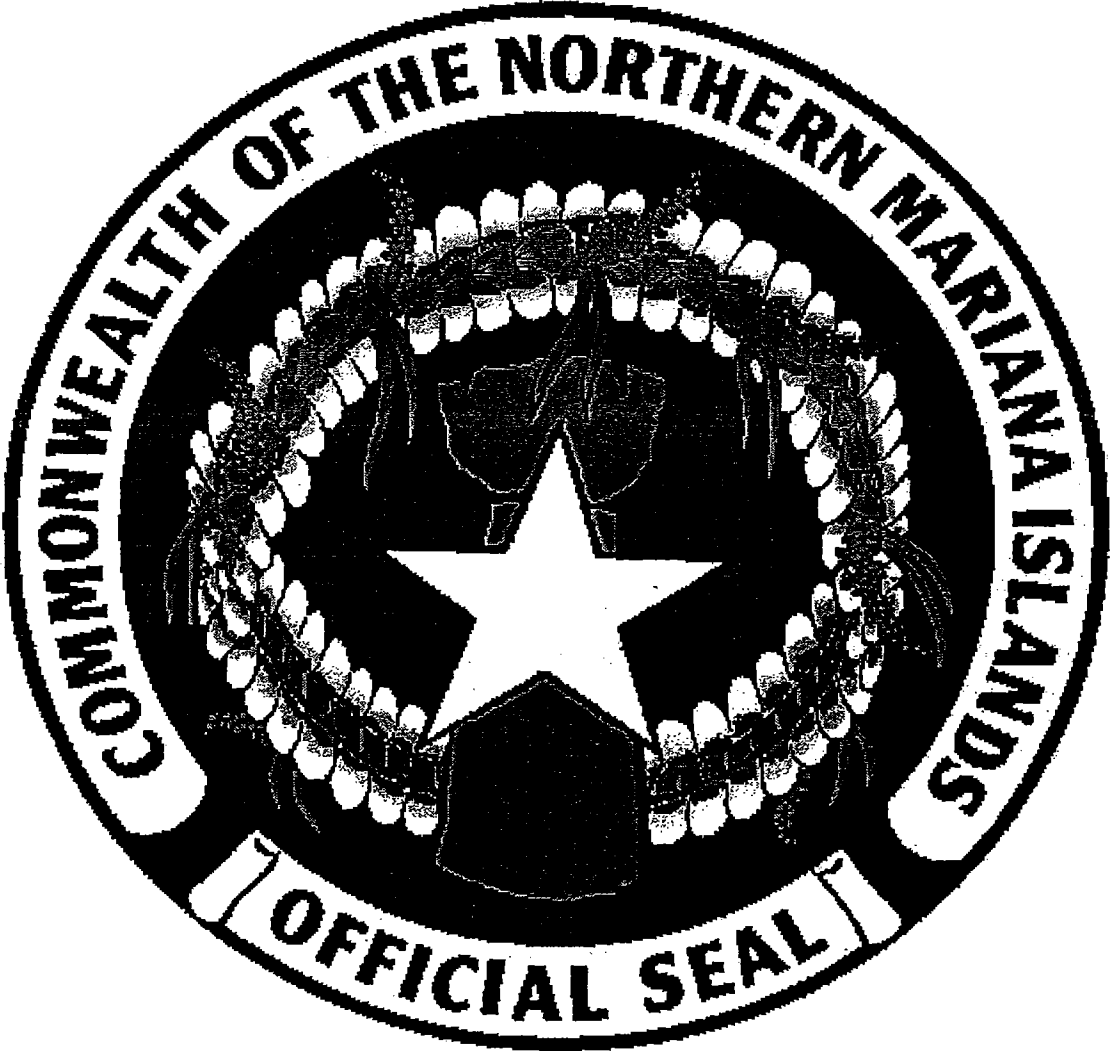
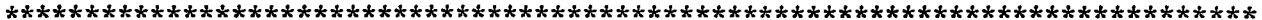


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



**COMMONWEALTH REGISTER  
VOLUME 32  
NUMBER 12  
DECEMBER 20, 2010**



# COMMONWEALTH REGISTER

VOLUME 32  
NUMBER 12

DECEMBER 20, 2010

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
HEALTH CARE PROFESSIONS LICENSING BOARD**

*In the Matter of Tinian Health Center* ) Case No. 2010-04  
(Amendment of Practice Agreement for )  
Remote Supervision )

**AMENDMENT TO THE BOARD EMERGENCY ORDER #01  
APPROVING PRACTICE AGREEMENT AMENDMENT  
FOR REMOTE SUPERVISION**

**Summary**

This amendment to this Order is entered on Friday, December 3, 2010, pursuant to the Board's decision at its meeting on Wednesday, December 1, 2010. It immediately authorizes the licensees, physician assistants Juan B. Pangelinan (medex), William R. Weiss PA-C, and any other CNMI licensed physician assistant ("PA"), during the period this Order is in effect, to work at the Tinian Health Center ("THC"), under the supervision of a physician located at a site other than the same Tinian Health Center. This Order is valid through the end of the day of February 17, 2011.

**Discussion**

The "Health Care Professions Licensing Act of 2007" ("the Health Care Act" or "the Act"), 3 CMC §§ 2201 - 36, P.L. 15-105, requires that a physician assistant ("PA") be licensed by the Health Care Professions Licensing Board ("the Board") and that his/her conduct conform to certain statutory and regulatory standards and specific dictates.

The pre-existing regulations of the predecessor Medical Professions Licensing Board continue in effect, except as amended by the Board:

- (e) Except as otherwise provided herein, the regulations, guidelines, standards, and procedures related to the regulation of the functions and operation of a regulated health care professional and/or profession that are in force when this Act becomes effective, shall continue to apply until amended or repealed by the Board.

3 CMC §§ 2235(e). The Board has amended its regulations in part. 140 NMIAC 50-3 Commonwealth Health Care Professions Licensing Board Regulations. 30 Com Reg. 03, p28388 - 28426. It has not yet amended its PA regulations so the pre-existing regulations apply

The Board's authority proceeds from the Act and the Administrative Procedure Act. The Act established the Board with complete jurisdiction, power and authority to regulate the health care professions. 3 CMC § 2204(a). The Board's powers include:

- To adopt rules and regulations to enforce the Act. 3 CMC § 2206(b);
- To issue, deny and condition licenses. 3 CMC § 2206 (c) ;
- To conduct disciplinary hearings to suspend or revoke licenses, 3 CMC § 2206 (h);
- To suspend or revoke a license. 3 CMC § 2206(k);
- To act summarily in the face of the likelihood of harm to:
  - i. the public health, safety or welfare; or
  - ii. to the patients of a health care professional who is regulated by this Chapter. 3 CMC § 2206(n).

A PA practicing with a license issued prior to the new Act and its new regulations continues as a licensee until the Board suspends or revokes that license:

1  
2 For the transition period between the application of the old Medical Practice Act  
3 and the new Health Care Professions Licensing Act, specifically until new applicable  
4 Regulations are promulgated, each practicing member of each profession over which  
5 the Board has jurisdiction shall be deemed practicing with a license until regulations  
6 are promulgated for the respective profession and an indicated re-licensing  
7 application period has ended, or until the Board acts to suspend, modify, revoke or  
8 otherwise affect a license, whichever comes first.  
9

10 140 NMIAC § 50.3-101-002.

11  
12 At all times a PA shall have in place a “practice agreement” with a supervising physician. 140  
13 NMIAC § 50.1-1220, 1230(d). Such agreement ordinarily provides the scope of a PA’s activities  
14 and ensures that the physician will be available for consultation, and will review and co-sign  
15 patient records. It also provides that the physician co-signs for prescription of medication and  
16 other treatments, except that the PA may not prescribe DEA-controlled substances. 140  
17 NMIAC § 50.1-1235.

