COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CIVIC CENTER, SAIPAN, MARIANA ISLANDS

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# ADOPTED REGULATIONS ON ALIEN REGISTRATION

The Attorney General for the Commonwealth of the Northern Mariana Islands hereby adopts regulations for the registration of aliens under the authority of Sections 24 (a) and 5 (b) (1) of Public Law No. 3-105. The text of the regulations are as proposed on February 15, 1985 in Vol. 7 No. 2 at page 3442 of the Commonwealth Register, without amendment.

DATED: Mary 20, 1985

sal REXFORD, C. KOSACK

Attorney General

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Office of Registrar of Corporations ADOPTION OF POLICIES CANDONWealth of the Northern Mariana Islands FOR THE ECONOMIC DEVELOPMENT LOAN FUND NORTHERN MARIANA ISLANDS

Filed this

The Chairman of the Northern Mariana Islands Economic Development Loan Fund, with the approval of the Governor of the Northern Mariana Islands, after reviewing all comments received, hereby adopts the Policies and Regulations for the Economic Development Loan Fund, as published in the Commonwealth Register on March 15, 1985, with the following amendment to Chapter 10, Section 1, Subsections J, K, and L:

- "J. No loan shall be granted to any EDLF Board member, or the Executive Director. Neither shall any loan be made to any corporation, company, association, partnership or legal entity in which any EDLF Board member, or the Executive Director, or any parent, spouse, son, daughter, brother, sister, mother-inlaw, father-in-law, sister-in-law, brother-in-law, or any member of his or her household, has any pecuniary interest, whether directly or indirectly.
- K. With the exception of EDLF Board members, and the Executive Director, the officers, counsel, agents, and employees of EDLF are eligible for a loan from EDLF, directly or indirectly. Provided, however, that they shall not, directly or indirectly, participate in the deliberation or upon the determination of any question affecting their personal interest or the interests of any enterprise in which their parent, spouse, son, daughter, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law or any member of their household is directly or indirectly interested.
- L. No member of the Board, officers, counsel, agent, or employee of EDLF, either directly or indirectly, for himself or as representative or agent of another person, shall become a guarantor, indorser, or surety for loans from EDLF to others, nor in any manner be an obligor for money borrowed from EDLF by another."

According to law, these regulations shall take effect within ten (10) days of this public notice of adoption.

David M. Sablan Chairman, EDLF Board

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#### POLICIES AND REGULATIONS FOR THE ECONOMIC DEVELOPMENT LOAN FUND NORTHERN MARIANA ISLANDS

| CHAPTER I. ORIGIN OF THE ECONOMIC DEVELOPMENT LOAN FUN | CHAPTER I. | ORIGIN | $\mathbf{OF}$ | $\mathbf{THE}$ | ECONOMIC | DEVELOPMENT | LOAN | FUND |
|--|------------|--------|---------------|----------------|----------|-------------|------|------|
|--|------------|--------|---------------|----------------|----------|-------------|------|------|

Section 1. The Trust Territory Economic Development Loan Fund (EDLF) was originally created by Administrative Directive 65-2 in 1964, by the High Commissioner of the TTPI in compliance with U.S. Public Law 88-487 and U.S. Public Law 92-257.

> The Trust Territory EDLF functions and operations were transferred to the Commonwealth through Sections 2, 3 and 13 of the Schedule on Transitional matters of the Commonwealth Constitution, and as further manifested by the TTPI-NMG Memorandum of Understanding No. 2. The organization, functions and procedures of the EDLF, as administered in the Commonwealth, were redefined in the EDLF Policy and Procedure Manual (Rules and Regulations), as approved by the Governor of the Commonwealth, which provides among other things, for the administration of the Fund by an Economic Development Loan Fund Board (hereinafter referred to as the Board or Fund). Grant funds received by the Commonwealth pursuant to Section 702(c) of the Covenant which presently are the principal source of funds, and from the TTPI pursuant to Memorandum of Understanding No. 2, are paid into and administered by the Commonwealth Economic Development Loan Fund.

> Pursuant to Section 702(c) of the Covenant, \$500,000.00 is reserved each year for small loans to farmers, fishermen and to agricultural and marine cooperatives. An additional \$250,000.00 is set aside each year for low interest housing loans for low income families and administered by the Mariana Islands Housing Authority.

- CHAPTER II. PURPOSE:
- Section 1. Purposes of the Economic Development Loan Fund are:
  - A. To initiate, stimulate, and facilitate development of the economy of the Commonwealth for the economic and social advancement of the people of the Commonwealth by making loans, and giving financial, technical, and advisory assistance in its sound discretion to enterprises in the Northern Marianas.

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- B. To achieve the greatest possible return, in terms of economic development on the funds provided.
- C. To encourage the development of technical expertise in business and financial management by cooperating with government and private groups, and assist in providing training services, where feasible.
- D. To assist in the identification, formulation and promotion of new projects.

#### CHAPTER III. GENERAL DEFINITIONS:

Unless the context otherwise requires, in these Policies and Regulations;

(a) "Applicant" or "loan applicant" means a person, partnership, association, or corporation seeking a loan or guaranty from the Economic Development Loan Fund.

(b) "Board" or "board of directors" means the board of directors of the Economic Development Loan Fund.

(c) "Chairman" means the chairman of the board of directors of the Economic Development Loan Fund.

(d) "Commonwealth" means the Commonwealth of the Northern Mariana Islands.

(e) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (P.L. 94-241; 90 Stat. 263; 48 U.S.C. 1681, note).

(f) "EDLF" means the Economic Development Loan Fund.

(g) "Executive Director" means the Executive Director of the Economic Development Loan Fund.

(h) "Fund" means the Economic Development Loan Fund.

(i) "Governor" means the Governor of the Northern Mariana Islands.

(k) "Loan" or "direct loan" means a delivery by EDLF to and receipt by a loan applicant of a sum of money upon agreement to repay it to EDLF, with interest.

(1) "Loan application" means a request by a loan applicant for a loan from EDLF.

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(m) "Loan guaranty" means a promise by EDLF to answer for repayment of a debt or performance of an obligation if a person

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primarily liable to a financial institution other than EDLF fails to make payment or perform the obligation.

(n) "NMG" means the Northern Marianas Government.

(o) "Public Auditor" means the Public Auditor of the Commonwealth of the Northern Mariana Islands.

(p) "Syndicated financial arrangement" means a financial arrangement by EDLF in association with one or more financial institutions formed for the purpose of making a loan.

(q) "TTPI" means the Trust Territory of the Pacific

Islands.

# CHAPTER IV. GENERAL POLICY AND OPERATING PRINCIPLE:

- Section 1. All loans must satisfy the Board that the loan will be beneficial, desirable and necessary to develop the economy of the Northern Mariana Islands. The Board shall give preference in determining whether or not any assistance is to be given to any eligible enterprise, and/or to enterprises which will:
  - A. Use locally available raw materials.
  - B. Make use of technologies to provide employment opportunities and training of local people.
  - C. Have a good potential for increasing exports and decreasing imports.
  - D. Lower cost within the Commonwealth and improve the efficiency or standards of goods and services within the Commonwealth.

# Section 2. In addition to the criteria mentioned under Section 1, all loan applications must satisfy the Board to a high degree that:

- A. The prospects of the enterprise will be successful, and the prospect of any money lent to it by the Board will be repaid to the Fund.
- B. The enterprise is or will become or remain of value to the economy of the Commonwealth.
- C. The enterprise is or will be or will remain owned or effectively controlled by persons who are citizens of the Northern Marianas, or U.S. citizens or nationals who are actual residents of the Northern Marianas.

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- D. The public interest of the Commonwealth will be served by assisting the enterprise.
- CHAPTER V. GENERAL POWERS:

Section 1. The Fund shall have and may exercise the following general powers:

- A. To prescribe, adopt, amend and repeal by-laws governing the manner in which its business will be conducted and in which the obligations imposed on it by law will be performed;
- B. To receive and hold funds from the United States Government, the Government of the Commonwealth, and any other source of Capital Contribution;
- C. To borrow money from any private or public source, either within the Commonwealth or the United States or in any other country; and to give security in connection with such borrowing;
- D. To make and issue bonds for sale to the general public;
- E. To make, contract and execute all instruments necessary or convenient in the exercise of its powers.
- F. To acquire and hold any interest in any real or personal property, tangible or intangible, deemed by it necessary or convenient for carrying out the purposes of the Fund;
- G. To pledge the full faith and credit of the Fund;
- To make direct loans and/or loan guarantees to н. citizens of the Commonwealth, or U.S. citizens or nationals, having at least a one (1) year continuous residency in the Commonwealth and who are domiciles of the Commonwealth as defined in Section 1005(e) of the Covenant, or a partnership or association wholly owned by citizens of the Northern Mariana Islands or U.S. citizens or U.S. nationals domiciled in the Northern Mariana Islands, or a corporation organized under the laws of the Commonwealth of which at least fifty-one percent (51%) of the capital stock outstanding and entitled to vote is owned and held by U.S. citizens or nationals or citizens of the Northern Marianas in which profits and/or surpluses are distributed in direct proportion to the shares held, or by a U.S. corporation,

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properly licensed and registered under the laws of the Northern Mariana Islands, and actually doing business in the Northern Mariana Islands for a period of at least one year.

- To make loans to a public corporation or agency of the Commonwealth Government to further the purposes of the Fund.
- J. To engage as its agent any commercial bank or autonomous public agency or private investor to administer any Fund loan program involving loans to private persons, corporations or partnerships or corporations eligible for a loan under Section 702(c) of the Covenant.
- K. To hire such employees as it deems necessary for the administration of the Fund.
- L. To sue and be sued in its own name as an independent agency of the Commonwealth Government.
- M. To take such action as is necessary and proper to operate the Fund, further its purposes, administer its loans and oversee its other capital outlays.
- CHAPTER VI. BOARD OF DIRECTORS:
- Section 1. The activities of the Fund shall be governed and controlled by a Board of Directors. The members should be knowledgeable about and experienced in business, financial or other economic affairs. The members shall be appointed by the Governor.
- Section 2. The Board shall be composed of the following seven (7) voting members and four (4) non-voting ex-officio members:

Voting Members

- A. One member representing Rota;
- B. One member representing the Carolinian community;
- C. One member representing Tinian;
- D. One member representing a banking institution licensed and operating in the Commonwealth;
- E. Three members representing Saipan and the Northern Islands.

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Of the seven voting members, at least one shall be a female voting member;

#### Non-Voting Ex-Officio Members

- H. The Director, or his designee, of the Department of Commerce and Labor;
- The Director, or his designee, of the Department of Natural Resources;
- J. The Director, or his designee, of the Department of Finance;
- K. The Attorney General, or his designee, of the Attorney General's Office.
- Section 3. Terms of office of appointed directors: Members of the Board shall be appointed for terms of three (3) years, except that the term of any member who sits on the Board by virtue of his government office or position shall continue for and only for the term of his occupancy of that office or position. Every voting member shall continue to hold office until his successor comes into office.
- Section 4. Resignation, Removal and Vacancies of Board: A voting director may at any time resign his office by notice in writing to the Governor. A voting Board member may be removed by the Governor before the expiration of his term for cause or not for cause pursuant to Public Law 1-8 (as amended). A voting Board member who grossly neglects or is in dereliction of his duty, is in breach of his fidiciary duty, is convicted of a felony, or is mentally or physically disabled, or who fails to attend three consecutive noticed meetings may be removed, by three fourths (3/4) vote of the Board, or alternatively by the Governor upon recommendation of removal by a majority vote of the Board to the Governor. Upon recommendation to the Governor, by majority vote of the Board, the Governor in his discretion may accept or reject the recommendation. Any person appointed to fill a vacancy shall hold office for the unexpired balance of the term of office of his predecessor.

In the event the Chairman and/or the Vice Chairman resign(s) or is/are replaced, the Board will select a Chairman and/or Vice Chairman from among its members as per Section 5 of this Chapter.

Section 5. Chairman and Vice Chairman: The Board will select a Chairman and Vice Chairman from among its voting

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members by a simple majority vote of the entire Board members (including the non-voting members). The Chairman and Vice-Chairman must be selected from the voting members. The Vice-Chairman in the absence of the Chairman shall assume all the duties and responsibilities of the Chairman. The Chairman may appoint and create special committees as needed to perform the functions of the Board. A member of the Board is eligible for reelection as Chairman or Vice Chairman of the Board.

Section 6. Meetings of the Board: The Board shall hold not less than six meetings in each financial year of the Fund, or as often as necessary for the purpose of governing the Fund. The Chairman or in the absence of the Chairman, the Vice Chairman, or the Executive Director shall call the Board meeting at a time and place convenient for the Board members. A notice of a Board meeting must be given each Board member at least 24 hours prior to the meeting. At a meeting of the Board at which neither the Chairman nor the Vice Chairman of the Board is present, the Board shall appoint one of their members to preside.

> All Board meetings shall be open to the public, except when the Board is considering matters involving the financial or credit confidences or any other privileged information concerning applicants or projects.

The Board shall cause to be kept minutes of the proceedings at each meeting of the Board, in such form as the Board directs.

For urgent or in emergency situations, a written decision signed and approved by a majority of the voting Board members, shall be binding and effective as if the same had been acted upon at a meeting of the Board duly convened and held. Subject to the provisions of these Policies and Regulations, the Board may regulate its procedure in such manner as it deems fit and proper.

- Section 7. Quorum: A quorum for meetings and transacting business shall be a simple majority of the voting members.
- Section 8. There shall be no proxies allowed.
- Section 9. Compensation for Board Members: Members of the Board of Directors who are not employees of the CNMI Government will be compensated at a rate to be established by the Board for meetings attended.

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Members of the Board who are government employees are entitled to compensation only for time spent in meetings after regular working hours.

All members shall be reimbursed for expenses incurred in connection with the Fund business if previously approved by the Chairman, the Vice Chairman in the absence of the Chairman, and the Executive Director. Rules on travel and per diem shall be established by the Board.

- Section 10. Disclosure of Conflict of Interest: Any director who otherwise as a director, is directly or indirectly interested in any arrangement, transaction or business matter entered into, proposed or under consideration by the Board shall, as soon as possible after the relevant facts have come to his attention, disclose the nature of his interest to the Board. А disclosure under this section shall be recorded in the minutes of the Board and, except as otherwise provided by a resolution of the Board, the director shall not take part after the disclosure in any deliberation or decision relating to the arrangement or agreement, but shall be counted as present for the purpose of forming a guorum of the Board for any such deliberation or decision.
- Section 11. Contracting Authority: The Executive Director and the Chairman (or Vice Chairman in the absence of the Chairman) shall have contracting authority for the purposes of dealing with all matters pertaining to the operations of the Fund, such as execution of all loan guarantees, and other agreements necessary to the operation of the Fund.
- Section 12. The Board shall have the following duties:
  - A. To govern the operation of the Fund in a manner that furthers its purposes;
  - B. To take action necessary to execute the powers of the Fund.
  - C. To adopt by-laws, and to adhere to operating policies that will assure the Fund's financial vitality and best promote its development purposes;
  - D. To make final decisions on loan applications and other proposals for funding of programs and projects, unless delegated to the Executive Director.

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- E. To submit a report at the end of each fiscal year of Fund activities during the year, together with a year-ending financial status to the Legislature and the Governor.
- Section 13. The Board shall further have and may exercise the following powers:
  - A. To exercise all powers enumerated in Section 1, Chapter V, that are necessary and appropriate to the fulfillment of its duties under Section 11, Chapter VI.
  - B. To employ an Executive Director, and provide for the hiring of staff employees, and to define their duties and responsibilities.
  - C. To decide finally on any use of EDLF funds, including the power to determine how the Fund's unexpended capital shall be maintained and managed;
  - D. To allocate and expend funds for the repayment of obligations incurred by the Fund in accordance with Section 1, Chapter V; and
  - E. To contract and pay for economic studies, project evaluations, feasibility studies, including pilot projects in cooperation with private groups or government agencies as deemed necessary and appropriate to further the Fund's economic development purposes.
  - F. To approve an annual operating budget for the Fund.
  - G. The Board may from time to time appoint committees consisting of any three or more directors or officers of the Fund.
  - H. The Board may from time to time delegate to any of its committees, or to the Executive Director, or to any other officer of the Fund any of its powers under these Policies and Regulations. Any committee or persons to whom any powers are so delegated may exercise these powers in the same manner and with the same effect as if they had been conferred on it directly by these Policies and Regulations.

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CHAPTER VII. OFFICERS:

- Section 1. The officers of the Fund shall be the Executive Director of the Fund and such other officers as the Board shall deem appropriate with respect to the operation of the fund.
- Section 2. The Executive Director shall perform the following functions:
  - A. Conduct and oversee the Fund's general operation, including the administration of all loans and the enforcement of all provisions of loan agreements, and the supervision of employees of the Fund.
  - B. Notify applicants of the status of their applications.
  - C. Continuously monitor the progress and financial status of projects financed in whole or in part by the Fund.
  - D. Report to the Board the status of the Fund's loans and its activities.
  - E. Refer to the Board for decision all loan applications from any eligible applicant, except those delegated by the Board.
  - F. Prepare an annual operating budget of expenses of the Fund, for approval by the Board.
  - G. Hire staff employees or other professionals.
  - H. Perform such other duties as the Board may require.
- Section 3. The Executive Director and other officers of the Fund may be dismissed for cause by the Board.
- CHAPTER VIII. PERSONNEL COMMITTEE:
- Section 1. The Board shall establish a Personnel Committee consisting of three (3) members of the Board, plus the Executive Director. The Personnel Committee shall establish procedures and rules governing employee relations, order of conduct of employees and Board members, compensations, time and attendance, and other matters affecting employees' moral.

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CHAPTER IX. FINANCIAL MATTERS.

