

TITLE 70: DEPARTMENT OF FINANCE

CHAPTER 70-30 DIVISION OF PROCUREMENT AND SUPPLY

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Subchapter Authority: 1 CMC § 2553(j); 1 CMC § 2557.

Subchapter History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553(j) authorizes the Department to be in control of and be responsible for procurement and supply in the Commonwealth. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

On July 29, 2010, the Department of Finance proposed to re-promulgate the Procurement Regulations subchapter 70-30.3 with comprehensive amendments. See 32 Com. Reg. 30602 (Aug. 16, 2010). A notice of adoption has not been published to date.

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Part 001 - General Provisions

§ 70-30.1-001 Overview and Summary

(a) The regulations in this subchapter provide procedures to ensure that all procurements funded by the Commonwealth of the Northern Mariana Islands and grants subject to OMB Cir. A-102, that the Commonwealth will pay a fair and reasonable price for negotiated contracts or contract modifications.

(b) Accordingly, the regulations require that, contractors submit certified cost and pricing data where negotiated contracts or contract modifications are entered into. Sections 70-30.1-110 and 70-30.1-115 set forth the conditions under which such data shall be required. Where the price of the negotiated contract or modification is expected to exceed \$1,000,000.00 such data may be required. In actions not expected to exceed \$1,000,000.00 such data may be required. Where there is adequate competition, as defined in § 70-30.1-115(b), neither submission of data nor cost and price analysis is required, although the contracting officer should still determine in competitive procurements that the prices submitted by offerors are reasonable before making award. If required, cost and pricing data should normally be furnished in the format prescribed in table 100-1.

(c) Where cost and pricing data are furnished, the Commonwealth has the right to secure a contract-price adjustment if the data are subsequently found to be inaccurate, as provided in § 70-30.1-135.

(d) As provided in § 70-30.1-201, the contracting officer should, with such expert assistance as is required, analyze modification to determine that the cost and price are reasonable.

(e) Further guidance regarding subcontract price analysis, prenegotiation objectives, documentation of the negotiations, and profit analysis, are provided in §§ 70-30.1-225, 70-30.1-230, 70-30.1-235, and 70-30.1-301, respectively.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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

The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

§ 70-30.1-005 Scope

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This subchapter prescribes the policies and procedures applicable to cost and price analysis of

- (a) Negotiated prime contracts (including subcontract pricing under them when required) and
- (b) Contract modifications (including modifications to contracts awarded by a sealed bid procedure).

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission changed the phrase “This subpart” to “This subchapter” pursuant to 1 CMC § 3806(d).

§ 70-30.1-010 Definitions

(a) “Cost analysis” means the review and evaluation of the separate cost elements and proposed profit of (1) an offeror’s or contractor’s cost or pricing data and (2) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

(b) “Cost or pricing data” means all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly, including all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

(c) “Price” as used in this subpart, means cost plus any fee or profit applicable to the contract type.

(d) “Price analysis” means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(e) “Technical analysis,” as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

Modified, 1 CMC § 3806(g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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Commission Comment: In subsection (e), the Commission moved the comma after “analysis” inside of the closing quotation mark.

Part 100 - Policy; Cost or Pricing Data

§ 70-30.1-101 Policy

Contracting officers shall:

- (a) Purchase supplies and services from responsible sources at fair and reasonable prices;
- (b) Price each contract separately and independently and not
 - (1) Use proposed price reductions under other contracts as an evaluation factor or
 - (2) Consider losses or profits realized or anticipated under other contracts; and
- (c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-105 General

- (a) Commonwealth personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror’s or contractor’s proposal without the concurrence of the contracting officer, responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.
- (b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data.
- (c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists’ opinions or with the contracting officer prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in

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a price negotiation memorandum when significant audit or other specialists recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Commonwealth actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Commonwealth. Therefore the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Commonwealth and the contractor. If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to the Director. Disposition of the action by the Director should be documented.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-110 Cost or Pricing Data

(a) General

Except as provided in § 70-30.1-115, certified cost or pricing data may be required before accomplishing any of the following actions:

- (1) The award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed \$1,000,000.
- (2) The modification of any formally advertised or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed \$1,000,000.
- (3) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed \$1,000,000.
- (4) The modification of any subcontract covered by subsection (a)(3) above, when the price adjustment (see subsection (a)(2) above) is expected to exceed \$1,000,000.

(b) If cost or pricing data are needed for pricing actions over \$1,000,000 certified cost or pricing data may be obtained. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

(c) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

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- (1) The cost or pricing data.
- (2) A certificate of current cost or pricing data, in the format specified in § 70-30.1-120, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

§ 70-30.1-115 Exemptions from or Waiver of Submission of Certified Cost or Pricing Data

(a) General. Except as provided in subsections (b) and (c) below, the contracting officer may not require submission or certification of cost or pricing data when the contracting officer determines that prices are:

- (1) Based on adequate price competition (see subsection (b) below);
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see subsection (c) below); or
- (3) Set by law or regulation (see subsection (d) below).

(b) Adequate price competition

(1) Price competition exists if --

- (i) Offers are solicited;
- (ii) Two or more responsible offerors that can satisfy the Commonwealth's requirements submit priced offers responsive to the solicitation's expressed requirements; and

(iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

(2) A price is "based on" adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

(c) Established catalog or market price

A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities and on similar terms to the general public. Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based.

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(d) Prices set by law or regulation

A price set by applicable law or regulation is exempt from the requirement for submission of certified cost or pricing data.

(e) Verification

When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either subsection (c) or (d) above, as appropriate, are satisfied before issuing the exemption.

(f) Price analysis

Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation. It may be necessary to obtain from the prospective contractor information such as that regarding--

- (1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);
- (2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);
- (3) Normal quantity per order; and
- (4) Annual volume of sales to largest customers.

(g) Waiver for exceptional cases

The head of the contracting activity may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing.

Modified, 1 CMC § 3806(c), (d), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (g), the Commission deleted the repeated word "may" to correct a manifest error.

§ 70-30.1-120 Certificate of Current Cost or Pricing Data

(a) When certified cost or pricing data are required under § 70-30.1-110, the contracting officer shall require the contractor to execute a certificate of current cost or pricing data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Commonwealth agreed on a price. Only one certificate shall be required, the contractor shall submit it as soon as practicable after price agreement is reached, but prior to serving final notice of contract award.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the contracting officer

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in support of _____¹ are accurate, complete, and current as of _____². This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Commonwealth that are part of the proposal.

Firm _____

Name _____

Title _____

Date of execution³ _____

¹ Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP no.).

² Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

³ Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing date (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Commonwealth will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a certificate of current cost or pricing data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a certificate of current cost or pricing data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see § 70-30.1-115 through § 70-30.1-120).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require re-certification.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (c), the Commission corrected the spelling of "subcontractor."

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The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

§ 70-30.1-125

[Reserved.]

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-130 Procedural Requirements

- (a)(1) The contracting officer shall specify
- (i) Whether or not cost or pricing data are required,
 - (ii) Whether or not certification will be required,
 - (iii) The extent of cost or pricing data required if complete data are not necessary, and
 - (iv) The form (see subsection (b) below) in which the cost or pricing data shall be submitted.
- (2) Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.
- (b) Cost or pricing data should normally be prepared to satisfy the instructions and appropriate format of table 100-1. In procurements conducted in cooperation with agencies of the United States government, appropriate equivalent forms prepared by such agencies may be used instead.
- (c) Closing or cutoff dates should be included as part of the data submitted with the proposal. If possible, the contracting officer and offeror should reach a prior understanding on criteria for establishing closing or cutoff dates.
- (d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or identified in writing by the time of agreement on price. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute "submission" of cost or pricing data.
- (e) If cost or pricing data are required and the offeror initially refuses to provide necessary data, the contracting officer shall again attempt to secure the data. If the offeror persists in the refusal, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or service from another source.
- (f) Preproduction and startup costs include costs such as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs. When these costs may be a

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significant cost factor in an acquisition, the contracting officer shall require in the solicitation that the offeror provide

- (1) An estimate of total preproduction and startup costs,
- (2) The extent to which these costs are included in the proposed price, and
- (3) The intent to absorb, or plan for recovery of, any remaining cost. If a successful offeror has indicated an intent to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Commonwealth in any future noncompetitive pricing action.

(g)(1) The requirement for contractors to obtain cost or pricing data from prospective subcontractors is prescribed at § 7030.1-225. However, these data do not have to be submitted to the Commonwealth unless called for under subsection (g)(2) below.

(2) The contracting officer shall require a contractor that is required to submit certified cost or pricing data also to submit to the Commonwealth (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

- (i) More than 10 percent of the prime contractor's proposed price, or
 - (ii) Considered to be necessary for adequately pricing the prime contract.
- (3) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in § 70-30.1-115, the contracting officer normally shall not require submission of subcontractor cost or pricing data.

(4) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in § 70-30.1-225(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(h) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of final price agreement given on the contractor's certificate of current cost or pricing data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

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

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The original paragraphs of subsections (a) and (b)(1) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (b)(1)(i) through (x).

The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

Table 100-1 was originally located after subsection (b) of this section. It has been relocated to a separate table for ease of use pursuant to 1 CMC § 3806(a).

In subsection (f)(2), the Commission changed "extend" to "extent" to correct a manifest error.

Table 100-1 Instructions for Submission of a Contract Pricing Proposal

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(a) A cost-element breakdown, using the applicable format prescribed in (g)(1), (2) or (333) below, shall be attached for each proposed line item and must reflect any specific requirements established by the Chief. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system. When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. Depending on offeror's system, breakdowns shall be provided for the following basic elements of cost, as applicable:

(1) Materials - provide a consolidated pricing summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Subcontracted items - include parts, components, assemblies, and services that are to be produced or performed by others in accordance with offeror's design, specifications, or direction and that are applicable only to the prime contract. For each subcontract over \$100,000, the support should provide a listing by source, item, quantity, price, type of subcontract, degree of competition, and basis for establishing source and reasonableness of price, as well as the results of review and evaluation of subcontract proposals when required by the contracting officer.

(2) Standard Commercial Items - Consists of items that offeror normally fabricates in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced at other than cost, provide justification for exemption from submission of cost or pricing data.

(3) Interorganizational Transfer (at other than cost) - Explain pricing method used.

(4) Raw Materials - Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal.

(5) Purchased Parts - Includes material items not covered above. Provide priced quantities of items required for the proposal.

(6) Interorganizational Transfer (at cost) - Include separate breakdown of cost by element.

(7) Direct Labor - Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

(8) Indirect Costs - Indicate how offeror has computed and applied offeror's indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

(9) Other Costs - List all costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework) and provide bases for pricing.

(10) Royalties - If more than \$250, provide the following information on a separate page for each separate royalty or license fee: name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part or model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the contracting officer,

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provide a copy of the current license agreement and identification of applicable claims of specific patents.

(b) As part of the specific information required, the offeror must submit with offeror's proposal, and clearly identify as such, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at § 70-30.1-010(b) of this article). In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including

- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
- (2) The nature and amount of any contingencies included in the proposed price.

(c) There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

(d) In submitting offeror's proposal, offeror must include an index, appropriately referenced, or all the cost or pricing data and information accompanying or identified in the proposal. In addition, any future additions and/or revisions, up to the date of agreement on price, must be annotated on a supplemental index.

(e) By submitting offeror's proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine those books, records, documents, and other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time before award.

(f) As soon as practicable after agreement on the price, but before the award resulting from the proposal, the offeror shall, under the conditions stated in § 70-30.1-120 of this subchapter submit a certificate of current cost or pricing data.

(g) Headings for Submission of Line-item Summaries.

- (1) New Contracts (including letter contracts).

Cost Elements	Proposed Contract Estimate (Total Cost)	Proposed Contract Estimate (Unit Cost)	Reference
(1)	(2)	(3)	(4)

Under column (1) - Enter appropriate cost elements.

Under column (2) - Enter those necessary and reasonable costs that in offeror's judgment will properly be incurred in efficient contract performance. When any of the

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costs in this column have already been incurred (e.g., under a letter contract or unpriced order), describe them on an attached, supporting schedule. When preproduction or startup costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.

Under column (3) - Optional, unless required by the contracting officer.

Under column (4) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

(2) Change Orders (modifications).

Cost Elements	Estimated Cost of All Work Deleted	Cost of Deleted Work Already Performed	Net Cost to be Deleted	Cost of Work Added	Net Cost of Change	Reference
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Under column (1) - Enter appropriate cost elements.

Under column (2) - Include (i) current estimate of what the cost would have been to complete deleted work not yet performed, and (ii) the cost of deleted work already performed.

Under column (3) - Include the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if offeror desires to retain these lines or any portion of them, indicate the amount offered for them.

Under column (4) - Enter the net cost to be deleted which is the estimated cost of all deleted work less the cost of deleted work already performed. (Column (2) less column (3) = column (4)).

Under column (5) - Enter the offeror's estimate for cost of work added by the change. When nonrecurring costs are sufficient, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.

Under Column (6) - Enter the net cost of change which is the cost of work added, less the net cost to be deleted. When this result is negative, place the amount in parentheses. (Column (4) less column (5) = column (6)).

Under column (7) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

(3) Price Revision/Redetermination

Cutoff date	Number of units completed	Number of units to be completed	Contract Amount	Redetermination proposal amount	Difference
(1)	(2)	(3)	(4)	(5)	(6)

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Cost elements	Incurred cost- preproduction	Incurred cost- completed units	Incurred cost - work in progress	Total incurred cost	Estimated cost to complete
(7)	(8)	(9)	(10)	(11)	(12)
Estimated total cost	Reference				
(13)	(14)				

Under column (1) - Enter the cutoff date required by the contract, if applicable.

Under column (2) - Enter the number of units completed during the period for which experienced costs of production are being submitted.

Under column (3) - Enter the number of units remaining to be completed under the contract.

Under column (4) - Enter the cumulative contract amount.

Under column (5) - Enter the offeror's redetermination proposal amount.

Under column (6) - Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parenthesis. (Column (4) less column (5) = column (6)).

