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By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SUCCESS INTERNATIONAL CORPORATION, DBA SARS TOWING SERVICES, AND AS SUCCESS AUTO REPAIR SHOP,	)	CIVIL ACTION NO. 14-0197
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT CNMI'S MOTION FOR SUMMARY JUDGMENT BECAUSE GOVERNMENT CONTRACTOR PLAINTIFF SUCCESS INTERNATIONAL FAILED TO EXHAUST THE AVAILABLE ADMINISTRATIVE REMEDIES PURSUANT TO NMIAC §§ 70-30.3-520(a) AND (b)(1) TO COLLECT NON-PAYMENT OF SERVICES ALLEGEDLY PROVIDED TO CNMI DEFENDANT
v.	)	
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	
	)	
Defendant.	)	
	)	

I. INTRODUCTION

This matter came before the Court on May 3, 2016 at 1:30 p.m. in Courtroom 220A on Defendant's motion for summary judgment. Defendant Commonwealth of the Northern Mariana Islands ("the Government") was represented by the Attorney General's Chief Solicitor James M. Zarones. Plaintiff Success International Corporation ("Success International") was represented by Michael A. White.

Based on a review of the filings, oral argument and applicable law, the Court **GRANTS**<sup>1</sup> the Government's motion for summary judgment because Success International failed to exhaust the

<sup>1</sup> Because the summary judgment is based on Success International's failure to exhaust the available administrative remedies, as required by law under NMIAC §§ 70-30.3-520(a) and (b)(1), the Court's order does not extend to the

1 available administrative remedies by complying with Northern Mariana Islands Administrative  
2 Code (NMIAC) §§ 70-30.3-520(a) and (b)(1), jurisdictional prerequisites to obtaining relief from  
3 the courts.

## 4 **II. BACKGROUND**

### 5 **A. Complaint**

6 On September 24, 2014, Success International filed its complaint, alleging that the  
7 Government failed to fulfill the following contractual promises: (1) to pay for the repair and service  
8 of government vehicles; (2) to pay for the towing services for government vehicles; and (3) to pay  
9 for fuel supplied by Success International to the Government for its government vehicles. Success  
10 International complains that it has been deprived of a total sum of \$36,801.50 in payments, together  
11 with interest accumulating from January 9, 2013, at a rate of nine percent per annum. While  
12 Success International did not caption the specific claims for relief, Success International filed: (1) a  
13 claim for breach of contract and (2) a request for remedy of unjust enrichment.

### 14 **B. Motion for Summary Judgment**

15 On March 10, 2016, the Government filed a motion for summary judgment. Success  
16 International filed a timely opposition on March 31, 2016.<sup>2</sup> In its motion, the Government alleges  
17 that Success International entered into oral contracts regarding its towing services. The Government  
18 also alleges that Success International entered into agreements with the Government without  
19 complying with the procurement regulations, in violation of NMIAC § 70-30.3-030.<sup>3</sup>

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21 merits of Success International's breach of contract claim or request for the remedy of unjust enrichment. If dismissal is  
22 eventually entered for lack of jurisdiction, as is the legal remedy when it is established that a litigant failed to exhaust  
23 his or her administrative remedies, such dismissal shall be without prejudice.

<sup>2</sup> The court-authorized filing deadline for an opposition was April 12, 2016. *Success Int'l v. Commonwealth*, No. 14-0197 (NMI Super. Ct. Mar. 11, 2016) (Order Granting Request for Hearing). The Government filed a timely reply on the court-authorized filing deadline of April 18, 2016. *Id.*

<sup>3</sup> NMIAC § 70-30.3-030 provides that "No government contract shall be valid unless it complies with the [procurement] regulations . . . ." The Court reserves the question as to whether a contract complies with procurement regulations to the fact-finding agency, the Office of Procurement & Supply. *See NMC v. Civil Service Comm'n*, No. 03-0092 (NMI Super.