18  
19 The Administrative Procedure Act provides for license hearings, when a notice of a hearing is  
20 required, and defers to an agency’s specific organic act. 1 CMC §§ 9108 – 10. This Order  
21 addresses an emergency situation coming under the specific “immediate and grave danger to  
22 the public” provision of the HCPLA, 3 CMC § 2206(n).  
23

24 **Facts**

25 Dr. Priyantha Wijayagunaratne, the only physician at THC, has submitted his resignation  
26 effective December 1, 2010. However, beginning on Friday, November 12, 2010, Dr.  
27 Wijayagunaratne will be on sick leave until December 1, 2010. Accordingly, as of Monday,  
28 November 15, 2010, THC is without a physician.  
29

30 THC requested the Board consider an Emergency Order to exempt THC’s Mid-Level Provider,  
31 PA Juan B. Pangelinan, PA-C William R. Weiss, and any other CNMI licensed physician  
32 assistant (“PA”), during the period this Order is in effect, to provide health care at THC through  
33 remote supervision. CHC, through Mr. John Tagabuel and Secretary Joseph K. Villagomez,  
34 has agreed to provide physician supervision to the physician assistants at THC. Supervision  
35 will be provided by the CHC’s Emergency Room physicians, namely Dr. Greg Kotheimer and  
36 Dr. Shirish Balachandra. Additional ER physicians at CHC who are designated by DPH  
37 administration and whose names are submitted in writing to the Board, may also provide  
38 supervision.  
39

40 **Board Findings and Conclusions**

41 The Board finds that it would be unfair to the people of Tinian to restrict physician assistants  
42 from practicing at THC merely because the Center does not presently have a physician. This  
43 Order provides authority for remote supervision from Saipan. We will not continue the  
44 authority provided in this Order indefinitely but we will continue it for a time.  
45

46 **Ruling and Ordering Paragraphs**

47 The Board having been fully advised in the premises of this matter, for the above-stated  
48 reasons, hereby Orders that:  
49

- 50 1. Mr. Juan B. Pangelinan, Mr. William R. Weiss, and any other CNMI licensed  
51 physician assistant during the period this Order is in effect, may work at the Tinian  
52 Health Center (“THC”), under the supervision of a physician located at a site other than  
53 the same Tinian Health Center  
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- 2. Supervision: Dr. Greg Kotheimer, Dr. Shirish Balanchandra, and any other ER physicians at CHC designated by DPH in writing to the Board, as supervising physicians.
  
- 3. Mr. Pangelinan, Mr. Weiss, and any other CNMI licensed physician assistant during the period this Order is in effect, shall submit a new Practice Agreement, which shall be approved by the Board, to address the requirements of this Order, and which shall be signed by both the PA and the supervising physician(s) (fax signatures are acceptable). This agreement must be submitted to the Board no later than Friday, December 3, 2010, by hard copy or electronically, otherwise this Order expires 24 hours later.
  
- 4. The agreement shall include:
  - a. The supervising physician(s) will provide adequate means for direct communication between themselves and the PA. The direct communication may occur through the use of technology, which may include but is not limited to, two-way radio, telephone, fax machine, modem, or other telecommunication device.
  
  - b. Daily emails shall be exchanged between the PA and the supervising physician for permitted prescriptions.
  
  - c. The database of patients on chronic or long-term scheduled medications shall be maintained and updated by the PA. The supervising physician to ensure adherence to the standard of care shall review it monthly.
  
  - d. Chart notes and prescriptions will be sent to the supervising physician for review and signature, as provided below.
  
  - e. The supervising physician shall closely monitor chronic pain contracts for adherence.
  
- 5. The physician assistants are authorized to prescribe:
  - a. Schedule III-V medications as follows:
    - 1. The PA is authorized to prescribe Schedule III through V medications as needed but shall be limited to prescribing, administering, and/or dispensing no more than 21-day supply. For refills, the supervising physician must co-sign the prescription and clearly write his DEA number on the prescription form. The supervising physician(s) shall review and sign chart notes within 21 days.
  
    - 2. All prescriptions for Schedule III-V medications written by the PA must be documented in the patient's chart and must include the name of the drug, dose, and route of administration, frequency, duration, quantity prescribed and name of supervising physician he consulted.
  
  - b. Schedule II medications as follows:
    - 1. In extreme emergency cases (myocardial infarction, motor vehicle trauma, certain fractures, pancreatitis, urethral and ureteral stones) Schedule II medications may be administered immediately, followed by a phone call to the supervising physician as soon as the patient is stable. In all other emergencies, Schedule II medications may not be prescribed, administered, or ordered without a verbal order from the ER physician on duty at CHC. The PA must first discuss the case with the ER physician. If the physician makes a verbal order for a Schedule II

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medication it must be appropriately documented in the patient's chart (as described in "B" above).

2. All such prescriptions and chart notes must be presented to the supervising physician(s) within seven (7) days for co-signature. The PA shall be limited to prescribing no more than a 7-day supply and there will be no refills.

c. All prescriptions will indicate the quantity of the medication being prescribed both numerically and alphabetically (e.g., "10" and "ten").

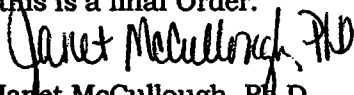
6. This Order is valid through the end of the day of February 17, 2011.

7. The Board shall review this matter at its next board meeting. THC management is invited to appear at that meeting and update the Board on its efforts at recruiting a supervising physician.

8. A copy of this Order shall be placed in a public area of the Tinian Health Center. The Executive Director, or her designee, is directed to do the following in person or by electronic means:

- a. Serve this Order on the physician assistants;
- b. Serve this Order on the director of the Tinian Health Center;
- c. Serve this Order on the Secretary of the Dept. of Public Health;
- d. Serve this Order on the supervising physicians at CHC's ER;
- e. Have this Order published in the next Commonwealth Register; and
- f. Place this matter on the Board's agenda for ratification at its next board meeting.

A party seeking to appeal this Order is directed to 1 CMC § 9112 (b), which provides for judicial review of final orders within 30 days in the Commonwealth Superior Court. The Board believes that this is a final Order.

  
/s/ Janet McCullough, Ph.D.  
Chair

Dated: 12/3/10

- /s/ Ahmad Al-Alou, MD, Board Member
- /s/ Leticia Borja, MD, Board Member
- /s/ Pam Carhill, MPT, Board Member
- /s/ Ken Pierson, DDS, Board Member

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Commonwealth of the Northern Mariana Islands  
Department of Public Health  
Office of the Secretary of Public Health



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jkvsaipan@gmail.com

**PUBLIC NOTICE OF ADOPTION OF EMERGENCY REGULATIONS**

**EMERGENCY REGULATIONS GOVERNING PROTOCOL FOR MINOR-ASSISTED UNDERCOVER PURCHASE OF TOBACCO PRODUCTS**

**EMERGENCY ADOPTION AND IMMEDIATE EFFECT:** The Commonwealth of the Northern Mariana Islands, through the Secretary of Public Health, finds that the attached Emergency Regulations Governing Protocol for Minor-Assisted Undercover Purchase of Tobacco Products shall be adopted immediately on an emergency basis because the public interest as well as an imminent peril to the public health, safety, or welfare so requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC § 9105(b)(2)). These emergency regulations shall become effective immediately upon filing with the Commonwealth Register and delivery to the Governor, (1 CMC § 9105(b)(2)), and shall remain in effect for 120 days. (1 CMC § 9104(b)).