Under column (7) - Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price incentive and fixed-price- redetermination arrangements should be net of the fair market value of the inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

Under column (8) - Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from offeror's books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from offeror's records, enter in this column offeror's best estimates. Explain the basis for each estimate and how the costs are charged on offeror's accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead, etc.). Also show how the costs would be allocated to the units at their various stages of contract completion.

Under columns (9) and (10) - Enter in column (9) the production costs from offeror's books and records (exclusive of preproduction costs reported to column (8)) of the units completed as of the cutoff date. Enter in column (10) the costs of working process as determined from offeror's records or inventories at the cutoff date. When the amounts for work in process are not available in contractor's record but reliable estimates for them can be made, enter the estimated amounts in column (10) and enter in column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor

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hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which offeror's proposal relates.

Under column (11) - Enter total incurred costs (total of columns (8), (9) and (10)).

Under column (12) - Enter those necessary and reasonable costs that in contractor's judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which contractor's proposal relates.

Under column (13) - Enter total estimated cost (total of columns (11) and (12)).

Under column (14) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission moved this table out of section 70-30.1-130. The Commission corrected the capitalization of "column" in subsection (g)(3) and inserted the word "column" before "(13)" in subsection (g)(3) pursuant to 1 CMC § 3806(g). In paragraph 3, the Commission corrected the spelling of "identification."

§ 70-30.1-135 Defective Cost or Pricing Data

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall negotiate, using any new data submitted or making satisfactory allowance for the incorrect data. The price negotiation memorandum shall reflect the revised facts.

(b) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's certificate of current cost or pricing data, the Commonwealth is entitled to a price adjustment, including profit or fee, or any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract a clause giving the Commonwealth the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(c) For each advisory audit received based on a post-award review which indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question.

(1) The contracting officer shall prepare a memorandum indicating

(i) The contracting officer's determination as to whether or not the submitted data were accurate, complete, and current as of the certified date and whether or not the Commonwealth relied on the data, and

(ii) The results of any contractual action taken.

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(2) The contracting officer shall send one copy of the memorandum to the Public Auditor and, if the contract has been assigned for administration, one copy to the administrating contracting officer (ACO). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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

In subsection (c)(2), the Commission corrected the spelling of “contracting.”

Part 200 - Cost and Price Analysis

§ 70-30.1-201 General

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts to assist in proposal analysis. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for

- (1) Determining the extent of specialists’ advice needed and evaluating that advice,
- (2) Coordinating a team of experts,
- (3) Consolidating pricing data and developing a prenegotiation objective, and
- (4) Conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer may make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform

- (1) Price analysis for all significant proposed subcontracts and purchase orders and
- (2) Cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see § 70-30.1-225(a)).

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-205 Price Analysis

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The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

- (a) Comparison of price quotations received in response to the solicitation.
- (b) Comparison of prior quotations and contract prices with current quotations for the same or similar end items.
- (c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- (d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- (e) Comparison of proposed prices with independent Commonwealth cost estimates (see § 70-30.1-105(b)).

Modified, 1 CMC § 3806(c).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

§ 70-30.1-210 Cost Analysis

The contracting officer shall, as appropriate, use the techniques and procedures outlined in subsections (a)(1) through (a)(4) below to perform cost analysis:

- (a) Verification of cost or pricing data and evaluation of cost elements, including -
 - (1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;
 - (2) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;
 - (3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
 - (4) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.
- (b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contacting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future.
- (c) Comparison of costs proposed by the offeror for individual cost elements with -

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- (1) Actual costs previously incurred by the same offeror;
- (2) Previous cost estimates from the offeror or from other offerors for the same or similar items;
- (3) Other cost estimates received in response to the Commonwealth's request;
- (4) Independent Commonwealth cost estimates by technical personnel; and
- (5) Forecasts or planned expenditures.

(d) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-215 Technical Analysis

When cost or pricing data are required, the contracting officer should, where practicable, request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum:

- (a) The quantities and kinds of material proposed;
- (b) The need for the number and kinds of labor hours and the labor mix;
- (c) The special tooling and facilities proposed;
- (d) The reasonableness of proposed scrap and spoilage factors; and
- (e) Any other data that may be pertinent to the cost or price analysis.

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-220 Field Pricing Support

(a) When cost or pricing data are required, contracting officer should, where practicable, request a field pricing report. Field pricing reports are intended to give the contracting officer a detailed analysis of the proposal, for use in contract negotiations. Field pricing support personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and legal specialists.

(b) The contracting officers should not request field pricing support for proposed contracts or modifications of an amount less than \$1,000,000.

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History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-225 Subcontract Pricing Considerations

(a) Subcontractors must submit to the contractor or higher tier subcontractor cost or pricing data or claims for exemption from the requirement to submit them. The contractor and higher tier subcontractor are responsible for

(1) Conducting price analysis and, when the subcontractor is required to submit cost or pricing data or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analysis for all subcontracts and

(2) Including the results of subcontract reviews and evaluations as part of their own cost or pricing data submission.

(b) Except when the subcontract prices are based on adequate price competition or on an established catalog or market prices of commercial items sold in substantial quantities to the general public or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed \$1,000,000 or issuing any modification involving a price adjustment expected to exceed \$1,000,000 or 10 percent of the total prime contract.

(c) The requirements in subsections (a) and (b) above, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

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

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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

§ 70-30.1-230 Prenegotiation Objectives

(a) The process of determining prenegotiation objectives helps the contracting officer to judge overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the prenegotiation objectives, the contracting officer shall analyze the offeror’s proposal, taking into account the field pricing report, if any; any audit report and technical analysis whether or not part of a field pricing report; and other pertinent data such as independent Commonwealth cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar action. When cost analysis is required, the analysis shall address

(1) The pertinent issues to be negotiated,

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- (2) The cost objectives, and
- (3) A profit or fee objective.

(c) The Commonwealth's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or weights assigned to individual profit-analysis factors (§ 70-30.1-310) is not required during negotiations and should not be attempted.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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

§ 70-30.1-235 Price Negotiation Memorandum

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information:

- (1) The purpose of the negotiation.
- (2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP no.).
- (3) The name, position, and organization of each person representing the contractor and the Commonwealth in the negotiation.
- (4) The current status of the contractor's purchasing system when material is a significant cost element.
- (5) If certified cost or pricing data were required, the extent to which the contracting officer -
 - (i) Relied on the cost or pricing data submitted and used them in negotiating the price; and
 - (ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.
- (6) If cost or pricing data were not required in the case of any price negotiation over \$1,000,000 the exemption or waiver used and the basis for claiming or granting it.
- (7) A summary of the contractor's proposal, the field pricing report recommendations, if any, and the reasons for any pertinent variances from the field pricing report recommendations.
- (8) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions.
- (9) The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

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(b) Whenever a field pricing report has been submitted, the contracting officer shall forward a copy of the price negotiation memorandum (PNM) to the cognizant audit office and a copy to the cognizant administrative contracting officer. When appropriate, information on how the advisory services of the field pricing support team can be made more effective should be provided separately.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-240

[Reserved.]

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Part 300 - Profit

§ 70-30.1-301 Profit

- (a) This part
- (1) Prescribes policies for establishing the profit or fee portion of the Commonwealth prenegotiation objective;
 - (2) Applies to price negotiations based on cost analysis; and
 - (3) Specifies
 - (i) Situations requiring the contracting officer to analyze profit and
 - (ii) Considerations for that analysis.
- (b) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Commonwealth's estimate of allowable costs to be incurred in contract performance together equal the Commonwealth's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs, the Commonwealth does not recognize as allowable, and contract type.
- (c) It is in the Commonwealth's interest to offer contractors opportunities for financial rewards sufficient to
- (1) Stimulate efficient contract performance,
 - (2) Attract the best capabilities of qualified large and small business concerns to Commonwealth contracts, and
 - (3) Maintain a viable industrial base.
- (d) Both the Commonwealth and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at

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reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Commonwealth's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance. With the exception of statutory ceilings in subsection (d) on profit and fee, agencies should not

- (1) Establish administrative ceilings or
- (2) Create administrative procedures that could be represented to contractors as de facto ceilings.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The cross-reference in subsection (d) to subsection (d) is unclear. The original regulations cite 1-200(4), which is codified at § 70-30.1-301(d). See 7 Com. Reg. at 3718 (May 21, 1985).

§ 70-30.1-305 Contracting Officer Responsibilities

(a) When the price negotiation is not based on cost analysis, the contracting officers are not required to analyze profit.

(b) When the price negotiation is based on cost analysis, the contracting officers with the use of structured approach shall use it to analyze profit. When not using a structured approach, the contracting officers shall comply with § 70-30.1-310 in developing profit or fee prenegotiation objectives.

(c) The contracting officers shall use the Commonwealth prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective.

(d) The contracting officer generally shall not negotiate a price or fee that exceeds the following limitations:

(1) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(2) For architect-engineering services for public works or utilities; the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(3) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(e) The contracting officer shall not require any prospective contractor to submit details of its profit or fee objective but shall consider them if they are submitted voluntarily.

(f) If a change or modification

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- (1) Calls for essentially the same type and mix of work as the basic contract and
- (2) Is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

§ 70-30.1-310 Profit-analysis Factors

Unless it is clearly inappropriate or not applicable, each factor outlined in subsections (a) through (f) following shall be considered by agencies in developing their structured approaches and by the contracting officers in analyzing profit whether or not using a structured approach.

(a) Contractor effort. This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance.

(b) Contract cost risk

(1) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume

(i) As a result of the contract type contemplated and

(ii) Considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance.

(2) The contractor assumes the greatest cost risk in the closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(c) Capital investments. This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(d) Cost-control and other past accomplishments. This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to

(1) Measures taken by the prospective contractor that result in productivity improvements and

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(2) Other cost-reduction accomplishments that will benefit the Commonwealth in follow-on contracts.

(e) Independent development. Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Commonwealth assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Commonwealth sources.

(f) Additional factors. In order to foster achievement of program objectives, the contracting officer may include additional factors in the profit analysis of individual contract actions.

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

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In the opening paragraph, the Commission deleted the word “the” to correct a manifest error. In subsection (a), the Commission inserted the final period.

Part 400 - Miscellaneous Provisions

§ 70-30.1-401 Effective Date

The regulations in this subchapter shall take effect upon publication in the Commonwealth Register and adoption thereafter.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission changed “adopted” to “adoption” to correct a manifest error.

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**SUBCHAPTER 70-30.2
GOVERNMENT VEHICLE REGULATIONS**

Part 001	General Provisions	Part 200	Enforcement and Penalties
§ 70-30.2-001	Authority	§ 70-30.2-201	Enforcement
§ 70-30.2-005	Purpose	§ 70-30.2-205	Penalty of Perjury
§ 70-30.2-010	Definitions	§ 70-30.2-210	Revocation of Government Vehicle Operator's Permit
Part 100	Government Vehicles	Part 300	Procedures and Implementation
§ 70-30.2-101	Procurement of Government Vehicles	§ 70-30.2-301	Procedures
§ 70-30.2-105	Use of Government Vehicles	§ 70-30.2-305	Implementation and Coordination
§ 70-30.2-110	Vehicle Log Records	Part 400	Miscellaneous Provisions
§ 70-30.2-115	Maintenance and Upkeep of Government Vehicles	§ 70-30.2-401	Applicability
§ 70-30.2-120	Government Vehicle Operator's Permit	§ 70-30.2-405	Supersession
§ 70-30.2-125	Accidents	§ 70-30.2-410	Severability
§ 70-30.2-130	Liability		

Subchapter Authority: 1 CMC § 2553(j); 1 CMC § 2557.

Subchapter History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553(j) authorizes the Department to be in control of and be responsible for procurement and supply in the Commonwealth. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

1 CMC § 7406 specifically addresses the use of government vehicles. PL 9-37 § 3 (effective Apr. 22, 1995), the "Government Vehicle Act of 1994," repealed and reenacted 1 CMC § 7406 in order to more effectively regulate the use of government vehicles. See PL 9-37 § 2, reprinted in the commission comment to 1 CMC § 7406. The regulations codified in this subchapter have not been updated or revised to reflect the new law.

In May, 2012, the Department of Finance proposed amendments to the rules and regulations for government vehicles. See 34 Com. Reg. 32422 (May 29, 2012). A notice of adoption has not been published to date.

Part 001 - General Provisions

§ 70-30.2-001 Authority

The regulations in this subchapter are issued under the authority of CNMI Constitution, article 10, section 8, and 1 CMC § 2553(j), and 1 CMC § 2557.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

§ 70-30.2-005 Purpose

The purpose of the regulations in this subchapter is to provide the standards in which CNMI government vehicles are to be procured and maintained; to establish standards for control and accountability on the use of government vehicles; to provide for the efficient and proper use of such vehicles; to safeguard such assets from waste and abuse due to unauthorized or improper use, or mismanagement; to protect the government from any liability resulting from any unauthorized use or misuse and report any impropriety in the use of such vehicles; and to provide for the day to day record keeping on the use of government vehicles.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

§ 70-30.2-010 Definitions

(a) “CNMI” or “Commonwealth” means the Commonwealth of the Northern Mariana Islands, which lie within the area north of the 14 degrees north latitude, south of 21 degrees north latitude, west of 150 degrees east longitude and east of 144 degrees longitude, as extended by the Marine Sovereignty Act (commencing at § 1101 of title 2 of the Commonwealth Code).

(b) “CNMI government” means any government entity within the CNMI and includes the executive, legislative, and judicial branches of the government, autonomous agencies or instrumentalities, and administrative departments or agencies. It also includes the government offices and activity heads established and located outside the CNMI and supported by CNMI funds.

(c) “Director” means the Director of the Department of Finance or his designee.

(d) “Chief” means the Chief of the Division of Procurement and Supply within the Department of Finance.

(e) “Director of Public Safety” means the Director of the CNMI Department of Public Safety or his designee.

(f) “Employee” means all persons, other than government officials, as defined herein, whom are receiving compensation from the CNMI government, its agencies and instrumentalities.

(g) “Government official” means a department head, activity head, agency head and their deputies; judges of the Commonwealth judiciary; any elected official; or any CNMI

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government official with expenditure authority who is authorized by law to administer, obligate, or expend public funds.

