(d) Bidding Time

Bidding time is the period of time between the date of publication of the Invitation for Bids and the time and date set for the opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A bidding time of thirty calendar days shall be provided, unless the Procurement and Property Manager determines a shorter period is reasonable and necessary, however, shall never be less than fourteen calendar days.

(e) Bid Receipt

(1) All bids shall be submitted to the Procurement and Property Manager. 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

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Procurement and Property Manager in writing of their intent to bid in order to receive an additional seven days for the receipt of the actual bid documents. This notice of intent to bid may be by any mode of written communication including telex, facsimile, or other electronic transmission.

(2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his/her signature and print his/her title on the envelope and deliver it to the Procurement and Property Manager. No information contained in the bid shall be disclosed prior to the bid opening. The Procurement and Property Management Manager shall cause the opened bid to be placed into a sealed receptacle.

(f) Bid Opening

The Procurement and Property Manager shall conduct the bid package opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The Procurement and Property Manager shall be present at the bid opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection. The Procurement and Property Manager shall prepare a written summary of the bid opening.

(g) Bid Acceptance and Bid Evaluation

Bids shall be unconditionally accepted without alteration or correction, except as authorized in these policies. 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.

(h) 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 College. 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 time of delivery; or
 - (iv) Limits the rights of the College.
- (3) Unreasonableness as to the price; or
- (4) A bid from a non-responsible bidder.

(i) Correction or Withdrawal of Bids; Cancellation of Awards

Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be approved by the Procurement and Property Manager in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the College or fair competition shall be allowed. Whenever a bid mistake is suspected, the College shall request confirmation of

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the bid prior to award. In such an instance, if the bidder alleges an error, the College shall only permit correction of the bid or withdrawal of the bid in accordance with subsections (i)(1) or (i)(2).

(1) Correction of Bids

Correction of bids shall only be permitted when:

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

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

(j) Award

(1) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid fully meets the requirements and criteria set forth in the Invitation for Bids and these regulations. 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 College contract is written and has been approved by all the College officials required by these regulations. College 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 College 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 percent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Procurement and Property Manager may be authorized by the President or his/her designee 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.

(k) Cancellation of Invitation for Bids

An invitation for bids may be canceled, and any and all bids may be rejected, when such action is determined in writing by the College official with expenditure authority and approved by the Procurement and Property Manager to be in the best interest of the

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College based on:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) Specifications, which have been revised;
- (3) Goods or services being procured which are not longer required;
- (4) Inadequate consideration given to all factors of cost to the College in the solicitation;
- (5) Bids or proposals received indicate that the needs of the College 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; or
- (8) Cancellation is determined to be in the best interest of the College.

(1) Qualifications and Duties

(1) Responsibilities of Bidders and Offerors

Awards shall be made only 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) Ability* 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 (or the ability to attain them) required to successfully perform the contract;
- (vi) Have the necessary production, construction, and technical equipment facilities, or the ability to attain them; and
- (vii) Be otherwise qualified and eligible to receive an award under applicable laws and rules;
- (viii) Not be disbarred from conducting official business with the US Government when such services involve federal funds. This determination shall be made by the Procurement and Property Manager based on a review of information available on entities disbarred at the time of review. Additionally, prospective bidders shall provide assurance in writing that they are not disbarred from conducting official business with the US Government at submission of their interest to provide goods or services to the College as part of a procurement process.

(2) Obtaining Information

Prior to award, the Procurement and Property Manager shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in subsection (1)(1). 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.

(3) Right of Non-disclosure

Information furnished by a bidder or offered pursuant to subsection (1)(2) may not be disclosed outside of the office of the Procurement and Property Manager, or any other College official involved without the prior consent of the bidder or offeror.

(4) 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 Procurement and Property Manager stating the basis for the determination and this shall be placed in the contract file.