**AUTHORITY:** Pursuant to PL 11-75, § 15(a), 4 CMC § 50143, the Department of Public Health is authorized "to secure, through adopted regulations, the voluntary assistance of minors to conduct undercover investigations against persons or businesses engaged in selling, giving, or otherwise providing tobacco products to minors (persons under the age of 18)..." Further, the Department of Public Health, under 1 CMC §§ 2603 and 2605, is empowered to maintain and improve the health conditions and is authorized to adopt rules and regulations regarding those matters over which it has jurisdiction.

1 CMC § 9104(b) of the Administrative Procedure Act provides that:

If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

**REASON FOR EMERGENCY ADOPTION:** Tobacco consumption, particularly smoking, is very high in the Commonwealth of the Northern Mariana Islands (CNMI). The CNMI has the highest youth tobacco use rate among the United States and Pacific Jurisdiction

(CDC Youth Tobacco Survey, 2004). Because nicotine is powerfully addictive, getting smokers to quit using tobacco can be challenging. This highlights the critical role of prevention in ensuring that CNMI's youth remain tobacco-free. A disturbing proportion of CNMI's youth have tried smoking, and some are already addicted to tobacco. Protecting those who remain free of tobacco is a crucial step in the effort to control the epidemic of tobacco use.

The Department of Public Health, in conjunction with the Department of Commerce, Alcohol Beverage and Tobacco Control Division, and the Department of Public Safety desires to conduct investigations of businesses engaged in the sale of tobacco products to ensure that businesses are not selling tobacco products to minors. Such inspections are permitted under PL 11-75, § 15(a), 4 CMC § 50143, and importantly, are required under the federal block grant the CNMI receives to fund its anti-tobacco use programs.

Under PL 11-75, § 15(a), 4 CMC § 50143, the Department of Public Health is authorized "to secure, through adopted regulations, the voluntary assistance of minors to conduct undercover investigations against persons or businesses engaged in selling, giving, or otherwise providing tobacco products to minors (persons under the age of 18)..." However, regulations have yet to be adopted. Further, the federal block grant requires the Commonwealth to conduct inspections of businesses selling tobacco to ensure that the business is not selling tobacco to minors. The federal block grant requires the Commonwealth to conduct the inspection on an annual basis. However, the Commonwealth has yet to conduct the inspection for the present year. The CNMI desires to conduct the inspection before the end of the present year so as not to jeopardize future federal funding.

Based on the foregoing, the Secretary of Public Health finds that the public interest as well as an imminent peril to the public health, safety, or welfare requires the immediate issuance and adoption of the attached Emergency Regulations in order to prevent harm to the public finances and curtail any threat to the public health and welfare.

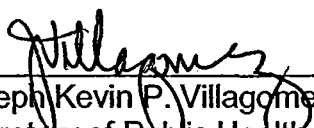
**THE TERMS AND SUBSTANCE:** The attached Emergency Regulations establish a protocol for the selection, training, and use of minors for undercover purchases of tobacco products. The attached Emergency Regulations set forth when the one year period described in PL 11-75, § 16(b), 1 CMC § 50144 shall occur. Finally, the attached Emergency Regulations establish reporting requirements for personnel conducting the inspections pursuant to PL 11-75, § 15(a) and these Emergency Regulations.

**DIRECTIONS FOR FILING AND PUBLICATION:** The Secretary of Public Health will take appropriate measures to make these Regulations known to the persons who may be affected by them. (1 CMC § 9105(b)(2)).

---

The attached Emergency Regulations are approved by the Secretary of Public Health on the date listed below.

Submitted by:

  
\_\_\_\_\_  
Joseph Kevin P. Villagomez  
Secretary of Public Health

12-14-10  
Date

Received by: For: J. Wilkerson  
Esther S. Fleming  
Special Assistant for Administration

12/14/10  
Date

Concurred by: [Signature]  
Benigno R. Fitial  
Governor

DEC 14 2010  
Date

Filed and Recorded by: [Signature]  
Esther M. San Nicolas  
Commonwealth Register

12.15.10  
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the Emergency Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

[Signature] For  
Edward T. Buckingham  
Attorney General

12/15/10  
Date

**DEPARTMENT OF PUBLIC HEALTH  
DEPARTMENT OF ENVIRONMENTAL HEALTH  
COMMUNITY GUIDANCE CENTER**

**EMERGENCY REGULATIONS GOVERNING PROTOCOL FOR MINOR-  
ASSISTED UNDERCOVER PURCHASE OF TOBACCO PRODUCTS**

**1.0 Introduction**

**Section 1.1 Authority**

The authority for the promulgation and issuance of these Department of Public Health Regulations is derived from Public Law 11-75, Section 15(a).

**Section 1.2 Purpose**

The purpose of these Department of Public Health Regulation is:

- (a) To establish a protocol for using minors for undercover purchases of tobacco products;
- (b) to assist with federal reporting requirements under 45 C.F.R. §96.130;
- (c) to further insure the CNMI's continued receipt of federal block grant funds pursuant to 45 USCS §300x-26; and
- (c) to facilitate enforcement of Public Law 11-75.

**Section 1.3 Definitions**

- (a) "Licensee" means any person, business entity, or organization licensed to sell tobacco products in the Commonwealth of the Northern Mariana Islands (CNMI) by the Department of Commerce, Alcohol Beverage and Tobacco Control Division.
- (b) "Minor" means an individual under the age of Eighteen (18) years.
- (c) "Tobacco Product" means any tobacco preparation, including but not limited to, chewing tobacco, cigars, cigarettes, any cigarette products, or snuff;
- (c) "Undercover Purchase" means an attempted purchase of tobacco products by a minor carried out in a manner that is reasonably designed to provide a reliable and realistic assessment of how a licensee reacts when presented, in a usual course of business, with typical young persons attempting to purchase tobacco products

## **2.0 Prerequisites For Using A Minor To Conduct An Undercover Purchase**

### **Section 2.1 Parental Consent**

The signed, written consent of a parent or guardian shall first be obtained for each minor used to purchase tobacco products undercover. The Community Guidance Center of the Department of Public Health (DPH: CGC) shall prescribe a form for such written consent.

### **Section 2.2 Training**

- (a) Before a minor conducts an undercover purchase of tobacco products, such minor shall first be trained by an employee of DPH: CGC.
- (b) Such training will be conducted with the aim towards instructing the minor on how to act in a manner that is reasonably designed not to reveal to a licensee that the attempted purchase of tobacco products is pursuant to an undercover purchase.
- (c) Such training shall be to the extent necessary to reasonably ensure that the minor is able to perform an undercover purchase in a competent and confident manner. To this end, such training shall include role-plays.

### **Section 2.3 General Selection Criteria for Minors Used**

- (a) DPH shall confirm that each minor selected is under the age of 18.
- (b) Each minor selected shall not appear to be older or younger than the average person of his or her age, shall dress in a manner reasonably appropriate to his or her age group, and shall not alter his or her appearance with the intent of appearing older or younger.
- (b) Minors selected may (but are not required to) include otherwise suitable persons who have previously used or currently use tobacco products.

### **Section 2.4 Voluntary Participation**

- (a) No minor shall be offered monetary compensation to participate in the undercover purchase program.
- (b) Nothing in this Section shall be construed as prohibiting DPH from offering volunteers items of *de minimis* value as a show of appreciation for their assistance.