(h)(1) “Government vehicle” means all motor vehicles:

- (i) As defined in the CNMI Vehicle Code, 9 CMC § 1102(u);
- (ii) Owned or leased by the CNMI government; and
- (iii) Vehicles purchased or leased from federal funds where the CNMI government is the grantee.

(2) The term shall not include privately owned vehicles or any other vehicle rented by employees or government officials on a day-to-day basis during intra-island and off-island travel. Nor shall the term include “heavy equipment vehicle” as defined in the CNMI Vehicle Code, 9 CMC § 1102(w).

(i) “Regular government working hours,” for the purposes of this subchapter, means the hours from 7:30 am to 4:30 pm. Monday through Friday and other than on official government holidays. The term shall also include the one hour period prior to and after the above stated hours.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

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

In subsection (i), the Commission moved the comma after “hours” inside of the closing quotation mark.

Part 100 - Government Vehicles

§ 70-30.2-101 Procurement of Government Vehicles

(a) The procurement of vehicles by the CNMI government or any of its agencies or instrumentalities shall be consistent with the CNMI Procurement Regulations [NMIAC, title 70, chapter 30.3], and policies and procedures adopted by the Director. Such procurement shall be in accordance with the vehicle fleet management plan approved by the Director which shall contain standard vehicle specifications and features for the type or class of vehicle, authorized for use by employees, government officials, division chiefs, administrative personnel, and specialty activities. The Director may, from time to time, amend the vehicle fleet management plan as required to economically and effectively meet the vehicle and transportation needs of the CNMI government.

(b) All government vehicles shall bear CNMI government license plates and any other identification as may be approved and assigned by the Chief. Such license plates and identification shall be clearly visible during operation of the vehicle. This provision does not apply to those vehicles which the Director of Public Safety has requested an exemption for security and other precautions. Such exempt vehicles shall be separately identified under procedures prescribed by the Director.

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(c) Government vehicles shall not be equipped with tinted, reflective, or darkened window glass that might interfere with outside visibility of the interior of the vehicle or with the visibility of the operator at any time, except those vehicles which the Director of Public Safety has determined and requested the installation of such equipment or other material for security and other precautions.

(d) No vehicle which has been procured or leased by the CNMI government may be altered or modified without the specific concurrence of the Director.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language of subsection (b).

§ 70-30.2-105 Use of Government Vehicles

Government vehicles shall be used exclusively as follows:

(a) Government vehicles may be used by government officials 24 hours a day, seven days a week, in the performance or in the furtherance of their official duties. Division Chiefs and other designated employees may use government vehicles on the same basis upon the approval by the appropriate government official and with the concurrence of the Director.

(b) Government vehicles may be used by employees in accordance with this subchapter and only for the purpose of accomplishing their regularly assigned duties and responsibilities and as authorized by the appropriate government official; provided that government vehicles may only be used during regular government working hours and for official government business.

(c) Use of a government vehicle by an employee at any time to accomplish regularly assigned and scheduled duties and responsibilities outside regular government working hours shall require the written authorization by the government official with the concurrence of the Director. Such written authorization must be retained by the employee on his or her person during the operation of the vehicle. The Director shall provide a copy of the written authorization to the Director of Public Safety. A special authorization shall be visibly displayed on the vehicle.

(d) Use of a government vehicle by an employee at any time to accomplish irregularly assigned and unscheduled duties outside regular government working hours shall require prior and immediate notification to the Department of Public Safety. Such notification shall be reported in writing to the Director within 24 hours of the authorization.

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(e) Official guests of the CNMI government, including guests of government officials, may have the use of a government vehicle upon the approval of the appropriate government official and concurrence by the Director. Such approval shall be in writing and contain the identity of the guest, the official nature of the guest's visit, the date of issuance, the date of the expiration of authorization, and the purpose of use. The Director shall provide a copy of the written authorization to the Director of Public Safety. Such written authorization must be retained by the official guest on his or her person during the operation of the vehicle.

(f) All government vehicles shall be parked overnight and on weekends and holidays in secure areas as designated by the Director. Upon the written authorization of the government official and with the concurrence of the Director, certain vehicles may be driven home by designated employees based upon the following guidelines:

(1) The employee's regularly assigned duties include 24-hour emergency or on-call services requiring the use of the government vehicle; or

(2) Where the Director has not designated a secure area and the government official is unable to locate a secure location on government property to park the vehicle during nonbusiness hours; and

(3) The designated employee agrees to assume responsibility for maintaining the safety and security of the vehicle at his or her residence during those hours; and

(4) The designated employee agrees to assume primary responsibility for any liability or damage occurring from any accident that may occur where such employee is determined to be negligent by the Director, or the Department of Public Safety, or by a court of competent jurisdiction; and

(5) The employee shall retain the written authorization and the vehicle shall be properly marked in accordance with this subchapter; and

(6) The employee agrees to be responsible for any tax consequences resulting from the benefit of the use of the government vehicle to and from his or her home and place of employment.

(g) Government vehicles shall not be used to transport anyone other than government officials and employees and only for official government business. When official government business requires, the government official with the concurrence of the Director, may authorize the use of government vehicles to transport non-employees and other passengers. Any person who allows unauthorized passengers in government vehicles shall be personally liable for any damage or injury to persons or property. The CNMI government expressly refuses to accept any liability in such a situation.

(h) Restrictions on the use of government vehicles may be waived by the Governor during the time of natural disaster or other emergencies.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language in subsections (f)(2) and (f)(4).

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§ 70-30.2-110 Vehicle Log Records

Except for vehicles assigned to and used by government officials; official government guests; emergency vehicles used by the Department of Public Safety, Civil Defense, Commonwealth Utilities Corporation, or Department of Public Health; and other authorized law enforcement officers, all other vehicles shall be equipped with continuous vehicle trip log forms at all times when in use by employees.

- (a) The Chief shall prepare and make available for use by all government employees, vehicle assignment and trip log forms which shall be used by the operator to provide basic trip information such as date, time, places of travel, purpose of travel, beginning and ending speedometer readings, total miles driven, the signature of the vehicle operator and vehicle identification data.
- (b) These log forms shall be placed in every vehicle and maintained by the vehicle operator.
- (c) Monthly, each government official shall account for the accuracy of the log forms, sign the log sheets, and transmit the log forms to the Chief where they will be maintained and filed as a part of the operational history of each vehicle.
- (d) Failure to maintain and submit these forms within fifteen days after the close of each month to the Chief, shall be grounds for the Director to take possession of the vehicle in question.

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language in subsection (d).

§ 70-30.2-115 Maintenance and Upkeep of Government Vehicles

Every government official shall be responsible for the maintenance and upkeep of all vehicles assigned to his or her activity.

- (a) Unless approved by the Director, all government vehicles shall be fueled only at the CNMI centralized fuel station maintained and operated by the Department of Public Works at Lower Base. However, government vehicles may be fueled elsewhere as long as it does not incur any cost to the government and all such costs are borne by the employee or government official.
- (b) In coordination between the Director and the Department of Public Works, government vehicles shall be turned in for periodic preventive maintenance in accordance with the schedule and procedures established by the two departments.
- (c) No government vehicle shall be turned in for maintenance or repairs to any privately owned and operated vehicle repair shops without specific approval of the Chief.

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History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language in subsection (a).

§ 70-30.2-120 Government Vehicle Operator's Permit

No person is authorized to drive or operate a government vehicle without a valid government vehicle operator's permit issued by the Department of Public Safety. For purposes of this section, government vehicle operator's permit issued by the Personnel Office shall be construed as meeting the requirements of this section for a period of 180 days following adoption of the regulations in this subchapter. Prior to the expiration of the 180 day period every employee and government official shall comply with the requirements of this section and obtain a government vehicle operator's permit from the Department of Public Safety.

(a)(1) Subject to subsection (b), CNMI government employees may be issued a CNMI government vehicle operator's permit for operation of the appropriate class of government vehicle to be driven or operated by the employee if:

(i) The employee is in possession of a valid CNMI driver's license as provided in title 9, division 2, chapter 2 of the Commonwealth Code;

(ii) The employee provides information of any accidents, arrests, or convictions for traffic violations of any vehicle codes, outstanding monetary liabilities for any traffic related incidents, and denial or non-renewal of any vehicle liability insurance for five years prior to the application date;

(2) Failure to provide complete and/or accurate information shall be grounds for non-issuance of a CNMI government vehicle operator's permit or revocation of a previously issued permit.

(b) Prior to issuing a CNMI government vehicle operator's permit, the Department of Public Safety shall review the driving record of the employee-applicant for violations obtained while driving a vehicle, such as driving under the influence of alcohol or drugs as defined in 9 CMC § 7105 or reckless driving as defined in 9 CMC § 7104. Where such violation has occurred, a CNMI government vehicle operator's license shall be denied. Such denial may be appealed to the Director by the appropriate government official to whom the employee reports. The appeal must be made within fifteen days of the denial date.

(c) The Director of Public Safety shall have the discretion to deny a government vehicle operator's permit if he or she finds the employee poses an unacceptable liability risk to the government. Such denial may be appealed to the Director by the appropriate government official to whom the employee reports. The appeal must be made within fifteen days of the denial date.

(d) Prior to issuing a CNMI government vehicle operator's permit to operate special emergency vehicles, the Department of Public Safety shall conduct a special Emergency Vehicle Operator's Course (EVOC) for those employees who will be driving such

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emergency vehicles. The Department of Public Safety shall issue government vehicle operator's permits to operate emergency vehicles only to those employees who successfully completed and pass the EVOC.

(e) Employees and government officials shall have in their possession while operating a government vehicle, a valid CNMI driver's license as provided in title 9, division 2, chapter 2 of the Commonwealth Code and a CNMI government vehicle operator's permit issued by the Department of Public Safety.

(f) An employee's and government official's CNMI government vehicle operator's permit shall expire on the earlier of the expiration date of such employee's private CNMI driver's license or the termination date of the employee's or government official's employment with the CNMI government.

(g) Official guests of the CNMI government shall have in their possession a driver's license valid under the CNMI Vehicle Code and written authorization from the CNMI government official for use of the vehicle which shall contain the identity of the guest, the official nature of the guest's visit, the date of issuance, date of expiration of authorization, and the purpose of use. The Director shall provide a copy of the written authorization to the Director of Public Safety.

(h) An employee's or government official's CNMI government vehicle operator's permit shall be revoked when such employee is convicted of violating 9 CMC §§ 7104 and 7105.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

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

The May 1993 notice of adoption changed the proposed language in the opening paragraph.

In the opening paragraph, the Commission corrected the spelling of "by." In subsection (a)(2), the Commission changed the final semi-colon to a period.

§ 70-30.2-125 Accidents

Every government employee shall exercise every precaution to prevent accidents. In case of an accident, the employee or government official concerned shall comply with the regulations set forth herein and the procedures prescribed by the Director.

(a) The operator of a government vehicle shall be responsible for notifying the following persons immediately, either in person or by telephone of any accident in which the vehicle may be involved:

(1) The Department of Public Safety; and

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(2) The employee's supervisor or appropriate government official. In the case of accidents involving government officials, the person to be contacted shall be the Chief.

(b) The vehicle operator shall, within twenty-four hours, obtain and record information pertaining to the accident on the operator's report of motor vehicle accident form. The form, upon completion, shall be submitted to the vehicle operator's supervisor or appropriate government official. A copy of the report shall be provided to the Chief.

(c) The vehicle operator shall also obtain the names, addresses, and telephone numbers of any witnesses and wherever possible, have witnesses complete the statement of witness form and submit the completed form to the vehicle operator's supervisor or appropriate government official along with the operator's report of motor vehicle accident form.

(d) The vehicle operator shall make no statements as to responsibility for the accident except to his or her supervisor or to the Director.

(e) Whenever a vehicle operator is injured and cannot comply with the above requirements, the appropriate government official shall comply with the above requirements as soon as possible after the accident.

(f) Where any damage to the government vehicle occurs, the Director of Public Safety shall immediately inform the Director as to the status of the vehicle. Upon notification by the Director of Public Safety that the necessary investigation has been completed, the Chief shall immediately cause the vehicle to be taken to the CNMI government procurement and supply compound for safekeeping, surveying, or other appropriate action.

(g) The Director of Public Safety shall provide the Chief a complete copy of the accident report including a synopsis of how the accident occurred and who, if anyone, is at fault.

(h) Every accident involving a CNMI government vehicle shall be investigated by the Chief. A report of the investigation shall include the operator's report of motor vehicle accident form, the statement of witness form (if available), and the Department of Public Safety's accident report. The procedures for investigation of accidents of CNMI government vehicles shall be promulgated by the Director.

(i) The Chief shall obtain three vehicle estimates for the cost of repairs from three different autobody repair shops within fifteen working days after the accident and submit that information to the appropriate government official advising such government official to take the necessary action, as appropriate

(j) The failure of a vehicle operator to report an accident involving a CNMI government vehicle as outlined above or where the operator has a high accident

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frequency or cost, shall be sufficient justification for the Director to revoke such employee's CNMI government vehicle operator's permit.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: In the opening paragraph, the Commission changed "regulation" to "regulations" to correct a manifest error. The Commission inserted a comma after the word "surveying" in subsection (f) pursuant to 1 CMC § 3806(g).

The May 1993 notice of adoption changed the proposed language in subsection (f).

§ 70-30.2-130 Liability

The employee or government official shall be personally liable for any damage or injury to persons or property as a result of negligence or violations of this subchapter. The CNMI government shall not be liable for any loss, damage, or injury caused by or resulting from any employee, government official, or any other person operating a government vehicle in violation of this subchapter or through any act of negligence of such person.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The Commission inserted a comma after the word "damage" pursuant to 1 CMC § 3806(g).

Part 200 - Enforcement and Penalties

§ 70-30.2-201 Enforcement

This subchapter shall be enforced as follows:

(a) The Chief shall have authority to investigate violations of this subchapter and determine the consequences and necessary action provided by this subchapter in the interest of the government. This investigation is not a substitute nor should it interfere, prevent or inhibit the normal and required investigation process of the Department of Public Safety. All persons operating or in possession of government vehicles shall be required to provide information or documents requested by the Chief in the course of the investigation. Refusal to cooperate shall be deemed a violation of this subchapter and subject to revocation of the government vehicle operator's permit. In addition, such refusal may subject the employee or government official to the requirement to pay for any costs related to the cause of action.