(m) Pre-qualification of Contractors

Prospective suppliers of goods or services may be pre-qualified for particular types of construction, goods, and services when determined necessary by the Procurement and Property Manager. 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, prequalified suppliers. In no event will bidders be allowed to qualify after the bid opening.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The paragraphs of subsections (a), (e), and (j) were undesignated in the original regulation. The Commission designated them as subsections (a)(1) through (a)(3), (e)(1) through (e)(3), and (j)(1) through (j)(3) pursuant to 1 CMC § 3806(a). The Commission struck the figures “30” in subsections (c) and (d), “7” in subsection (e), and “5%” in subsection (j)(3) pursuant to 1 CMC § 3806(e). The Commission corrected the period at the end of subsection (l)(1)(vii) to a semicolon pursuant to 1 CMC § 3806(g).

Part 1100 - Competitive Sealed Proposals

§ 95-50-1101 Conditions for Use

When the College official with expenditure authority determines in writing that the use of competitive sealed bidding is either not practical or not advantageous to the College and receives the approval from the Procurement and Property Manager, a contract may be entered into by competitive sealed proposals.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1105 Procedures

(a) Request for Proposals

Competitive sealed proposals shall be solicited through a Request for Proposals.

(b) Public Notice

Adequate and reasonable public notice of the request for proposals shall be given in the same manner as provided for in the competitive sealed bids.

(c) Receipt of Proposals

Proposals shall not be disclosed to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.

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(d) Evaluation Factors

The request for proposals shall state the relative importance of price and other evaluation factors.

(e) 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.

(f) Award

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the College taking into consideration price and the evaluation factors set forth in the request for proposals. 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.

(g) Cancellation of Request for Proposals

A request for proposal may be canceled based on the same factors as provided for in the competitive sealed bids.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Part 1200 - Contracting for Services

§ 95-50-1201 General

Programs requiring specialized skills, knowledge, resources and/or experience, which cannot be provided by existing staff, may obtain such services on a contractual basis from providers outside the College. Under no circumstances should a services contract be used to circumvent College employment procedures. For the purposes of classification, services are categorized as professional services or independent contracts.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission inserted a period after the word “procedures” pursuant to 1 CMC § 3806(g).

§ 95-50-1205 Applicability

This section shall apply to all College officials, programs, and organizations.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1210 Procedures for Contracting for Services and Service Contract Addendum/Change Orders

The acquisition of services for all College programs shall be subject to the following procedures:

(a) In general, College policy provides that services shall be acquired by one of the following source selection methods: Small Purchases, Sole Source and Expedited Purchasing in Special Circumstances procurements, Emergency procurements, Competitive Sealed Bidding, Competitive Sealed Proposals, and Construction and Architect-Engineer Services. Programs should review the relevant section of the College Procurement Policies and Procedures to determine the appropriate source selection method for a specific requirement.

(b) Subsequent to completion of the appropriate source selection process, the following procedure shall apply:

(1) Professional Services

(i) The program shall notify the Procurement and Property Management Office in writing of the consultant selected to provide the services. The memo shall include all pertinent information to be incorporated into the contract.

(A) Scope of work and deliverables

(B) Total obligation of the College

(C) Account number for certification funds

(D) Business license

(E) Tax (Federal/Local) Identification number

(ii) The Procurement and Property Management Office shall prepare a Contract for Professional Services for the selected contractor.

(iii) The contract shall be signed by the following individuals in order:

(A) College official with expenditure authority of the program

(B) Procurement and Property Manager

(C) The Funds Certification Officer

(D) The Chief Financial and Administrative Officer

(E) Legal Counsel

(F) President

(G) Chairperson of the Board of Regents if the contract amount exceeds \$24,999.99

(H) Contractor

(I) Procurement and Property Manager (for signature verification)

(2) Non-Professional Services

(i) The Procurement and Property Manager shall issue an award letter to the independent contractor selected to provide the services and a declination letter to those not chosen.

(ii) A contract for Independent Services shall be prepared by the Procurement and Property Manager.