- (c) DPH may advertise the undercover purchase project to the public at large
- (d) At all times, a minor's performance of an undercover purchase is strictly voluntary, and such voluntary relationship between the minor, the minor's parent(s) and DPH may be terminated by any party without notice or cause.
- (e) No minor may assist or be requested to so assist DPH as a condition of probation or in connection with a minor's disposition or sentencing in juvenile delinquency proceedings.

### **3.0 Conduct of Undercover Purchases**

#### **Section 3.1 Required Items**

When an undercover purchase begins, the minor shall possess a sum of money sufficient to pay for the tobacco product that the minor shall attempt to purchase.

#### **Section 3.2 Adult Supervision**

The minor shall be accompanied to the store that will be subject of the undercover purchase by a person who is at least Twenty-One (21) years of age, and is an agent and/or trained volunteer for DPH. That person shall supervise the minor as closely as circumstances permit without suggesting to the business under investigation that the minor is accompanied. Department of Commerce or Department of Public Safety staff may serve as agents for DPH for purposes of this Section.

#### **Section 3.3 Enforcement Officers**

A citation may be written by DPH staff, Department of Public Safety officers, or Department of Commerce: Alcohol Beverage and Tobacco Control staff, who have completed mandatory training, provided by the Department of Public Health: Community Guidance Center Prevention Unit Staff.

#### **Section 3.4 Procedure for Purchase**

- (a) The adult escort shall enter the store alone to ensure the minor's safety, to observe the transaction between the minor and the store clerk/management, and to observe all data collection form requested information.
- (b) The minor shall enter the store.
- (b) The minor shall approach the counter, or secured area where tobacco products are maintained, and request from the cashier a single package of tobacco product. The brand requested shall be as consistent as possible

for undercover purchases. If the store sells cigarettes in packages of less than twenty sticks, the minor shall purchase such a package.

- (c) The minor shall place on the counter enough money to purchase tobacco product.
- (d) If the cashier asks the minor his or her age, the minor shall respond truthfully.
- (e) If the cashier requests ID, the minor shall state that he or she does not have an ID in his or her possession.
- (f) The minor shall not attempt to persuade the cashier to sell the tobacco product.
- (g) If the cashier provides the requested tobacco product, the minor shall pay for it, obtain the receipt and whatever change is owed, and promptly leave the store.
- (h) If the cashier declines to make the sale, the minor shall leave the store.
- (i) The person described in Section 3.3 above, shall promptly meet the minor as soon as the minor leaves the store to determine whether tobacco products were purchased and to obtain the tobacco product, any monetary change, and the receipt from the minor.
- (j) Such tobacco products shall be retained by DPH for a period of at least six months and shall thereafter be destroyed, unless the tobacco product is to be used in connection with any prosecution or administrative procedure arising from the undercover purchase.
- (k) Any remaining money provided to a minor in connection with an undercover purchase shall be turned over by the minor to the adult referenced in Section 3.3. This money shall be returned to the retail establishment. The original monetary bill that was used to complete the purchase shall be requested for by providing a copy of that bill to the establishment.

#### **4.0 Citations and Reports**

##### **Section 4.1 Citation Issuance**

- (a) If a violation of P.L. 11-75 occurred during the course of an undercover purchase, an agent of DPH, Department of Commerce, or Department of Public Safety shall issue to the licensee a Violation Citation on a form to be prescribed by DPH: CGC within three business days after the violation.

- (b) For purposes of determining the number of a licensee's violations pursuant to Section 16 of P.L. 11-75, a one-year period shall run from June 1 of each year to May 31 of the following year, whereupon the violation number shall start over again.
- (c) A licensee who accumulates four violations of Section 2(a) of P.L. 11-75 within any 12 month period shall, in addition to penalties provided by law, cause DPH: CGC to recommend in writing to the Department of Commerce, Alcohol Beverage and Tobacco Control Division, that the licensee's renewal application to sell tobacco be denied.

#### **Section 4.2 Report of Incident**

**Immediately following each undercover purchase, the inspection team completes a report that includes, at a minimum, the following information:**

- (a) The minor's name, sex, and date of birth;
- (b) The date and time of the undercover purchase;
- (c) The location or address of the licensee checked;
- (d) The name or a brief description of the cashier involved;
- (e) The type of brand of tobacco product requested;
- (f) Whether the clerk asked the minor his/her age;
- (g) Whether ID was requested;
- (h) Whether the tobacco products requested were purchased;
- (i) Comments regarding any noteworthy aspects of the transaction

#### **Section 4.3 Report To Be Provided To Licensee**

A copy of the report described in Section 4.2 shall be sent or provided to the licensee.

#### **Section 4.4 Retention of Citations and Reports**

DPH shall retain for at least five years all citations and reports, together with receipts, and any accompanying relevant paperwork.



**5.0 Immunity for Minor Engaged in Undercover Investigations**

Any minor engaged in an undercover investigation pursuant to Public Law 11-75, Section 15(a) is immune from prosecution or penalties for violation of any provision of Public Law 11-75, or under any other provision of law prohibiting the purchase of a tobacco product by a minor.



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

STATE BOARD OF EDUCATION  
PUBLIC SCHOOL SYSTEM  
P.O. BOX 501370  
SAIPAN, MP 96950



Lucia L. Blanco-Maratita  
Chairperson

MaryLou S. Ada  
Vice-Chairperson

D. Tanya King  
Secretary/Treasurer

Members  
Herman T. Guerrero  
Galvin S. Deleon Guerrero

Non Public School Rep.

Student Representative  
Joycelynn Y. Ataliz, Rota High School

Teacher Representative

Commissioner of Education  
Rita A. Sablan, Ed.D.  
coe.ras@cnmipss.org

## PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-20 PUBLIC SCHOOL SYSTEM RULES AND REGULATIONS

**PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands Public School System ("PSS") finds that:

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Public School System ("PSS") intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). These regulations were published as Emergency regulations in V32 #09 on September 22, 2010. The Emergency regulation period is in effect for 120 days and now requires that promulgation take place to comply with and allow the thirty (30) day period for public comment. The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

**AUTHORITY:** The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.


**THE TERMS AND SUBSTANCE:** The proposed amendment sets forth the Chapter 60-20 Public School System Rules and Regulations.

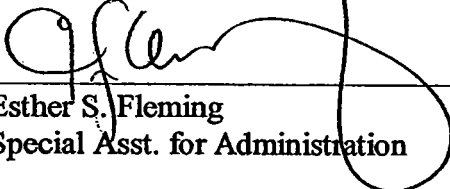
**THE SUBJECTS AND ISSUES INVOLVED:** These rules and regulations provide the Subchapter 60-20-720 Accounting and Reporting: Travel Outside the CNMI and Subchapter 60-20-721 Accounting and Reporting: Travel Within the CNMI. These regulations will serve to eliminate excessive paperwork for inter-island travel. Accountability for travel expenditures is maintained in the implementation of these regulations.


**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations. (1 CMC § 9102(a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

**TO PROVIDE COMMENTS:** All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, Board of Education, P.O. Box 1370 CK, Saipan, MP 96950, call 237-3727 or fax 664-3711 within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC §9104(a)(2))

This regulation was approved by the Board of Education Meeting on December 7, 2010.