1 It is undisputed that,<sup>4</sup> in its attempts to be paid for the alleged contracts, on August 20, 2013,  
2 Success International sent a demand for payment to the Commissioner of the Department of Public  
3 Safety (DPS). Just eight days later, on August 28, 2013, the Director of Procurement and Supply  
4 (P&S Director), Herman S. Sablan, issued a memorandum to the DPS Commissioner. In relevant  
5 part, the memorandum stated:

6 Please verify the veracity of the outstanding Statement of Account submitted by [Success  
7 International] and submit to this office a request for ratification for payment accordingly.

8 I believe the former DPS Commissioner acted in good faith when it authorized [Success  
9 International] to provide the needed services to its vehicles without a contract during  
10 financial crunch so that DPS may carry-out its fiduciary duty to protect properties and the  
11 general public. For reasons stated here-in, I believe it is in the best interest of the  
12 Commonwealth to ratify the inappropriate procurement and pay the vendor.

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Compl. Ex. B.<sup>5</sup> The Government has refused to pay the sum demanded by Success International.<sup>6</sup>

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15 Ct. May 28, 2003) (Order Denying Mot. to Dismiss at 4). The law requires that parties to a contract with the  
16 Government (government contractors) adhere to the legal requirements of procurement regulations as provided pursuant  
17 the policy interests provided under NMIAC §§ 70-30.3-001(b)(1)–(6). These provisions provide that the purpose of the  
18 procurement regulations is to ensure consistency in government contracting, promote the public confidence in an open  
19 and fair system of procurement, to foster effective competition amongst government contractors, and to maximize the  
20 purchasing power of public funds.

21 <sup>4</sup> NMI R. Civ. P. 56(d) requires the court to specify the material facts that appear without substantial controversy and  
22 what material facts are in good faith controverted.

23 <sup>5</sup> The August 28, 2013 memorandum was referred to in Success International's opposition brief, and was incorporated in  
24 Success International's complaint, a pleading. The Court can consider this exhibit for the purposes of ruling on a motion  
for summary judgment because NMI R. Civ. P. 56(c) and 56(e) require the Court to render judgment on the non-  
moving party's pleadings and admissions that show that the moving party is entitled to a judgment as a matter of law.  
*See* NMI R. Civ. P. 56(e) (" . . . the adverse party's response, by affidavits or as otherwise provided in this rule, must set  
forth specific facts showing that there is a genuine issue for trial.") (emphasis added). The Government objects to the  
admissibility of the contents of the August 28, 2013 memorandum on hearsay grounds. The objection is overruled  
because, for the purposes of ruling on the Government's motion for summary judgment, the significance of the contents  
of the August 28, 2013 memorandum "lies solely in the fact that it was made": words with independent legal  
significance. Fed. R. Evid. 801(c) advisory committee's note; *see also, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
242, 249 (1986) (" . . . at the summary judgment stage the judge's function is not himself to weigh the evidence and  
determine the truth of the matter but to determine whether there is a genuine issue for trial.").

<sup>6</sup> Whether the DPS Commissioner submitted a request for ratification for payment to the Office of Procurement and  
Supply, in accordance with the August 28, 2013 memorandum, remains disputed for the purposes of ruling on the  
Government's motion for summary judgment.

1 **III. LEGAL STANDARD**

2 Under NMI R. Civ. P. 56, a moving party has the initial burden to show that he or she is  
3 entitled to summary judgment. *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*, 2002 MP 5 ¶ 22. If the  
4 moving party is the plaintiff, he or she must show that the undisputed facts establish every element  
5 of his or her claim. *Id.* If the defendant is the moving party, he or she must either show that the  
6 undisputed facts establish every element of an asserted affirmative defense or that the plaintiff  
7 cannot establish his or her prima facie case. *Id.* ¶¶ 22, 23.

8 If the moving party satisfies the initial burden, the nonmoving party must respond by  
9 showing that there is a genuine issue of material fact. *Id.* ¶ 24. If the nonmoving party cannot, then  
10 the court may grant summary judgment to the moving party as a matter of law. NMI R. Civ. P.  
11 56(c). In considering the motion, the court views facts and inferences in the light most favorable to  
12 the non-moving party. *Fujie v. Atalig*, 2014 MP 14 ¶ 7.