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(b) Pursuant to a joint enforcement agreement between the Department of Finance and the Department of Public Safety:

(1) The Department of Public Safety shall report any alleged violation of this subchapter. The observing Department of Public Safety Officer shall prepare a report of the alleged violation which includes the identity of the vehicle operator, vehicle license number or identification number, date, time, and place where the violation of this subchapter allegedly occurred. These reports shall be submitted by Department of Public Safety to the Chief on a weekly basis;

(2) The observing Department of Public Safety Officer may, on his or her discretion, stop any person driving a government vehicle if in the judgment of such officer, the operation of such vehicle may be in violation of this subchapter. The Department of Public Safety Officer shall prepare a report of such incident which includes such information as described in (b)(1) above and whether the written authorization for use of the vehicle was presented to the officer. Such reports shall be submitted by the Department of Public Safety to the Chief on a weekly basis;

(3) Where the Department of Public Safety Officer determines that the use of the government vehicle is unauthorized, the officer shall immediately restrain the vehicle or otherwise immobilize the vehicle from operation and inform the Chief of such action and the vehicle's location for subsequent appropriate action.

(4) Any vehicle restrained or immobilized as a result of unauthorized or improper use may be towed away or confiscated by the Chief without prior notice. The determination of unauthorized use shall be pursuant to this subchapter and procedures promulgated by the Director.

(c) The Director shall forward a report of allegations of violations of this subchapter to the respective government official for immediate investigation, inquiry, or action. The results of the government official's inquiry shall be prepared in writing and submitted to the Director within fifteen days upon notification of such violation. The Director shall review these findings and if no further action is warranted, the findings will be filed by the Chief as a part of the history of that vehicle.

(d) Upon a determination by the Director that this subchapter has been violated and/or the interest of the CNMI government is in peril, the Director shall have authority to revoke the employee's CNMI government vehicle permit, immediately confiscate the vehicle in question, bring disciplinary action against the offending official or employee, or refer the matter to the Attorney General or Department of Public Safety for further investigation.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

§ 70-30.2-205 Penalty of Perjury

Any written statement required by this subchapter shall be made by certification under penalty of perjury. Any person who states or subscribes any material which he or she

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does not believe to be true, is guilty of perjury and upon conviction may be subject to the penalty prescribed in 6 CMC § 3306.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

§ 70-30.2-210 Revocation of Government Vehicle Operator's Permit

An employee's or government official's government vehicle operator's permit may be revoked by the Director for any of the following reasons:

- (a) Failure to provide complete and accurate driving information history;
- (b) Conviction of a violation of 9 CMC §§ 7104 and 7105;
- (c) Unauthorized use of a government vehicle;
- (d) Failure to keep a complete and/or accurate vehicle log;
- (e) Failure to report an accident and provide correct and/or accurate information on the required form to the appropriate persons;
- (f) Failure to cooperate with the investigation of an accident by the Department of Public Safety or Director;
- (g) Unauthorized or improper use or misuse of the government vehicle;
- (h) High frequency rate of accidents by an employee; and
- (i) Any violation of the government vehicle regulations in this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Part 300 - Procedures and Implementation

§ 70-30.2-301 Procedures

The Director shall have the authority to prescribe all necessary procedures not inconsistent with this subchapter for the full and complete implementation of this subchapter.

Modified, 1 CMC § 3806(d).

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History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

§ 70-30.2-305 Implementation and Coordination

(a) Within 90 days from the effective date of the regulations in this subchapter, the Division of Procurement and Supply shall inventory and inspect all government vehicles and install the markings and other identification required under § 70-30.2-101(b) of this subchapter.

(b) Within 30 days from the effective date of the regulations in this subchapter, the Director of Public Safety shall submit a list of all government vehicles exempted from the vehicle marking and other identification requirements under § 70-30.2-101(b) of this subchapter.

(c) Within 60 days from the effective date of the regulations in this subchapter, the Division of Procurement and Supply shall process those vehicles exempted under the provisions of § 70-30.2-101(b).

(d) Within 30 days from the effective date of the regulations in this subchapter, all government vehicles equipped with tinted or reflective glass or other materials prohibited under this subchapter and where such vehicles are not exempted under § 70-30.2-101(c), shall be turned in to the Division of Procurement and Supply for the removal of such material in conformance with this subchapter. The operation of any vehicle not exempted and equipped with prohibited materials and operated after the above 30 day period, shall be grounds for confiscation and the Director may take possession of such vehicle without prior notice.

(e) Within 30 days from the effective date of the regulations in this subchapter, the appropriate government official shall forward written authorizations for the Director's concurrence a list of all those employees authorized to operate government vehicles outside regular government working hours pursuant to § 70-30.2-105 of this subchapter.

(f) Within 30 days from the effective date of the regulations in this subchapter, all government officials shall forward written authorizations for the Director's concurrence a list of all those designated employees authorized to drive the government vehicle to and from his or her home and place of work based on the guidelines pursuant to § 70-30.2-105 of this subchapter.

(g) Within 30 days from the effective date of the regulations in this subchapter, all government officials shall forward written authorizations for the Director's concurrence, a list of all those employees regularly assigned duties that include 24-hour emergency or on-call services pursuant to § 70-30.2-105 of this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

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Commission Comment: The May 1993 notice of adoption changed the proposed language in subsections (c), (d) and (g).

Part 400 - Miscellaneous Provisions

§ 70-30.2-401 Applicability

This subchapter shall apply in full force and effect to the procurement, management, control and use of government vehicles to all senatorial districts of the Commonwealth and in other CNMI government offices outside the Commonwealth. Certain exceptions shall apply to the 1st senatorial district of Rota, the 2nd senatorial district of Tinian, and other government offices outside the Commonwealth and shall be promulgated at a later date. The effective date of the implementation of this subchapter in these areas and locations other than the 3rd senatorial district of Saipan, shall be prescribed at a later date.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language of this section.

§ 70-30.2-405 Supersession

Upon the effective date of the regulations in this subchapter, all prior procedures, policies, or regulations governing the procurement, management, control and use of government vehicles are hereby superseded.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

Commission Comment: The May 1993 notice of adoption changed the proposed language of this section.

§ 70-30.2-410 Severability

If any provision of the regulations in this subchapter should be held invalid by a court of competent jurisdiction, the validity of the remaining provisions of this subchapter shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 10648 (May 15, 1993); Proposed 15 Com. Reg. 10509 (Apr. 15, 1993); Proposed 15 Com. Reg. 10371 (Jan. 15, 1993).

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SUBCHAPTER 70-30.3 PROCUREMENT REGULATIONS

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Part 100 Procurement Organization

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Part 300 Procurement of Construction and Architect-Engineer Services, Professional Services, Vehicles and Special Conditions for Computer Software and Hardware

§ 70-30.3-301 Construction Procurement
§ 70-30.3-305 Architect-Engineer Services
§ 70-30.3-310 Competitive Selection Procedures for Professional Services
§ 70-30.3-315 Lease or Purchase of Vehicles
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Part 400 Contract Terms and Administration of Contracts

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§ 70-30.3-401	Contract Clauses	Subpart B	Standards of Conduct
§ 70-30.3-405	Contract Administration	§ 70-30.3-705	Policy
§ 70-30.3-410	Change Order	§ 70-30.3-710	General Standards
Part 500	Protests and Disputes	§ 70-30.3-715	Employee Disclosure Requirements
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§ 70-30.3-701	Definitions of Terms		

Subchapter Authority: 1 CMC § 2553(j); 1 CMC § 2557; 1 CMC § 7404.

Subchapter History: Amdts Adopted 30 Com. Reg. 28745 (Sept. 25, 2008); Amdts Proposed 30 Com. Reg. 28554 (July 28, 2008); Amdts Emergency and Proposed 27 Com. Reg. 25282 (Dec. 30, 2005) (effective for 120 days from December 5, 2005);** Amdts Emergency and Proposed 27 Com. Reg. 24657 (July 20, 2005) (effective for 120 days from June 30, 2005);** Amdts Proposed 27 Com. Reg. 24444 (May 18, 2005);** Amdts Emergency and Proposed 27 Com. Reg. 23921 (Feb. 17, 2005) (effective for 120 days from Feb. 14, 2005);** Amdts Emergency and Proposed 26 Com. Reg. 22617 (June 24, 2004) (effective for 120 days from June 18, 2004);** Amdts Adopted 26 Com. Reg. 22331 (Apr. 23, 2004); Amdts Emergency and Proposed 26 Com. Reg. 21781 (Feb. 23, 2004) (effective for 120 days from Feb. 2, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20253 (July 15, 2003) (effective for 120 days from June 27, 2003); Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 22 Com. Reg. 17383 (Aug. 18, 2000); Amdts Proposed 22 Com. Reg. 17036 (Feb. 15, 2000); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Amdts Emergency 12 Com. Reg. 7394 (Sept. 15, 1990) (effective for 120 days from Sept. 7, 1990); Amdts Emergency 9 Com. Reg. 5243 (Sept. 15, 1987) (effective for 120 days from Sept. 8, 1987); Amdts Adopted 8 Com. Reg. 4207 (Feb. 17, 1986);* Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

*A notice of proposed regulations for the 1986 amendments was not published.

**As of December 2005, notices of permanent adoption for the June 2004, February 2005, May 2005, June 2005 and December 2005 amendments had not been published.

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553(j) authorizes the Department to be in control of and be responsible for procurement and supply in the Commonwealth. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

1 CMC § 7404, as amended by PL 13-24 § 602(b) (effective Sept. 10, 2002), provides for a bidding preference for local businesses in public contracting. PL 11-87 § 2 (effective July 30, 1999) repealed and reenacted 1 CMC § 7404. PL 11-87 contained procurement regulations preserved and regulations provisions as follows:

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Section 3. Procurement Regulations Preserved. Notwithstanding Section 2 of this Act, any procurement regulations validated by 1 CMC § 7404(a) as it existed prior to the effective date of this Act shall continue to the same extent to be lawful regulations following the effective date of this Act, subject to subsequent amendment, repeal, or other action according to law.

Section 4. Regulations. The Secretary of Finance shall promulgate rules and regulations for the implementation of this Act within 180 days of this Act becoming law. No local preference shall be granted or available pursuant to 1 CMC § 7404, as enacted by this Act, until valid regulations, duly promulgated in accordance with the Administrative Procedure Act, are in effect.

PL 11-87 §§ 3 and 4, reprinted in the commission comment to 1 CMC § 7404.

On October 15, 1984, the Department of Finance proposed “Bid Protest and Appeal Procedures Regulations.” See 6 Com. Reg. 3185 (Oct. 15, 1984). A notice of adoption was never published.

In May 2005, the Department of Finance proposed to repromulgate the Procurement Regulations in this subchapter with comprehensive amendments. See 27 Com. Reg. 24444 (May 18, 2005). As of December 2005, a notice of adoption had not been published.

On July 29, 2010, the Department of Finance proposed to repromulgate the Procurement Regulations in this subchapter with comprehensive amendments. See 32 Com. Reg. 30602 (Aug. 16, 2010). A notice of adoption has not been published to date.

PL 15-118 (effective December 14, 2007) amended PL 15-95 (effective October 3, 2007 pursuant to override action by the House of Representatives and Senate) to include U.S. permanent residents and citizens of any state or territory of the U.S. in the local bidder preference law, and exempted capital improvements and procurement of goods and services funded in whole or in part with federal funds from the local bidder preference laws and regulations of the Commonwealth upon certification by a federal agency that such preference law conflicts with federal regulations.

Part 001 - General Provisions

Subpart A - General

§ 70-30.3-001 Purposes

- (a) Interpretation. The regulations in this subchapter shall be construed and applied to promote their underlying purposes and policies.
- (b) Purposes and Policies. The underlying purposes and policies of the regulations in this subchapter are:
 - (1) To simplify, clarify, and modernize the procurement policies and practices of the Commonwealth and its agencies;
 - (2) To make as consistent as possible the procurement policies and practices among the various branches, activities, and agencies of the Commonwealth;
 - (3) To provide for increased public confidence in the procedures followed in public procurement;
 - (4) To insure the fair and equitable treatment of persons who deal with the procurement system of the Commonwealth;

- (5) To provide increased economy in Commonwealth procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;
- (6) To foster effective broad-based competition within the free enterprise system; and
- (7) To provide safeguards for the maintenance of a procurement system of quality and integrity.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 and 2001 amendments to the Procurement Regulations readopted and republished the existing procurement regulations in their entirety. The Commission, therefore, cites the 1990 and 2001 Procurement Regulations in the section histories throughout this subchapter.

The 1990 amendments added new subsections (a) and (b) and redesignated the remaining subsections accordingly.

The Commission inserted a comma after the word “activities” in subsection (b)(2) pursuant to 1 CMC § 3806(g).

§ 70-30.3-005 Authority

The regulations in this subchapter are promulgated under the authority of 1 CMC § 2553(j) which gives the Secretary of Finance the duty to be in control of and be responsible for procurement and supply in the Commonwealth.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-010 Supplementary General Principles of Law Applicability

Unless displaced by the particular provisions of this subchapter, 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 the regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-015 Requirement of Good Faith

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The regulations in this subchapter require all parties, including government employees, contractors, and suppliers, involved in the negotiation, bidding, performance, or administration of government contracts to act in good faith.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The Commission inserted commas after the words “contractors” and “performance” pursuant to 1 CMC § 3806(g).

§ 70-30.3-020 Application of Regulations

The regulations in this subchapter apply to every expenditure of public funds irrespective of source, including federal assistance monies and Covenant funds. These regulations apply to all agencies, departments, branches of the government, political subdivisions, public corporations and agencies of local government of the Commonwealth, all collectively, referred to herein as “public agencies.” Any public agency which adopts the regulations in this subchapter or identical regulations may be authorized by the Department of Finance to administer procurement functions pursuant to the provisions of § 70-30.3-101 of this subchapter. These regulations do not apply to contracts between the government and its political subdivisions or other governments, nor do they apply to a public corporation or autonomous agency of the Commonwealth which has been authorized to conduct its own procurement by enabling statute or other law. Nothing in this subchapter shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda. The regulations in this subchapter do not apply to employment contracts or contracts for personal services under an excepted service.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Amdts Emergency 9 Com. Reg. 5243 (Sept. 15, 1987) (effective for 120 days from Sept. 8, 1987); Amdts Adopted 8 Com. Reg. 4207 (Feb. 17, 1986); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The Commission moved the comma after “agencies” inside of the closing quotation mark.