- Section 1. The Board shall not make any loan, guarantee any loan or participate in any loan if such loan application would exceed twenty-five (25%) of the Fund's uncommitted cash.
- Section 2. In exceptional cases meriting special consideration, limits under Section 1 of this chapter may be exceeded provided the loan is covered by sufficient securities, pursuant to Section 1, Chapter XI.
- Section 3. In financing worthwhile projects requiring more than its maximum lending limits under Section 1 of this chapter, the fund may enter into a syndicated financial arrangement with financial institutions, both domestic and foreign, limiting the Fund's exposure to the ceiling referred to under Section 1 of this chapter.
- Section 4. Checks: All checks issued by the Fund shall contain two signatures one of which shall be the Executive Director or Chairman of the Board and the other by the Vice-Chairman or other official of the Fund with check signing authority as approved by the Board of Directors. In the absence of the Chairman, Vice Chairman and the Executive Director, the Board of Directors shall appoint one among its members to sign jointly with the other official of the Fund.
- Section 5. The Executive Director shall ensure at all times that accounting records and support are maintained. Monthly financial statements with fund status reports must be prepared in accordance with generally accepted accounting principles and practices and copies thereof shall be provided to Board members. The accounts and statement of accounts of the Fund shall be audited by the Public Auditor or an independent auditor approved by the Public Auditor.
- Section 6. Moneys of the Fund not immediately required to meet the obligations of the Fund may be invested by the Board on such terms and conditions as the Board may determine.
- Section 7. The Board may, as it deems necessary, open and maintain savings, checking accounts and other investment forms with banks or savings and loan associations which are members of the Federal Reserve System or the Federal Deposit Insurance Corporation or which are reputable financial firms. Monies received by the Board shall be deposited into the account or accounts maintained by the Board.

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#### The Board shall cause to be collected and obtained.

- A. All monies pursuant to Article VII, Section 702(c) of the Covenant, and pursuant to Article II, Section 5 and Article III, Section 9A of the Northern Marianas Constitution.
- B. All monies to be received by or on behalf of the Fund, with respect to repayment of any loan made, including interest and other charges payable.
- C. All monies arising from property or investments acquired by or invested in by the Board.
- D. Other monies and property due and payable to the Fund.
- Section 9. The Board shall pay out of the Fund:
  - A. Loan amounts approved by the Board or the Executive Director.
  - B. Amounts approved by the Board or the Executive Director for investment.
  - C. All expenses, costs and obligations incurred for the administration and operation of the Fund.
  - D. Amounts expended or obligated for activities and projects under Section 12, Chapter VI.
- Section 10. The Board may, as necessary, require its borrowers to keep records and accounts in accordance with sound and generally accepted business practice, and may require them to furnish necessary information as to their business operations and accounts, deemed appropriate. The Board shall also retain the right to inspect the enterprises' finances, as well as their operations, records, and books of accounts.
- Section 11. The Fund shall review and from time to time determine the rates of interest to be assessed a borrower not to exceed the rate authorized by law.
- Section 12. The loan applicants shall pay all loan fees necessary or incidental to the loan. Such fees may include but are not limited to recording fees, notary fees, appraisal fees, or certified public accountant fees, in the event such is required by the Board, and attorneys fees incurred by the Board for the drafting of the loan documents in the making of the loan. In addition to these fees, the Board shall assess each loan applicant the following service charges:

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A. Loan Charges: Applicants for either a direct loan or loan guaranty shall be assessed the following service fee for making the loan:

Up to \$10,000..... \$ 10 \$10,001 to \$25,000..... \$ 25 \$25,001 to \$50,000..... \$ 50 \$50,001 to \$100,000..... \$ 75 \$100,001 or above.... \$100

In the case of an EDLF guaranty, the borrower shall be required to remit the applicable fees to EDLF prior to the execution of the guaranty agreement.

в. Loan Revision: In the event a loan is in default, the loan applicant may request or the Executive Director may recommend, a loan revision with the loan applicant by modifying the terms and conditions of the loan. Provided, however, that such revision or modification is reasonable and prudent and is to the benefit of the Fund. Commercial reasonableness shall be a primary consideration taken by the Executive Director in considering any loan revision or modification. Any such amendments for a revision must be with the approval of the Executive Director. As consideration of such revision or modification, the following administrative fee schedule shall be assessed the borrower:

| \$1 to \$10,000       | \$ 50 |
|-----------------------|-------|
| \$10,001 to \$25,000  | \$75  |
| \$25,001 to \$50,000  | \$100 |
| \$50,001 to \$75,000  | \$150 |
| \$75,001 to \$100,000 | \$200 |
| \$100,001 or above    | \$250 |

- Section 13. The repayment periods of loans to the Fund shall not exceed twenty (20) years. The Board shall determine the repayment period including any grace period with the following considerations:
  - A. The repayment capability of the enterprise;
  - B. The useful life of assets to be acquired under the Fund's assistance;
  - C. The optimum use of the Fund's resources by means of the turnover of its portfolio.
- Section 14. The Board shall set aside as a reserve not less than fifty (50%) percent of the amount of guaranteed loans.

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#### CHAPTER X. CREDIT UNDERWRITING

- Section 1. In all cases the applicant must be able to meet the following general credit requirements and credit underwriting criteria:
  - A. The applicant must be of good character.
  - B. The applicant must demonstrate an ability to operate his business successfully.
  - C. The applicant must be willing to provide the Fund with a reasonable equity in cash or in-kind or by way of collateral to ensure that the applicant has an appropriate stake in the venture.
  - D. The applicant must show that the proposed loan is of sound economic value to the respective community in which it will operate.
  - Е. The applicant must show that the past earnings, if any, and future prospects and potential of the company indicate the ability to repay the loan and other fixed debt, if any, out of profits; provided however, that where the Board determines that (1) the project or business is one that will substantially foster and facilitate the overall commercial and economic development of a particular industry, and (2) that the service or business is not otherwise reasonably or readily available locally, the Board in its sound discretion may make a loan (or "otherwise fund" and participate in a particular economic development project or business meeting the above criteria,) and after consideration of the criteria listed under Sections 1 and 2 of Chapter IV.
  - F. For all loan applications from \$100,000.00 to \$200,000.00, the loan applicant shall be required to submit financial statements and income projections which shall be reviewed by an independent certified public accountant. For new business with a loan application in excess of \$200,000.00, the loan applicant shall be required to submit financial statements and income projections which shall be compiled and reviewed by an independent certified public accountant. For an existing business, a loan application in excess of \$200,000.00, the loan applicant shall be required to submit financial statements and income projections which shall be compiled, reviewed and audited by an independent certified public accountant.

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- G. No loan applicant shall be cranted a loan if such person, partnership or corporation has been adjudicated bankrupt or has filed bankruptcy or was under receivership within three (3) years prior to the date of filing the loan application.
- H. No loan applicant shall be granted a loan if in default of any debt, loan or any financial obligation at the time of filing the application or if the loan applicant has a record of defaulting on previous loans or other credit extension without justification.
- I. No loan applicant shall be qualified for a loan in the event any property of applicant was actually foreclosed upon, or taken and sold at foreclosure sale to satisfy any debt owed to a creditor by the applicant, if such sale or foreclosure occurred within the last three (3) years before the date of the loan application. The Board shall also take into consideration any notices of default, collection problems experienced by previous lenders with respect to the applicant, or any other defects in the credit rating or comments made by any other creditors.
- J. No loan shall be granted to any EDLF Board member, or the Executive Director. Neither shall any loan be made to any corporation, company, association, partnership or legal entity in which any EDLF Board member, or the Executive Director, or any parent, spouse, son, daughter, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, or any member of his or her household, has any pecuniary interest, whether directly or indirectly.
- K. With the exception of EDLF Board members, and the Executive Director, the officers, counsel, agents, and employees of EDLF are eligible for a loan from EDLF, directly or indirectly. Provided, however, that they shall not, directly or indirectly, participate in the deliberation or upon the determination of any question affecting their personal interest or the interest of any enterprise in which their parent, spouse, son, daughter, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law or any member of their household is directly or indirectly interested.

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- L. No member of the Board, officers, counsel, agent, or employee of EDLF, either directly or indirectly, for himself or as representative or agent of another person, shall become a guarantor, indorser, or surety for loans from EDLF to others, nor in any manner be an obligor for money borrowed from EDLF by another.
- M. No loan shall be made to any person, for a hobby, personal entertainment or personal pleasure.
- N. All loan guaranties must meet and satisfy the same criteria as a direct loan.
- O. No loan applicant shall be approved unless sufficient securities or collateral is provided to secure the loan, pursuant to Section 1 of Chapter XI.
- P. No loan applicant shall be deemed to have been granted a loan unless and until the Executive Director so notifies the applicant in writing, and the applicant has indicated his acceptance in writing.
- Section 2. In addition to the above, the Board shall not make loans or loan guarantees under the following circumstances:
  - A. If funds are otherwise available on reasonable terms from other sources, including but not limited to personal resources, commercial banks, savings and loan associations and credit unions.
  - B. Illegal business activities.
  - C. For refinancing a debt not connected with an existing EDLF loan.

#### CHAPTER XI. SECURITY:

Section 1. The Board shall secure its loans and guarantees in accordance with sound lending practices, provided that in doing so, the Fund shall have due regard to its policy to promote economic development in the Commonwealth. Securities may consist of one, or a combination of the following, at the discretion of the Board:

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- A. Firs Monto age on Real Estate: Wherever possible, all loans shall be secured by a first mortgage or deed of trust interest in real estate and improvements. The loan to value ratio of any real estate first mortgage given as security shall not exceed eighty percent (80%) of the value of the assets, improvements and proposed improvements.
- B. Second Mortgage on Real Estate: Secondary mortgages are discouraged, but may be allowed if a loan application has a strong economic feasibility and potential for success, the loan applicant has a good credit rating and good repayment ability, and the total outstanding principal debt of the holder of the first security interest on the proposed EDLF second mortgage will not exceed more than eighty percent (80%) of the appraised value of the real estate and improvements thereon.
- C. Leasehold Mortgage: The total loan allowable on the first leasehold interest given as security shall not exceed 80% of improvements and/or proposed improvements, excluding the value of the land.
- D. Chattel Mortgage and Inventories: Loans may further be secured by a chattel mortgage or a security interest on personal and/or business properties provided that such loan shall not exceed fifty percent (50%) of the value of such personal and/or business properties, or of the purchase price thereof, whichever is lower, and provided that the Economic Development Loan Fund receives a first lien on the chattel mortgage or security interest. Crops or agricultural products such as livestock, poultry and fish may not be used as security for any Fund loan due to their perishable nature.
- E. Additional Security: In addition to any one or combination of the above securities, the Board may require individual guaranties from the shareholders of a corporation, partners, association and partnership, and an assignment of receivables and/or assignment of life or mortgage insurance for each loan applicant.
- Section 2. The Board in determining the value of all property being offered as security, be it real estate or personal property, may require a complete appraisal

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report or letter of appraisal by an appraiser acceptable to the Board. Loan applications in excess of \$25,000.00 shall be accompanied by a complete appraisal report. The Board shall examine the qualifications of the appraiser to determine whether or not his work product is acceptable. Where appropriate, appraisal reports on real property shall be done by a real estate appraiser whose work product is acceptable to a financial institution other than the Economic Development Loan Fund.

#### CHAPTER XII. DISBURSEMENTS:

- Section 1. At all times, the Executive Director and the Board shall insure that no funds shall be disbursed unless fully reviewed and that all the terms and conditions of the loan agreement have been satisfied in addition to the following:
  - A. No disbursement shall be made unless all the loan documents have been completed and executed and all fees, charges and other expenses have been paid and/or added to the total note due and payable.
  - B. No disbursement shall be made unless the loan applicant has produced all the necessary information and copies of any documents required as part of the loan application, including but not limited to insurance policies, releases, appraisal reports, etc., and the applicant shall have executed all loan documents, notes, mortgages, etc.
  - C. All disbursements shall be subject to accounting procedures and policies adopted by the Board.
  - D. In the event an approved loan is for a construction project, then with each increment payment, an amount equal to a minimum of ten percent (10%) of the incremental payment shall be withheld to assure that all subcontractors, materialmen and suppliers have been paid. Such retained portion shall be released after the project has been completed, upon a finding by the Executive Director that all of the materialmen, subcontractors and other suppliers have been paid. Each construction increment shall be done according to the plans and specifications and approved by the loan applicant or owner. Upon receipt of such approval, then such increment

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shall be inspected to the satisfaction of the Executive Director or his representative to determine that the work has been performed according to the plans and specifications. Upon approval of each increment by the Executive Director, funds may accordingly be disbursed, subject to the ten percent (10%) withholding as set forth herein above. The Executive Director may obtain the assistance of outside consultants, architects or engineers concerning the construction of a project financed by an EDLF loan. Such consultants may be retained whenever necessary to assure a sound and workmanlike project performance. The loan applicant shall be required to pay for the inspection and consulting fees.

E. In the event the disbursements involve the purchase of equipment, materials or personal property, disbursements shall be made only upon the loan applicant producing satisfactory receipts and/or evidence of purchase of the same and remit to EDLF the invoices and receipts prior to any future disbursement. The Executive Director shall exercise his sound discretion in authorizing release of funds with respect to the loan.

#### CHAPTER XIII. INSURANCE:

All loans having real estate improvements as security shall have the necessary insurance policies insuring the improvements against any damage due to earthquake, fire, typhoon and any other casualty up to the full insurable value of the improvements, provided, that at all times the insurance coverage shall not be less than the amount of the outstanding loan balance. With respect to construction loans, a loan applicant shall be required to produce a performance and payment bond covering the full value of the improvements and construction cost. EDLF may, in its sole discretion, waive bonding requirements on small local contractors, provided that the loan proceeds for the project is controlled and monitored closely by EDLF, and all costs in relation to the supervision of the fund proceeds, including supervision of the project, shall be borne by the contractor. Any real estate loan shall also have title insurance policies, if obtainable, naming the Fund as the loss payee. If title insurance is not obtainable and the property does not have a clear

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title, then an attorney's title opinion or such other assurances shall be obtained by the loan applicant as the Board may require and as approved by the attorney for the Board. The expense of such title insurance, casualty insurance, title opinion, etc., shall be paid solely by the loan applicant.

CHAPTER XIV. SERVICING OF LOAN:

A. The Executive Director shall institute a follow-up or tickler system and accounting system to assure that all the payments concerning all loans are received. The accounting systems as adopted by the Board shall be followed. Such systems shall include the follow-up on insurance

payments, principal and interest payments and production of any financial statements required pursuant to the loan agreement.

- в. All loans shall require at least an annual or semi-annual financial reports from all of the Fund borrowers, together with a status report of the business and the progress of their economic development. For loans of \$100,000.00 to \$200,000.00, the borrower shall submit annual financial statements reviewed by a certified public accountant. For loans in excess of \$200,000.00 the borrower shall submit annual financial statements compiled, reviewed and audited by a Certified Public Accountant. However, the Board, in its discretion, may require a borrower to submit monthly financial reports and balance sheets to the Executive Director, together with any information which from time to time shows the progress and status of the borrower. The Executive Director, or his representative, shall meet with each borrower at least semi-annually to discuss any problems with the borrower and to review his progress. The Executive Director shall submit to the Board such semi-annual progress report, or any report as required by the Board concerning each loan applicant. The Board may require the Executive Director to submit such reports more than semi-annually if the board deems it necessary. The Executive Director shall file with the Board field reports on all loans or invidivual loans as may be prescribed by the Board.
- C. The Board in its discretion may contract for the servicing and collection of all loans with a

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financial institution authorized to do business in the Northern Mariana Islands pursuant to Section 7, Chapter IX. The terms and conditions of such servicing agreement shall be determined by the Board.

#### CHAPTER XV. COLLECTION AND FORECLOSURES:

- A. The Executive Director or his representative shall closely monitor the repayment of all loans by the borrowers. All loan installments shall be due and payable monthly. If any payment is not received by the thirtieth (30) day after the due date, then the Executive Director or his designee shall personally contact the borrowers immediately thereafter concerning the payment default. The Executive Director shall also send out such letters or notices of default as may be necessary or required pursuant to the terms and conditions of the loan agreements and the various loan documents.
- B. In the event any due payments are more than ninety (90) days delinquent, then the matter shall be forwarded to EDLF's attorney for collection. The attorney shall be authorized to send such notices or letters of default and to institute legal action against the loan applicant to protect the right of the Fund and to minimize delinquencies.
- C. The Executive Director shall make a monthly report of all delinquent accounts with respect to status and nature and with respect to what notices were given.
- D. The Board shall use every effort to collect the monies due to the Fund and active measures shall be used for collection. It is important that the Fund be maintained in a strong position at all times and that delinquencies remain at a minimum.
- E. Any amendments to the terms and conditions of the loan, once granted, regardless of whether or not a loan is in default, shall require the approval of the Executive Director.

CHAPTER XVI. INVESTIGATION AND AUDITS:

The Board or the Executive Director may instruct a representative of the Fund, or may contract with a qualified person to investigate or audit the accounts

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of any borrower from the Fund or from the commercial banks guaranteed by the Fund in order to ascertain:

- A. Whether the loan has been used for the purpose for which it was granted.
- B. Whether there is evidence or indication of future difficulties arising that might prevent the borrower from repaying the loan in accordance with the loan agreement.
- C. Whether management or other assistance is needed to improve the business' operation.

# CHAPTER XVII. PRIVILEGED INFORMATION/APPROVAL NOTICE:

- A. The Executive Director, Board members and every employee of the Fund shall maintain the confidentiality of all matters relating to borrowers' and applicants' financial reports. Matters discussed by the Board, and any other information pertaining to any individual or corporation directly or indirectly involved with EDLF shall also be kept confidential.
- B. The Executive Director, Board members and every employee of the Fund shall not engage in the preparation of any EDLF loan application, provided, however, that EDLF's staff may assist a loan applicant in the preparation of a loan application within the office of EDLF without compensation.
- C. The Executive Director, or his authorized designee, is the only authorized officer of the Fund to release and provide notice of loan approval or disapproval to a loan applicant. Notices by other employees or Board members verbally or otherwise shall be invalid and have no effect.