13 **IV. DISCUSSION**

14 In the Commonwealth of the Northern Mariana Islands (CNMI), exhaustion of available  
15 administrative remedies is a jurisdictional prerequisite to judicial review. *Cody v. NMIRF*, 2011 MP  
16 ¶ 10. In other words, the law requires the plaintiff to establish that the court has jurisdiction over  
17 the dispute by showing that he or she exhausted the available administrative remedies. *Id.*; *see*  
18 *Atalig v. Mobil Oil Marianas, Inc.*, 2013 MP 11 ¶ 10. As discussed below, Success International did  
19 not do what the law requires it to do. Success International did not exhaust all of the available  
20 administrative remedies before filing its complaint; and the Government's motion for summary  
21 judgment is granted for the following reasons.

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1       **A. Legal Requirements for Exhaustion of Available Administrative Remedies for a**  
2       **Contract Dispute with the Government**

3           Before filing a complaint, the law requires that the plaintiff exhaust "all intra-agency appeals  
4 expressly mandated by statute or by the agency's regulations." *Cody*, 2011 MP 16 ¶ 11. If the  
5 plaintiff fails to meet this burden, the court must dismiss the action in its entirety. *Arbaugh v. Y & H*  
6 *Corp.*, 546 U.S. 500, 514 (2006).

7           Accordingly, when a government contractor plaintiff seeks to sue the Government in trial  
8 court for breach of contract, the law requires that the government contractor plaintiff meet two  
9 requirements. First, the law requires that the government contractor plaintiff comply with the  
10 requirements set out in NMIAC § 70-30.3-520(a).<sup>7</sup> Second, the law requires that the government  
11 contractor plaintiff receive a written decision from the P&S Director, a requirement pursuant to  
12 subdivision (b)(1). The written decision must provide factual and legal findings pertinent to the  
13 dispute. *See* NMIAC § 70-30.3-520(b)(1). Success International did neither.

14       **1. Compliance with NMIAC § 70-30.3-520(a)—Proper Procedure for Filing an**  
15       **Administrative Complaint**

16           The Government argues that Success International, a government contractor plaintiff, failed  
17 to exhaust the available administrative remedies because Success International did not comply with  
18 the dispute resolution provisions provided under NMIAC § 70-30.3-520(a). In response, Success  
19 International concedes that it did not strictly follow NMIAC procedures. *E.g.*, Pl.'s Mot. at 3  
20 ("Although the strict formalities of [NMIAC § 70-30.3-520(a)] were not followed, the [P&S  
21 Director] did issue a decision: he ruled that [Success International] should be paid"). However,

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23 <sup>7</sup> NMIAC § 70-30.3-520(a) provides that "Any dispute between the government and a [government contractor plaintiff]  
24 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."

1 there is no provision under the plain meaning of NMIAC § 70-30.3-520(a) that allows for anything  
2 less than strict compliance.

3 In relevant part, NMIAC § 70-30.3-520(a) provides that "[a]ny dispute between the  
4 government and a [government contractor plaintiff] relating to the performance, interpretation of or  
5 compensation due under a contract . . . must be filed in writing with the P&S Director and the  
6 official with the expenditure authority within ten calendar days after knowledge of the facts  
7 surrounding the dispute." The law requires that the government contractor plaintiff strictly complies  
8 with agency regulations. *See, e.g., Jenny Wiley Health Care Ctr. v. Commonwealth Cabinet for*  
9 *Human Resources Appellee* , 828 S.W.2d 657, 661 (Ky. 1992) ("Language in the regulation states  
10 that a 'licensee may file,' not that they may 'mail' a request. To rule differently, basically rewrites  
11 the regulation."); *see also Marianas Ins. Co. v. CPA*, 2007 MP ¶ 13 (explaining that "exhaustion  
12 protects agency authority in that it discourages people from disregarding agency procedures.").