A notice of proposed regulations for the 1986 amendments was not published.

§ 70-30.3-025 Severability

If any provision of the regulations in this subchapter 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 application of the regulations in this

subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are declared to be severable.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-030 Validity of Contract

No government contract shall be valid unless it complies with the regulations in this subchapter.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-035 Remedy Against Employee

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

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Subpart B - Definitions

§ 70-30.3-040 Definitions

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

(a) “Attorney General” means the Attorney General of the Commonwealth of the Northern Mariana Islands.

(b) “Construction” means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.

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- (c) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services, or construction, including purchase orders.
- (d) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and the regulations in this subchapter, and a fee, if any.
- (e) “Definite-quantity contract” means a contract which provides for delivery of a definite quantity of specific supplies or services for a fixed period. This type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period.
- (f) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.
- (g) “Employee” means an individual receiving a salary from the government, including appointive and elective officials and non-salaried individuals performing personal services for the government. This definition extends to the Governor, Lt. Governor and members of their staff. Consultants, independent contractors, and part-time workers shall be considered employees only with respect to the ethics in public contracting provisions in part 700.
- (h) “Firm-fixed-price contract” means a contract which provides for a price that is not subject to any subsequent adjustment as a result of the contractor’s cost experience in performing the contract. This type of contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.
- (i) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, and leases of real and personal property.
- (j) “Government” or “Commonwealth” means the government of the Commonwealth of the Northern Mariana Islands which includes the executive, legislative, and judicial branches. It also includes government agencies, political subdivisions, public corporations and agencies of local government, all collectively referred to herein as “public agencies.”
- (k) “Governor” means the Governor of the Commonwealth of the Northern Mariana Islands.
- (l) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

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- (m) “Official with expenditure authority” means that public official who may expend, obligate, encumber, or otherwise commit public funds under the Planning and Budgeting Act or under any annual appropriation act.
- (n) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.
- (o) “Procurement” means buying, purchasing, renting, leasing, or acquiring construction, goods, or services. It also includes all functions that pertain to the obtaining of construction, goods, or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- (p) “P&S Director” means the Director of the Division of Procurement and Supply within the Department of Finance.
- (q) “Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.
- (r) “Requirements contract” means a contract which provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled with the contractor.
- (s) “Responsible” in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (t) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- (u) “Secretary” means the Secretary of Finance.
- (v) “Services” means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans, and incidental documents.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added former subsection (b), redesignated the then-existing subsections and amended subsections (a), (c), (i), (j) and (k). The 2001 amendments added subsections (e), (h), (p), (r) and (u), deleted former subsections (b) and (c), redesignated the remaining subsections accordingly and amended subsections (c), (g) and (i).

In subsection (j), the Commission moved the period after “agencies” inside of the closing quotation mark. The Commission inserted commas after the words “improving” in subsection (b), “services” in subsection (c), “contractors” in subsection (g), “legislative” in subsection (j), “encumber” in subsection (m), “leasing” and “goods” in subsection (o), “services” in subsection (q), and “labor” and “plans” in subsection (v) pursuant to 1 CMC § 3806(g). The Commission placed quotation marks around terms defined.

Subpart C - Public Access

§ 70-30.3-050 Public Access to Procurement Information

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Part 100 - Procurement Organization

Subpart A - Director of Procurement and Supply

§ 70-30.3-101 Creation of Procurement and Supply Division

There is created in the Department of Finance a Division of Procurement and Supply to assist the Secretary of Finance in the execution of those duties authorized under 1 CMC § 2553(j) and 1 CMC §§ 2581-2590.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-105 Director of Procurement and Supply (P&S)

The Secretary of Finance shall appoint a P&S Director to administer and supervise the day-to-day activities of the Division. The Director of Procurement and Supply shall be assisted in carrying out his functions and duties by employees of the Procurement and Supply Division.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-110 Duties of the P&S Director

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

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- (a) Ensure that the regulations in this subchapter are observed in all government procurement;
- (b) Provide advance planning for the centralized purchase of government supplies;
- (c) Procure or supervise the procurement of all supplies, goods, and services needed by the government;
- (d) Conduct bidding, procurement, negotiation, or administration of government contracts upon request of the official with expenditure authority;
- (e) Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the government;
- (f) Exercise general supervision and control over all inventories of supplies belonging to the government;
- (g) Exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;
- (h) Establish and maintain programs for the inspection, testing, and acceptance of supplies;
- (i) Hear all protests and disputes; and
- (j) Oversee the administration of government contracts.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added new subsections (c) and (e), reordered and redesignated the remaining subsections and amended subsection (f). The 2001 amendments added a new subsection (j) and amended the opening paragraph and subsections (a) and (i).

The Commission corrected the spelling of “ensure” in subsection (a) pursuant to 1 CMC § 3806(g). The Commission inserted commas after the words “goods” in subsection (c), “negotiation” in subsection (d), “trade” in subsection (e), and “testing” in subsection (h) pursuant to 1 CMC § 3806(g).

§ 70-30.3-115 Contract Review, Processing and Oversight

- (a) All contracts must first be prepared by the official with expenditure authority who shall certify that he has complied with Procurement Regulations, codified in this subchapter, and that the proposed contract is for a public purpose, and does not constitute a waste or abuse of public funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference. The

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contract documents prepared by the official with expenditure authority shall be submitted to the P&S Director.

(b) The next step in the contract process is the review by the P&S Director. Upon his own initiative or upon the request of the Public Auditor, the P&S Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract. The P&S Director shall cause such review to occur in a prompt and timely manner.

(c) The contract shall next be approved by the Secretary of Finance or his designee who shall certify the availability of funds. If the Secretary finds any aspect of the contract to be deficient or defective in any respect, he shall return the contract to the P&S Director for appropriate resolution with the official with expenditure authority. The contract shall also be approved by other government agencies that need to certify the availability of funds for the contract.

(d) The fourth review is that of the Attorney General or his designee who shall certify the contract as to form and legal capacity.

(e) The contract shall then be approved by the Governor.

(f) After the Governor's approval, the P&S Director shall forward the contract to the contractor for his approval and signature.

(g) After the signature of the contractor, the P&S Director shall review the contract documents for completeness. If he is satisfied, he shall sign in the appropriate space and shall:

(1) Inform in writing the official with the expenditure authority that the contract has been signed by all parties and that he may proceed with contract implementation according to the terms contained therein; and

(2) Provide copies of said contract to the:

(i) Secretary of Finance

(ii) Attorney General

(iii) Contractor.

(h) A contract may be referred back to the P&S Director by the Secretary of Finance or the Attorney General for further review based on additional evidence that it may not comply with this subchapter. If the P&S Director withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.

(i) It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. The supervision, inspection, and administration of a government contract is the primary responsibility of the official with expenditure authority. However, the supervision, inspection, and administration of construction contracts (including architect-engineer services) shall be performed by the

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Secretary of the Department of Public Works or his designee unless the Secretary certifies that the expenditure authority has the capability to handle his own construction and A&E contracts.

(j) No contract is effective against the Commonwealth until all of the parties whose signatures are required on the contract form have signed the contract. A contract shall contain a right to audit records clause.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Emergency and Proposed 26 Com. Reg. 22617 (June 24, 2004) (effective for 120 days from June 18, 2004); Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added new subsection (a) and reordered and readopted the remaining subsections with extensive amendments. The 2001 amendments readopted and republished this section in its entirety with numerous amendments.

The June 2004 emergency and proposed amendments proposed to amend subsection (i). As of December 2004 a notice of permanent adoption had not been published.

In subsection (g)(2)(iii), the Commission inserted the final period.

§ 70-30.3-120 Split Contracts

If the P&S Director determines that a contract has been split into two or more contracts for the purpose of avoiding bidding, then he may require the contract to be competitively bid.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-125 Acceptance of Gratuities by the P&S Director and Procurement and Supply Division Employees

In addition to the restrictions found in § 70-30.3-725, the P&S Director and the employees of the Procurement and Supply Division shall not accept from any person any gift of value given to them with the intent to influence their business judgment.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended former subsection (b). The 2001 amendments combined former subsections (a) and (b).

Subpart B - Procurement Function

§ 70-30.3-130 Decentralized Procurement

(a) All purchases under § 70-30.3-225, § 70-30.3-230, and § 70-30.3-235 shall be centralized through the P&S Director. However, upon approval by the Secretary, the P&S Director may delegate, in writing, other procurement functions and responsibilities to public agencies upon satisfying the following requirements:

- (1) The procurement regulations in this subchapter have been duly adopted pursuant to the procedures required for adopting official business of such agencies.
- (2) The agency has adequate staff capability necessary to carry out the functions of the P&S Director.
- (3) The agency shall certify to the P&S Director that it is in compliance with subsections (a)(1) and (a)(2) above.

(b) Where the P&S Director has delegated his authority under this section, the official with expenditure authority may conduct bidding, procurement, negotiation, and the administration of contracts involving funds appropriated to their own office, department, agency, or branch. All such activity must be shown to the reasonable satisfaction of the P&S Director to be in compliance with the regulations in this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added a new subsection (a) and redesignated and amended subsection (b). The 2001 amendments amended subsections (a), (a)(2), (a)(3) and (b).

The Commission inserted commas after the words “negotiation” and “agency” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 70-30.3-135 Procurement Services

Notwithstanding the decentralized procurement authority of any agency, upon request by the official with expenditure authority, the P&S Director shall provide assistance or conduct the bidding, procurement, negotiation, or administration of a particular contract.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-140 Centralized Procurement of Supplies

The P&S Director may, with the approval of the Secretary of Finance, purchase certain government supplies in large quantities to be relied upon by all departments, agencies, offices and branches. No separate contract or purchase order for these supplies will be approved.

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History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 70-30.3-201 Requirements for Competition

Officials with expenditure authority shall provide for full and open competition through use of the competitive procedure that is best suited to the circumstances of the contract action. The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) Competitive sealed bidding (§ 70-30.3-205)
- (b) Competitive sealed proposals (§ 70-30.3-210)
- (c) Architect-engineer services (§ 70-30.3-305); and
- (d) Competitive selection procedures for professional services (§ 70-30.3-310).

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

Commission Comment: The 2001 amendments deleted and replaced former § 3-101 in its entirety. See 12 Com. Reg. at 7287 (Sept. 15, 1990); 7 Com. Reg. at 3743-44 (July 22, 1985).

In subsection (d), the Commission inserted the final period.

§ 70-30.3-205 Competitive Sealed Bidding

- (a) All government procurement shall be awarded by competitive sealed bidding under this section, except as provided in:
 - (1) § 70-30.3-210 (Competitive Sealed Proposals);
 - (2) § 70-30.3-220 (Small Purchases);
 - (3) § 70-30.3-225 (Sole Source Procurement);
 - (4) § 70-30.3-230 (Emergency Procurement);
 - (5) § 70-30.3-235 (Expedited Purchasing in Special Circumstances);
 - (6) § 70-30.3-305 (Architect-Engineer Services); and
 - (7) § 70-30.3-310 (Competitive Selection Procedures for Professional Services)
- (b) Invitation for Bids.
 - (1) An invitation for bids shall be issued and shall include at the minimum:
 - (i) An invitation for bids number;

- (ii) Date of issuance;
- (iii) Name, address, and location of issuing office;
- (iv) Specific location where bids must be submitted;
- (v) Date, hour, and place of bid opening;
- (vi) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (vii) Quantity to be furnished;
- (viii) Time, place, and method of delivery or performance requirements;
- (ix) Essential contractual terms and conditions; and
- (x) Any bonding requirements.

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

(c) **Application for Brand Name Descriptions.** An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product peculiar to one manufacturer is not normally allowed regardless of the number of sources solicited. It shall be allowed only when justified and approved in accordance with the procedures on justifying sole-source procurement. Specifically, the justification shall indicate that the use of such descriptions in the acquisition is essential to the government's requirements, thereby precluding consideration of a product manufactured by another company. "Brand-name or equal" descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.

(d) **Bid Solicitation Accuracy.** The bid solicitation shall accurately reflect the government requirement. It shall adequately state what is to be done or what is to be delivered to the government in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Exact quantities shall be stated in the statement of deliverables, unless use of a requirements contract is justified under § 70-30.3-265.

(e) **Publication.** The P&S Director shall publicize all invitation for bids in order to increase competition and broaden industry participation. The bidding time (i.e., the time between issuance of the solicitation to the public and opening of bids) shall be prescribed as follows:

(1) **Minimum Bidding Time.** A bidding period of at least 30 calendar days shall be provided unless the P&S Director determines that a shorter time is reasonable and necessary. Such shorter bidding period must afford potential bidders a reasonable opportunity to respond considering the circumstances of the individual acquisition, such as the complexity, and urgency. The bidding period, however, shall never be less than fourteen calendar days.

(2) **Extended Bidding Period.** Because of limited bidding time in certain cases, potential sources may be precluded from bidding and others may be forced to include

contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, the P&S Director may increase the 30-day bidding period by not more than 60 additional calendar days, considering such factors as:

- (i) Degree of urgency;
- (ii) Complexity of requirements;
- (iii) Anticipated extent of subcontracting;
- (iv) Geographic distribution of bidders; and
- (v) Normal transmittal time for invitations and bids.

(f) **Public Notice.** The P&S Director shall advertise the invitation for bids in a newspaper of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.

(1) Before advertising the invitation for bids, the official with expenditure authority shall certify in writing to the P&S Director whether there is adequate local competition for the solicited goods or services based on past experience, or if necessary, based on a survey of available local vendors. If there is adequate local competition (i.e., evidence of two or more vendors preliminarily determined to be responsible bidders or offerors), the advertisement shall be made only within the Commonwealth. The P&S Director may choose to have a separate solicitation package for bid details which cannot be practically stated within the advertisement; in such case, the advertisements shall state that solicitation package(s) are available at the particular agency. For solicitations amounting to \$25,000 and above, the advertisement shall be printed in a separate box and shall appear prominently among other advertisements.