CHAPTER XVIII. MISCELLANEOUS:

- Section 1. The Board members may, by resolution, make rules providing for:
  - A. Any matter for which Rules may be made under any other provision of these Policies and Regulations;

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- B. The application form and the manner in which application to the Fund for loans, guarantees or other assistance are to be made;
- C. The fees (if any) to be paid for or in connection with any loan application;
- D. The form and manner in which the receipt of any money from the Fund is to be acknowledged;
- E. The manner in which any document or notice may be served on or by the Fund;
- F. Any fee, rate, matter or thing which is required or desirable or in connection with these Policies and Regulations.
- Section 2. Amendment of Policies and Regulations: These Policies and Regulations may be amended from time to time upon recommendation of the Board of Directors and with the approval of the Governor.
- Section 3. Effective Date: These Policies and Regulations governing the Economic Development Loan Fund of the Commonwealth of the Northern Mariana Islands shall be effective upon publication in the Commonwealth Register as provided in Title 1, Division 9 of the Commonwealth Code.

EDLF Board of Directors rman,

Date:

Pedro P. Teporio, Governor

Date:

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\_ day Filed this, 190

Office of Registrar of Corporations Commonwealth of the Northern Mariana Islands

#### Public Notice

#### Adopted Regulation

#### Proposed Amendment No. 60485

#### Revenue and Taxation Regulations No. 8301

#### Authority

The Director of Finance (Tax Commissioner) in accordance with 4 CMC §1701(c) and §1818 shall promulgate needful rules and regulations for the enforcement of the NMTIT and all other taxes under Title 4 of the Commonwealth Code. Additional authority is also found on 1 CMC §2557.

#### Subject Matter

The proposed Amendment No. 60485 with the Additions noted below is adopted and became a part of Revenue and Taxation Regulation No. 8301 as amended. The adoption of the proposed regulation includes the following topics:

- A. General Provisions
- B. NMTIT Defined
- C. NMTIT Future Amendments
- D. Non Retroactivity
- E. Fresh Start Assets
- F. Deductions and Credits
- G. Accelerated Cost Recovery System (ACRS)
- H. Disincentive to Off-island Investments
- I. Floor Exclusion
- J. Tax Relief
- K. Foreign Sales Corporation
- L. Payment Deposit (Form 500)
- M. Special Rules for Trust Territory Citizens and Other Citizens

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N. Resident Defined

O. United States Agencies and Commonwealth Agencies

P. Commonlaw Relationship

Q. Forms and Returns

R. Effective Date

#### Additions

#### Section 4.1703.4(A)(a)

(3) If the appraisal is performed before and after the 6 months period prior to and after January 1, 1985, the appriasal may be used to find the future value (AT 1/1/85) and the present value (AT 1/1/85) which will be the FMV on January 1, 1985, by using the discounting method at the prevailing NMTIT §6621 interest rate per annum on January 1, 1985. The NMTIT interest rate on January 1, 1985 is 13% per annum.

Section 4.1709.1

(D) For partnerships and subchapter S corporations, the non-refundable credit for each partner or subchapter S shareholder shall be equal to the percentage share of the profits and losses or the capital (equity) ownership, whichever is applicable.

# Public Comments

The proposed regulation was given extended period so that there will be adequate time for the public to review and make comments for or against it. There are very few comments received from the public, the major comments are provided by the Tax Task Force. The Tax Task Force went through lengthy process in reviewing the propose regulation. Those comments and recommendations we believe are valid are taken into consideration.

#### Repealer

The proposed amendment No. 50285 to the Revenue and Taxation Regulation No. 8301 published in the Commonwealth Register volume 7 No. 2, Page 3445, on February 15, 1985, is hereby repealed.

PEDRO P. TENORIO GOVERNOR

Tomas B/Aldan

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The forms and returns prepared by the Internal Revenue Service may be adopted and modified to suit the application thereof.

Section 4.1818.7. Application of Penalty and Interest

The provisions of §4.1709.1(A) also determine the applicable penalty and interest. If §4.1709.1(A)(a) is higher than § 4.1709.1(A)(b), the applicable penalty and interest under the law for taxes on §4.1709.1(A)(a) will be applied. However, if an employee fail to make withholding payment deposit as required by §4.1818.1(A) of this regulation, and fail to file a quarterly return (OS-3705), the sum of all withholding taxes will be computed with the applicable penalty and interest charges under 4 CMC Chapter 7, and 8 separately, and the greater of the Chapter 7 or 8 will be applied.

Section 4.1818.8. <u>Effective Date.</u> The effective date of this regulation shall be January 1, 1985.

**APPROVED:** PEDRO P. TENORIO

Governor

TOMAS B. ALDAN Director of Finance

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## EMERGENCY and PROPOSED REGULATIONS Providing for Distribution of Headnote 3(a) Production Under the Limited Waiver Provided by Administrative Arrangement.

<u>Authority</u>: The Director of Finance, under his customs authority as provided for by 1 CMC §§2553(i) and 2557, hereby promulgates emergency regulations and proposed regulations for subsequent adoption which provide a distribution plan for manufacturers of the Headnote 3(a) limited waiver.

Emergency: The Director of Finance hereby finds under 1 CMC \$9105(b) that the public interest requires adoption of regulations providing a distribution plan for the limited waiver prior to providing public notice of thirty (30) days. This is necessary because the practical elimination of Headnote 3(a) manufacturing by Treasury Regulations (T.D. 84-171 and 85-38) in the Commonwealth of the Northern Mariana Islands has caused severe curtailment of production and the loss of numerous jobs to residents. An administrative arrangement with the United States government has lifted the restrictions imposed by the Treasury Regulations of 70,000 dozen sweaters. Production may commence and employment may be renewed as soon as this waiver is equitably distributed among Commonwealth manufacturers. These regulations provide for immediate distribution and shall remain in effect for one hundred and twenty (120) days or until adopted with or without amendments whichever occurs first.

#### Proposed Adoption: These regulations provide:

1. Distribution - The 70,000 dozen waiver shall be distributed equally among all sweater manufacturers incorporated and licensed as such in the Commonwealth of the Northern Mariana Islands prior to January 30, 1985, who produced in excess of 7,500 dozen sweaters under Headnote 3(a) by that date and who maintain forty percent (40%) local employment. The distribution of future waiver increases shall be determined by the quantity of local employees, their salaries, the quality of their jobs and the quality of any training programs.

2. Transshipment Prevention Measures - Upon importation, component parts shall be checked against Customs rulings for the style involved. Nonconforming component parts will not be certified later. Samples shall be clearly marked as such. Upon exportation, an affidavit as to the processing shall be executed under penalty of perjury in order to receive a certification. Perjury may result in criminal prosecution as well as a loss of all or part of a company's share of the waiver.

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<u>Comment</u>: Interested persons may submit in writing any data, views or arguments during the next thirty (30) days to the Director of Finance and the Attorney General. All comments will receive careful consideration prior to any action.

| Certified by: Jomas B. Aldan                  | 5/20/85<br>DATE                          |
|---|--|
| Director of Finance                           |  |
| Concurred by:<br>PEDRO P. TENORIO<br>Governor | =  |
| 5/20/5<br>Date of Filing with the Registrar   | Andra Matly<br>REGISTRAR OF CORPORATIONS |

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Managuahayi para distribusion i Headnote 3(a) na production gi papa i madespensa na medida sigun i areglamenton i administrasion.

<u>AUTHORIDAD</u>: I Direcktod i Bandan Salape, gi papa i autoridadna gi departmanenton i Customs nu i nina guahayi nu i l CMC §§2553(i) yan 2557, estaguiya hana guahayi inalulu na regulasion nu i mapropone despues de maadapta i plano nu i munaguahayi i madespensa na medision gi bandan Headnote 3(a).

INALULA: I Direcktod i Bandan Salape estaguiya na hasoda gi papa i 1 CMC §9105(b) na i interes i publico na nesisita na u adopta regulasion pot planon distribusion para i limitibo na mmadespensa antes de u guaha noticia para i publico 30 dias. Necessario este sa i practicat na eliminasion i Headnote 3(a) nu i para man produsi ginen i regulasion i Tresurero (T.D. 84-171 yan 85-38) gi Commonwealth gi San Katan Siha na Isla adit na haprevene production ya hana fan malingo siha chocho para taotao natibo. Ι areglamenton Administrasion yan i estados Unidos na Govetnamento hana suha este na prevesion i nina guhayi nu i Regulasion i Tresurero pot 70,000 dosena na magagon manengng. Production debe de ututuhon yan bandan empleao debe de u ma renueba gigigo ha i man debidin paraho este na despensasion gi entalo i man mamatitinas gi halom i Commonwealth. Este na regulasion ha na guahayi immediatemente distribution ya debe de uffectibo pot lomenos siento bente (120) dias osino asta ke maadapta osino ma amenda o masea amano i finnena masusede.

I MAPROPONE NA UMAADOPTA: Este siha na regulasion ha na guahayi:

1. Distribusion - I 70,000 dosena nu i madespensa debe de u madibidi pareho gi entalo i man manprododosi ya man malicencia pareho gi Commonwealth i San Katan Siha na Isla antes de i Enero 30, 1985, yan eyo siha i man man produsi mas ke 7,500 dosena na chininan manegng gi papa i Headnote 3(a) guenao na fecha yan loque guaha 40% na emplao taotao natibo. I distribusion i mamaila na tiempo para u dinetetmina nu i cantida na empleao taotao natibo, i suetdon nihna, yan i qualidad chocho, cantida yan experencia.

2. Prevension Sumogo Catga gi Carerana - Duranten i encatgo, patte siha debe de u pareho yan i areglamento Customs pot modelo. I titumatiyi este na areglamento, ti uma certifica despues. Modelo para u ma copia debe de i ma-marka como siempre. Gi mana hanaona i carga, u guaha affidavit guachongna na ha testifica i machoguen i catga, yan i papa i penan i mandagi yangyin para u resibe i certification. I mandagi siempre ultimmona u guaha criminat na castigo yan malingon todo parte gi cabo i compania guine na dinespensa.

<u>Commento</u>: Todes man enteresao na petsona debe de unahalom i matugi na opinion, dinesea osino argumento gi duranten i mamaila trenta (30) dias para guato gi Directot Babdan Salape yan i

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Attorney General. Todo commento siempre u manai considerasion antes de u guaha hafa na action.

Ma Certified by: Fećha TOMAS Β. ALDAN Director of Finance Concurred by: TENORIO PEDRO Ρ. 'ech⁄a Governor Fecha nai numalom gi Registrar Registrar of Corporat on

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Filed this <u>30</u> May

# REGULATIONS PROVIDING FOR DISTRIBUTION Northern Meriane Lal OF HEADNOTE 3(a) PRODUCTION WINDER THE LIMITED WAIVER PROVIDED BY ADMINISTRATIVE ARRANGEMENT

## ARTICLE I. GENERAL PROVISIONS

Section 101. Purpose. These regulations shall provide for a division among CNMI sweater manufacturers of the import limit placed by the United States upon cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646 assembled in the CNMI from a minimum of four major sweater parcels which originate in a country whose sweater exports to the United States are subject to quota.

Section 102. Findings. The following administrative findings constitute the basis for these regulations:

(a) On January 9, 1978 upon the inception of the government of the Commonwealth of the Northern Mariana Islands General Headnote 3(a) to the Tariff Schedules of the United States, 19 U.S.C. 1202, provided a country of origin rule specifically for insular possessions of the United States. That rule provides that an article is a product of the insular possessions if it does not contain foreign materials exceeding 50% of the total appraisal value of the product. There are no quota restrictions or duties applicable to insular possessions.

On February 22, 1983 the United States Customs Service (b) recognized that Headnote 3(a) applied to the Commonwealth of the Northern Mariana Islands under Section 603(c) of the Covenant which provides the same treatment for imports from the Northern Mariana Islands into the United States as imports from Guam into the United States.

(c) Based upon that decision, certain corporations located sweater factories in the Commonwealth and began assembly operations under Headnote 3(a).

(d) On August 3, 1984 the Customs Service published interim regulations governing the importation of textiles and textile products into the United States (T.D. 84-171). These regulations, which applied to insular possessions, provide that articles which consist of materials which originated in a foreign country shall be considered as products of an insular possession only if the article has been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character or use distinct from the article or material from which it was so transferred. Essentially, assembly operations which contribute 50% to the final appraisal value of an article will no longer qualify the article as originating in the Commonwealth of the Northern Mariana Islands.

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(e) As a result of the interim regulations, the sweater manufacturers have been unable to import sweaters into the United States Customs Territory, thereby threatening the existence of such an industry in the Commonwealth.

(f) On April 4, 1985 the Customs Service adopted the interim regulations, with minor amendments, as a final rule (T.D. 84-38).

(g) As a result of many months of discussion with the Committee for the Implementation of Textile Agreements (CITA) and the Office of the United States Trade Representative an administrative arrangement for the waiver of the regulations for 70,000 dozen sweaters annually was agreed to by the United States government and the government of the Northern Mariana Islands on January 30, 1985. A directive from the Chairman of CITA to the Commissioner of Customs establishes an import limit and certification requirements to be effective on April 15, 1985. However, the annual period commenced on November 1, 1984.

(h) The amount of the annual waiver was established by the United States as the annual production capacity of the sweater manufacturers which were engaged in manufacturing under Headnote 3(a) in the CNMI.

(i) It is necessary to establish a system for the distribution of the waiver among those factories.

#### ARTICLE II. WAIVER CERTIFICATE

Section 201. Waiver Certificate. The Chief of the Division of Customs shall issue a waiver certificate to applicants who meet the criteria set forth in Section 202 which will entitle the holder to a pro rata share of the waiver. The certificate shall specify the number of sweaters in the share.

Section 202. Eligibility for Certificate.

(a) An applicant is eligible for a waiver certificate upon proof of:

(1) incorporation in the Commonwealth of the Northern Mariana Islands prior to January 30, 1985;

(2) a valid license to conduct a sweater manufacturing business prior to January 30, 1985;

(3) CNMI certificates of origin evidencing production in excess of 7,500 dozen sweaters under Headnote 3(a) prior to January 30, 1985; and

(4) full time employment of workers who are either United States citizens, certificate of identity holders, Public Law No. 5-11 permanent residents, or Trust Territory

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citizens who comprise at least 40% of the company's labor force. Failure to maintain this minimum requirement at any time during the year shall cause a certificate to be suspended until proof of compliance.

(b) Application for a waiver certificate shall be made before June 1, 1985.

(c) Certificates shall be awarded prior to June 10, 1985.

<u>Section 203.</u> Duration of Certificate. A waiver certificate shall be valid for one year. The Chief shall reissue certificates annually in October. The Director may amend the eligibility requirements in Section 202 in his discretion.

Section 204. Non-Assignable Certificates. Waiver certificates cannot be assigned, sold, or transferred by the holder to any other person or entity.

## Section 205. Change in Pro Rata Shares.

(a) Upon any decrease in the amount of the waiver by the United States, the effect of the decrease shall be shared equally among each of the holders of waiver certificates, to the maximum extent practicable.

(b) If the Chief determines upon a hearing that a company cannot be reasonably expected to utilize its entire waiver within the year, the share of the company may be re-assigned in equal shares to the remaining companies which can reasonably be expected to utilize the remainder.

Section 206. Retroactive Effect. The waiver certificates issued in June of 1985 shall be retroactive to November 1, 1984 and shall expire on October 31, 1985. All shipments already documented by certificates of origin which entered the United States as part of the 70,000 dozen waiver shall be debited against the amounts of the certificate holders.

# Section 207. Increase of Waiver.

(a) The division of shares of any waiver in excess of the 70,000 dozen agreement shall not be by pro rata share.

(b) Such division shall ensure a continued commitment by manufacturers to the training and employment of resident workers. Resident workers are those described in Section 202(a)(4).

(c) To the pro rata share of each company of the increased waiver shall be added a percentage of the entire amount of the increased waiver for certain achievements which shall be subtracted equally from the other companies' shares. The achievements of each company shall be assessed by the Chief of Customs in consultation with the Director of Commerce and Labor looking at the company's performance over the year. The

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achievements and percentages are:

|          |         | company w   |      |         |        |       |   |    |
|----------|---------|-------------|------|---------|--------|-------|---|----|
| resident | workers | (the number | r of | man hou | rs per | year) | • | 5% |

(2) for the company which has paid the most total salary for resident workers over a year  $\dots$  5%

Example: If there are three companies eligible and the waiver is increased to 130,000 dozen, if one company received all the awards, then it would be entitled to 23,333 dozen (base pro rata share of 70,000 dozen) plus 20,000 (base pro rata share of 60,000 increase) plus 12,000 (20% of the 60,000 increase). The other companies would receive 23,333 plus 14,000 dozen each.

#### ARTICLE III. CERTIFICATION PROCESS

# Section 301. Commonwealth Imports.

(a) Imports of any component parts which come under the administrative agreement must be identified as such to Customs upon inspection.

(b) A company with a waiver certificate shall identify upon inspection the style of sweater to be assembled and shall provide the Customs inspector with a copy of the applicable Customs ruling for assembly of that style.

(c) The Customs inspector shall inspect the component parts of each shipment and compare them with the components called for by the ruling. If the component is a more finished product than specified, the Customs inspector shall notify the Chief of Customs. The Chief shall not issue a certificate of origin or a sweater quota exemption certification for any sweater utilizing the nonconforming component piece.

(d) All completed sweater samples shall be clearly and individually marked as samples. In addition, their container shall clearly indicate that samples are enclosed.

(e) The Chief of Customs shall cause records to be kept to identify imported component parts in exported finished sweaters.

#### Section 302. Commonwealth Exports.

 (a) A company seeking a sweater quota exemption certification shall apply to Customs by executing under penalty
 COMMONWEALTH REGISTER
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 PAGE 3620 of perjury an affidavit which states:

(1) the quantity of sweaters;

- (2) the MFA category;
- (3) the style number;
- (4) the country of origin of the component part; and

(5) that each of the sweaters was assembled in the Northern Mariana Islands from a minimum of four separate major sweater panels.

(b) The Customs inspector shall check the shipment against the record of importation and shall stamp the front of the original commercial invoice in blue ink only if he reasonably believes the shipment qualifies under the certification agreement.

(c) The affidavit shall be kept in a file for that company with a deduction made from the company's share of the waiver.

Section 303. Perjury. In addition to criminal prosecution, the Chief of Customs may revoke a portion of a company's present or future quota if he finds, after an administrative hearing, proof by a preponderance of the evidence of perjury in the affidavit submitted under Section 302.

#### ARTICLE IV. CUSTOMS RECORDS

<u>Section 401.</u> Signature Authority. The Chief of Customs shall designate by letter to the Director of Finance four officials, including himself, authorized to issue and sign the certificates.