Submitted by:  Dec 13, 2010  
Lucia L. Blanco-Maratita, Chairperson  
Board of Education  
Date

Received by:  12/20/10  
Esther S. Fleming  
Special Asst. for Administration  
Date

Filed and  
Recorded by:  12-20-10  
ESTHER M. SAN NICOLAS  
Commonwealth Register  
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 20<sup>th</sup> day of December, 2010.

 for  
EDWARD BUCKINGHAM  
Attorney General

# COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA

STATE BOARD OF EDUCATION  
SISTEMAN ESKUELAN PUPBLIKU  
P. O. BOX 501370  
SAIPAN, MP 96950

## NOTISIAN PUPBLIKU POT I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTO YAN REGULASION SIGUN I KAPITULU 60-20 NA AREKLAMENTO YAN REGULASION SIHA GI SISTEMAN ESKUELAN PUPBLIKU

**MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan Marianas Sistemán Eskuelan Pupblíku ("PSS") ha sodda' na:**

**I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTE I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA:** I Commonwealth gi Sangkattan na Islan Marianas Siha, i Sistemán Eskuelan Pupblíku ("PSS") ha intensiona para u adápta komu petmanente na regulasion siha ni mañechetton i Manmapropone na Regulasion, sigun gi areklo siha gi Ákton Administrative Procedures, 1 CMC § 9104(a). Este na regulasion siha manmapupblika komu Emergency na regulasion gi V32 #09 gi Septembre 22, 2010. I tetminon i Emergency na regulasion umifektibu gi halom sientu bente(120) dihas yan ha nesisita pá'go na u macho'gue ya u makomple yan u sedi trenta(30) dihas na tetmino para opiñon i pupblíku. I Regulasion siha para u efektibu gi halom i dies(10) dihas despues di adáptasion yan pupplikasion gi halom i Rehistran Commonwealth. (1 CMC § 9105(b))

**ATURIDAT:** I manmapropone na amendasion siha para i PSS na regulasion manmácho'gue sigun gi áturidát i Kuetpo komu mapribeniyi ginen i Attikulu XV gi Konstitusion CNMI, Lai Pupblíku 6-10 yan i Ákton i CNMI Administrative Procedures.

**I SUSTANSIAN I PALABRA SIHA:** I mapropone na amendasion mapega mo'na gi Kapitulu 60-20 gi Areklamento yan Regulasion siha gi Sistemán Eskuelan Pupblíku.

**SUHETO NI MASUMARIA YAN ASUNTO NI TINEKKA:** Este na areklamento yan regulasion siha ha pribeniyi i Subchapter 60-20-720 na Accounting yan Reporting:

Kinarera gi Hiyong i CNMI yan i Subchapter 60-20-721 Accounting yan Reporting: Kinarera gi Halom i CNMI. Este na regulasion siha u setbe ni para u mana'suha i mampos bula che'cho páppet para i kinareran inter-island. I accountability para i gáston kinarera siha ha maintained gi halom i implementasion este siha na regulasion.

*"Estudiante Siha Finene'na"*

**DIREKSION PARA U MAPO'LO YAN MAPUPBLIKA:** Este i Manmapropone na Regulasion siha debi na u mapupblika gi halom i Rehistran Commonwealth gi seksiona ni manmapropone yan nuebu na ma'adapta na regulasion siha (1 CMC § 9102 (a)(1) yan mapega gi halom i kombeniente na lugat siha gi halom ofisinin gobietnamento gi kada distriton senadot, parehu English yan i dos na lengguáhen natibu. (1 CMC § 9104(a)(1))

**PARA U MAPRIBENIYI OPIÑON SIHA:** Todu maninterisáo na petsona siña ma'eksamina i manmapropone na amendasion siha yan u mana'háлом i tinige' infotmasion, pusision, pat deklarasion inaksepta pat kinentran i manmapropone na amendasion siha guatu gi Kabiseyu, Kuetpon Edukasion, P.O. Box 1370 CK, Saipan, MP 96950, ágang 237-3727 pat fax 664-3711 gi halom i trenta(30) diha siha ni tinattitiyi ni fechan publikasion gi halom i Rehistran Commonwealth gi este na amendasion siha. (1 CMC § 9104(a)(2))

Este na regulasion ma'apreba gi Huntan i Kuetpon Edukasion gi Disembre 7, 2010.

Nina'háлом as:

Lucia L. Blanco-Maratita, Kabesiyu  
Kuetpon Edukasion

Fecha

Rinisibi as:

  
ESTHER S. FLEMING  
Espisiát Na Ayudánte Para Administrasion

12/20/10  
Fecha


Pine'lo yan  
Rinekot as:

  
ESTHER M. SAN NICOLAS  
Rehistran Commonwealth

12-20-10  
Fecha

Sigun i 1 CMC § 2153(e) (I Abugádu Henerát ha apreba i regulasion siha na para u macho'gue komu fotma) yan 1 CMC § 9104(a)(3) (hentan inapreban Abugádu Henerát) i manmapropone na regulasion siha ni mañechetton guini ni manmarebisa yan manma'apreba komu fotma yan suficiente ligát ginen i CNMI Abugádu Henerát yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion i areklamento yan regulasion siha)

Mafecha guini gi diha 20<sup>th</sup>, gi Disembre, 2010

  
EDWARD T. BUCKINGHAM  
Abugádu Henerát

**ARONGORONGOL TOULAP REEL POMWOL FFÉÉRÚL ALLÉGH  
IWE E LIWILI AUTOL ALLÉGH WE REEL CHAPTER 60-20  
ALLÉGHÚL PUBLIC SCHOOL SYSTEM**

**ALLÉGH KKA RE PROPOSE-LI:** Commonwealth of the Northern Mariana Islands Public School System (“PSS”) e schuungi bwe:

**MÁNGEMÁNGIL MWÓGHUT BWE EBWE ADAPTAALÓ ALLÉGH KKA E PROPOSE:** Commonwealth of the Northern Mariana Islands, Public School System (“PSS”) aa mángiyy bwe ebwele adaptááililó ngare allégh kka ebwele lléghló ikka e appasch iwe Pomwol Fféérúl Allégh reel rebwe attabweey Administrative Procedures Act, 1 CMC § 9104(a). Allégh kkaal nge aa takkal arongowow ngare Alléghúl Ghitipotch llól V32 #09 wóól Septiembre 22, 2010. Alléghúl Ghitipotch we nge e tool ebwe lléghló 120 ráll nge ighila aa fil bwe ebwe arongowow bwe ebwe attabweey akkúle we eliigh (30) ráll bwe ebwe atootoolong mwaliyeer toulap. Allégh yeel nge ebwe lléghló llól seigh ráll sáangi igha re adaptááli me arongowow mellól Commonwealth Register, (1 CMC § 9105(b).

**BWÁNG:** Pomwol lliiwel mellól Alléghúl PSS nge e arongowow reel bwángiir Board igha e mwetto mereel Article XV mellól CNMI Constitution, Alléghúl Toulap ye 6-10 me CNMI Administrative Procedures Act.

**KKAPASAL ME AUTOL:** Pomwol lliiwel nge ebwe arongaawow Chapter 60-20 mellól Alléghúl Public School System.

**AUTOL ME MILIKKA E BWAL TOOLONG:** Allégh kkaal nge e ayooraalong Subchapter 60-20-720 Accounting me Reporting: Travel Outside the CNMI me Subchapter 60-20-721 Accounting me Reporting: Travel within the CNMI. Allégh kkaal nge ebwe lo bwe asúúwló ssoghul paperworks reel inter-island travel. Accountability reel gastool travel nge e bwal lo schagh llól ayoorul allégh kkaal.