(2) If there is no adequate local competition, the invitation for bids shall also be advertised in at least one regional newspaper or at least one national publication or on the internet; in such case, the P&S Director shall consider extending the bidding period as provided in § 70-30.3-205(e)(2).

(g) **Bid Receipt.**

(1) All bids shall be submitted to the office of the Director of the Division of Procurement and Supply. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at 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 P&S Director in writing of their intent to bid in order to receive this 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 signature and print his title on the envelope and deliver it to the P&S Director. No information contained in the bid shall be disclosed prior to the bid opening. The P&S Director shall cause the opened bid to be placed into the sealed receptacle.

(h) **Bid Opening.** The bid opening shall be conducted by the P&S Director at the office of the Division of Procurement and Supply. Bids shall be opened publicly in the

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presence of one or more witnesses at the time and place designated in the invitation for bids. The P&S Director 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 P&S Director shall prepare a written summary of the bid opening.

(i) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this subchapter. 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.

(j) **Responsiveness of Bids.** To be considered for award, a bid must comply in all material respects with the invitation for bids. Bids must be filled out, executed, and submitted in accordance with the bid instructions. A bid may be considered only if

- (1) The bidder accepts all material terms and conditions of the invitation, and
- (2) Any future award based upon the bid would result in a binding contract with terms and conditions that do not vary from the requirements of the invitation. Electronic or facsimile bids shall not be considered unless permitted by the invitation.

(k) **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 government. 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 government.
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder as defined in § 70-30.3-245.

(l) **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 P&S Director in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the government or fair competition shall be allowed. Whenever a bid mistake is suspected, the government shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subsection (l)(1) or (l)(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

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(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 shall not be permitted to correct a bid mistake resulting from an error in judgment.

(2) Withdrawal of bids. Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is a 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.

(m) Award.

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and the regulations in this subchapter. 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 government contract is written and has been approved by all the officials required by law and regulation. Government 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 government 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 official with expenditure authority may be authorized by the P&S Director to negotiate an adjustment of the bid price including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

The 1990 amendments amended former subsections (d) and (i)(2). The 2001 amendments added subsections (a), (b)(2), (c), (d), (e)(2), (f)(1), (f)(2) and (j), moved former subsection (b) to subsection (f), moved former subsection (c) to subsection (e)(1) and re-designated the remaining subsections accordingly with numerous amendments.

In subsection (f)(1), the Commission inserted the closing parenthesis after “offerors.” In subsection (b)(2), the Commission corrected the spelling of “fulfill.” The Commission inserted commas after the words “address” in subsection (b)(1)(iii), “hour” in subsection (b)(1)(v), “place” in subsection (b)(1)(viii), and “facsimile” in subsection (g)(1) pursuant to 1 CMC § 3806(g).

§ 70-30.3-210 Competitive Sealed Proposals

(a) Conditions for use. When the official with expenditure authority determines in writing that the use of a competitive sealed bidding is either not practical or not advantageous to the government and receives the approval of the P&S Director, a contract may be entered into by competitive sealed proposals.

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

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

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

(e) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors. Price or cost to the government shall be included as an evaluation factor in every solicitation of proposals. The P&S Director must ensure that the following requirements are complied with in any evaluation of proposals.

(1) All evaluation factors stated in the solicitation shall be considered in determining proposals in the competitive range (i.e., those allowed to participate further in the selection process), and any subsequent evaluations (including evaluation of best and final offers from the competitive range offerors).

(2) Competitive range. The official with expenditure authority shall determine which proposals are in the competitive range, based on the recommendations of the evaluator or evaluation team, for the purpose of conducting written or oral discussions, and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal shall be included. Proposals determined to have no reasonable chance of being selected for contract award shall no longer be considered for selection. A proposal is not reasonably susceptible of being selected for award and can be excluded from the competitive range if it is clear that

(i) Its contents are so unacceptable that a revision of the proposal in the negotiation stage would be equivalent to accepting a new proposal, or

(ii) In comparison with other proposals, such proposal clearly has no chance of being selected for award.

(3) Technical evaluation. If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the evaluator or evaluation team shall document the technical evaluation which shall include:

(i) The basis for the evaluation;

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- (ii) An assessment of each offeror's ability to accomplish the technical requirements;
 - (iii) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
 - (iv) A summary of findings. The supporting documentation prepared for the selection decision shall show the proposals' comparative strengths, weaknesses, and risks in terms of the evaluation factors.
- (4) When technical criteria (generally, criteria other than price) are involved, the P&S Director shall determine in writing that appropriate qualified personnel are assigned to conduct a technical evaluation of the proposals. In forming an evaluation team, the P&S Director shall insure that --
- (i) The evaluators, including any other personnel responsible for the selection of competitive range offerors or final selection of an offeror, are formally designated to exercise such responsibility by the official with expenditure authority in consultation with the P&S Director; and
 - (ii) Before conducting any evaluation, the official with expenditure authority in consultation with the P&S Director, approves an evaluation plan which as a minimum shall include --
 - (A) A statement of the evaluation factors and any significant subfactors and their relative importance;
 - (B) A description of the evaluation process, methodology, and techniques to be used; and
 - (C) Documentation requirements.
- (f) Notification to offerors excluded in the competitive range. The P&S Director shall promptly notify offerors when they are excluded from the competitive range or otherwise excluded from further consideration. The notice shall state the basis for the exclusion.
- (g) 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.
- (h) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the government 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. Within three working days after the date of contract award, the P&S Director shall provide written notification to each unsuccessful offeror (unless pre-award notice was given under § 70-30.3-210(f)). The notice shall include, as applicable --
- (1) The number of offerors solicited;

- (2) The number of proposals received;
- (3) The name and address of each offeror receiving an award;
- (4) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and
- (5) In general terms, the reason the offeror's proposal was not accepted, unless the price information in item (h)(4) of this subsection readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990);

Commission Comment: The 2001 amendments moved this section from former § 3-106. See 12 Com. Reg. at 7293 (Sept. 15, 1990); 7 Com. Reg. at 3748 (July 22, 1985). The 2001 amendments added new subsections (e)(1) through (e)(4), (f), and (h)(1) through (h)(5), redesignated the remaining subsections and amended subsections (a), (e) and (h).

§ 70-30.3-215 Circumstances Permitting Other than Full and Open Competition

- (a) The following procurement methods permit contracting without using full and open competition.
 - (1) Small purchases (§ 70-30.3-220);
 - (2) Sole source procurement (§ 70-30.3-225);
 - (3) Emergency procurement (§ 70-30.3-230); and
 - (4) Expedited purchasing in special circumstances (§ 70-30.3-235).
- (b) Use of the methods in (a)(2), (a)(3), and (a)(4) above is subject to the following requirements.
 - (1) Officials with expenditure authority, before executing the contract, shall justify to the P&S Director in writing the following:
 - (i) The need for contracting, the purpose of the contract, how the expected outcome would help the agency achieve its objectives, and that the services do not unnecessarily duplicate any previously performed work or services.
 - (ii) The non-availability of resources within and without the agency;
 - (iii) Vendor qualifications. The official with expenditure authority shall review any contractor evaluation on file with the P&S Director. For professional services contract, a completed resume for each contractor participant who will exercise a major role in the completion of the contract will be required; and
 - (iv) Reasonableness of price. No presumption of reasonableness shall be attached to the incurring of costs by a contractor. The following factors will be used in determining whether costs are justified: cost information in sufficient detail to support and justify the contract; cost information for similar services, with differences noted and explained; and special factors affecting the costs under the contract. For contract amendments, the

agency shall examine price considerations in the same manner as one would examine them for a basic contract. If the independent government estimate appears to be defective, other means of comparison, such as a history of contracts with similar requirements, or current market prices, shall be used.

(v) Documentation of the above should be contained in a form prescribed by the P&S Director.

(2) If the P&S Director's written determination was that the request for contract execution was not justified based on the analysis of items in subsection (b)(1) above, he shall promptly notify the official with the expenditure authority of his disapproval in writing.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

Commission Comment: The final paragraph of subsection (b)(1) was not designated. The Commission designated subsection (b)(1)(v).

§ 70-30.3-220 Small Purchases

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

(b) Bidding is not required for procurement under \$2,500.

(c) Bidding is not required but is encouraged for procurement over \$2,500 and under \$10,000. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$2,500 to \$10,000. Any price quotations obtained must be written, documented, and submitted to the P&S Director for approval.

(d) Purchase orders may be utilized for small purchasers subsections (b) and (c).

(e) Any lease or purchase of vehicles shall be procured pursuant to § 70-30.3-315. Any lease or purchase of machinery and equipment in excess of \$2,500 shall be procured pursuant to § 70-30.3-205 or other applicable provisions of the regulations in this subchapter.

Modified, 1 CMC § 3806(c), (d), (e).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added a new subsection (e) and amended subsections (b), (c) and (d). The 2001 amendments amended subsections (c) and (e).

§ 70-30.3-225 Sole Source Procurement

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

- (1) The Director determines in writing that there is only one source for the required supply, service, or construction; or
- (2) For the purpose of procuring equipment and services identified as interoperable for the use of enhancing and protecting the Commonwealth homeland security from suppliers determined capable to deliver such equipment and services for the purpose specified and/or for purposes relating to the needs of agencies designated as homeland providers; or
- (3) To obtain professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructure of the Commonwealth; or
- (4) To obtain professional services for the purpose of facilitating the establishment of a unit authorized in a federal defense appropriation act; or
- (5) Solely for the purpose of obtaining expert witnesses for litigation; or
- (6) For legal services; or
- (7) For policy consultants of the Governor, Lt. Governor, and presiding officers of the Legislature.

(b) For any sole source procurement pursuant to subsection (a)(1), a written justification for sole source procurement shall be prepared by the official with expenditure authority and shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the efforts made to obtain competition; and the specific considerations given to alternative sources and specific reasons why alternative sources were not selected.

(c) For any sole source procurement pursuant to subsections (a)(2), (a)(3) or (a)(4), the official with expenditure authority shall provide a written copy of the applicable federal grant or act under which the services are authorized or required.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 22331 (Apr. 23, 2004); Amdts Emergency and Proposed 26 Com. Reg. 21781 (Feb. 23, 2004) (effective for 120 days from Feb. 2, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20253 (July 15, 2003) (effective for 120 days from June 27, 2003); Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsections (a) and (b). The 2001 amendments added subsection (c) and amended subsections (a) and (b). The 2004 amendments repealed and reenacted this section in its entirety.

§ 70-30.3-230 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this subchapter, the government may make emergency procurement when there exists a threat to public

health, safety or welfare under emergency conditions. An emergency procurement must be as competitive as practicable under the circumstances.

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

(c) If the P&S Director is satisfied, he shall state his approval in writing.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added new subsection (c) and amended subsection (b). The 2001 amendments amended subsection (c).

The 2001 amendments moved former § 3-106 to § 3-103, codified at § 70-30.3-210, and deleted former § 3-107, entitled “Competitive Selection Procedures for Professional Services.” See 12 Com. Reg. at 7294-95 (Sept. 15, 1990); 7 Com. Reg. at 3749-50 (July 22, 1985).

§ 70-30.3-235 Expedited Purchasing in Special Circumstances

(a) When special circumstances require the expedited procurement of goods or services including professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth, the official with expenditure authority may request that the Director approve expedited procurement without the solicitation of bids for proposals.

(b) The factor to be considered by the Director in approving or disapproving this request shall be:

(1) The urgency of the government’s need for the good or services especially if procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency supplies as described by the Office of Domestic Preparedness;

(2) The comparative costs of procuring the goods or service from a sole source or through the competitive process;

(3) The availability of the goods or service in the Commonwealth and the timeliness in acquiring it; and

(4) Any other factors establishing the expedited procurement is in the best interest of the Commonwealth government.

(c) Upon the Director’s written determination that the factors in (b) above justify an expedited purchase, he shall process the necessary document(s) and assist the official with the expenditure authority in procuring the required goods or services in the most efficient manner.

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(d) If the Director determines that the request for the expedited procurement did not meet the criteria in (b) above, he should promptly notify the official with the expenditure authority of his disapproval in writing.

(e) The expedited procurement shall be as competitive as possible under the circumstances.

(f) The total amount of goods or service that may be approved under this section shall not exceed \$25,000 except when such goods or services are procured for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth including procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness.

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Emergency and Proposed 27 Com. Reg. 25282 (Dec. 30, 2005) (effective for 120 days from December 5, 2005); Amdts Emergency and Proposed 27 Com. Reg. 24657 (July 20, 2005) (effective for 120 days from June 30, 2005); Amdts Proposed 27 Com. Reg. 24444 (May 18, 2005); Amdts Emergency and Proposed 27 Com. Reg. 23921 (Feb. 17, 2005) (effective for 120 days from Feb. 14, 2005); Amdts Adopted 26 Com. Reg. 22331 (Apr. 23, 2004); Amdts Emergency and Proposed 26 Com. Reg. 21781 (Feb. 23, 2004) (effective for 120 days from Feb. 2, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20253 (July 15, 2003) (effective for 120 days from June 27, 2003); Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Amdts Emergency 12 Com. Reg. 7394 (Sept. 15, 1990) (effective for 120 days from Sept. 7, 1990).

Commission Comment: The 2001 amendments amended subsections (a), (b), (c) and (d). The 2004 amendments repealed and reenacted this section in its entirety and amended subsections (a), (b)(1), (c), (d) and (f).

In subsection (b)(1), the Commission changed the final period to a semi-colon.

The February 2005 emergency and proposed amendments proposed to repeal and reenact this section in its entirety. As of December 2005, a notice of permanent adoption had not been published.

In May 2005, the Department of Finance proposed to re-promulgate the Procurement Regulations in this subchapter with comprehensive amendments. See 27 Com. Reg. 24444 (May 18, 2005). As of December 2005, a notice of adoption had not been published.

The June 2005 and December 2005 emergency and proposed amendments proposed to repeal and reenact this section in its entirety. As of December 2005, notices of permanent adoption had not been published.