<u>Section 402. Certification Stamp</u>. The Chief of Customs shall be responsible for the security of the sweater quota exemption certification stamp.

#### Section 403. Records.

(a) At the minimum, the following records must be maintained by the Customs Division:

(1) importation of component parts listing quantities, style numbers, countries of origin, fiber, and recipient;

(2) affidavits upon exportation under the waiver;

(3) certificates of origin; and

(4) a current account of the remaining share of each company.

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Section 404. Inspection of Premises. Customs inspectors shall make periodic inspections of business premises, paying particular attention to:

(1) the processes of manufacturing;

(2) the component parts utilized;

(3) the number of resident workers and the types of tasks assigned, and

(4) the presence of any training programs for resident workers.

<u>Section 405. Audit</u>. As a condition of accepting a waiver certificate, a company consents to provide the Public Auditor of the Commonwealth of the Northern Mariana Islands with access to and the right to examine and copy any records, data, or papers relevant to the manufacturing process in the Commonwealth.

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Filed this

Office of Registrar of Corporations Commonwealth of the Northern Mariana Islands

## PROPOSED COMPREHENSIVE IMMIGRATION REGULATIONS

The Attorney General for the Commonwealth of the Northern Mariana Islands, under the authority vested by Section 5(b)(1) of Public Law No. 3-105, hereby proposes comprehensive regulations governing the Office of Immigration and Naturalization.

These proposed regulations will replace the regulations adopted on July 15, 1982, which have been repealed by Section 29 of the Commonwealth Entry and Deportation Act of 1983. The subjects included in the regulations are:

- I. GENERAL
- II. APPOINTMENTS
- III. CONDUCT OF INSPECTORS
  - IV. REGISTRATION
  - V. PORTS OF ENTRY
- VI. VESSEL AND AIRCRAFT ENTRY
- VII. ENTRY PERMIT
- VIII. EXCLUSION
  - IX. FOREIGN INVESTOR VISAS
  - X. HEARINGS
  - XI. EFFECT OF REGULATIONS
- XII. FEES

The text of the regulations follows this notice.

These regulations propose substantial changes in the immigration law. Interested persons may submit data, views and arguments in favor or opposed to these regulations in writing to the Office of the Attorney General, Nauru Building, Susupe, Saipan, prior to June 15, 1985. All submissions respecting these regulations will receive careful consideration in determining the final form of any regulations covering these subject matters.

Certified: ORD C. KOSACK Attorney General

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I Attorney General para i Commonwealth i San Katan Siha Na Isla, gi papa i autoridad nu i ninaguahayi nu i Section 5(b)(l) ni i Lai Publico 3-105, estaguiya na hapropone regulasion na hagobebetna i Officinan i Immigration.

Este siha i man mapropone na regulasion para u cuentayi i regulasion nu i maadapta gi Julio dia 15, 1985, nu i cuenentayi nu i Section 29 gi Commonwealth Entrada yan Deportasion na Acto gi 1983. I subjecto ni i man incluso guine na regulasion este siha:

- I. HENERAT
- **II. APPONTASION**
- III. CONDUCTAN INSPECTOR
- IV. REHISTRASION
- V. PUETTON ENTRADA
- VI. ENTRADAN BATKO YAN BATKON ARIE
- VII. PREMISION ENTRADA
- VIII. TI SUMAO NAO
  - IX. VISA PARA ENTRANGERO NA COMMETSANTE
  - X. INENKONGOG
  - XI. EFFECTIBON REGULASION
- XII. APAS

I taotaotao este na regulasion para u tatiyi este na noticia.

Este na regulasion ha propose noncuantos tinelaika gi lain Immigrasion. Todo man interesao na taotao debe de u na halom, argumento, ponto, pareho ha contestasion pat kinentfotme pot este na regulasion ya u matugi ya u mana halom guato i officinan i Attorney General, Nauru Building, Susupe, Saipan antes de Junio dia 15, 1985. Todo man halom pot este na regulasion para u resibe considerasion nu i para u dinetetmina i ulttimo na form gi masea hafa na regulasion gi pareho na subjecto osino articulo.

Certified: KOSACK ORD С.

Attorney General

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#### EMERGENCY REGULATIONS

## OFFICE OF IMMIGRATION AND NATURALIZATION

The Attorney General for the Commonwealth of the Northern Mariana Islands, in accordance with Section 5(b)(1) of Public Law 3-105 and 1 CMC §§ 9105(b) and 2171, hereby finds that there is a need to immediately promulgate regulations for the Division of Immigration and Naturalization and that it is in the public interest that these regulations take effect prior to public notice and public hearing. This is necessary because Public Law 3-105 repeals Chapter 3 of Title 53 of the Trust Territory Code and the regulations promulgated thereunder which provided for such matters as the processing of applications for entry permits from aliens who want to enter the Commonwealth as tourists, workers, businessmen, investors, or dependents. In the absence of these regulations there are no procedural guidelines by which Immigration may issue permits, record aliens who are on island, determine how long aliens should remain in the Commonwealth or determine how aliens should be dealt with should they violate the At the same time, this issue of the Commonwealth Register law. proposes comprehensive regulations which cover these subjects. However, because these regulations propose substantial changes in the law, it is believed that it is in the public interest to first provide 30-day's notice and opportunity to comment on the proposed changes prior to adoption.

Therefore, the regulations promulgated under 53 TTC Chap. 3 are hereby promulgated as emergency regulations to become effective upon notice to the Registrar of Corporations and to remain in effect for 120 days or until the regulations proposed in this issue are adopted with or without amendment, whichever occurs first.

The regulations referred to are found at Volume 4, Number 3 of the Commonwealth Register (July 15, 1982).

| Certified by:      | ex out C Losa     | <u>k 5/11</u>      | 185       |
|--------------------|-------------------|--------------------|-----------|
| Ϊ.                 | RECTORD C. KOBACK | / Date             | 9         |
|                    | Accorney General  | -•                 |           |
| Concurred by:      | (Dgn)             | JIN                | 185       |
|                    | PEDRO P. TENORIO  | / Date             | e         |
|                    | Governor          |                    | ~         |
| 5/201              | 185               | Janha Va           | atler     |
| Date of Filing wi  | th Registrar      | Registrar of Corpo | rations   |
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## INAMULA NA RECULASION OFFISINAN I IMMIGRATION YAN NATURALISION

I Attorney General para I Commonwealth I Sankatan Siha na Isla, sigun i Section 5(b)(1) gi Lai Publico 3-150 yan 1 CMC §§9105(b) yan 2171, estaguiya hasoda na necessario na immediatemente debe de unaguaha regulasion para i Division i Immigrasion yan Naturalization yan loque pot interes i publico este na regulasion debe de uffectibo antes de u guaha inekengog publico. Necessario este sa i Lai Publico 3-105 ha puno i Chapter 3 Titulo 53 gi Lai Trust Territory Code yan regulasion nai hana guaha areglamento pot applicasion para entrada ginen taotao hiyung nu i manmalago man halom gi Commonwealth como turista, para manmachocho, cometsiante yan dependensia. Gi tumaiguen este na regulasion taya areglamento anai sina ma detetmina cuanto tiempo para sumagana i taotao hiyong gi halom i Commonwealth osino hafa para u machogue nu este siha na taotao yangin ma contra i Lai. Gi mismo tiempo, este na noticia ginen i Commonwealth Register ha propone na unaguaha finu na areglamento na ha embrasa este siha na subjecto. Eyu mina, pot este siha na regulasion ha umentayi i tinelaika gi Lai, mahongi na i interes publico debe de u naguahayi 30 dias na noticia para u guaha opportunidad para commento pot i mapropone na tinelaika antes de u ma adopta.

Asikomo, i regulasion gi papa i 53 TTC Chap. 3 estaguiya na hanaguaha inalula na regulasion ya u effectibo gi hilo i noticia para guato gi Regisrar of Corporations ya u maconsigi pot lomenos 120 dias asta ke maadopta yan amendasion osino sin nihafa na amendasion, masea amano i finnena masusede.

Certified by: EXFORD C. KOSACK Attorney General Concurred by: PEDRO/P. TENORIO Governor

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#### IMMIGRATION AND NATURALIZATION REGULATIONS

## I. GENERAL

Section 101. Purpose. These regulations shall replace those rules and regulations repealed by Section 29 of Public Law No. 3-105.

Section 102. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105. As used herein, "inspector" shall include registrars, examiners, inspectors, and all officers of the Immigration and Naturalization Office.

## II. APPOINTMENTS

Section 201. Immigration and Naturalization Officer. The Immigration and Naturalization Officer shall be appointed by a letter of appointment signed by the Attorney General delivered to the Immigration and Naturalization Officer and the Governor.

#### Section 202. Inspector.

A. Inspectors shall perform all the duties of the Office of Immigration and Naturalization under Public Law Nos. 1-8 and 3-105.

B. Inspectors shall be appointed by memoranda of the Immigration and Naturalization Officer with the written concurrence of the Attorney General. To become effective, the appointments must be followed by the execution of an oath of office.

#### Section 203. Examiner.

A. Examiners shall provide further examination of persons excluded at the borders by an inspector. An examiner shall have the powers and duties described in Sections 14-16 of Public Law 3-105 specifically and those of an inspector generally.

B. Examiners shall be designated by memoranda of the Immigration and Naturalization Officer with notice to the Attorney General. Appointment to the position of examiner does not entitle the examiner to an increase in compensation and shall not be considered as a promotion or demotion. There shall be one examiner on duty with an inspector at each port of entry when clearing vessels.

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## Section 204. Registrar.

A. Registrars shall register aliens in accordance with Section 24 of Public Law No. 3-105 and the regulations issued thereunder.

B. Registrars shall be inspectors designated as registrars by the Immigration and Naturalization Officer with notice to the Attorney General. Appointment to the position of registrar does not entitle the registrar to an increase in compensation and shall not be considered as a promotion or demotion. There shall at all times be at least two registrars whose duty station shall be at the Main Office.

# III. CONDUCT OF INSPECTORS

Section 301. Personnel Service System Rules and Regulations. The Personnel Service System Rules and Regulations, as finally adopted by the Civil Service Commission, shall apply to all inspectors. All amendments thereafter shall apply. In particular, the Code of Ethics, Part V(D), applies to every inspector. The Immigration and Naturalization Officer shall cause a copy of the Code of Ethics to be delivered to every inspector to be kept at his or her work station.

#### Section 302. Dress.

A. No inspector shall report to duty unless dressed in full uniform. Full uniform consists of black shoes, dark socks, dark blue pants, black leather belt, light blue shirt, name tag and badge. Those items issued by the government cannot be substituted. In cold weather, the government-issued dark blue jacket shall be worn.

B. Clothing shall be clean and ironed. Shoes shall be shined. The inspector must be clean shaven and neat.

## Section 303. Punctuality.

A. An inspector shall arrive at his assigned station on time for his shift in uniform and prepared to work. Failure to do so may result in suspension or termination. This is particularly important at the ports of entry where the commercial activities of the Commonwealth depend upon Immigration to promptly clear vessels and aircraft.

B. If an inspector is unable to arrive on time or is unable to show up to work, he shall immediately notify his supervisor in advance. If his supervisor is unavailable, he shall notify the Assistant Chief or the Immigration and Naturalization Officer. Failure to do so may result in suspension or termination.

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## Section 304. Chain of Command.

A. Requests or grievances shall be brought within the chain of command in order to provide for an orderly, non-partisan resolution of problems within the Office. An employee shall not pursue a grievance with a higher rank supervisory official until he has done so with a lesser rank official.

B. The one exception to the rule is that informal grievances may be brought to the Personnel Officer in order to seek advice.

#### IV. REGISTRATION

<u>Section 401.</u> Purpose. These regulations shall provide for a system of annual registration as required by Section 24 of Public Law No. 3-105.

<u>Section 402. Definitions</u>. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105.

#### Section 403. Registration.

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A. Every alien who remains in the Commonwealth longer than ninety (90) days shall register with the Office of Immigration and Naturalization.

B. Every alien who is present in the Commonwealth on the first day of a calendar year shall register within forty-five (45) days with the Office of Immigration and Naturalization. This is a continuing obligation which must be renewed annually.

C. Parents and legal guardians are responsible for the registration of aliens under the age of 18.

## Section 404. Registered Alien Card.

A. Aliens who file the required documents, pay the required fee, and who are legally present in the Commonwealth shall receive a Registered Alien Card.

B. The Registered Alien Card shall have the alien's photograph on one side and the signature of the Immigration and Naturalization Officer or a Registrar on the other side. The card shall also include a physical description, the name and address of the alien's employer, the expiration dates of the entry permit, passport, and labor certificate, as well as the alien's local address. The front of the card shall have the seal of the Commonwealth of the Northern Mariana Islands printed in the background.

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Any alien 18 years old or older shall keep his or her Registered Alien Card in their personal possession.

Section 405. Registration Fee. No Registered Alien Card shall issue until the alien has paid a ten dollar (\$10.00) application processing fee to the Treasurer of the Commonwealth of the Northern Mariana Islands. Any alien issued a card without payment of the fee shall not be deemed to have registered as required by law.

## Section 406. Application.

A. The alien must complete an Alien Registration Application and sign it under penalty of perjury before a Registrar.

B. Any alien who is a nonresident worker must submit a completed Affidavit of Employer of Nonresident Worker. The affidavit must be signed under penalty of perjury.

### Section 407. Examination.

A. Upon registration the alien must appear before a registrar in the Office of Immigration and Naturalization.

B. The registrar shall require the alien to take an oath under penalty of perjury that the information submitted is true and correct and witness the alien's signature to that effect upon the Alien Registration Application. In addition, the alien must answer under oath questions relevant to the application and the alien's immigration status.

## Section 408. Not Evidence of Legal Status.

A. The purpose of the Alien Registration Card is to provide the alien with acceptable identification.

B. The purpose of the application is to provide the government of the Commonwealth of the Northern Mariana Islands with background information on each alien, statistical data for the purpose of analyzing immigration in the Commonwealth, and a means of a detecting overstays among aliens.

C. The issuance of a Registered Alien Card is not an adjudicatory act determining the legality of an alien's status. It is evidence only of the receipt of information for the above purposes.

Section 409. Immigration Processing. The Immigration and Naturalization Officer shall cause the information received to be recorded on computer or on a card file. In addition, a current file system shall be established with a file for each alien containing, at the minimum, the application forms and a photograph of the alien.

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Section 410. Effective Date. This Part shall apply to registration during 1985. However, those aliens who have registered prior to the notice of these regulations shall be deemed to have validly registered if they have submitted the required documents, the Commonwealth Treasurer retains their application fee and they have been issued an Alien Registration Card.

#### V. PORTS OF ENTRY

Section 501. Purpose. The Attorney General shall designate Ports of Entry for arriving aliens under Section 26 of Public Law No. 3-105.

Section 502. Saipan and Northern Islands. There are hereby designated only two ports of entry for the island of Saipan and those islands of the Commonwealth north of Saipan:

A. Saipan International Airport (at Aslito Field) for air carriers,

B. Charlie Dock (Tanapag Harbor, Saipan) for ocean carriers.

Section 503. Tinian. There are hereby designated two ports of entry for the islands of Tinian and Aguigan:

A. North Field Airport, Tinian for air carriers,

B. Tinian Harbor for ocean carriers.

Section 504. Rota. There are hereby designated three ports of entry for the island of Rota:

A. Rota International Airport for air carriers,

B. West Dock (Sasanlago Harbor),

C. East Dock (Sasanhaya Harbor).

Section 505. Exclusive Ports of Entry. The ports of entry designated in Sections 502, 503 and 504 are exclusive. Any person who unlawfully enters or attempts to enter the CNMI or any alien who enters or attempts to enter the CNMI at a place other than these ports of entry is guilty of a crime under Section 25(a) of Public Law No. 3-105. In addition, any carrier, master, commanding officer, purser, person in charge, agent, owner or consignee of any vessel or aircraft who knowingly brings or attempts to bring or aid, abet or assist in bringing any person into the Commonwealth at other than these ports of entry maybe punished by a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each occurrence.

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#### VI. VESSEL AND AIRCRAFT ENTRY

Section 601(A). Permission to Enter. No vessel or aircraft, unless military, shall enter the CNMI without first having received permission from the Immigration and Naturalization Officer. A vessel or aircraft master or pilot may file an Application For Vessel Or Aircraft To Enter The Northern Mariana Islands. Request for permission to enter shall contain the following information:

1. Vessels:

a. Name of vessel,

- b. Place of registry and registration number,
- c. Name, nationality and address of operator,
- d. Name, nationality and address of owner,
- e. Radio call sign,
- f. Length, breadth and depth of vessel,
- g. Gross tonnage,
- h. Last port of call,
- i. Date of last entry,
- j. Purpose of entry,
- k. Approximate duration of stay,
- 1. Port of next destination,
- m. Name and address of agent,
- n. Estimated time of arrival.
- 2. Aircraft:
  - a. Type and serial number of aircraft,
  - b. Name, nationality and address of senior pilot,
  - c. Name, nationality and address of owner,
  - d. Plan of flight route,
  - e. Landing weight,
  - f. Date of last entry.

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- Port of next destination, g.
- Name and address of agent, h.
- i. Purpose of entry,
- Estimated time of arrival. j.

Section 601(B). Aircraft may obtain multiple entry permission upon submission of the type and serial number of the aircraft, the name, nationality and address of the owner, the purpose of entry, the name, address and phone number of the agent, and roster of all flight staff. This multiple entry permission shall remain in effect for one (1) year and is specifically conditioned on the local agent providing at least seven (7) days in advance to the Immigration Officer an estimated passenger forecast and the port of last call for the aircraft.

Section 601(C). Non-commercial pleasure vessels or aircraft may arrive at the ports of entry without prior permission to enter if:

They immediately notify the port authority of their 1. entry and their lack of permission to enter from the Immigration and Naturalization Officer,

The total number of crew and passengers is less than ten 2. (10) persons,

The master or pilot immediately reports to port 3. authority to request Immigration clearance,

The master or pilot fills out the form entitled 4. "Application For Vessel Or Aircraft To Enter The Northern Marianas", and

No member of the crew leaves the vessel or aircraft 5. until directed to do so by an Immigration Inspector.