**AFAL REEL AISIIS ME ARONGORONG:** I óPropose Regulations kkaa nge ebwe toowow mell (1)(a)9102 § CMC 1) .liláál adaptáákka rell ghélil we elo propose me allál tóCommonwealth Register ll civic center me bwulasyool government kka senatorial ,me ebwe appasch me bwuley kka e fil meiyé .(1)(a)9104 § CMC 1) ..wúreel ii me ruwoow English me mwaliyeer aramasal fal ,districts

**EBWE AYOORAALONG MWALIYEER ARAMAS:**Alongeer aramas kka re tipeli nge emmwel reel aar ,rebwe amwuri fischiiy pomwol lliiwel kkaal nge raa atootoolong mwaliyeer nge ebwe ischitiw Board of ,irpersonli Chaángare re abwuta pomwol lliiwel kkaal nge raa afanga ng ,kkapas ,position ngare ,3727-237ngare ffaingí numurool tilifoon ye ,96950MP ,Saipan ,CK 1370Box .O.P ,Education l Commonwealth Registeróll mwiril igha e toowow arongorong yeel mellár (30)eliigh 3711-664fax .((2)(a)9104 ~CMC 1) .reel lliiwel kkaal

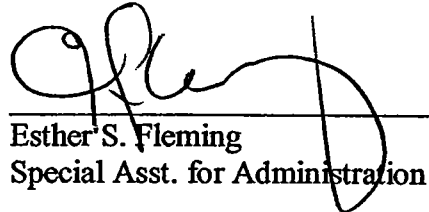
Allégh yeel nge aa angúungú sáangiir Board of Education ighiwe re yeelágh Disembre 7, 2010.

Féerúyal:

\_\_\_\_\_  
Lucia L. Blasco-Maratita, Chairperson  
Board of Educational

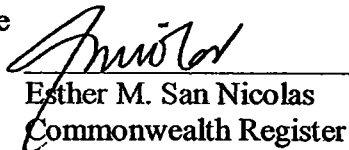
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Ráll

Aramas ye  
e bwughi:

  
\_\_\_\_\_  
Esther S. Fleming  
Special Asst. for Administration

12/20/10  
\_\_\_\_\_  
Ráll


File-liiyal me  
Rekoodliyal:

  
\_\_\_\_\_  
Esther M. San Nicolas  
Commonwealth Register

12.20.10  
\_\_\_\_\_  
Ráll

Reel rebwe attabweey 1 CMC § 2153(e) (angúungú sáangi AG reel allégh kka ebwe arongowow reel fféerúl) me 1 CMC § 9104(a)(3) (angúungú mereel AG) allégh kka e propose ikka e appasch ighaal nge aa takkal review me angúungú reel fféerúl me legal sufficiency mereel CNMI Attorney General nge ebwe atootowow (1 CMC § 2153(f) (atootowowul allégh)).

Re mákkiy ráálil ye 20<sup>th</sup> Disembre, 2010.

  
\_\_\_\_\_  
EDWARD BUCKINGHAM  
Attorney General

**NORTHERN MARIANA ISLAND ADMINISTRATIVE CODE  
TITLE 60  
BOARD OF EDUCATION**

**Regulation Title: Northern Mariana Islands Administrative Code  
Chapter 60-20 Public School System Rules and Regulations**

**Subchapter § 60-20-720 is repealed in its entirety and replaced by with the following emergency regulations: § 60-20-720 Accounting and Reporting: Travel Outside the CNMI and § 60-20-721 Accounting and Reporting: Travel Within the CNMI.**

**§ 60-20-720**

**Accounting and Reporting: Travel Outside the CNMI**

**(a) Applicability**

This section applies to official travel outside the CNMI performed in the interest of the Public School System by Public School System employees and the Board of Education. Other individuals covered by this section include, but are not limited to, consultants, employees eligible for repatriation and individuals, such as students and parent chaperones, and advisory council members who are traveling on official business for the Public School System. This section shall not apply to travel for repatriation or other travels for which additional regulations may be established and approved by the Board of Education.

**(b) General Rules**

Only official travels that are considered necessary to accomplish a specified purpose shall be authorized.

**(c) Travel Authorizations (TA)**

(1) All official travel shall be authorized with an approved travel authorization (TA). Situations requiring emergency official travel shall be permitted upon approval of a written justification.

(2) Trip-by-trip authorization shall be issued to allow an individual to perform official travel. This authorization shall include:

- (i) Specific purpose
- (ii) Itinerary (schedule of departure, arrival and destination)
- (iii) Estimated cost.

(3) All travel outside of the CNMI by PSS employees, students, parents and appropriate consultants and guests shall be requested by the principal or program manager through the Commissioner and authorized by the Chairperson of the Board or his designee as the approving officer.



(4) All travel outside of the CNMI by the Commissioner, BOE key staff, and BOE members other than the Chairperson of the Board of Education shall be signed by the traveler as requester and the Chairperson of the Board or his designee as the approving officer.

(5) All travels outside of the CNMI by the Chairperson of the Board shall be requested by the Chairperson of the Board and approved by the Vice-chairperson of the Board of Education.

(6) The following information must be attached to the TA before being presented to the Chairperson of the Board and to the Commissioner as appropriate:

(i) Justification memorandum for the travel

(ii) Document of invitation and/or agenda

(iii) Specific purpose

(iv) Itinerary (schedule or departure, arrival and destinations)

(v) Estimated cost.

(7) Out of CNMI travel requests shall be submitted to the Commissioner or the Chairperson of the Board of Education, as appropriate, no later than 10 working days prior to commencement of travel, except for extenuating circumstances.

(8) Instructions for travelers shall be attached to all approved travel authorizations notifying travelers of their responsibilities in accounting for all procurement documents such as unused tickets, coupons, receipts, and other documents that will be required for completion of vouchers or for accounting for travel cancellations.

(9) TAs shall not be issued if there is an outstanding voucher or if an outstanding expense by the traveler has not been verified. Exceptions to this rule may be made at the discretion of the Commissioner or the Chairperson of the Board, as appropriate.

(10) TAs may be amended only upon approval by the requesting and approving officials. A justification memorandum for the amendment must be attached. Any diversion from what was specified on the approved TA must be presented as an amended TA and shall be approved by the appropriate requesting and approving officials. Amendments to TAs must be in the interest of the Public School System.

(d) Travel Expenses

Expenses anticipated in the fulfillment of an official travel may include the following:

(1) Transportation: PSS will authorize the mode of transportation which will result in the greatest advantage to the PSS considering factors such as per diem, overtime, lost work-time, transportation costs, distance of travel, number of travelers, and stopovers. Travel by common carrier, which is most efficient and economical to the PSS, shall be selected unless this will impose undue hardship upon the traveler or would seriously interfere with the performance of business by the traveler.

(2) Individual travel: Payment for ground transportation will be \$30 per day per individual. No receipts are necessary as this is a per diem travel expense. In certain circumstances the traveler

may find it more convenient to rent a car. The rate for the car should not be higher than the federal rates for the economy car. Please check with the travel section of PSS for the allowable rate for the rental car. (Rates will vary by city.) The traveler will be paid the difference between the car rental cost and the ground transportation per diem. The traveler will be expected to pay the car rental agency. Receipts for the car rental are necessary for reimbursement. PSS will not pay car rental agencies directly.

(3) Group travel: Payment for transportation expenses for group travel will be handled in a different manner. Ground transportation of \$30 per diem will not be issued to any traveler. One person in the group shall receive an advance to pay for the cost of the van. No other person will receive any funds for transportation expenses. The person who receives the cash for the rental of the van must rent the van or be liable for the reimbursement of the funds to PSS. Receipts must be submitted to PSS to certify the rental. Actual cost of the van rental is allowable. The difference between the funds advanced and the actual cost will be reconciled immediately upon submission of the travel voucher to the mutual benefit of the traveler and PSS.

(4) Termination of travel due to illness may be authorized prior to completion of temporary duty assignment. Termination of travel as a result of the travelers own misconduct shall be at the expense of the traveler.