(iii) The contract shall be signed by the following individuals in the same order:

(A) College official with expenditure authority of the program

(B) Procurement and Property Manager

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- (C) Funds Certification Officer
- (D) Chief Financial and Administrative Officer
- (E) Legal Counsel
- (F) President
- (G) Chairperson of the Board of Regents if the contract amount exceeds \$24,999.99
- (H) Contractor
- (I) Procurement and Property Manager - for signature verification
- (3) Limitations

All contracts that exceed \$24,999.99 require Chairperson, Board of Regents approval.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The phrase “Addendum/Change Orders” in the section title is struck through in the original proposed regulation, but was not noted as amended in the proposed or enacted regulations. The Commission corrected the capitalization of the word “deliverables” in subsection (b)(1)(i)(A) pursuant to 1 CMC § 3806(f).

§ 95-50-1215 Exceptions

- (a) Honoraria

An “honorarium” is a payment that is primarily intended to confer distinction on or to demonstrate respect, esteem, or admiration for the recipient. It is paid to non-employees at the discretion of the College and is not a fee charged or negotiated by the person being paid. If the recipient is being paid to render services, e.g., to give a lecture or deliver an address, the payment, regardless of the amount, will be considered a payment for services and shall be subject to the procedures mentioned above; Written justification for honoraria exceeding \$1,000.00 must be attached to the payment document and maintained in the file by Procurement and Property Manager.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1220 Responsibility

Programs requiring professional or non-professional services are responsible for:

- (a) Where practical, planning the acquisition of the services with adequate procurement leadtime.
- (b) Determining limitations, if any, and obtaining all required approvals in advance of contract preparation, and insuring that the specifications and/or contract terms are clear, complete, and justifiable before transmittal to the President.
- (c) Ensuring that appropriate supporting documentation are included and made a part of the contract.
- (d) Ensuring that all contracted services are performed satisfactorily and on time, in accordance with the contract terms.

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History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Part 1300 - Types of Contracts

§ 95-50-1301 General

The selection of an appropriate contract type depends on factors such as the nature of the goods, services, or construction to be procured, the uncertainties that may be involved in contract performance, and the extent to which the College or contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor.

§ 95-50-1305 Types of Contracts

The following are the most common types of contracts used by the College. Other types of contracts not described may be used, subject to the approval of the President.

(a) Fixed-Price Contracts

A fixed price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that is firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet College requirements can be reasonably estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

(b) Leases

A lease is a contract for the use of equipment or property under which title will not pass to the College at any time. A lease may be entered into provided all conditions for renewal and costs of termination are set forth in the lease and the lease is not used to circumvent normal procurement procedures.

(c) Lease-Purchase Contract

A lease-purchase contract is a contract for the use of equipment under which title will pass to the College if and when the College exercises the option to purchase. Such a contract specifies the initial term of the contract with an option for renewal, extension, or purchase. Renewals or extensions for succeeding periods shall be subject to the availability of funds. At the end of the lease term, the College may exercise its option of purchasing the equipment for a nominal amount or returning it to the Contractor. The College does not acquire an equity interest in the equipment until the exercise of the purchase option under this type of contract.

(d) Installment-Purchase Contract

This type of contract provides for the purchase of equipment over a specific period. The contract specifies the initial term of the contract which shall be renewable annually thereafter up to the agreed upon term period, contingent upon the availability of funds. At the end of the specified term, title to the equipment passes to the College. The College

does acquire an equity interest in the equipment under this type of contract.

(e) **Cost Reimbursement Contract**

A cost reimbursement contract may be used when the Procurement and Property Manager 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;
- or
- (2) Use of a cost reimbursement contract is likely to be less costly to the College than any other type due to the nature of the work to be performed under the contract.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1310 Contracts Not Allowed

(a) **Cost-Plus-Percentage of Cost**

An agreement on a construction project in which the contractor is provided a specified percentage profit over and above the actual costs of construction.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1315 Addendum/Change Order

(a) Execution of a addendum/change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, no change order resulting in an increase in contract cost or time shall be allowed when it is a direct result of the contractor(s) inexperience, inefficiency, or incompetence.