Section 602. Emergency Entry. Upon request, the Immigration and Naturalization Officer may authorize the emergency entry of a vessel or aircraft to CNMI port of entry in the event of distress, weather, mechanical, or medical emergency. Post-entry authorization may be granted where circumstances do not permit pre-entry authorization. No vessel or aircraft which has entered a CNMI port by reason of an emergency shall be permitted to depart the CNMI until a written report of the emergency incident, bearing the subscription of the master of such vessel or senior pilot of such aircraft, is filed with and evaluated by the Immigration and Naturalization Officer with the concurrence of the Attorney General. If the emergency is not verified by such report, the entry shall be considered as being unlawful. The period of stay authorized by an emergency entry shall be limited to that length of time until the emergency circumstances have been resolved. The

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owners, agents, crew, passenger and master of any such vessel or aircraft shall be liable for the costs of inspectors providing services at hours other than working hours in accordance with Section 605.

Section 603. List of Crew and Passengers. The master or pilot of every vessel or aircraft arriving in the CNMI from a port outside the CNMI shall furnish a list of the crew and passengers aboard before the commencement of inspection.

<u>Section 604.</u> Departure of Vessel or Aircraft. The privilege of a vessel or aircraft to enter the CNMI may be revoked or suspended at any time by the Immigration and Naturalization Officer. Grounds for revocation or suspension include violation of any section of these Regulations or violations of Section 22 of Public Law No. 3-105. An aircraft or vessel's privilege to enter shall be suspended if the aircraft or vessel abandons any of its crew in the CNMI. The period of suspension shall be at the discretion of the Immigration and Naturalization Officer.

## Section 605. Compensation for Services Rendered.

A. Established working hours for Immigration inspectors are on Mondays through Fridays, except legal holidays, from 0730 to 1630 hours.

B. All carriers and persons who require the services of inspectors at other than established working hours shall pay the overtime costs of the inspectors providing such services. The rate overtime compensation is one and one-half  $(1\frac{1}{2})$  times the inspector's basic pay.

C. There shall be a minimum charge of two hours overtime. Otherwise, charges shall be based on actual time.

1. On legal holidays, the rate shall be at holiday pay. The holiday pay rate is two (2) times the base salary rate or the adjusted salary rate. A salary rate may be adjusted by overtime compensation.

2. In the event that an inspector is entitled by law to any other adjustment in pay (eg. hazardous pay), then such charges shall be passed on to the carrier.

D. Computation of time:

1. If services are requested, but need not or cannot be performed through no fault of the inspector, the minimum charge shall be assessed.

2. If services are rendered for more than one vessel/ aircraft of the same owner arriving within two hours of one another, the charge shall be computed on a continuous basis.

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3. If in Section 605(d)(2) the vessels have different owners, the service charges shall be apportioned among them:

a. for passenger inspection, the charges shall be apportioned based on each carrier's passenger count, ų

b. for non-passenger inspection, the charges shall be based on actual time, and

c. for a combination of non-passenger and passenger inspection, the charges shall be based on actual time.

4. If the vessels arrive two or more hours apart, the period shall not be continuous and the two hour minimum charge shall apply to each arrival.

### Section 606. Clearance During Journey.

A. Clearance services may be provided during the journey of a vessel or aircraft upon request.

B. The charges shall be according to Section 605(b) and (c).

C. All necessary transportation shall be furnished by the master, owner or agent. The master, owner, or agent shall provide to the inspector per diem at the prevailing government rate or adequate hotel accommodations if the vessel departure is delayed and the inspector is required to wait for more than three (3) hours between 10:00 p.m. and 5:00 a.m. or for more than six (6) hours between 6:00 a.m. and 10:00 p.m. for the departure.

D. During the voyage, accommodations provided passengers must be provided to the inspector.

E. The master, owner or agent shall assume responsibility for necessary medical expenses incurred while away from the primary duty station in order to provide clearance during a journey.

### Section 607. Billing.

A. Charges shall be billed monthly.

B. Late payment shall be charged at 10% per annum.

C. All bills not paid within ninety (90) days shall be reported to the Attorney General for civil suit and to revoke a carrier's entry privilege.

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Section 701. Requirement. An alien may enter the CNMI only upon evidence of a valid entry permit granted in advance of his arrival at the port of entry.

Section 702. Exceptions by Waiver. Section 701 is waived for:

A. Tourist entry,

B. Short-term business entry permits,

C. Employees of the CNMI government and their immediate relatives.

#### Section 703. Tourist Entry.

A. An alien arriving by licensed carrier possessing a valid passport may enter the CNMI for seven (7) days for the purpose of tourism.

B. An Immigration Landing Card, Form 958, must be filled out upon entry and submitted to an inspector.

C. Entry shall be without charge.

D. An inspector shall be satisfied that there are no grounds for exclusion prior to admitting the alien tourist.

E. An alien admitted as a tourist is prohibited from seeking employment or from engaging in any business activities.

F. An extension may be granted for an additional seven (7) days without an entry permit upon filing a request at the Main Office of Immigration in Susupe. There shall be no charge. Only one extension will be permitted. Any further extension requires a change of status and the issuance of an entry permit.

G. A tourist entry permit and extension shall be granted only if an inspector has no reasonable cause to believe the visit is for purposes other than tourism.

#### Section 704. Short-term Business Entry Permit.

A. A short-term business entry permit need not be obtained in advance of arrival at the port of entry. The application may be completed under penalty of perjury and reviewed at the port of entry.

B. The short-term business entry permit permits a stay of fourteen (14) days only.

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C. No extension of the short-term business entry permit can be granted. Instead, a stay can be lengthened only upon the grant of a regular-term business entry permit.

D. Change in status to a regular-term business entry permit should be sought four (4) days in advance of expiration of a current permit. In compelling circumstances when in the interest of the Commonwealth, the Immigration and Naturalization Officer may, in his discretion, grant a three (3) day extension to the short-term permit in order to process the regular-term application.

E. Business entry is for the purpose of conducting negotiations, formulating plans, and surveying prospects. The permit holder may not become a member of the work force in any capacity.

# Section 705. CNMI Employees.

A. CNMI employees and immediate relatives may enter for twenty (20) days without an entry permit if they possess a valid passport and a valid CNMI government travel order that specifies the immediate relatives to accompany the employee.

B. It is specifically a condition of such entry that applications for CNMI employee entry permits shall be filed within ten (10) days of the arrival.

C. Immigration must grant or deny the entry permits within seven (7) days of application.

D. Should employment terminate for any reason during the twenty (20) day period, the alien and the supervisor must report this fact to the Immigration and Naturalization Officer within twenty-four (24) hours.

# Section 706. Classifications of Entry Permits.

A. Regular-term Business Entry Permit - permits an alien to remain in the CNMI for one (1) ninety (90) day stay. Alien may conduct business, negotiate contracts, make purchases, etc., but may not enter into employment or in any way become a part of the work force in the CNMI. No extensions are permitted. Only one (1) such permit shall be granted in a twelve (12) month period.

B. CNMI Employee Entry Permit - permits alien to remain in the CNMI for one (1) year so long as the alien is employed by the CNMI government. Alien may not enter into any other employment agreements while in the CNMI other than with the government. If the employee continues employment beyond the entry permit, then the permit may be renewed. In no circumstance shall the permit last longer than seven (7) days past employment.

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C. Long-term Tourist Entry Permit - permits alien to remain in the CNMI for thirty (30) days. Alien can conduct no business and perform no services during stay. Extensions will be granted only upon showing that it is in best interests of the Commonwealth.

D. Immediate Relative of Nonalien Entry Permit - permits immediate relatives of persons who are not aliens to remain in the CNMI for one (1) year so long as the nonalien relative remains in the CNMI. May be renewed if nonalien resides in the CNMI and immediate relative lives in the same household.

E. Immediate Relative of Alien Entry Permit:

1. Type 1: Permits the immediate relative of an alien with a valid entry permit under subsections (A), (B), (F), (I), (J) and (K) to temporarily reside in the Commonwealth for such time as the alien is permitted to remain in the Commonwealth if:

a. the alien is being paid an annual salary of more than \$20,000; and

b. the alien posts cash or other surety with the Chief of Immigration sufficient to guarantee the cost of repatriation of those family members for whom entry permits are sought.

2. Type 2: Permits the immediate relative of other aliens with entry permits to remain in the CNMI for 120 days. Only one such permit may be granted during a twelve (12) month period.

F. Diplomat or Consular Entry Permit - permits a designated principal resident representing a foreign government which government is recognized in law by the United States and his immediate relatives to remain in the CNMI for the duration of his appointment.

G. Foreign Investor Visa - An alien granted a certificate of foreign investment by the Department of Commerce and Labor and has complied with Part IX of these regulations.

H. Foreign Student Entry Permit - An alien with residence in a foreign country which he has no intention of abandoning who is a bona fide student qualified to pursue a full course of study at an established institution of learning or other recognized place of study in the CNMI which is approved by the Immigration and Naturalization Officer may remain in the CNMI for one (1) year. The permit is renewable annually.

The Immigration and Naturalization Officer designates the following as recognized places of study:
 a. Northern Marianas Community College

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I. Foreign Press Entry Permit - An alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the Commonwealth solely to engage in such vocation, and the spouse and children of such representative which have joined him may remain in the CNMI for six (6) months. The permit is renewable.

J. Distinguished Merit Entry Permit - An alien who has a residence in a foreign country which he does not intend to abandon who is of distinguished merit and ability and who is coming temporarily to the CNMI to perform temporary service of an exceptional nature requiring such merit and ability may remain for ninety (90) days. This permit is renewable indefinitely.

K. Nonresident Worker Entry Permit - An alien who is coming temporarily to the CNMI to perform temporary service or labor who has been certified as an eligible nonresident worker by the Department of Commerce and Labor may be granted an entry permit in accordance with Public Law No. 3-66.

# Section 707. Application Procedure.

A. Applications for entry permits shall be submitted to the Main Office for Immigration and Naturalization. The application will not be accepted without the necessary supporting documents. All applications and supporting documents become the property of the Office of Immigration and Naturalization. Applications shall be processed within seven (7) days of submission. Entry permits will be signed only by the Immigration and Naturalization Officer except for Short-term Business Entry Permits.

B. Necessary documents for filing include:

1. a completed application form,

2. certified copy of birth certificate,

3. a police clearance from place of residence for last twelve (12) months,

4. any documents necessary to prove one's classification, and

5. one and one-quarter inch  $(1\frac{1}{4}")$  frontal photograph (non-polaroid) in either black and white or color.

Further documents may be required to gain admission based upon subsequent investigation.

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C. The application fee shall be deposited with the CNMI Treasurer prior to filing the necessary documents. The fee is non-refundable.

The application shall include a pre-stamped and self-D. addressed envelope for the return of the entry permit. Permits will be returned only by mail to the applicant.

Section 708. Valid Passport. No entry permit shall be issued for a period of time which, at the time of entry, is not covered by a valid passport.

## Section 709. Landing Card.

A. Issuance - All aliens entering the CNMI must complete the Immigration Landing Card Form CNMI-958 prior to entry. The form shall be affixed in the passport or upon the return ticket of the alien. All entries are subject to the condition that the 958 form be kept within the passport or upon the return ticket until departure.

Collection - An airline or shipping agent must collect Β. the original white copy of the Form CNMI-958 and entry permit when an alien departs the CNMI. The agent must present an immigration inspector with the vessel or aircraft manifest with a 958 form and entry permit for every departing alien immediately after departure.

In the event that the alien claims that he is 1. returning to the CNMI upon the same entry permit, then only the 958, and not the entry permit, shall be collected.

### Section 710. Alien Tracking System.

Α. The Immigration and Naturalization Officer shall, at all times, keep an accurate record of all aliens who are present in the CNMI. This may be stored by computer or by card file.

The Alien Tracking System shall file aliens by departure Β. dates. Within each date's file, the names shall be in alphabetical order. Each day, the 958 forms collected upon departure shall be compared with the day's file in order to detect overstays. The file on each overstay shall be delivered by the following day to the Immigration and Naturalization Officer for appropriate action.

# Section 711. Denial of Permit, Review.

The denial of an entry permit shall be in writing Α. stating the reasons for the denial. This writing shall be provided to the applicant.

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B. The denial of an entry permit may be appealed to the Attorney General by the person excluded. The Attorney General in his discretion may rely solely on the documents submitted or may supplement them with additional information. He shall provide the denied alien with all the opportunities to be heard made available in Section 16 of Public Law No. 3-105. He may affirm, modify, or reverse the decision.

Section 712. Renewal or Extension of Permit. No entry permit shall be renewed or extended unless a completed application is filed with the government before the date of expiration.

## VIII. EXCLUSION

Section 801. Threat to Public Health. Any dangerous contagious disease designated by the U.S. Public Health Service and listed at 42 C.F.R. §34.2(b) shall be considered a threat to public health. Additionally, any physical condition designated as a threat to public health in the Commonwealth by the Director of Public Health and Environmental Services shall be so considered.

Section 802. Economic Grounds.

A. The following persons will be considered to have no demonstrable means of support:

1. paupers, professional beggars and vagrants,

2. persons who either have no return ticket or do not have sufficient funds to support a stay for the duration of the entry permit, and

3. any person who by reason of poverty, insanity, disease or disability will probably become a charge upon the public.

B. Entry may be allowed, in the discretion of the Immigration and Naturalization Officer, if relatives or friends in the CNMI will post sufficient cash with Immigration to ensure the alien's support for the duration of the entry permit. The full amount of cash deposited with the Immigration and Naturalization Office shall be kept in a trust account until the departure of the alien.

Section 803. Record of Examination. An examiner shall prepare a summary of the essential information obtained in the interview. Following this shall be the decision of the examiner written in a separate section.

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#### IX. FOREIGN INVESTOR VISAS

#### Section 901. Definitions.

"Approved Investment" means an investment made by an Α. Alien Investor in the Commonwealth pursuant to a Certificate of Foreign Investment issued by the Director of Commerce and Labor.

"Alien Investor" means any individual, but not legal Β. entities such as corporations, partnerships or other entities existing solely by virtue of the law. An "Alien Investor" is a person without United States citizenship, Commonwealth permanent residency or certificate of identity, or Trust Territory citizenship, that qualifies as a holder of a Certificate of Foreign Investment issued by the Director of Commerce and Labor.

C. "Certificate of Foreign Investment" means a Certificate issued by the Director of Commerce and Labor pursuant to rules and regulations issued by the Director of Commerce and The Certificate constitutes proof of the holder's Labor. participation as an Alien Investor in an Approved Investment in the Commonwealth of the Northern Mariana Islands.

"Chief" means the Chief of Immigration in the Office of D. the Attorney General for the Commonwealth of the Northern Mariana Islands.

E. "Family" of a holder of a Certificate of Foreign Investment means the holder's spouse, the holder's children by blood and the holder's children by legal adoption effective one (1) year prior to the date of application for Certificate of Foreign Investment.

"Foreign Investor Visa" means a Visa issued by the Chief F. to a holder of a Certificate of Foreign Investment that complies with the conditions of issuance of a "Foreign Investor Visa" provided herein. The Visa is issued for purposes of providing entry into and exit from the Commonwealth of the Northern Mariana Islands for a holder of a Certificate of Foreign Investment, as long as the Certificate remains in force and effect. A "Foreign Investor Visa" is issued to any holder of a valid Certificate of Foreign Investment, and members of the holder's family complying with the conditions enumerated below.

Section 902. Foreign Investor Visa.

The Chief shall issue a Foreign Investor Visa to any Α. Alien Investor (and members of his family) for each Alien Investor:

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1. who presents to the Office of the Chief a current Certificate of Foreign Investment issued to himself or to a person of such relation that the applicant would be considered a member of a Certificate holder's family, and

2. who submits evidence of good moral character in seeking such permit, which evidence shall be obtained from a competent authority of and certified by an officer in the United States Consulate, or law enforcement official, of the country in which the Alien Investor permanently resides, and

3. who submits payment of a non-refundable application fee for issuance of a Foreign Investor Visa, as specified below, and

4. who presents a currently valid passport or certificate of identity for himself and any member of his immediate family seeking such permit.

B. The Foreign Investor Visa shall allow the Alien Investor entry and exit, of any frequency or duration, to and from the Commonwealth of the Northern Mariana Islands. The Visa shall have no effect other than for the purposes of Foreign Investment and shall not vest in the holder thereof, or his immediate family, any rights to permanent residence for reasons unrelated to operation of an Approved Investment, or rights to CNMI citizenship or United States citizenship.

C. The Foreign Investment Visa shall be valid for an indefinite period of time, subject to revocation upon the conditions specified below.

D. The Chief shall review and take action (issuance or denial) within fifteen (15) days following receipt of a complete application.

E. In the event the Chief denies the Alien Investor's application for a Foreign Investor Visa, he shall state the reasons for the denial, in writing, within the time period specified in Section 902(d).

## Section 903. Revocation of Foreign Investor Visa.

A. Upon written notification from the Director of Commerce and Labor that a Certificate of Foreign Investment has been revoked, the Chief shall revoke the Visas of the holder and his family, provided, however, that the revocation shall not take effect until six (6) months following the date of revocation of the Certificate of Foreign Investment.

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B. Upon written notice from the Director of Commerce and Labor of the revocation of a Certificate of Foreign Investment, the Chief shall send written notice of revocation of the Foreign Investor Visas for the Certificate holder and his family to the Certificate holder. This written notice shall specify the date of termination of the Visas which shall be six (6) months from the date of revocation of the Certificate of Foreign Investment.

# Section 904. Schedule of Fees.

A. An application for a Foreign Investor Visa shall be accompanied by:

1. a non-refundable application fee of five hundred dollars (\$500.00) for the holder of the Certificate of Foreign Investment, and

2. a non-refundable application fee of five hundred dollars (\$500.00) for each member of the holder's family for which he or she desires issuance of a Foreign Investment Visa.

## X. HEARINGS

<u>Section 1001.</u> Procedure. Hearings on certificates of identity and permanent residence shall be conducted in accordance with the CNMI Administrative Procedures Act (1 CMC §9101).