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

§ 70-30.3-240 Cancellation

An invitation for bids or request for proposals may be canceled, and any and all bids or proposals may be rejected, when such action is determined in writing by the official with

expenditure authority and approved by the P&S Director to be in the best interest of the government based on:

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments added a new subsection (h). The 2001 amendments amended the opening paragraph.

Subpart C - Qualifications and Duties

§ 70-30.3-245 Responsibility of Bidders and Offerors

- (a) Awards shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:
 - (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
 - (2) Be able to comply with the required delivery or performance schedule;
 - (3) Have a satisfactory performance record;
 - (4) Have a satisfactory record of integrity and business ethics;
 - (5) Have the necessary organization, experience, and skills, (or the ability to obtain them), required to successfully perform the contract;
 - (6) Have the necessary production, construction, and technical equipment facilities, or the ability to obtain them; and
 - (7) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

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

(c) Right of non-disclosure. Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the P&S Director, or any other government official involved without prior consent by the bidder or offeror.

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

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsections (b) and (c). The 2001 amendments amended subsections (b), (c) and (d). The Commission inserted commas after the words “experience” in subsection (a)(5) and “construction” in subsection (a)(6) pursuant to 1 CMC § 3806(g).

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

§ 70-30.3-250 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 P&S Director. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Subpart D - Types of Contracts

§ 70-30.3-255 Permissible Types of Contracts

Government contracts shall utilize a firm fixed price unless the use of a cost reimbursement contract is justified under § 70-30.3-260. Government contracts shall also use definite-quantity contracts unless a requirements contract is justified under § 70-30.3-265. Use of cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments deleted former subsection (c)(2) and amended former subsection (c). The 2001 amendments amended former subsections (a) and (b) and moved former subsection (c) to § 70-30.3-260(b).

§ 70-30.3-260 Cost-reimbursement Contracts

(a) Policy. Cost-reimbursement contracts must contain a ceiling which the contractor shall not exceed without the recommendation of the official with expenditure authority and approval by the P&S Director.

(b) Application. A cost-reimbursement contract may be used when the P&S Director attaches to the contract a written determination that --

- (1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
- (2) Use of a cost reimbursement contract is likely to be less costly to the government than any other type due to the nature of the work to be performed under the contract.

(c) Limitations.

(1) A cost-reimbursement contract may only be used when the P&S Director determines that the contractor's accounting system is adequate for determining costs applicable to the contract, and government surveillance in the form of a construction management contract will be obtained to ensure the use of efficient methods and effective cost controls in the performance of the contract.

(2) The use of cost-reimbursement contracts is prohibited for the acquisition of commercially available items.

(d) Cost-plus-fixed-fee contracts.

(1) Description. A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract, authorized pursuant to § 70-30.3-410(a).

(2) Application.

(i) A cost-plus-fixed-fee contract is suitable for use when the conditions of § 70-30.3-260(b) are present and the contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown.

(ii) A cost-plus-fixed-fee contract normally must not be used in development of major systems once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the government has established reasonably firm performance objectives and schedules.

(3) Limitations. No cost-plus-fixed-fee contract shall be awarded unless the official with expenditure authority complies with all limitations in § 70-30.3-260(c).

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments moved subsection (b) from former § 3-401(c) and added new subsections (a), (c) and (d).

§ 70-30.3-265 Requirements Contracts

(a) For the information of offerors and contractors, the official with expenditure authority shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The official with expenditure authority may obtain the estimate from records of previous requirements and consumption, or by other means, and shall base the estimate on the most current information available.

(b) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the government's obligation to order. The contract may also specify maximum or minimum quantities that the government may order under each individual order and the maximum that it may order during a specified period of time. The contract shall specify that failure of the government to order such estimated minimum or maximum quantities will not entitle the contractor to any equitable adjustment in unit price.

(c) Application. A requirements contract may be appropriate for acquiring supplies or services when the government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated government activities will need during a definite period.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

Subpart E - Inspection and Audit

§ 70-30.3-270 Right to Inspect Place of Business

The government, 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 government.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-275 Right to Audit Records

As required by § 404 of Public Law No. 3-91 (1 CMC § 7845), the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data, or papers relevant to a government 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 government contracts and obligations.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

Subpart F - Reports and Records

§ 70-30.3-280 Report of Anti-competitive or Deceptive Practices

(a) When for any reason any person suspects the following practices are occurring among bidders, offerors, contractors, or subcontractors, a notice of the relevant facts shall be transmitted by the P&S Director to the Attorney General without delay:

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

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The Commission inserted a comma after the word “contractors” in subsection (a) pursuant to 1 CMC § 3806(g).

The 1990 and the 2001 amendments amended the opening paragraph of subsection (a).

§ 70-30.3-285 Retention of Procurement Records

- (a) All procurement records shall be retained by the P&S Director for a period of 5 years after completion of construction, or full delivery of the goods or services under the contract. The official with expenditure authority shall also keep copies of all procurement records for their respective agencies.
- (b) The P&S Director shall maintain a record listing all contracts for a minimum of five years. The records shall contain:
- (1) Each contractor's name;
 - (2) The amount and type of each contract; and
 - (3) A listing of the supplies, services, or construction procured under each contract; and
 - (4) A listing of contracts per agency and by fiscal year.
- (c) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsections (a) and (b). The 2001 amendments added new subsection (b)(4) and amended subsections (a) and (b).

In subsection (a), the Commission deleted the unnecessary word "Chief" before "P & S Director." In subsection (b)(1), the Commission changed "contractors" to "contractor's" to correct a manifest error. The Commission inserted a comma after the word "services" in subsection (b)(3) pursuant to 1 CMC § 3806(g).

Part 300 - Procurement of Construction and Architect-Engineer Services, Professional Services, Vehicles and Special Conditions for Computer Software and Hardware

§ 70-30.3-301 Construction Procurement

- (a) Invitation for Bids.
- (1) Deposit. The P&S Director shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.
 - (2) Contents. The invitation for bids shall be prepared in accordance with § 70-30.3-205(b). In addition, the following items shall be included in the invitation for bids:
 - (i) Notice to Bidders. General information regarding the project;
 - (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
 - (iii) General Conditions. Standard contract clauses governing the performance of work;

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- (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 P&S Director to exceed \$25,000.00 or when the P&S Director determines it is in the interest of the Commonwealth. Bid security shall be on a bid bond, in cash, by certified check, cashiers' check or other form acceptable to the government. 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.

(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.

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

(i) A performance bond satisfactory to the government pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the government, in an amount equal to one hundred percent of the price specified in the contract; and

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

(2) Acceptability of payment and performance bonds. The P&S Director shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the P&S Director shall require the selected contractor to submit --

(i) A current license from the bonding company showing that it has authority to issue bonds, and

(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.

(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the P&S Director, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the P&S Director shall confirm the acceptability of the bonding company from

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other government agencies, such as the Insurance Office under the Department of Commerce.

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

(e) **Suits on Payment Bonds; Where and When Brought.** Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth. 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 Secretary of Finance 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 contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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Commission Comment: The 1990 amendments amended subsections (a)(1), (c)(1)(i) and (c)(1)(ii). The 2001 amendments added new subsections (c)(2) and (c)(3) and amended subsections (a)(1), (a)(2), (b)(1), (c)(1)(i), (e) and (f).

In subsection (a)(2)(v), the Commission changed the final semi-colon to a period to correct a manifest error. The Commission corrected the phrase “cashiers check” in subsection (b)(1) to “cashiers’ check” pursuant to 1 CMC § 3806(g).

§ 70-30.3-305 Architect-Engineer Services

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

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

(c) Selection. The P&S Director and the Technical Services Division of the Department of Public Works shall jointly 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 that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required. Fee proposals may be solicited upon public announcement; however, this information shall not be considered in the selection of the most highly qualified firms. Such fee proposals may be used by the P&S Director in determining a fair and reasonable contract price.

(d) Negotiation. The P&S Director shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the government. In determining what constitutes a fair and reasonable price to the government, the P&S Director shall consider factors such as the prices proposed by other firms responding to the solicitation. If a fair and reasonable price cannot be negotiated with the highest ranking qualified firm, then the P&S Director may select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsection (d). The 2001 amendments amended subsections (a), (c) and (d).

§ 70-30.3-310 Competitive Selection Procedures for Professional Services

(a) Procurement method. The services of accountants, physicians, or lawyers shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement or sole-source procurement.

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

(c) Public announcement and form of request for proposals. Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

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

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsections (a), (b) and (e). The 2001 amendments moved this section from former § 3-107. See 12 Com. Reg. at 7294-95 (Sept. 15, 1990); 7 Com. Reg. at 3749-50 (July 22, 1985). The 2001 amendments amended subsections (b) and (e). The Commission inserted commas after the words “physicians” in subsection (a) and “offeror” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 70-30.3-315 Lease or Purchase of Vehicles

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(a) Policy. Any lease or purchase of government vehicles shall be governed by this section. It applies to both the initial acquisition of vehicles and the renewal or extension of vehicle leases. The lease or purchase of vehicles shall be procured using an invitation for bids, unless it qualifies for other procurement methods. The P&S Director shall establish standard vehicle specifications which shall be updated on a regular basis (not less frequently than every 2 years). All vehicles leased or purchased shall be procured in the name of the government, and shall conform to CNMI and federal laws, including the CNMI Government Vehicle Act (1 CMC § 7406), and associated rules and regulations.

(b) Whether to Lease or Purchase. Agencies shall consider whether to lease or purchase vehicles based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that shall be considered, and a record reflecting the application of these factors shall be provided in a form prescribed by the P&S Director and shall be included in the file:

- (1) Estimated length of the period in which the vehicle is to be used and the extent of use within that period.
- (2) Financial and operating advantages of alternative types and makes of vehicles.
- (3) Cumulative rental payments for the estimated period of use.
- (4) Net purchase price.
- (5) Maintenance and other service costs.
- (6) The following additional factors shall be considered, as appropriate,
 - (i) Availability of purchase options,
 - (ii) Potential for use of the vehicle by other agencies after its use by the acquiring agency is ended,
 - (iii) Trade-in or salvage value,
 - (iv) Imputed interest, and
 - (v) Availability of a servicing capability; e.g., can the vehicles be serviced by the government or other sources if it is purchased?

(c) Purchase method. The purchase method is appropriate if the vehicles will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(d) Lease Method. The lease method is appropriate if it is to the government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of vehicles to meet program or system goals; but do not currently support acquisition by purchase.

(e) Lease with Option to Purchase. If a lease is justified, a lease with option to purchase is preferable. Generally, a long term lease shall be avoided, but may be appropriate if an option to purchase or other favorable terms are included. If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase. The option to purchase may only be exercised by a government entity. The expenditure authority shall notify the P&S Director 30 days in advance if it does not intend to exercise the purchase option.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

§ 70-30.3-320 Computer Software and Hardware

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

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

(c) In acquiring commercial software, the government shall not generally require offerors and contractors to:

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

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

(d) Competitive bidding, or competitive procurement shall not be required for commercial software upon a showing that:

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

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

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

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

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

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

(3) an extension of maintenance services for previously-purchased software; or

(f) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) blanket contract which had been negotiated by the federal government, shall be presumptively concluded to be in compliance with the competitive procurement requirements of these Regulations. This presumption shall apply not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

Modified 1 CMC § 3806(d), (f).

History: Amdts Adopted 30 Com. Reg. 28745 (Sept. 25, 2008); Amdts Proposed 30 Com. Reg. 28554 (Jul. 28, 1980); Amdts Emergency 30 Com. Reg. 28529 (Jul. 28, 2008) (effective for 120 days from July 3, 2008).

Commission Comment: In May 2005, the Department of Finance proposed to re-promulgate the Procurement Regulations in this subchapter with comprehensive amendments. See 27 Com. Reg. 24444 (May 18, 2005). A notice of adoption has not been published.

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

Part 400 - Contract Terms and Administration of Contracts

§ 70-30.3-401 Contract Clauses

(a) **Price.** In executing contracts, agencies shall set the maximum amount that can be charged under the contract and disallow open-ended contracts, i.e. contracts which do not specify the maximum contract price. Whatever contract type is selected, agencies shall limit contracts to a fixed price or a ceiling price, and the contractor shall not exceed the price set unless a change order is approved (See § 70-30.3-410, change order). Provided, however, in the case of contracts for legal or lobbying services obtained pursuant to a contingency fee agreement, the agency shall put a fixed price on any costs to be borne by the agency out of the general fund, including but not limited to any price to be charged by the contractor in lieu of a percentage of an award obtained as a result of the contractor's services.

(b) **Payment Terms.** Payments shall be made only upon submission of evidence of work performed and adherence to contract terms and specifications. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. Other types of payments are as follows:

(1) **Advance Payments.** Advance payments shall be authorized only in certain circumstances as provided in (b)(1)(i), in (b)(1)(ii), or in (b)(1)(iii) below.

(i) The contractor fails to qualify as a responsible contractor due solely to the absence of financial capability, and it is justified under § 70-30.3-225 that the contractor is the only available source, subject to the following conditions:

(A) **General requirements** - the contractor pledges adequate security, and the official with expenditure authority determines, based on written findings, that the advance payment is in the public interest.

(B) **The standards for advance payment determination are:**

(I) The advance payments will not exceed the contractor's interim cash needs based on an analysis of the cash flow required for contract performance, consideration of the

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reimbursement or other payment cycle, and employment of the contractor's own working capital;

(II) The advance payments are necessary to supplement other funds or credit available for the contract;

(III) The recipient is otherwise qualified as a responsible contractor in all areas other than financial capability; and

(IV) Paying the contractor in advance will result in specific advantages to the government.

(C) Advance payments shall be limited to not more than 25 percent of the contract price or an amount equivalent to a 60 day working capital requirement, whichever is lower.

(ii) The official with expenditure authority demonstrates in writing that the common business practice of a particular industry requires buyers to pay on an advance payment basis. Such advance payment shall be limited to not more than 50 percent of the contract price. Pertinent documents supporting such business practice shall be attached to the written justification.