(b) Before adding significant new work to existing contracts, the program shall thoroughly assess whether or not it would be more prudent to seek competition. Change orders on Construction and A & E contracts which exceed 25 percent of the cumulative contract price shall automatically be procured through competitive procedures* section 95-50-1001, except when the procurement of the additional work is authorized without using full and open competition under section 95-50-410(c).

(c) Contractors shall not be allowed to continue working beyond the expiration term of an original contract in the absence of an approved new contract or change order. Addendum/Change orders shall be processed using the procedures for signing new contracts.

(d) **Extension of Services.** Award of contracts for continuing service requirements are often delayed due to circumstances beyond control of the contracting program. In order to avoid negotiation of short extension* to existing contracts, the contracting program may include an option clause in the contract which will enable the college to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of

performance there under shall not exceed 6 months.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The final paragraph was undesignated in the original regulation. The Commission designated it as subsection (d) pursuant to 1 CMC § 3806(a).

Part 1400 - Construction and Architect-Engineer Services

§ 95-50-1401 Policy

It is the policy of NMC 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.

§ 95-50-1405 Procedures: Construction

(a) Invitation For Bids

(1) Contents

The invitation for bids shall be prepared in accordance with Section 9 – C*. 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 construction contracts where the price is estimated by the Procurement and Property Manager to exceed \$25,000.00 or when the Procurement and Property Manager, in consultation with the Chief Financial and Administrative Officer, determines it is in the interest of the College. Bid security shall be on a bid bond, in cash, by certified check, cashier's check, or other form acceptable to the College. 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 Attorney General.

(2) Amount

Bid security shall be an amount equal to at least fifteen percent of the amount of the bid or other amount as specified in the Invitation for Bids depending upon the source of funding.

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(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 College and shall become binding on the parties upon the execution of the contract:

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

(2) A payment bond satisfactory to the College, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the College, for the protection of all persons supplying labor and material to the contractor of 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 respect of which a payment bond is furnished under this section, and who has not been paid in full 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 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 finished 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 written certification by the Chief, Financial and Administrative Officer as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefore*, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the 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 price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission corrected the spelling of “cashier’s check” and inserted a comma after the word “check” in subsection (b)(1) pursuant to 1 CMC § 3806(g). The Commission struck the figures “15%” in subsection (b)(2), “100%” in subsections (c)(1) and (c)(2), “90” in subsection (d), and “1” in subsection (e) pursuant to 1 CMC § 3806(e).

§ 95-50-1410 Procedures: Architect-Engineer Services

(a) Procurement Method

Architect-Engineer services shall be procured as provided in section 95-50-1405 except when authorized as a small purchase or emergency procurement.

(b) Policy

It is the policy of NMC 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 Procurement and Property Manager will maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirement for architect-engineer services, current statements shall be reviewed together with those 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 there from, in order of preference, of no less than three firms determined to be the most highly qualified to perform the service required, unless the number of qualified vendor/service providers is less than (3).

(d) Negotiation

The Procurement and Property Manager shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the College. 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, then the Procurement and Property Management Manager shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon. In the event only one qualified vendor/service provider is available, the College may at its discretion elect to reject the vendor/service provider or may alternatively choose to negotiate and enter into a contract with the sole vendor/service provider.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission struck the figure “3” from subsection (b) pursuant to 1 CMC § 3806(e).

Part 1500 - Protests and Disputes

§ 95-50-1501 Protests

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 President.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1505 Disputes

Any dispute between the College and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of these regulations, must be filed in writing with the President within ten calendar days after knowledge of the facts surrounding the dispute.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission struck the figure “10” pursuant to 1 CMC § 3806(e).