13 Success International did not file a written complaint to the P&S Director regarding its  
14 breach of contract dispute with the Government. This fact is conceded by Success International. *See*  
15 *Pl.'s Mot.* at 3. Therefore, Success International failed to strictly comply with the legal requirements  
16 of NMIAC § 70-30.3-520(a).

17 **2. Compliance with NMIAC § 70-30.3-520(b)(1)—Proper Requirements of P&S Director's**  
18 **Written Decision**

19 The Government also argues that Success International failed to exhaust the available  
20 administrative remedies because Success International did not receive a written decision from the  
21 P&S Director, a legal requirement pursuant to NMIAC § 70-30.3-520(b)(1). In response, Success  
22 International argues that it received a decision from the P&S Director, recommending that the  
23 Government pay the alleged loss, in the form of a memorandum issued from the P&S Director,  
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1 dated August 28, 2013. However, as described below, the writings contained in the memorandum is  
2 not sufficient to be a decision under NMIAC § 70-30.3-520(b)(1).

3 The full text of NMIAC § 70-30.3-520(b)(1) provides that:

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

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

13 The writings contained in the August 28, 2013 memorandum contain directives to the DPS  
14 Commissioner to verify the outstanding accounts with Success International and for the DPS  
15 Commissioner to submit to the Office of Procurement and Supply a request for ratification for  
16 payment.<sup>8</sup> This memorandum does not meet the legal requirements of a decision, as defined  
17 pursuant to NMIAC § 70-30.3-520(b)(1), because the P&S Director's memorandum does not  
18 explain: the nature of the dispute; the specific contract terms in dispute; the legal basis for its  
19 directive for DPS to submit a ratification of payment to the Office of P&S; or what is owed from  
20 one party to the other. Therefore, Success International failed to comply with the legal requirements  
21 of NMIAC § 70-30.3-520(b)(1).

22 In sum, Success International failed to exhaust the available administrative remedies  
23 because it did not comply with NMIAC §§ 70-30.3-520(a) or (b)(1). The law requires that the  
24 government contractor plaintiff meet these jurisdictional prerequisites before seeking relief from the

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25 <sup>8</sup> See *supra* Part II.B. ("Please verify the veracity of the outstanding Statement of Account submitted by [Success  
International] and submit to this office a request for ratification for payment accordingly . . . For reasons stated here-in,  
I believe it is in the best interest of the Commonwealth to ratify the inappropriate procurement and pay the vendor.")  
(citing Compl. Ex. B.). Whether the DPS Commissioner submitted the request for ratification to the Office of  
Procurement and Supply, as requested in the August 28, 2013 memorandum, remains disputed for the purposes of  
ruling on the Government's motion for summary judgment. See *supra* note 6.

1 trial court. Accordingly, the Court does not have jurisdiction to address the merits of Success  
2 International's (1) claim of breach of contract or (2) request for the remedy of unjust enrichment.  
3 Therefore, the Government's motion for summary judgment is granted.

4 **V. CONCLUSION**

5 For the foregoing reasons, the Government's motion for summary judgment is **GRANTED**.  
6 Because the summary judgment is based on Success International's failure to exhaust the available  
7 administrative remedies, as required by law under NMIAC §§ 70-30.3-520(a) and (b)(1), the  
8 Court's order does not extend to the merits of Success International's breach of contract claim or  
9 request for the remedy of unjust enrichment. If dismissal is eventually entered for lack of  
10 jurisdiction, as is the legal remedy when it is established that a litigant failed to exhaust his or her  
11 administrative remedies,<sup>9</sup> such dismissal shall be without prejudice.

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13 **IT IS SO ORDERED** this 8th day of August, 2016.

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15 /s/ \_\_\_\_\_  
16 JOSEPH N. CAMACHO  
17 Associate Judge  
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<sup>9</sup> *Marianas Ins. Co.*, 2007 MP 24 ¶ 14 (holding that the exhaustion doctrine is a prerequisite to proceeding to court).