# XI. EFFECT OF REGULATIONS

Section 1101. Grandfather Clause. All entry permits validly issued upon the effective date of these regulations shall remain valid until their expiration date. The renewal of any entry permit shall for the purpose of these regulations be treated as an initial application.

Section 1102. Severability. If any provision of these regulations, or order issued under these regulations, or the application of any rule, regulation or order to any person or circumstances shall be held invalid by a court of competent jurisdiction, the remainder of these rules, regulations, or orders issued under these rules and regulations, or the application of such rule, regulation, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

#### XII. FEES

Section 1201. Fees. The following schedule of fees shall apply to cover the cost of services provided by the Immigration and

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Naturalization Office. These fees cover administrative costs and are non-refundable.

| Α. | Certificate of Identity\$ 5.00                          |
|----|---|
| В. | Entry Permit  |
| C. | Application for Extension<br>or Renewal of Entry Permit |
| D. | Application for Foreign Investor Visa500.00             |
| E. | Vessel or Aircraft Permission to Land10.00              |

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Filed this

Office of Registrar of Corporations PROPOSED PROCUREMENT MERCULATIONS

The Director of Finance hereby proposes regulations governing the procurement of all manners of goods and services among all branches of the Commonwealth government under the authority of 1 CMC §2553(j). The regulations, which follow, cover: Article 1 - GENERAL PROVISIONS Part A - General Part B - Definitions Part C - Public Access Article 2 - PROCUREMENT ORGANIZATION Part A - Chief of Procurement and Supply Part B - Chief of Procurement Function Article 3 - SOURCE SELECTION AND CONTRACT FORMATION Part A - Source Selection Part B - Cancellation Part C - Qualifications and Duties Part D - Types of Contracts Part E - Inspection and Audit Part F - Reports and Records Article 4 - PROCUREMENT OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES Article 5 - PROTESTS AND DISPUTES Article 6 - ETHICS AND PUBLIC CONTRACTING Part A - Definitions Part B - Standards of Conduct Interested persons may submit data, views, or arguments in writing to the Director of Finance or the Attorney General for thirty (30) days following the publication of this notice. All comments will receive careful consideration before the adoption of any procurement regulations. Certified by

ALDAN В Director of Finance

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## MA PROPONE NA AREGLAMENTON MA GANYI

I Directot bandan Salape estaguiya na hapropone regulasion na hagobebetna i mangayen minauleg yan setbisio gi catcuet manera gi entalo todos ramas Gobetnamento gi papa i autoridad 1 CMC §2553(j).

I regilasion, este siha ha embrasa:

Articulo 1 - HENERAT NA PROVISION

Part A - Henerat Part B - Explicasion Part C - Meturo Publico

Articulo 2 - ORGANIZATION MANGANYE

Part A - I Chief Manganye yan Suplica Part B - I Funcion i Chief Manganye

Articulo 3 - MAFOTMAN CONTRATA yan INFORMASION SELECTION

Part A - Selection Informasion Part B - Cancellasion Part C - Qualificasion yan Obligasion Part D - Clasen Contrata Part E - Reconsosimento yan Aodit Part F - Repot yan Docomento Siha

Articulo 4 - MANGANYEN SERVISION MANHATSA yan ARCHIETECT-ENGINEER

Articulo 5 - PROTESTA yan RESISTO

Articulo 6- ETHICS yan CONTRATAN PUBLICO

Part A - Explicasion Part B - Diario na Conducta

Todos man enteresao na persona debe de u nahalom matugi na documento pot linieniha, pat argumento ya u ma submite guato gi Directot bandan Salape osino guato gi Offisinan i Attorney General gi entalo trenta (30) dias despues de este na publicasion noticia. Todos commento u manae finu na considerasion antes de u ma adopta masea hafa na areglamenton manganyi.

Certified by: TOMAS Β. Fecha ALDAN

Director of Finance

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#### CNMI PROCUREMENT REGULATIONS

# Article 1 - GENERAL PROVISIONS Part A - General

## Section 1-101 Purposes.

(1) Interpretation. These regulations shall be construed and applied to promote their underlying purposes and policies.

(2) Purposes and Policies. The underlying purposes and policies of these regulations are:

(a) to provide for increased public confidence in the procedures followed in public procurement;

(b) to insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth;

(c) to provide increased economy in Commonwealth procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(d) to foster effective broad-based competition within the free enterprise system; and

(e) to provide safeguards for the maintenance of a procurement system of quality and integrity.

#### Section 1-102 Authority.

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

# Section 1-103 Supplementary General Principles of Law Applicable.

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

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Section 1-10 A granuirement of Good Fai T.

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

# Section 1-105 Application of Regulations.

These regulations apply to every expenditure of public funds irrespective of source, including federal assistance monies and covenant funds, except as otherwise specified by law, under any contract, except these regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.

# Section 1-106 Severability.

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If any provision of these regulations or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of this Code are declared to be severable.

# Section 1-107 Validity of Contract.

No government contract covered by these regulations shall be valid unless it complies with these regulations.

# Section 1-108 Remedy Against Employee.

Any procurement action of an employee of government in violation of these regulations will be considered to have been accomplished outside the scope of 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.

# Part B - Definitions

Section 1-201 Definitions.

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

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1. "Attorney General" means the Attorney General of the Northern Mariana Islands.

2. "Chief" means the head of the central procurement office of the government. The word Chief shall mean the Chief of Procurement and Supply or designee.

3. "Construction" means the process of building, alterating, 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.

4. "Contract" means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.

5. "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and these regulations, and a fee, if any.

6. "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.

7. "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.

8. "Goods" means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property, and sale or other disposal of personal property.

9. "Government" means the Commonwealth of the Northern Mariana Islands Government which includes the executive, legislative and judicial branches.

10. "Governor" means the Governor of the Northern Mariana Islands.

11. "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

12. "Official with Expenditure Authority" means that public official who may expend, obligate, encumber or otherwise commit

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public funds under the Planning and Budget Act or under any annual appropriation act.

13. "Person" means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.

14. "Procurement" means buying, purchasing, renting, leasing or acquiring construction, good or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

15. "Purchase Description" means the words used in a solicitation to describe the surplus, services or construction to be purchased and includes specifications attached to, or made part of, the solicitation.

16. "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.

17. "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.

18. "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.

## Part C - Public Access

#### Section 1-301 Public Access to Procurement Information.

Procurement information shall be a matter of public record and shall be available for public inspection.

Article 2 - PROCUREMENT ORGANIZATION Part A - Chief of Procurement and Supply

#### Section 2-101 Creation of Procurement and Supply Division.

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

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Section 2-102 Chief of Procurement and Supply.

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

## Section 2-103 Duties of the Chief.

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

(1) oversee that these regulations are observed in all government procurement;

(2) hear all appeals of protests and disputes;

(3) conduct bidding, procurement, negotiation or administration of government contracts upon request of the official with expenditure authority;

(4) provide advanced planning for the centralized purchase of government supplies;

(5) exercise general supervision and control over all inventories of supplies belonging to the Commonwealth; and

(6) establish and maintain programs for the inspection, testing and acceptance of supplies.

#### Section 2-104 Contract Oversight.

(1) No government contact will be approved by the Director of Finance unless it has been reviewed and approved by the Chief. The Chief shall review all contracts for construction, the procurement of goods, leases, the sale of goods and for services by an independent contractor to insure compliance with these regulations, that the contract is for a public purpose, and does not constitute a waste or abuse of public funds.

(2) A contact shall be approved first by the Chief before it is signed by either party. The Chief shall cause such review to occur in a prompt and timely manner.

(3) The Chief may refer any contract to the Public Auditor for a recommendation before he approves or disapproves the contract.

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(4) A contract may be referred back to the Chief by the Director of Finance, Personnel Officer, Attorney General or Public Auditor for further review based upon additional evidence that it may not comply with these regulations. The Chief may withdraw approval or refuse to do so and must state the reasons why.

(5) The official with expenditure authority is responsible to insure that the contractor does not sign the contract or incur expenses until all necessary government signatures have been obtained.

#### Section 2-105 Split Contracts.

If the Chief Procurement Officer determines that a contract has been split into subcontracts for the purpose of avoiding bidding or if a change order or modification is unreasonably being made in a contract to increase the contract price where a contract has been bid and awarded to the lowest responsible and responsive bidder, then the Chief may require the contract or the modification to be competitively bid. An unreasonable modification or change order would be, for example, one which would have been reasonably foreseeable at the time of the formation of the contract.

## Section 2-106 Acceptance of Gratuities by Chief and Procurement and Supply Division Employees.

(1) In addition to the restrictions found in Section 6-205, the Chief and the employees of the Procurement and Supply Division shall be subject to these additional restrictions to avoid the appearance of impropriety.

(2) The Chief and his employees cannot accept from any business any gift of a value in excess of twenty-five dollars (\$25.00).

## Part B - Procurement Function

## Section 2-201 Decentralized Procurement.

Officials 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 Chief to be in compliance with the regulations.

#### Section 2-202 Procurement Services.

Upon request of any official with expenditure authority, the ChiefCOMMONWEALTH REGISTERVOL. 7 NO. 5MAY 21, 1985PAGE 3653

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shall provide assistance or conduct the bidding, procurement, negotiation or administration of a particular contract.

# Section 2-203 Centralized Procurement of Supplies.

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

# Article 3 - SOURCE SELECTION AND CONTRACT FORMATION Part A - Source Selection

# Section 3-101 Methods of Source Selection.

Unless otherwise authorized by law or by regulation, all government contracts shall be awarded by competitive sealed bidding, except as provided in:

- (1) Section 3-103 (Small Purchases);
- (2) Section 3-104 (Sole Source Procurement);
- (3) Section 3-105 (Emergency Procurement);
- (4) Section 3-106 (Competitive Sealed Proposals);
- (5) Section 3-107 (Professional Services);
- (6) Section 4-102 (Architect-Engineer Services).

Section 3-102 Competitive Sealed Bidding.

(1) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:

- (a) an invitation for bids number;
- (b) date of issuance;
- (c) name, address and location of issuing office;
- (d) specific location where bids must be submitted
- (e) date, hour and place of bid opening;

(f) a purchase description in sufficient detail to permit bull and open competition and allow bidders to properly respond;

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(g) quantity to be furnished;

(h) time, place and method of delivery or performance requirements;

(i) essential contractual terms and conditions; and

(j) any bonding requirements.

(2) Public Notice. Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice in a newspaper of general circulation in the Commonwealth once in each week over a period of thirty (30) calendar days shall be deemed to be adequate notice.

(3) Bidding Time. A bidding time of thirty (30) calendar days shall be provided, unless the Chief determines a shorter period is reasonable and necessary.

(4) Bid Receipt. All bids shall be submitted to the Office of the Chief of the Division of Procurement and Supply. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office. If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Chief. No information contained in the bid shall be disclosed prior to the bid opening. The Chief shall cause the opened bid to be placed into the sealed receptacle.

(5) Bid Opening. The bid opening shall be conducted by the Chief of Procurement and Supply at the Office of the Division of Procurement and Supply. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The Chief shall be present at the Bid Opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Chief shall prepare a written summary of the bid opening.

(6) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in these regulations. 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.

(7) Bid Rejection. A bid may be rejected for any of the following reasons:

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(a) failure to conform to essential requirements of the Invitation for Bids such as specifications or time of delivery;

(b) 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.

(c) unreasonableness as to price;

(d) a bid from a nonresponsible bidder.

(8) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved of by the Chief in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the 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 subparagraph (a) or (b).

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

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

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

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(b) Withdrawal of Bids. Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake but not as to the bid intended.

(c) 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.

(9) Award.

(a) 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 whose bid fully meets the requirements of the invitation for bids and these regulations. Unsuccessful bidders shall also be promptly notified.

(b) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a 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.

(c) 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 (5%), and time or economic considerations preclude resolicitation of work of a reduced scope, the official with expenditure authority may be authorized by the Chief to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

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# section 3-103 Small Purchases.

(1) 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.

(2) No bidding is required for procurement under \$2,500.00

(3) Bidding is not required for procurement under \$5,000.00. However, the official with expenditure authority must obtain price quotations from at least three (3) vendors and base the selection on competitive price and quality for procurement valued at \$2,500.00 to \$5,000.00.

(4) Purchase orders may be utilized for small purchases in subparagraphs (2) and (3) only. In no other instance may purchase orders be utilized instead of contracts.

# Section 3-104 Sole Source Procurement.

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

(2) The written determination shall be prepared by the official with expenditure authority and shall contain the following information:

(i) the unique capabilities required and why they are required and the consideration given to alternative sources.

# Section 3-105 Emergency Procurement.

(1) Notwithstanding any other provision of these regulations, the government may make emergency procurements 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.

(2) A written determination of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority and approved by the Chief.

# Section 3-106 Competitive Sealed Proposals.

(1) Conditions for use. When an official with expenditure authority determines in writing that the use of a competitive

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VOL. 7 NO. 5 MAY 21, 1985 PAGE 3658 -11**MAN** ed bidding is either not practical or not advantageous to the government and receives the approval of the Chief Procurement Officer, a contract may be entered into by competitive sealed proposals.

(2) Request for proposals. Proposals shall be solicitated through a request for proposals.

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

(4) 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.

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

(6) 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.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Commonwealth 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.

# Section 3-107 Competitive Selection Procedures for Professional Services.

(1) 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 or sole-source procurement.

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Policy. It is the policy to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. The Chief Procurement Officer shall maintain files of current statements of qualifications of professional firms. Persons engaged in providing the types of services specified herein 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.

(3) 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.

(4) 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.

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

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

Section 3-201 Cancellation.

An invitation for bids or request for proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined in writing by the official with expenditure authority and approved by the Chief to be in the best interest of the government based on:

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(1) inadequate or ambiguous specifications contained in the solicitation;

(2) specifications which have been revised;

(3) goods or services being procured which are no longer required;

(4) inadequate consideration given to all factors of cost to the government in the solicitation;

(5) bids or proposals received indicate that the needs of the government can be satisfied by a less expensive good or service;

(6) all others with acceptable bids or proposals received are at unreasonable prices; or

(7) bids were collusive.

Part C - Qualifications and Duties

Section 3-301 Responsibility of Bidders and Offerors.

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

(a) have adequate financial resources to perform the contract, or the ability to obtain them;

(b) be able to comply with the required delivery or performance schedule;

(c) have a satisfactory performance record;

(d) have a satisfactory record of integrity and business ethics;

(e) have the necessary organization, experience and skills, (or the ability to obtain them), required to successfully perform the contract;

(f) have the necessary production, construction and technical equipment facilities, or the ability to obtain them; and

(g) be otherwise qualified and eligible to receive an award under applicable laws and rules.

(2) Obtaining information. Prior to award, the official with expenditure authority shall obtain information from the bidder or offeror necessary to make a determination of

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responsibility using the factors in paragraph 1 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 nonresponsibility with respect to that bidder or offeror.

(3) Right of non-disclosure. Information furnished by a bidder or offeror pursuant to paragraph 2 may not be disclosed outside of the office of the official with expenditure authority, the Chief Procurement Officer, the Attorney General or any involved government agency without prior consent by the bidder or offeror.

(4) Nonresponsibility 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 nonresponsible, a written determination shall be signed by the official with expenditure authority stating the basis for the determination and this shall be placed in the contract file.

## Section 3-302 Prequalification of Contractors.

Prospective suppliers of goods or services may be prequalified for particular types of construction, goods and services when determined necessary by the Chief. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, prequalified suppliers. In no event will bidders be allowed to qualify after the bid opening.

Part D - Types of Contracts

Section 3-401 Types of Contracts.

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

(2) Government contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under paragraph 3.

(3) A cost reimbursement contract may be used when the official with expenditure authority determines in writing which is attached to the contract that:

(a) 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;

(b) use of a firm fixed price contract could seriously effect the contractor's financial stability or result in

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**NAME** y the government for contingencies that never occur; or

(c) 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.

#### Part E - Inspection and Audit

## Section 3-501 Right to Inspect Place of Business.

The government, may at responsible 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.

# Section 3-502 Right to Audit Records.

As required by section 404 of Public Law No. 3-91, the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data or papers relevant to a government contract or grant for a period of three (3) years after the final payment under the contract or grant. A clause to this effect shall appear in all government contracts and obligations.

#### Part F - Reports and Records

## Section 3-601 Report of Anticompetitive or Deceptive Practices.

When for any reason the following practices are suspected among bidders, offerors, contractors or subcontractors, a notice of the relevant facts shall be transmitted to the Attorney General without delay:

(1) unfair methods of competition; or

(2) deceptive acts.

# Section 3-602 Retention of Procurement Records.

(1) All procurement records shall be retained by the official with expenditure authority and the chief procurement officer for their respective agencies.

(2) The Chief Procurement Officer shall maintain a record listing all contracts made under sole-source procurement or

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emergency procurements for a minimum of five (5) years. The records shall contain:

(a) each contractors name;

(b) the amount and type of each contract; and

(c) a listing of the supply services or construction procured under each contract.

(3) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Article 4 - PROCUREMENT OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES

Section 4-101 Construction Procurement.

(1) Invitation for Bids.

(a) Deposit. The official with expenditure authority shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

(b) Contents. The invitation for bids shall be prepared in accordance with section 3-102(1). In addition, the following items shall be included in the Invitation for Bids:

(i) Notice to Bidders. General information regarding 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;

(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;

(2) Bid Security.

(a) Requirement. Bid security shall be required for

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all competitive sealed bidding construction contracts where the price is estimated by the Chief to exceed \$25,000.00 or when the Chief 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 government.

(b) Amount. Bid security shall be an amount equal to at least fifteen percent (15%) of the amount of the bid or other amount as specified in the Invitations for Bids depending upon the source of funding.

(c) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as nonresponsive.

(3) Contract Performance and Payment Bonds.

(a) 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, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(ii) a payment bond satisfactory to the Commonwealth, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, 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 (100%) of the price specified in the contract.

(4) 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 (90) 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

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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 (90) 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.

Suits on Payment Bonds; Where and When Brought. Every (5) suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(6) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Director 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 therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price which the contract is reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

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Section 4-102 Architect-Engineer Services.

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

(2) 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.