§ 95-50-1510 Procedures: Bid Protests and Appeals

Protests to the President*

(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 President. The protest shall be received by the President in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto. The President shall consider all protests or objections to the award of a contract, whether submitted before or after award (within the timeframe provided herein).

(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 President within

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a specified period of time. Normally, the time specified will be one calendar week.

(3) The President, in consultation with Procurement and Property Manager, the Chief Financial and Administrative Officer and Legal Counsel, shall decide on the protest within twenty calendar days after all interested parties have submitted their views unless she/he certifies that the complexity of the matter requires a longer time, in which event she/he shall specify the appropriate longer time.

(4) When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the President is requested to submit a report, the President 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 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 President'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 President's report will include the determination prescribed in subsection (b)(2).

(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 President's decision has been taken to the Public Auditor, the President shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4). To further expedite processing, the official who furnishes the agency's report should, upon request of the protester or the Public Auditor, simultaneously furnish a complete copy (except for information privileged by law or which the President deems must be confidential in order to benefit from competitive bidding) to the protester. In such instances, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the President.

(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).

(2) When a written protest is received, award shall not be made until the matter is resolved, unless the President 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 College.

(3) If award is made under subsection (b)(2), the President shall document the file to

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explain the need for an immediate award. The President shall also give written notice to the protester and others concerned of the decision to proceed with the award.

(c) Protests after Award

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

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the College. 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: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission struck the figures "10" in subsection (a)(1), "1" in subsection (a)(2), and "20" in subsection (a)(3) pursuant to 1 CMC § 3806(e). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 95-50-1515 Appeals to the Public Auditor

(a) Jurisdiction; Exhaustion of Remedies

A written appeal to the Public Auditor from a decision by the President may be taken provided that the party taking the appeal has first submitted a written protest to the President as provided in section 95-50-1510(a)(1) of these Procedures, and the President has denied the protest or has failed to act on the protest within the time provided for in section 95-50-1510(a)(1).

(b) Form of Appeal

No particular form of pleading is required for filing an appeal to the Public Auditor. The appeal shall, however:

- (1) Include the name and address of the appellant;
- (2) Identify the contracting agency and the 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 Public Auditor.

(c) Time for Filing; Appeal

An appeal from the President's decision must be received by the office of the Public Auditor not later than ten days after the appellant receives the decision of the President or, in the event that the President has not decided the protest within ten days from the

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date that s/he should have decided the protest pursuant to section 95-50-1510(a)(3). Any appeal received after these time limits shall not be considered by the Public Auditor, unless good cause is shown or the Public Auditor determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the College should the appeal be considered.

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

(1) The Public Auditor shall notify the President by telephone and in writing within one day of the receipt of an appeal, requesting the President 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 President shall be requested to furnish in accordance with section 95-50-1510(a)(2) of these Procedures copies of the protest and appeal documents to such parties with instructions to communicate further directly with the Public Auditor.

(2) Material submitted by the appellant will not be withheld from any Commonwealth or federal agency that may be involved in the appeal except to the extent that the withholding of information is permitted or required by law or regulation. If the appellant considers that the protest contains material that should be withheld, a statement advising of this fact must be affixed to the front page of the appeal document and the allegedly proprietary information must be so identified wherever it appears.

(3) The Public Auditor shall request the President to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 25 working days) in accordance with section 95-50-1510(a)(4) of these Procedures and to furnish a copy of the report to the appellant and other interested parties as defined in section 95-50-1510(a)(2).

(4) Comments on the College report shall be filed with the Public Auditor within ten days after the Public Auditor's receipt of the report, with a copy to the agency office that furnished the report and to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Public Auditor within five days after receipt of the comments to which rebuttal is directed, with a copy to the agency office that furnished the report, the appellant, and interested parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within five days after receipt by the agency of the comments to which rebuttal is directed.