(5) Travel routes other than what was authorized shall be allowed if it can be established as necessary and will not incur additional expense to the PSS and if the trip is related to official business to be performed by the traveler.

(6) Insurance for collision damage and liability shall be paid by PSS for official travel requiring the use of a vehicle and as authorized in the TA. Travelers are required to obtain collision damage and liability insurance when renting or otherwise obtaining a vehicle. Damages to rented vehicles may be paid up to the deductible amount shown in the rental contract if it can be proven that the damage occurred while the vehicle was used for official business only. Personal accident insurance is reimbursable.

(7) Expenses incurred due to cancellation of flights by the airline shall be the responsibility of the airline. Lodging and meal expenses incurred as a result of flight cancellation shall be the responsibility of the airline. It is the responsibility of the traveler to ensure that the airline covers these costs.

(8) Voluntary cancellation of reservation on the part of the employee shall be at the expense of the employee and not the PSS. Employees on official travel status shall not voluntarily cancel their reservations if it will interfere with performance of official duties. Employees who voluntarily delay their travel while on official duty en-route to home destination shall be charged annual leave for additional hours or days that they miss as a result of voluntary postponement of travel, if approved in advance per the annual leave regulations. Those employees who voluntarily delay their travel while on official duty en-route to home destination without prior approval will be charged absence without leave (AWOL) and may be otherwise disciplined, including losing future travel privileges.

(9) Miscellaneous expenses such as excess baggage, communication costs, gasoline, baggage transfer and others that are incidental to performance of official business shall be reimbursed only when authorized and when accompanied by explanation for each expense item.

(10) Per diem rates shall be established by the Board of Education in accordance with board policy and CNMI law. Per diem rates shall be the standard form of travel reimbursement for PSS travelers unless otherwise requested and authorized. It is assumed that the per diem rate will cover all expenses other than airplane transportation and ground transportation.

(11) Actual subsistence rates may be requested, if appropriate for the nature of business to be conducted, and must be authorized by the Commissioner or Chairperson of the Board. Appropriate circumstances may include conferences held in hotels where the per diem rate would not be sufficient to cover travelers expenses. To determine the actual subsistence rate, reasonable cost of lodging for the number of days authorized plus the amount established by the Board for meals per day. Cost of ground transportation related to official business activity may be reimbursed in addition to the set amount per day for meals and miscellaneous subsistence expenses. Receipts for ground transportation expenses shall be attached to the voucher for reimbursement. Actual subsistence reimbursement shall not exceed 55% of the established per diem rate. Lodging, transportation and receipts for any claimed miscellaneous expenses must be submitted with the travel voucher.

(12) Whenever a traveler interrupts his/her travel for personal reasons or due to illness or injury not due to his/her own misconduct, the proper leave application must be filed with the voucher and approved by the authorized official.

**(e) Travel Authorization with No Expense to PSS**

Travel sponsored by agencies other than PSS must be approved with a travel authorization showing zero travel expense. All travel performed by PSS staff at the expense of agencies other than the PSS must be in the interest of the PSS. Proper leave must be applied if the traveler requires additional days from duty station for personal reasons not related to the purpose of the travel. The leave application must be attached to the TA.

**(f) Travel Advance**

(1) General rules: A travel advance form shall be filed by the traveler to authorize release of checks. The travel advance form shall be submitted with the TA.

(2) Travel advance checks shall be released on a timely basis. Ninety percent of the travel advance allowed shall be issued to the traveler. The remaining ten percent shall be issued only upon travelers completion and filing of the appropriate support documents with the fiscal office within fifteen working days upon completion of travel.

(3) Travel advance should be considered as a loan to the traveler until proper reconciliation of approved travel expenses has been authorized and no outstanding amount is due to either the traveler or the PSS.

(g) Travel Voucher

(1) General rules: Travelers are solely responsible for the preparation and submission of all travel vouchers and shall be held accountable for any missing documents or any failure to file in a timely manner. Travelers must file a travel voucher with supporting documentation within fifteen working days upon completion of travel. Travelers who fail to meet this deadline will forfeit the remaining ten percent of the cost of travel. Travelers who fail to submit travel vouchers and supporting documentation will be subject to payroll deduction of the entire amount of the advance.

(2) The traveler must complete and file a travel voucher form following these procedures.

(i) Front page (self explanatory)

(ii) Reverse page: Complete the form by filling in the appropriate space the local date, time of arrival and departure, and location. Note any departure from approved travel routes and delays.

(3) For travelers using the per diem rate, the following items must be submitted with the voucher:

(i) An approved detailed trip report explaining the purpose of the travel, the event or meeting attended (if appropriate) and the benefit to the traveler and the PSS. All trip reports must be submitted to the traveler's supervisor for approval before submission to the fiscal office. The sufficiency of the trip report shall be determined by the traveler's supervisor, who shall approve the report and return to traveler for submission to the fiscal office if the report is sufficient. If insufficient and not approved, the supervisor shall return the trip report to the traveler and request more information from the traveler for re-submission to the supervisor;

(ii) Conference receipt, if applicable;

(iii) Airline ticket stub/Boarding Pass

(iv) Any unused ticket coupons.

(4) For travelers using the actual subsistence rate, the following documents must be submitted with the travel voucher:

(i) An approved detailed trip report following the same procedures set forth above in (g)(3)(i);

(ii) A detailed statement justifying why the actual subsistence rate is/was necessary for the business conducted;

(iii) Airline ticket stub/Boarding Pass;

(iv) Conference receipt, if applicable;

(v) Lodging receipt;

(vi) Car rental receipt;

(vii) Receipts for any claimed miscellaneous expenses other than for meals; and

(viii) Any lack of receipts must be fully explained.

(5) TAs approved by PSS but at the expense of agencies other than PSS require submission of a voucher upon completion of travel.

(6) Traveler must submit any appropriate leave applications.

(7) Within fifteen working days after the voucher was or should have been submitted, the travel section of the Fiscal and Budget Office will issue the employee a statement notifying him/her of any discrepancies in the submitted documents and all amounts owed to PSS. This statement shall include the following:

- (i) The date of each travel resulting in an outstanding balance;
- (ii) The place of each travel resulting in an outstanding balance;
- (iii) The amount advanced for each trip;
- (iv) The amount owed for each trip;
- (v) The total amount owed;
- (vi) Any discrepancies or problems with the submitted documents; and
- (vii) Notification that the amount will be deducted from the employees paycheck for the next pay period unless resolved.

(8) In no case shall a payroll deduction exceed more than thirty percent of the employee's gross paycheck unless the employee is leaving PSS. Payments owed to PSS may be deducted over several pay periods, if necessary.

(9) If the travel advance exceeds reimbursement due, the balance will be deducted from the travelers paycheck subsequent to the notice of the balance due, but no later than fifteen days after travel has been officially notified of amount due to PSS. For Board members, deductions shall be made from honorarium payments. For all non-employee travelers, including Board members, if future travel is approved as an exception under subsection (c)(10) of this section, deductions for amounts owed may be made from the per diem advance for the next travel.

(10) If travel is cancelled for any reason, immediate refund of the travel advance must be made. Employee must notify the travel section that the travel was cancelled and the purchased tickets or unused GTRs must be returned to PSS. Employee will be notified that a payroll deduction shall be made from the employees next pay check and the deduction shall be made no later than 15 days after the notice.

(11) Responsibility for examination of voucher and supporting documentation rests with the fiscal staff of the PSS. Vouchers must be accurate and expenses claimed authorized. If necessary, the voucher examiner shall initiate the voucher for review by the appropriate officials. Notes shall be made by the examiner if any discrepancy exists and forwarded to the traveler for clarification or correction. Employees must respond with the requested supporting information to avoid forfeiture of the 10% and/or to avoid any paycheck deductions.