(3) Selection. The chief procurement officer or the technical services division of the Department of Public Works shall 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 (3) of the firms regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three (3) firms determined to be the most highly qualified to perform the services required.

(4) Negotiation. The official with expenditure authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the government. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, then the officer with expenditure authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

> Article 5 - PROTESTS AND DISPUTES Part A - Bid Protests and Appeals

# Section 5-101 Protests to the Chief.

(1) General

(a) 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 Chief. The protest shall be received by the Chief in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise

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thereto. The Chief 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 be requested by the Chief. The written protest shall state fully the factual and legal grounds for the protest;

(b) 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 Chief within a specified period of time. Normally, the time specified will be one (1) week;

(c) The Chief shall decide the protest within thirty (30) 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;

(d) When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the Chief is requested to submit a report, the Chief 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 Chief's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Chief's report will include the determination prescribed in subparagraph (2)(d) below.

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

# (2) Protests Before Award:

(a) The Chief shall require that written confirmation of an oral protest be submitted by the time specified in section 5-101(1)(a) 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. An award may be made in the normal manner unless the Chief finds it necessary in his discretion to take remedial action.

(b) 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 should be informed of the protest. In addition, those bidders should be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for readvertisement. In the event of failure to obtain such extensions of bids, consideration should be given to proceeding with an award under subparagraph (c) below.

(c) When a written protest is received, award shall not be made until the matter is resolved, unless the Chief determines that:

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

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

(iii) a prompt award will otherwise be advantageous to the Commonwealth.

(d) If award is made under subparagraph (c) above, the Chief shall document the file to explain the need for an

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immediate award. The Chief also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(3) Protests After Award:

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Chief, at least the contractor shall be furnished the notice of protest and its basis in accordance with subparagraph (1)(b) 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 Chief should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(4) Computation of Time:

(a) 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.

(b) 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.

# Section 5-102 Appeals of Chief's Decisions to the Public Auditor:

(1) Jurisdiction; Exhaustion of Remedies. A written appeal to the Public Auditor from a decision by the Chief may be taken provided that the party taking the appeal has first submitted a written protest to the Chief as provided in section 5-101 of these Procedures, and the Chief has denied the protest or has failed to act on the protest within the time provided for in section 5-101(1)(c) above.

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

(a) Include the name and address of the appellant;

(b) Identify the contracting agency and the number of the solicitation or contract;

(c) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and

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(d) Specifically request a ruling by the Public Auditor.

(3) Time for Filing Appeal. An appeal from the Chief's decision must be received by the office of the Public Auditor not later than ten (10) days after the appellant receives the decision of the Chief, or, in the event that the Chief has not decided the protest within ten (10) days from the date that he should have decided the protest pursuant to section 5-101(1)(c) 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.

(4) Notice of Protest, Submission of Chief's Report and Time for Filing of Comments on Report.

(a) The Public Auditor shall notify the Chief by telephone and in writing within one (1) day of the receipt of an appeal, requesting the Chief 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 Chief shall be requested to furnish in accordance with section 5-101(1)(b) of these Procedures copies of the protest and appeal documents to such parties with instructions to communicate further directly with the Public Auditor.

(b) 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.

(c) The Public Auditor shall request the Chief to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 25 working days) in accordance with section 501(1)(d) of these Procedures and to furnish a copy of the report to the appellant and other interested parties as defined in section 4-101(4)(c).

(d) Comments on the agency report shall be filed with the Public Auditor within ten (10) days after the Public

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Auditor's receipt of the report, with a copy to the agency office which furnished the report and to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Public Auditor within five (5) 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 (5) days after receipt by the agency of the comments to which rebuttal is directed.

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

(5) Withholding of Award. When an appeal has been filed before award, the Chief will not make an award prior to resolution of the protest except as provided in section 401(2)(d) of these Procedures. In the event the Chief determines that award is to be made during the pendency of an appeal, the Chief will notify the Public Auditor.

Furnishing of Information on Protests. The Public (6) 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 (10) days.

(7) 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 (5) days after the receipt of such request. If it is necessary to obtain additional information from the Chief, the Public Auditor will request that such information be furnished as expeditiously as possible.

(8) Conference.

(a) 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 Chief. 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.

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(b) 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.

(c) Any written comments to be submitted and as deemed appropriate by the Public Auditor as a result of the conference must be received in the Office of the Public Auditor within five (5) days of the date on which the conference was held.

(i) Time for Decision; Notice of Decision: The Public Auditor shall, if possible, issue a decision on the appeal within 25 days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the Chief.

(10) Request for Reconsideration:

(a) 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 Chief, 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.

(b) Request for reconsideration of a decision of the Public Auditor shall be filed not later than ten (10) 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.

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

## Section 5-103 Remedies:

(1) Remedies Prior to Award. If prior to award the Chief or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be:

(a) cancelled; or

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•) revised to comply with law or regulation.

(2) Remedies After an Award. If after an award the Chief or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Commonwealth; or

(ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;

(b) if the person awarded the contract has acted fraudulently or in bad faith:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if such action is in the best interests of the Commonwealth, without prejudice to the Commonwealth's rights to such damages as may be appropriate.

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

#### Part B - Disputes

# Section 5-201 Disputes.

(1) 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 these regulations, must be filed in writing with the official with expenditure authority within ten (10) calendar days after knowledge of the facts surrounding the dispute.

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

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(a) description of the dispute;

(b) reference to pertinent contract terms;

(c) statement of the factual areas of disagreement or agreement; and

(d) statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

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

(4) Duty to Continue Performance. A contractor that has a dispute pending before the official with expenditure authority or an appeal before the Chief 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 expenditure authority.

# Article 6 - ETHICS IN PUBLIC CONTRACTING Part A - Definitions

# Section 6-101 Definitions of Terms.

1. "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.

2. "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.

3. "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.

4. "Financial interest" means:

a. 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

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**b.** holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.

5. "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.

6. "Immediate family" means spouse, children, parents, brothers and sisters.

Part B - Standards of Conduct

# Section 6-201 Policy.

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

(1) insure fair competitive access to governmental procurement by reasonable contractors; and

(2) conduct themselves in a manner as to foster public confidence in the integrity of the government.

# Section 6-202 General Standards.

(1) 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 these regulations.

(2) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in these regulations is also a breach of ethical standards.

# Section 6-203 Employee Disclosure Requirements.

(1) 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 Chief Procurement Officer.

(2) 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.

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## Sumion -204 Employee Conflict of Interest.

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

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

(b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(c) 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.

(2) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file 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.

# Section 6-205 Gratuities and Kickbacks.

(1) 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.

(2) 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 adducement for the award of a subcontractor or order.

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# Section 5-206 Prohibition Against formingent Fees.

(1) 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.

(2) 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.

# Section 6-207 Contract Clauses.

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

# Section 6-208 Restrictions on Employment of Present and Former Employees.

(1) 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 as employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(2) Restrictions on former employees in matters connected with their former duties.

(a) 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:

(i) judicial or other proceeding, application, request for a ruling or other determination;

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(ii) contract;

(iii) claim; or

(iv) charge or controversy

in which the employee participated personally and substantially through decision, approval, disapproval,

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recommendation, rendering o **advice** investigation or otherwise while an employee, where the government is a party or has a direct or substantial interest.

(3) 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:

(a) judicial or other proceeding, application, request for a ruling or other determination;

- (b) contract;
- (c) claim; or
- (d) 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 responsible, where the government is a party or has a direct and substantial interest.

# Section 6-209 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.

# Section 6-210 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 the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

Section 6-211 Penalties.

(1) Government employees. Government employee is any person whether appointed, elected, excepted service or civil service. An employee who violates the provisions of these rules and regulations is subject to adverse action as may be

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appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution.

(2) Contractors. A contractor who violates a provision of these rules and regulations 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.

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

# Section 6-212 Authority to Debar or Suspend.

(1) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedures Act, the Chief Procurement Officer after consultation with the official with expenditure authority and the Attorney General, shall have authority to have debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the official with expenditure authority and 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 (3) months.

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

(a) 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;

(b) 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 <u>et. seq.</u>), 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 responsible as a government contractor;

(c) conviction under Commonwealth or federal antitrust statues arising out of the submission of bids or propos-

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als such as in Chapter 2 of Division 5 of Title 4 of the Commonwealth Code;

(d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer 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;

(e) any other cause that the Chief Procurement Officer determines to be so serious and compelling as to effect responsibility as a government contractor, including debarment by another governmental entity; and

(f) for violation of any of the ethical standards set forth in Article 6.

(3) Decision. The Chief Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

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

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Filed this\_

Office of Registrar of Corporations Commonwealth of the Northern Mariana Islande

## PUBLIC NOTICE

# Proposed Regulations of

## the Northern Marianas College

The Board of Regents of the Northern Mariana Islands, in accordance with Public Law 3-43, Section 203 (a) and (b), is proposing to adopt policies for Northern Marianas College.

The proposed policies include the following subject areas:

- 1. Student Financial Aid Policy
- 2. Registration Fees

Copies of the proposed regulations may be obtained from Juan N. Babauta, Chairman of the Board of Regents, c/o Commonwealth Health Planning and Development Agency (CHPDA), 5th floor, Nauru Building, Saipan, CM 96950 or Agnes M. McPhetres, President, Northern Marianas College, P.O. Box 1250, Saipan, CM 96950.

The Board of Regents is soliciting views, opinions, fact and data for or against the proposed College Policy from the general public.

Anyone interested in commenting on the proposed policies may do so by submitting comments in writing to the Chairman of the Board of Regents within thirty (30) days from the date this notice is published in the Commonwealth Register.

Chairman, Board of Regents

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#### NUTISTA PARA I PUPBLIKU

I MAPROPOPONI NA RIPARASION POT I REGULASION I ESKUELA GI HALOM I DEPATTAMENTON EDUKASION

Sigun gi Lain i Pupbliku numiru 3-43, i Board of Education i Sankattan siha na Islas Marianas, ha propoponi rumipasa i regulasion i Northern Marianas College.

I manmapropoponi siha na regulasion ni para u fanmaripasa ha inklulusu i manatatte siha na arean suhetu;

- 1. Apas Rehistrasion (Registration Fees)
- 2. Regulasion Financiat (Student Financial Aid Policy)

I kopian i manmapropoponi siha na regulasion sina manmachule' ginen as Sinot Juan N. Babauta Chairman i Board of Regents/ c/o Commonwealth Health Planning and Development Agency, 5th floor, Nauru Building, Saipan, CM 96950 pat si Agnes M. McPhetres, Presidentan i Northern Marianas College, P.O. Box 1250, Saipan, CM 96950.

I Board of Regents lokkue' ha solilisita opinion, fakto, yan enfotmasion siha para osino kontra i manmapropoponi siha na regulasion eskuela ginen i pupbliku henerat.

Todu ayu siha i manenteresao manmanlaknus rekomendasion pot i mapropoponi na tinilaika gi regulasion siha, sina manmangge' guatu gi Chairman i Board of Regents gi halom i trenta (30) dias desde i fecha ni mapupblika este na nutisia gi Commonwealth Register.

hairman, Board of Regents

COMMONWEALTH REGISTER

Section 1. Purpose:

There is hereby established by the Board of Regents a postsecondary education financial assistance fund for the purposes of aiding eligible applicants who desire postsecondary education within and without the Commonwealth through grants, loans and/or scholarships. In providing such financial assistance, it is the intent of the Board to supplement, not replace, other sources of financial assistance which may be available to the student.

# Section 2. Definitions:

The following terms whenever used in this Policy shall be the meanings given below, except when the context clearly requires otherwise:

- a. "Board" means the Board of Regents.
- b. "Committee" means the Financial Aid Committee which shall be comprised of four voting members: one to represent Tinian, one to represent Rota, one to represent Saipan and the Chairman of the Fiscal Affairs Committee of the Board. In addition, the College's Financial Aid Specialist will serve as an ex-officio member. The Chairman of the Board in consultation with the President will appoint the members to represent Rota, Tinian and Saipan.
- c. "Scholarship" means financial assistance awarded to students on the basis of superior academic ability and scholastic achievement: a minimum grade point average of 3.25 is required.
- d. "Grant" means financial assistance awarded to students who maintain a minimum cumulative grade point average of 2.0.
- e. "Loan" means financial assistance awarded to students with an obligation by the recipients to repay under the terms and

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**cond**tions established by the Board: a minimum cumulative grade point average of 2.0 is required.

# Section 3. <u>Responsibilities of the Committee</u>: The responsibilities of the Committee are:

- a. to determine the levels and types of financial assistance.
- b. to review and take action on financial assistance applications compiled by the Financial Aid Office.
- c. to report to the Board its actions after each regular and special meeting.

Section 4. <u>By-laws of the Committee</u>: The Committee shall operate as follows:

- a. the presence of at least three members shall constitute a quorum.
- b. all acts of the Committee shall be voted for by at least a simple majority.
- regular meetings shall be called in August and December annual ly. Special meetings may be called by the Fiscal Affairs Committee Chairman as needed.
- d. the Committee may adopt or amend any by-laws as they see necessary.

# Section 5. Financial Aid Office:

A section within the Financial Aid Office of the Northern Marianas College is established for the following purposes:

a. to provide financial assistance to eligible applicants who are or will be attending a postsecondary institution within or without the Commonwealth.

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- b. to process applications and recommend applicants.
- c. to maintain accurate and up-to-date files on students.
- d. to prepare reports on the status of funds and students receiving financial assistance for submission to the Board.

# Section 6. Funding:

The Financial Aid Office will receive funds through appropriations by the Legislature, gifts, bequests, donations or other lawfully made contributions to the Commonwealth and the Northern Mariana Islands Student Financial Assistance Program. Unless otherwise specified, these funds shall be divided into three categories:

a. Grant Program.

b. Loan Program.

c. Scholarship Program.

Section 7. Maintenance of Funds:

Funds received through appropriations by the Legislature will be kept in a trust fund of the College. The Financial Aid Specialist, CNMI and the Director of Financial Aid will have access to the fund. A Memorandum of Request for Payment will be forwarded to the Dean of Administration and Business Affairs. The Memorandum of Request for Payment will include the names of recipients, amount and type(s) of aid the recipient is to receive and the account(s) to be charged.

Funds received through gifts, bequests, donations, etc., will be kept under separate accounts at the Business Office of the Northern Marianas College. The Director of Financial Aid will have access to the fund. A Memorandum of Request for Payment will be submitted to the Dean, Administration and Business Affairs when appropriate. The Memorandum of Request for Payment will include the names of recipients, amount and type(s) of aid the recipient is to receive and the account(s) to be charged. COMMONWEALTH REGISTER VOL. 7 NO. 5 MAY 21, 1985 PAGE 3686 Section 8. Eligibility Criteria for Financial Assistance:

No person shall receive a grant, loan, scholarship or a combination award unless they meet the following criteria:

- a. <u>Citizenship</u>: The person shall not be an alien as defined in Section 3(a) of P.L. 3-105.
- b. <u>Residency</u>: The person shall be a resident of the Commonwealth as defined herein:
  - 1) a dependent student is a resident of the state or territory where his parents reside.
  - 2) dependency is defined as a student who lived with the parents for more than six weeks in a calendar year, whose parents claimed the student as a U.S. income tax exemption, and who received more than \$750 worth of support from the parents.
  - 3) an independent student must have five years of actual continuous residence in the CNMI prior to the leaving of the Commonwealth for purposes of going to school.
  - 4) independent students who come to the CNMI for the purpose of pursuing higher education must be in continuous residence for 12 months to be considered CNMI residents.
- c. <u>Applied for Federal Financial Assistance</u>: Any person who applies for CNMI financial assistance shall provide proof that he has applied first for federal financial assistance.
- d. <u>Enrollment</u>: An applicant must be admitted or enrolled in an accredited or CNMI government funded postsecondary institution. The applicant must maintain a full-time course of study (as defined by that institution) during the academic school year

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except those students attending a CNMI government funded postsecondary institution.

e. <u>Minimum Scholastic Achievement</u>: An applicant must have a cumulative grade point average of 2.0 on a 4.0 system.

Exceptions:

## New Incoming Freshmen:

An applicant who will be attending a postsecondary institution or program will be considered for financial assistance even if his/her grade point average (GPA) is below the 2.0 GPA requirement. The applicant is given two (2) semesters or three (3) quarters to raise his/her GPA to the 2.0 GPA requirement.

#### Returning Student:

An applicant who is returning after being away from school for at least one academic year and has a GPA of less than 2.0 will be considered for financial assistance. He/she will have two (2) semesters or three (3) quarters to raise his/her GPA to the 2.0 GPA requirement.

If the recipient, after the two (2) semesters or three (3) quarters, failed to raise his/her cumulative GPA to 2.0, financial assistance for subsequent quarters/semesters will be discontinued.

f. <u>Limited Duration</u>: Eligible students may receive CNMI financial assistance for no more than 4.5 years except when enrolled in a 5-year program as undergraduate students, or for 2 years when enrolled as graduate students.

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g. <u>Prohibited Courses of Study</u>: Eligible students may not major in a course of study leading to degrees in divinity, theology, or religious education.

Section 9. Conditions of Receipt of Award:

No grant, loan, scholarship or combination thereof shall be provided unless:

- a. the student first obligates himself to reside within the CNMI and apply the skills/knowledge acquired for a period equal to that for which financial assistance was provided.
- b. the student shall sign a "Statement of Educational Purpose" affirming that any funds received will be used solely for expenses related to attendance at the institution.
- c. the student shall not be in default on any CNMI educational loan.

Section 10. Application Process:

The following procedures must be followed to apply for a grant, loan, scholarship or combination thereof:

- a. New applicants must submit:
  - l. application,
  - 2. recent official transcript mailed directly to the NMC Financial Aid Office from the Registrar's Office at last institution attended,
  - 3. an official letter as proof of admission,
  - 4. proof of application for federal financial assistance, and
  - 5. copy of documents establishing citizenship status as defined in Section 8(a).

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- b. Continuing applicants must submit:
  - 1. up-to-date official transcript or grade reports for prior term postmarked no later than January 20th.
- c. Applications for the fall semester must be postmarked by July 15th and applications for the spring semester must be postmarked by November 15th.
- d. For those students who are able to attend school for the summer term only due to the nature of employment within the CNMI may be eligible for financial assistance.