(5) 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 President will not make an award prior to resolution of the protest except as provided in this section. In the event the President determines that award is to be made during the pendency of an appeal, the President will notify the Public Auditor.

(f) Furnishing of Information on Protests

The Public Auditor shall, upon request, make available to any interested party

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information bearing on the substance of the appeal that has been submitted by interested parties or agencies 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 Public Auditor 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 President, the Public Auditor will request that such information be furnished as expeditiously as possible.

(h) Conference

(1) A conference on the merits of the appeal with the Public Auditor may be held at the request of the appellant, any other interested party, or the President. 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 Public Auditor will determine whether a conference is necessary for resolution of the appeal.

(2) Conferences 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 appropriately by the Public Auditor as a result of the conference must be received in the Office of the Public Auditor within five days of the date on which the conference was held.

(i) Time for Decision: Notice of Decision

The Public Auditor shall, if possible, issue a decision on the appeal within 25 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 President.

(j) Request for Reconsideration

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

(2) Request for reconsideration of a decision of the Public Auditor shall be filed not later than ten days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the Office of the Public Auditor.

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

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

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Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission struck the figures “10” in subsection (c), “1” in subsection (d), “10” and “5” in subsection (d)(4), “10” in subsection (f), “5” in subsections (g) and (h)(3), and “10” in subsection (j)(2) pursuant to 1 CMC § 3806(e).

§ 95-50-1520 Remedies

(a) Remedies Prior to Award

If prior to award the President or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or policies, then the solicitation or proposed award shall be:

- (i) Cancelled; or
- (ii) Revised to comply with law or policies.

(b) Remedies After an Award

If after an award the President or the Public Auditor determines that a solicitation or award of a contract is in violation of law or policies, 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 interest of the College; .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 College, without prejudice to the College’s rights to such damages as may be appropriate.

(c) Finality of Findings of Fact by the Public Auditor

A determination of an issue of fact by the Public Auditor under these Procedures shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1525 Effective Date

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

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1530 Disputes

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(a) Filing of Disputes

Any dispute between the College and a contractor relating to the performance, interpretation of or compensation due under a contract which is the subject of these policies and procedures, must be filed in writing with the President within ten calendar days after knowledge of the facts surrounding the dispute.

(b) Resolution of Disputes

The Procurement and Property Manager will attempt to resolve the dispute by mutual agreement. If the dispute cannot be settled by mutual agreement and a decision on the dispute is necessary, the President shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a written decision 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.

The President may require a hearing or that information be submitted on the record, at his/her discretion.

(c) Duty to Continue Performance

A contractor that has a dispute pending before the official with expenditure authority or the Procurement and Property Manager must continue to perform according to the terms of the contract, failure to do so shall be deemed to be a material breach of the contract unless s/he obtains a waiver of this provision by the President.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission struck the figure “10” from subsection (a) pursuant to 1 CMC § 3806(e). The Commission inserted a comma after the word “assistance” in subsection (b) and a period at the end of subsection (c) pursuant to 1 CMC § 3806(g).

Part 1600 - Ethics in Contracting

§ 95-50-1601 Standards of Conduct

College personnel who deal with any phase of contracting shall abide by the following:

(a) Gifts

No employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of the employee’s official duties or is intended as a reward for any official action on the employee’s part.

(b) Confidential Information

No employee shall disclose information which by law or practice is not available to the public and which the employee acquires in the course of the employee’s official duties, or

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use the information for the employee's personal gain or for the benefit of anyone.

(c) Fair Treatment

No employee shall use or attempt to use the employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others including, but not limited to, the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the employee's office or position;
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the employee's official duties or responsibilities except as provided by law;
- (3) Using College time, equipment, or other facilities for private business purposes; and
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business that the employee inspects or supervises in the employee's official capacity.