(iii) The official with expenditure authority demonstrates in writing that the advance payment is made pursuant to procurement of goods and services as provided in § 70-30.3-225(a)(2), (a)(3), or (a)(4), or § 70-30.3-235(b)(1).

(2) Progress Payments. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. No official with expenditure authority shall make progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract. Payments shall be allowed on stored materials only upon arrival of materials in the CNMI, not prior to shipment, and only after inspection by the official with expenditure authority.

(c) The contract shall accurately reflect the actual government requirement, stating adequately what is to be done or to be delivered to the government. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified under § 70-30.3-265. Contracts with general requirements shall be disallowed.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 22331 (Apr. 23, 2004); Amdts Emergency and Proposed 26 Com. Reg. 21781 (Feb. 23, 2004) (effective for 120 days from Feb. 2, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20253 (July 15, 2003) (effective for 120 days from June 27, 2003); Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

Commission Comment: The 2001 amendments added part 400 and re-designated the remaining parts accordingly. The 2004 amendments amended subsections (a), (b)(1) and (b)(1)(i)(B) and added new subsection (b)(1)(iii). The original subsections (b)(2) and (c) were not addressed and, therefore, the Commission has retained them.

Original subsection (b)(1)(iii) cross-referenced § 3-104, codified at § 70-30.3-215. The intent to reference § 3-106, codified at § 70-30.3-225, was clear and the Commission changed the citation accordingly. The Commission corrected the spelling of the word “borne” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 70-30.3-405 Contract Administration

(a) The primary responsibility for ensuring compliance in contracting rests with the official with expenditure authority. The official with expenditure authority must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.

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

(c) Contract Monitoring.

(1) Contract monitoring shall be accomplished through “production surveillance and reporting.” Production surveillance is a function which the official with expenditure authority uses to determine contractor progress and to identify any factors that may delay performance. It shall involve government review and analysis of

- (i) Contractor performance plans, schedules, controls, and industrial processes, and
- (ii) The contractor’s actual performance under them.

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

(d) The P&S Director shall verify, whenever necessary and practicable, the results of monitoring by the official with expenditure authority. The P&S Director shall determine the extent of surveillance based on several factors such as the contractor’s history of contract performance, the contractor’s experience with the contract supplies or services, and the contractor’s financial capability. For construction contracts (including architect-engineer services), contract monitoring is performed by the Secretary of the Department of Public Works or his designee pursuant to § 70-30.3-115(i).

(e) Evaluating Results.

(1) Officials with expenditure authority shall complete, within 15 days of the end of the contract, a post-evaluation of each contractor which shall be kept on file for 36 months. The official with expenditure authority shall report at least the following information to the P&S Director on a prescribed form:

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

- (ii) Whether the contracted work or services met the quality standards specified in the contract.
- (iii) Whether the contractor fulfilled all the requirements of the contract, and if not, in what ways the contractor did not fulfill the contract.
- (iv) Factors outside the control of the contractor that caused difficulties in contractor performance.
- (v) How the contract results and findings will be utilized to meet the goals of the official with expenditure authority.
- (2) The post evaluation of each contractor shall be submitted before final payment and close-out of the contract is done.
- (3) Final payment shall not be made unless the contractor has submitted a tax clearance verifying the filing of all required Commonwealth employment, excise, gross revenue, and income tax returns and payment of all amounts owing on such returns.
- (4) The P&S Director shall establish and maintain a central depository of all contract administration documents, which should include, but not be limited to, progress performance and post-evaluation documents. These documents shall be made available to any expenditure authority upon request to the P&S Director.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

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

§ 70-30.3-410 Change Order

- (a) Execution of a change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, 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 agency 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 pursuant to § 70-30.3-201, except when the procurement of the additional work is authorized without using full and open competition under § 70-30.3-215.
- (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. Change orders shall be processed using the procedures for processing new contracts in § 70-30.3-115.
- (d) Extension of Services. Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting

offices. In order to avoid negotiation of short extensions to existing contracts, the P&S Director may include an option clause in solicitations and contracts which will enable the government 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 thereunder shall not exceed 6 months.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (d).

Part 500 - Protests and Disputes

Subpart A - Bid Protests and Appeals

§ 70-30.3-501 Protests to the P&S Director

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the P&S Director. The protest shall be received by the P&S Director in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto. The P&S Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. If a protest is oral and the matter cannot be resolved, written confirmation of the protest shall state fully the factual and legal grounds for the protest;*

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

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

(4) When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the P&S Director is requested to submit a report, the P&S Director should include with his report a copy of;

(i) The protest;

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

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

(iv) The abstract of offers or relevant portions;

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

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

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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 P&S Director's report will include the determination prescribed in subsection (b)(4) below.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the P&S Director's decision has been taken to the Public Auditor, the P&S Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above. To further expedite processing, the official who furnishes the agency's report should, upon request of the appellant or the Public Auditor, simultaneously furnish a complete copy (except for information privileged by law or which the P&S Director deems must be confidential in order to benefit from competitive bidding) to the appellant. In such instances, the appellant shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the P&S Director.

*So in original; see the commission comment to this section.

(b) Protest Before Award

(1)(i) The P&S Director shall require that written confirmation of an oral protest be submitted by the time specified in subsection (a)(1) and may inform the protester that the award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded.

(ii) An award may be made in the normal manner unless the P&S Director finds it necessary in his discretion to take remedial action.

(2) 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)(3) below.

(3) When the P&S Director receives a protest, a contract may not be awarded pending the resolution of the protest and appeal to the Public Auditor, if any, (including the time period for filing an appeal), unless it is determined in writing that urgent and compelling circumstances which significantly affect the interest of the Commonwealth will not permit awaiting the decision of the P&S Director and the Public Auditor.

(4) The P&S Director is authorized to make the determination in subsection (b)(3) above after receiving the recommendation of the expenditure authority. The determination of the urgent and compelling situation shall be submitted to the Attorney General for review, and absent objection from the Attorney General within five working days of such submittal, the P&S Director's determination becomes final. A contract award shall not be authorized until the P&S Director has notified the Public Auditor of his determination in subsection (b)(3) above. The P&S Director also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(c) Protests After Award

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the P&S Director, at least the contractor shall be furnished the

notice of protest and its basis in accordance with subsection (a)(2) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the government's interest, the P&S Director should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Commonwealth government. 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.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

The starred final sentence in subsection (a)(1) contains an error. It should probably read: "If a protest is oral and the matter cannot be resolved, written confirmation of the protest shall be requested by the Chief. The written protest shall state fully the factual and legal grounds for the protest." Compare 7 Com. Reg. at 3757 (July 22, 1985) and 12 Com. Reg. at 7304 (Sept. 15, 1990).

The 1990 amendments amended subsections (a)(2) and (a)(3). The 2001 amendments readopted and republished this section in its entirety with numerous amendments.

§ 70-30.3-505 Appeals of P&S Director's Decisions to the Public Auditor

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Public Auditor from a decision by the P&S Director may be taken provided that the party taking the appeal has first submitted a written protest to the P&S Director as provided in section § 70-30.3-501 of these procedures, and the P&S Director has denied the protest or has failed to act on the protest within the time provided for in § 70-30.3-501(a)(3) above.

(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 P&S Director'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 P&S Director, or, in the event that the P&S Director has not decided the protest within ten days from the date that he should have decided the protest pursuant to § 70-30.3-501(a)(3) above. Any appeal received after these time limits shall not be considered by the Public Auditor unless good cause is shown or unless the Public Auditor determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Commonwealth should the appeal be considered.

(d) Notice of Appeal, Submission of P&S Director's Report and Time for Filing of Comments on Report

(1) The Public Auditor shall notify the P&S Director by telephone and in writing within one day of the receipt of an appeal, requesting the P&S Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The P&S Director shall be requested to furnish in accordance with § 70-30.3-501(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 an appellant will not be withheld from any Commonwealth or federal agency which 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 which 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 P&S Director to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 10 working days) in accordance with § 70-30.3-501(a)(4) of these procedures and to furnish a copy of the report to the appellant and other interested parties.

(4) Comments on the agency 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 which furnished the report and to other interested parties. Any rebuttal an appellant or interested party may 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 which 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 interested party to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.

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

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(f) **Furnishing of Information on Protests.** The Public Auditor shall, upon request, make available to any interested party information bearing on the substance of the appeal which 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.

(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 P&S Director. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The 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.

(4) **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 P&S Director.

(i) **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 P&S Director, 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.

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

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History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments readopted and republished this section in its entirety with numerous amendments.

In subsection (f), the Commission changed “extend” to “extent” to correct a manifest error.

§ 70-30.3-510 Remedies

(a) Remedies Prior to Award. If prior to award the P&S Director or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the P&S Director or the Public Auditor shall have the solicitation or proposed award:

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

(b) Remedies After an Award. If after an award the P&S Director or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then the P&S Director or the Public Auditor may:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) Ratify or affirm the contract provided it is determined that doing so is in the best interest of the Commonwealth; or
 - (ii) Terminate the contract 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) Declare the contract null and void; or
 - (ii) Ratify or affirm the contract if such action is in the best interests of the Commonwealth, without prejudice to the Commonwealth’s rights to such damages as may be appropriate.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments deleted former subsection (c) and amended subsections (a), (b)(1) and (b)(2).

§ 70-30.3-515 Effective Date

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

subpart upon the request of the actual or prospective bidder, offeror, or contractor who is aggrieved.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Subpart B - Disputes

§ 70-30.3-520 Disputes

(a) Any dispute between the government and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of the regulations in this subchapter, must be filed in writing with the P&S Director and the official with the expenditure authority within ten calendar days after knowledge of the facts surrounding the dispute.

(b)(1) The official with contracting authority will attempt to resolve the dispute by mutual agreement. If the dispute cannot be settled either party may request a decision on the dispute from the P&S Director. The P&S Director shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a decision that shall include:

- (i) Description of the dispute;
- (ii) Reference to pertinent contract terms;
- (iii) Statement of the factual areas of disagreement or agreement; and
- (iv) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(2) The P&S Director may require a hearing or that information be submitted on the record, in his discretion.

(c) **Duty to Continue Performance.** A contractor that has a dispute pending before the official with expenditure authority or the P&S Director must continue to perform according to the terms of the contract and failure to so continue shall be deemed to be a material breach of the contract unless he obtains a waiver of this provision by the official with the expenditure authority.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

The 1990 amendments deleted and replaced former subsection (c) and amended subsections (a) and (b). The 2001 amendments amended subsections (a), (b)(1), (b)(2) and (c).

Part 600 - Socio-economic Programs

[Reserved.]

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 22 Com. Reg. 17383 (Aug. 18, 2000); Amdts Proposed 22 Com. Reg. 17036 (Feb. 15, 2000).

Commission Comment: The 2000 amendments added a new article 7, entitled “Socio-economic Programs,” which included part A, “Preferences for Local Businesses,” to implement PL 11-87. The 2001 amendments deleted part A, but reserved part 600 for future programs.

Part 700 - Ethics in Public Contracting

Subpart A - Definitions

§ 70-30.3-701 Definitions of Terms

(a) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of this government and is not a matter of public knowledge or available to the public on request.

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

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

(d) “Financial interest” means:

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

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

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

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments amended subsection (a). The Commission inserted quotation marks around terms defined. The Commission inserted commas after the words “print” in subsection (b), “auditing” in subsection (c), and “brothers” in subsection (f) pursuant to 1 CMC § 3806(g).

Subpart B - Standards of Conduct

§ 70-30.3-705 Policy

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

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

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments amended subsection (b). The Commission corrected the spelling of the word “ensure” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 70-30.3-710 General Standards

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

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: In subsection (b), the Commission changed “standard” to “standards” to correct a manifest error.

§ 70-30.3-715 Employee Disclosure Requirements

- (a) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from, any government contract with a business in which the employee has a financial interest shall report such benefit to the P&S Director.

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(b) Failure to disclose benefit received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments amended subsection (a).

§ 70-30.3-720 Employee Conflict of Interest

(a) Conflict of interest. It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the P&S Director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 1990 amendments deleted former subsection (a)(2). The 2001 amendments amended subsection (b).

§ 70-30.3-725 Gratuities and Kickbacks

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

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

§ 70-30.3-730 Prohibition Against Contingent Fees

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

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-735 Contract Clauses

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-740 Restrictions on Employment of Present and Former Employees

(a) Present employees. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

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

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

(c) Disqualification of business when an employee has a financial interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than government, in connection with any:

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the government is a party or has a direct and substantial interest.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-745 Use of Confidential Information

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-750 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 finds sufficient evidence after a contract has been let that contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

§ 70-30.3-755 Civil and Administrative Remedies

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

- (a) Government employees.
 - (1) Government employee is any person whether appointed, elected, excepted service or civil service. An employee who violates the provisions of the rules and regulations in this subchapter is subject to adverse action as may be appropriate in his or her particular circumstances.
 - (2) This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution.

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

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

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

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

The 1990 amendments added the opening paragraph.

In the opening paragraph, the Commission changed “maybe” to “may be” to correct a manifest error. The Commission inserted a comma after the word “contract” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 70-30.3-760 Authority to Debar or Suspend

- (a) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the P&S Director after consultation with the official with expenditure authority and the Attorney General, 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 same officer, after consultation with the official with authority and

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the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

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

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

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

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

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

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

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

(5) Any other cause that the P&S Director determines to be so serious and compelling as to affect responsibility as a government contractor, including debarment by another governmental entity; or

(6) For violation of any of the ethical standards set forth in part 700.

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

(d) Notice of decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person. A copy of the decision shall also be provided to other Commonwealth procurement offices.

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

History: Amdts Adopted 23 Com. Reg. 17855 (May 24, 2001); Amdts Proposed 23 Com. Reg. 17640 (Feb. 23, 2001); Amdts Adopted 12 Com. Reg. 7436 (Oct. 15, 1990); Amdts Proposed 12 Com. Reg. 7274 (Sept. 15, 1990); Adopted 7 Com. Reg. 3736 (July 22, 1985); Proposed 7 Com. Reg. 3646 (May 21, 1985).

Commission Comment: The 2001 amendments amended subsections (a), (b)(4), (b)(5), (c) and (d).

In subsection (a), the Commission changed “Procedures” to “Procedure” to correct a manifest error.