#### Section 11. Procedure for Review:

- a. A completed application shall be processed by the Financial Aid Office.
- b. The completed application shall be transmitted to the Committee for final review.

Section 12. Appeal:

An applicant may appeal a disapproval to the Board of Regents. The following procedure must be followed:

- a. Application consists of:
  - 1. letter of grievances; the reasons for petitioning the Board for special consideration must be stated;
  - 2. documents supporting the petition for special consideration; a letter from a doctor, instructor, or other school officials;
  - 3. remedial course of action the student plans to take in order to meet any of the requirements that were not met and which led to the denial of financial assistance.

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- •. Application for an appeal must be made within 14 days of the receipt of the notification of the disapproval. It must be submitted to the Chairman of the Board of Regents.
- c. The Board must decide on the appeal within 15 working days of receipt of the appeal application by the Chairman.

#### Section 13. Scholarship Awards:

a. An award based upon scholarship will be in the following amounts per semester throughout the award period dependent upon the student's grade point average (GPA) on a 4.0 scale.

| 3.51 - 4.00 GPA | \$375.00 |
|-----------------|----------|
| 3.25 - 3.50 GPA | \$250.00 |

However, a student with the minimum number of hours per semester for full-time attendance who has a pass or credit for a course rather than an A through F or numerical grade will not be eligible to receive a scholarship based on that semester.

b. In the case of students attending a school on the quarter system the same rules apply, however, awards will be based only upon the performance during the Fall and Spring Quarters.

Section 14. Grant Awards:

- a. <u>Definition</u>: A grant means financial assistance awarded to students who maintain a minimum cumulative grade point average of 2.0.
- b. <u>Amount</u>: Grants shall be the following per semester (or per half year for students on quarter system):

| Undergraduate | \$ 700 |
|---------------|--------|
| Graduate      | 1,000  |
| Professional  | 1,000  |

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Section 15. Loans:

a. Students may be eligible to receive loans up to the following amount per semester (or per half year for students on quarter system):

| Undergraduate | \$ | 500  |
|---------------|----|------|
| Graduate      | 1, | 500  |
| Professional  | 2  | ,000 |

- b. Loan recipients are required to execute a promissory note before release of loan check.
- c. Loan repayments are subject to the following conditions:
  - 1. a student who returns to the CNMI and is gainfully employed will receive a 10% cancellation against their principle amount of loan per each year employed.
  - 2. a student who is not employed within CNMI must repay the loan at the rate of 10% of the principle per year.
  - 3. a student who is in default must pay the entire loan at 3% interest per year he is in default.
- d. Loan becomes due and payable one (1) year after the date of actual termination of formal studies.
- e. In the event of the borrower's death or total and permanent disability, the unpaid indebtedness hereunder shall be cancelled.
- f. Upon the occurrence of default, the holder of the note shall have the right, at its option, and without notice, to declare the whole sum of principal and interest and any other indebtedness or obligation, immediately due and payable together with interest at the rate of 3% per annum on the total amount due, and no waiver

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of this right shall be effective unless in writing and signed by the holder.

Section 16. Change in Funding Levels:

The Committee may change the award levels for loans, grants, and scholarships based on availability of funding upon filing of a notice of emergency regulation with the Registrar of Corporations in compliance with the CNMI Administrative Procedures Act. However, loans, grants and scholarships already awarded shall not be affected.

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# REGISTRATION FEE

The Board proposes to include the following fees:

1. Registration Fee \$ 5.00

2. Late Registration 10.00

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Filed this. day Office of Registrar of Corporations

PROPOSED COST AND PRICE ANALYSIS RECILIENS hern Mariana Islands

The Director of Finance, under the authority of 1 CMC §2553(j), hereby proposes cost and price analysis regulations governing all procurements in excess of \$1,000,000.

Interested persons may submit data, views and arguments concerning these regulations in writing to the Director of Finance within 30 days of publication.

> Director of Finance Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

All submissions respecting these regulations will receive careful consideration.

Certified by:

Director of Finance

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## I MAPROPONE NA PRECIO YAN GASTON MA ANALISA I REGULASION

I Direcktot i bandan Salape, gi papa i autoridad 1 CMC §2553(j), estaguiya na hapropone i precio yan gaston ma analisan regulasion nu i gomobebetna i manule pat mamahan nu i mas ke \$1,000,000.

Todos man enteresao na persona sina munahalom, linie niha pat argumento pot este na regulasion gi matugi na manera para guato gi Direcktot bandan Salape gi halom 30 dias despues de este na publicasion.

> Director of Finance Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

Todo man mana halom pot este na regulasion para u fan ma nae finu na consideration.

Certified by Director of Finance

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## COST AND PRICE ANALYSIS REGULATION Part A - General

#### Section 1-100 Overview and Summary

These regulations 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.

Accordingly, the regulations require that contractors submit certified cost and pricing data where negotiated contracts or contract modifications are entered into. Sections 1-104-2 and 1-104-3 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 section 1-104-3(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 1 of Section 1-104-6.

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 section 1-104.7(b).

As provided in section 1.105, the Contracting Officer should, with such expert assistance as is required, analyze modification to determine that the cost and price are reasonable.

Further guidance regarding subcontract price analysis, prenegotiation objectives, documentation of the negotiations, and profit analysis, are provided in sections 1-106, 1-107, 1-108 and 1-200, respectively.

#### Section 1-100 Scope

This subpart prescribes the policies and procedures applicable to cost and price analysis of (i) negotiated prime contracts (including subcontract pricing under them when required) and (ii) contract modifications (including modifications to contracts awarded by a sealed bid procedure).

#### Section 1-101 Definitions

(1) "Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (i) an offeror's or contractor's cost or pricing data and (ii) 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.

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(2) "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.

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

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

(5) "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.

#### Section 1-102 Policy

Contracting officers shall-

(1) Purchase supplies and services from responsible sources at fair and reasonable prices;

(2) Price each contract separately and independently and not (i) use proposed price reductions under other contracts as an evaluation factor or (ii) consider losses or profits realized or anticipated under other contracts; and

(3) 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.

#### Section 1-103 General

(1) 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.

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(2) 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.

Price negotiation is intended to permit the Contracting (3) 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 The contracting officer is responsible for objective. 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 a price negotiation memorandum when significant audit or other specialists recommendations are not adopted.

The contracting officer's primary concern is the price (4)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.

#### Section 1-104 Cost or Pricing Data

(1) <u>General</u>

Except as provided in 1-104-3, certified cost or pricing data may be required before accomplishing any of the following actions:

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(a) The award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed \$1,000,000.

(b) 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.

(c) 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.

(d) The modification of any subcontract covered by subdivision (c) above, when the price adjustment (see subdivision (b) above) is expected to exceed \$1,000,000.

(2) 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.

(3) 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:

(a) The cost or pricing data.

(b) A certificate of current cost or pricing data, in the format specified in 1-104-4, 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.

<u>Section 1-104-3 Exemptions from or waiver of submission of certified</u> <u>cost or pricing data</u>

(1) <u>General</u>. Except as provided in paragraphs (2) and (3) below, the contracting officer may not require submission or certification of cost or pricing data when the contracting officer determines that prices are --

(a) Based on adequate price competition (see paragraph(2) below);

(b) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see paragraph (3) below); or

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C) Set by law or regulation (see paragraph (4) below).

#### (2) Adequate price competition

Price competition exists if --

(i) Offers are solicited:

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

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

(b) 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.

#### (3) 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.

#### (4) 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.

#### (5) 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 paragraph (3) or (4) above, as appropriate, are satisfied before issuing the exemption.

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## (6) 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--

> The supplier's marketing system (e.g., use of (a) jobbers, brokers, sales agencies, or distributors);

The services normally provided commercial (b) purchasers (e.q., engineering, financing, or advertising or promotion);

- (c) Normal quantity per order; and
- (d) Annual volume of sales to largest customers.

(7) Waiver for exceptional cases.

The head of the contracting activity may, in exceptional cases, may 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.

#### Section 1-104-4 Certificate of Current Cost or Pricing Data

(1) When certified cost or pricing data are required under 1-104-2, 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 in support of \_\_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\_\*\*. 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 execution\*\*\*

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

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

\*\*\* 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)

The certificate does not constitute a (2) 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.

(3) 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 subcontactor'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.

(4) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(5) 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 1-104-3) through (4)).

(6) 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 recertification.

#### Section 1-104-5 Reserved

Section 1-104-6 Procedural requirements.

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(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 paragraph (2) below) in which the cost or pricing data shall be submitted. 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.

(2) Cost or pricing data should normally be prepared to satisfy the instructions and appropriate format of Table 1. In procurements conducted in cooperation with agencies of the United States Government, appropriate equivalent forms prepared by such agencies may be used instead.

#### TABLE 1. INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL

A cost-element breakdown, using the applicable format prescribed in 7A, B, or C 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:

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.

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.

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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.

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

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

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

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

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.

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.

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

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

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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 Section 1-101(2) of this article. In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including -

> The judgmental factors applied and the a. mathematical or other methods used in the estimate, including those used in projecting from known data; and

The nature and amount of any contingencies b. included in the proposed price.

- 3. 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 idendification, 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.
- In submitting offeror's proposal, offeror must include 4. 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.
- 5. 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.
- As soon as practicable after agreement on the price, but 6. before the award resulting from the proposal, the offeror shall, under the conditions stated in section 1-104-4 of this article submit a Certificate of Current Cost or Pricing Data.

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HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES; A. New Contracts (including Letter contracts).

|   | A. New                | Contracts (   | including   | Letter co | ntracts).  |                                       |
|---|-----------------------|---|-------------|-----------|------------|---------------------------------------|
|   | PROPO                 | SED CON-  | PROPOSED    | CON-      |            | · · · · · · · · · · · · · · · · · · · |
|   |                       | TRACT ESTIM   |             | CT ESTIMA | TE         | REF-                                  |
| COST ELE  | EMENTS                | (Total Cost   |             | it Cost)  |            | ERENCE                                |
|   |                       | <b>、</b>  |             | ,         |            |                                       |
| ( ]   | L)                    | (2)   |             | (3)       |            | (4)                                   |
| (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 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. |                       |   |             |           |            |                                       |
|   |                       | B. Change   | e Orders (m | odificati | ons).      |                                       |
|   |                       |   |             |           |            |                                       |
| <b>_</b>  | Estimat               |   |             |           |            | Refer-                                |
| Cost  | Cost of               |   |             | Work      | of         | ence                                  |
| Elements  | s All Wor             |   | Deleted     | Added     | Change     |                                       |
|   | Deleted               |   | -           |           |            |                                       |
| ( 7 )   | ( ) )                 | Performe  |             |           |            | ( 7 )                                 |
| (1)   | (2)                   | (3)   | (4)         | (5)       | (6)        | (7)                                   |
| τ   | Jnder Col             | umn (1) - er  | nter approp | riate cos | t elements | •                                     |
| 7<br>1  | what the<br>not yet p | umn (2) - Ir<br>cost would r<br>erformed, ar<br>erformed. | nave been t | o complet | e deleted  | work                                  |

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.

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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.

C. Price Revision/Redetermination

| Cutoff<br>Date            | Number of<br>Units<br>Completed         | Units to                                | Contract<br>Amount                      | Redetermina-<br>tion Proposal<br>Amount | Dif-<br>ference                  |
|---------------------------|---|---|---|---|----------------------------------|
| (1)                       | (2)                                     | (3)                                     | (4)                                     | (5)                                     | (6)                              |
| Cost<br>Elements          | Incurred<br>Cost-<br>prepro-<br>duction | Incurred<br>Cost-<br>Completed<br>Units | Incurred<br>Cost-<br>Work in<br>Process | Total<br>Incurred<br>Cost               | Estimated<br>Cost to<br>Complete |
| (7)                       | (8)                                     | (9)                                     | (10)                                    | (11)                                    | (12)                             |
| Estimate<br>Total<br>Cost |   | erence                                  |   |   |                                  |
| (13)                      | (14)                                    |   |   |   |                                  |
|                           |   | n (l) - Ente<br>f applicable            |   | ff date requir                          | ed by the                        |
| ď                         | uring the                               |   | which exper                             | er of units co<br>ienced costs o        |                                  |
|                           |   |   |   |   |                                  |

Under Column (3) - Enter the number of units remaining to be completed under the contract. COMMONWEALTH REGISTER VOL. 7 NO. 5 MAY 21, 1985 PAG

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 Explain the basis for each estimate and best estimates. 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.

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Furnish experienced unit or lot costs (or labor 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 (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.

(3) 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.

The requirement for submission of cost or pricing (4) 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 However, there is a clear distinction between price. 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.

(5) 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 theofferor persists in the refusal, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, includingdetails of the attempts made to resolve the matter and a statement of the practicability of obtainingthe supplies or services from another source.

Preproduction and startup costs include costs such as (6) 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 significant cost factor in an acquisition, the contracting officer shall require in the solicitation that the offeror provide (i) an estimate of total preproduction and startup costs,

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(ii) the extend to which these costs are included in the proposed price, and (iii) 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.

 (7) (a) The requirement for contractors to obtain cost or pricing data from prospective subcontractors is prescribed at 1-106. However, these data do not have to be submitted to the commonwealth unless called for under subparagraph (b) below.

> (b) 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.

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in 1-104-3, the contracting officer normally shall not require submission of subcontractor cost or pricing data.

(d) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in 1-106(2) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(8) 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.

#### Section 1-104-7 Defective cost or pricing data

(1) 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.

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(2) 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.

For each advisory audit received based on a post-award (3) 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. 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 The contracting officer shall send one copy of the taken. memorandum to the Public Auditor and, if the contract has been assigned for administration, one copy to the administrating contracing officer (ACO). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

#### Section 1-105-1 General

(1) 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 (i) determining the extent of specialists' advice needed and evaluating that advice, (ii) coordinating a team of experts, (iii) consolidating pricing data and developing a prenegotiation objective, and (iv) conducting negotiations.

(2) 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.

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(3) The contracting officer shall require prospective contractors to perform (i) price analysis for all significant proposed subcontracts and purchase orders and (ii) 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 1-106(1)).

#### Section 1-105-2 Price Analysis.

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(1) 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.

Comparison of prior quotations and contract (b) 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.

Comparison with competitive published price (d) lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(e) Comparison of proposed prices with independent Commonwealth cost estimates (see 1-103(b)).

#### Section 1-105-3 Cost Analysis

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

> (1) Verification of cost or pricing data and evaluation of cost elements, including -

> > The necessity for and reasonableness of (a) proposed costs, including allowances for contingengies;

(b) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(c) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and MAY 21, 1985 COMMONWEALTH REGISTER VOL. 7 NO. 5

(d) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future.

(3) Comparison of costs proposed by the offeror for individual cost elements with -

(a) Actual costs previously incurred by the same offeror;

(b) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(c) Other cost estimates received in response to the Commonwealth's request;

(d) Independent Commonwealth cost estimates by technical personnel; and

(e) Forecasts or planned expenditures.

(4) 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.

#### Section 1-105-4 Technical analysis

(1) 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.

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# Section 1-105-5 Field pricing support

(1) 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.

The contracting officers should not request field (2)pricing support for proposed contracts or modifications of an amount less than \$1,000,000.

#### Section 1-106 Subcontract pricing considerations

(1) 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 (i) 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 (ii) including the results of subcontract reviews and evaluations as part of their own cost or pricing data submission.

(2) 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 pruchase 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.

(3) The requirements in paragraphs (1) and (2) 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.

#### Section 1-107 Prenegotiation objectives

(1) The process of determining prenegotiation objectives helps the contracting officer to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee.

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n 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 independend Commonwealth cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(2) 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 (i) the pertinent issues to be negotiated, (ii) the cost objectives, and (iii) a profit or fee objective.

(3) The Commonwealth's cost objective and proposedpricing 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 ( 1-200-2) is not required during negotiations and should not be attempted.

#### Section 1-108 Price negotiation memorandum

(1) 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:

(a) The purpose of the negotiation.

(b) A description of the acquisition, including appropriate identifying numbers (e.g., RFP No.).

(c) The name, position, and organization of each person representing the contractor and the Commonweath in the negotiation.

(d) The current status of the contractor's purchasing system when material is a significant cost element.

(e) If certified cost or pricing data were required, the extent to which the contracting officer -

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(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.

(f) 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.

(g) 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.

(h) 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.

(i) The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

Whenever a field pricing report has been submitted, (2) 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.

#### Section 1-109 Reserved

#### Section 1-200 Profit

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This subpart

(a) Prescribes policies for establishing the profit or fee portion of the Commonwealth prenegotiation objective;

(b) Applies to price negotiations based on cost analysis; and

(c) Specifies (i) situations requiring the contracting officer to analyze profit and (ii) considerations for that analysis. MAY 21, 1985

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(2) 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.

(3) It is in the Commonwealth's interest to offer contractors opportunities for financial rewards sufficient to (i) stimulate efficient contract performance, (ii) attract the best capabilities of qualified large and small business concerns to Commonwealth contracts, and (iii) maintain a viable industrial base.

(4) Both the Commonwealth and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at 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 1-200(4) on profit and fee, agencies shall not (i) establish administrative ceilings or (ii) create administrative procedures that could be represented to contractors as de facto ceilings.

#### Section 1-200-1 Contracting officer responsibilities

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

(2) 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 section 1-200-2 in developing profit or fee prenegotiation objectives.

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

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

> (a) 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.

(b) 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.

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

(5) 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.

(6) If a change or modification (i) calls for essentially the same type and mix of work as the basic contract and (ii) 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.

#### Section 1-200-2 Profit-analysis factors

Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (a) through (f) the 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.

> (1) 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

(2) Contract cost risk

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(a) 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.

(b) 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.

(3) <u>Capital investments</u>. This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(4) <u>Cost-control and other past accomplishments</u>. 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 (i) measures taken by the prospective contractor that result in productivity improvements and (ii) other cost-reduction accomplishments that will benefit the Commonwealth in follow-on contracts.

(5) <u>Independent development</u>. 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.

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

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# Section 1-301-1 Effective Date

These regulations shall take effect upon publication in the Commonwealth Register and adopted thereafter.

Walen Approved: Tomas B. Aldan Director of Finance



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