(d) Conflict of Interest

No employee shall participate in any phase of contracting, where, to his or her knowledge, any of the following has a financial interest in that contract:

- (1) The employee or any member of his or her immediate family;
- (2) His or her business partner;
- (3) An organization in which any of the above is an officer, director, partner, or employee; or
- (4) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

(e) Disclosure

Any employee who participates directly or indirectly in a procurement and obtains any benefit from any College contract with a business in which the employee has a financial interest shall report such benefit to the Procurement and Property Manager. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

(f) Discovery of Actual or Potential Conflict of Interest.

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement and Property Management Manager 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.

(g) Kickbacks.

When expending federal funds, the College is required to comply with the Anti-Kickback Act of 1986, which prohibits the making or accepting of payments for the purpose of improperly obtaining or rewarding favorable treatment.

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(h) Restrictions on Employment of Present and Former Employees

(1) Present Employees

It shall be a breach of ethical standards for any college employee to participate directly or indirectly in procurement when the employee knows that:

- (i) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
- (ii) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has arrangement concerning prospective employment is involved in the procurement.

(2) 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 Procurement and Property Manager 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 Chief Financial and Administrative Officer for an advisory opinion as to what further participation, if any the employee may have in the transaction.

(2) Former Employees

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 College, in connection with any:

- (i) judicial or other proceeding, application, request for ruling or other determination,
- (ii) contract,
- (iii) claim; or
- (iv) 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 College is a party or has a direct or substantial interest.

(i) Disqualification of Business

It shall be a breach of ethical standards for a business in which a college employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the College, in connection with any:

- (1) judicial or other proceeding, application, request for 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, or which is the subject of the employee's official responsibility, where the College is a party or has a direct or substantial interest.

(j) 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 official with the expenditure authority may declare the contract void if he/she finds sufficient evidence after a contract has been awarded that the contract was obtained by a bidder or bidders by reason of collusive or secret arrangement among the bidders to the

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disadvantage of the College.

(k) Civil and Administrative Remedies

(1) College Employees

A College employee is any person whether appointed in an excepted service arrangement*. An employee who violates the provisions of these rules and regulations 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 College money, or criminal prosecution.

(2) Contractors

A contractor who violates a provision of these regulations shall be subject to a written warning of reprimand, the termination of the contract or suspension of being a contractor or subcontractor under a College contract in addition to other penalties prescribed by law.

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

(1) Authority to Debar or Suspend

(1) Authority

After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedures Act, the President after consultation with the College Legal Counsel 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 President, after consultation with the College Legal Counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for suspension. The suspension shall not be for a period exceeding three months.

(2) Causes for Debarment or Suspension

The causes for debarment or suspension include the following:

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

(ii) 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 College contractor;

(iii) Conviction under Commonwealth or federal anti-trust 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;

(iv) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement and Property Management Manager to be so serious as to justify debarment action:

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

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(B) 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.

(v) Any other cause that the Procurement and Property Manager determines to be so serious and compelling as to affect responsibility as a College contractor, including debarment by another governmental entity; and*

(vi) For violation of any of the ethical standards set forth in this Section.

(vii) Debarment from participation or conduct of business with the US Government or its entities by a federal authority legally empowered to make such a decision. The Procurement Property Management Office shall periodically review the list of entities debarred from conducting business with the US Government or its entities issued by a duly authorized entity or agency of the federal government.

(m) Decision

The Procurement and Property Manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(n) Notice of Decision

A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

* So in original.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission inserted commas after the words “equipment” in subsection (c)(3) and “business” in subsection (h)(1)(ii) pursuant to 1 CMC § 3806(g). The Commission struck periods from the ends of subsections (h)(2)(iv) and (i)(4) pursuant to 1 CMC § 3806(g). The Commission struck the figure “3” in subsection (l)(1) pursuant to 1 CMC § 3806(e).

§ 95-50-1605 Purchase Order and Contract Administration

(a) General

Purchase order and contract administration consists of the management of all facets of purchase orders and contracts to assure that the vendor's products meet purchase order requirements and that the contractor's performance is in accordance with its contractual commitments and that the obligations of the College are fulfilled. It includes the monitoring and supervision of contract actions from award of the contract to completion of the work required. It also includes, but is not limited to, the following:

- (1) Ensuring timely delivery;
- (2) Inspection and acceptance of goods;
- (3) Reconciling of invoices with orders;
- (4) Making payment (progress payments for construction);
- (5) Clarifying contract plans and drawings;
- (6) Issuing amendments or contract modifications, if necessary;
- (7) Resolving disputes;
- (8) Processing claims;

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- (9) Issuing stop work orders;
- (10) Interpreting contract provisions;
- (11) Assessing liquidated damages;
- (12) Terminating contracts; and
- (13) Closing the contract file.

(b) The administration of purchase orders and contracts from their initiation to their closing is the responsibility of the appropriate College official with expenditure authority.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The Commission designated subsection (b) pursuant to 1 CMC § 3806(a).

Part 1700 - Requirements of Federally Funded Purchases

§ 95-50-1701 Federal Flow-down Provisions

When expending federal funds certain Federal Acquisition Regulation (FAR) clauses and provisions must be included in any contract entered into by the College. The Procurement and Property Management Manager maintains a current listing of federal flow-down provisions and includes it in all contracts utilizing federal funds.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1705 Purchases Using Federal Funds

Prior to purchasing with federal funds, College officials with expenditure authority over federally funded programs should be aware of their program's requirements and should inform the Procurement and Property Manager and the Chief Financial and Administrative Officer of any additional regulations or expectations imposed by the granting authority on specific federal programs administered by the College.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

§ 95-50-1710 Federal Acquisition Regulations Applicable to Northern Marianas College

(a) Northern Marianas College is a legally established institution of higher education by the laws of the Commonwealth of the Northern Mariana Islands. It is governed a* Board of Regents who are appointed by the Governor of the Commonwealth of the Northern Mariana Islands. The Board of Regents establishes all policies which govern the operations and conduct of business of the College, including procurement policies. The President, selected and appointed by the Board of Regents, is charged with oversight and implementation of all policies set forth by the Board.

(b) As Northern Marianas College is an institution of higher education, federal acquisition regulations applicable to institutions of higher education, related OMB

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Circulars and, as applicable, pertinent sections of the Circulars codified in the Code of Federal Regulations apply to federal grants/awards received and administered by Northern Marianas College.

(c) The following is a list of, not comprehensive, federal documents which apply to Northern Marianas College's administration of federal funds:

- (1) OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," applicable chapter in the Code of Federal Regulations under Title 2;
- (2) OMB Circular A-133, "Audits of States, Local Government, and Non-Profit Organizations," applicable chapter in the Code of Federal Regulations under Title 2;
- (3) OMB Circular A-21, "Cost Principles for Educational Institutions," applicable chapter in the Code of Federal Regulations under Title 2;
- (4) Agency specific requirements; and
- (5) Agency documentation standards.
- (6) Codified provisions of various circulars and other procurement regulations applicable to Institutions of Higher Education. Examples include, Title 34, Subtitle A, Part 74 applies in conjunction with the policies and procedures contained herein for awards from the US Department of Education; Title 7, Chapter XXX, Part 3019 applies in conjunction with the policies and procedures contained herein for awards from the US Department of Agriculture, etc.

History: Adopted 33 Com. Reg. 31393 (Feb. 24, 2011); Proposed 32 Com. Reg. 31109 (Dec. 20, 2010).

Commission Comment: The original paragraphs of the regulation were undesignated. The Commission designated subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission moved commas inside quotation marks in subsections (c)(1) through (c)(3) pursuant to 1 CMC § 3806(g). The Commission struck the duplicated phrase "applicable chapter in the Code of Federal Regulations under Title 2;" in subsection (c)(3) pursuant to 1 CMC § 3806(g).