(12) Appropriate procedures including possible legal action may be initiated in case of fraudulent claims. Documentation of this process must be made in writing by the fiscal section and the appropriate official of PSS.

#### **60-20-721 Accounting and Reporting: Travel Within the CNMI**

##### **(a) Applicability**

This section applies to official commutes performed in the interest of the Public School System by Public School System employees and the Board of Education. Other individuals covered by

this section include, but are not limited to, consultants, and individuals, such as students and parent chaperones, and advisory council members who are traveling on official business for the Public School System. This section shall not apply to travel for repatriation or other travels outside the CNMI for which additional regulations may be established and approved by the Board of Education.

**(b) General Rules**

Only official commutes that are considered necessary to accomplish a specified purpose shall be authorized.

**(c) Definitions**

(1) "Commuting Costs"—Travel within the CNMI

(2) "Commuters"--- Individuals identified in the applicability section traveling within the CNMI.

(3) "Frequent Commuters"— PSS Commuters who travel within the CNMI on a frequent basis including but not limited to the Commissioner of Education, Special Education and Early Childhood staff.

(4) "Semi-Frequent Commuters" --- PSS Commuters who travel often within the CNMI including but not limited to; Board Members, Principals and Leadership.

(5) "Infrequent Commuters"--- PSS Commuters who rarely travel within the CNMI including but not limited to, Teachers, Students, Parents, Chaperones.

**(d) Frequent Commuters:**

(1) Commuting costs of frequent commuters will require a yearly scope of purpose for the duties performed on neighboring islands of the CNMI.

(2) A yearly schedule of visits to other islands of the CNMI from the home island of the employee will also be required. (The exact dates are not necessary, but a fairly accurate estimate of trips per month to the various islands is expected.)

(3) The scope of work and yearly schedule will be approved by the respective department heads.

(4) The travel section will then compute a monthly amount of estimated commuting expense based on this yearly schedule.

(5) The estimated amount will be advanced to the employee at the beginning of the month.

(6) At the end of every month, the employee will submit the following to the Finance Department to provide a method of accounting for the Federal Commuting and Local Commuting departments.:

(i) Boarding passes to and from the neighboring islands

(ii) Auto rental receipts,

(iii) parking receipts

(7) Commuters will compute the exact amount of funds expended every month from these monthly reports.

(8) Reports must be submitted by the 27<sup>th</sup> of every month.

(9) In the event that the monthly reports are not submitted by the 27th of the month, the advance payment will be stopped.

(10) The overage and underage of the monthly advances will be carried forward to the next month if it is less than a cumulative \$50, if the overage and underage is greater than \$50, it will be adjusted in the next monthly advance.

**(e) Semi-Frequent Commuters**

- (1) A yearly scope of work and yearly schedule of commutes for the semi-frequent commuters will be submitted in the same manner as frequent commuters.**
- (2) Rota and Tinian Principals will be allowed up to three days per month of commuting to Saipan unless specifically authorized by the Commissioner.**
- (3) Leadership will be allowed two days per month to visit Rota and Tinian every other month.**
- (4) Board members are automatically authorized as necessity requires.**
- (5) The reports of the expenditures are the same requirements as the frequent commuters.**

**(f) Infrequent Commuters**

- (1) Commuting expenses of infrequent commuters to neighboring islands will be advanced on an estimated advance form.**
- (2) A scope of work will be provided on the advance request form.**
- (3) After the commute is performed, the commuter will submit the following documents within 10 days of their commute:**
  - (i) Boarding passes,.**
  - (ii) Auto rental receipts.**
  - (iii) Parking receipts.**
- (4) An advance has no deadline to be submitted since these commutes must be attended to immediately.**

**(g) General rules:**

- (1) Commuters are solely responsible for the preparation and submission of all yearly reports and advances and shall be held accountable for any missing documents or any failure to file in a timely manner.**
- (2) Commuters must file the appropriate report with supporting documentation within set forth in each section above.**
- (3) Commuters who fail to submit reports and supporting documentation will be subject to payroll deduction of the entire amount of the advance.**
- (4) Summer conferences attended within the CNMI will be paid with commuting advances not with TA's and GTR's.**
- (5) All inter-island commutes require a scope of work, and estimated schedule.**
- (6) The commuter is required to handle their own airline tickets, hotel reservations.**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**  
**NORTHERN MARIANAS COLLEGE PROCUREMENT AND PROPERTY MANAGEMENT**  
**PUBLIC NOTICE OF PROPOSED POLICIES AND PROCEDURE OF THE**  
**NORTHERN MARIANAS COLLEGE**

**INTENDED ACTION TO ADOPT:** The Board of Regents of the Northern Marianas College intends to adopt as permanent policies and regulations the attached proposed Policies/Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board of Regents intends to adopt them as permanent, and hereby gives 30 days notice of its intent. (*Id.*) The Policies/Regulations will become effective 10 days after adoption. 1 CMC § 9105(b).

**CONSTITUTIONAL AND STATUTORY AUTHORITY:** The Board of Regents is mandated to “formulate policy relating to the higher education needs of the Commonwealth of the Northern Marianas Islands.” Northern Mariana Islands Constitution, Article XV, Section 2(a).

One of the statutory duties of the Board of Regents is “To establish procurement policies for the college, and to expend funds appropriated by the federal or Commonwealth government or donated to the college by any other entity” 3 CMC §1316 (v)

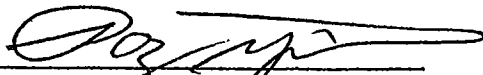
**TERMS AND SUBSTANCE:**

These procurement policies/regulations have been developed to:

1. Define the college’s procurement policies and practices;
2. Delineate the authority and responsibilities of College personnel involved in the acquisition of goods, services, construction, and cooperative agreements;
3. Establish standard procedures to effectively manage the College’s purchasing and contracting activities;
4. Insure compliance with Commonwealth and Federal laws, rules and regulations, as well as Board of Regents policies;
5. Ensure fair and equitable treatment of all persons who deal with the procurement system of the college;
6. Provide increased economy in the College’s procurement activities and to maximize the purchasing value of public funds entrusted to it; and
7. Provide safeguards for the maintenance of a procurement system of quality and integrity.

**COMMENTS:** Interested parties may submit written comments on these proposed policies/regulations to Maria (Paz) C. Younis, Chair, Board of Regents, P.O Box 501250, Saipan MP 96950, or by fax to (670) 234-1270. Comments must be received by the Board of Regents within 30 days of the date this notice is published in the Commonwealth Register.



Submitted by:   
MARIA (PAZ) C. YOUNIS  
Chairperson

12/13/10  
Date

Received by:   
ESTHER FLEMING  
Special Assistant to the Administration


12/13/10  
Date

Filed and Recorded by:   
ESTHER SAN NICOLAS  
Commonwealth Register

12-14-10  
Date

Pursuant to 1 CMC §2153(e), the proposed policies/regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 13<sup>th</sup> December day of ~~November~~ 2010.

  
EDWARD BUCKINGHAM  
Attorney General

**COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA  
KOLEHON NOTTE MARIANAS PROCUREMENT YAN PROPERTY MANAGEMENT  
NOTISIAN PUPBLIKU GI MAPROPONE NA POLICIES YAN PROCEDURE GI KOLEHON  
NOTTE MARIANAS**

**AKSION NI MA'INTENSIONA PARA U MA'ADÁPTA:** I Kuetpon i Regents gi Kolehon i Notte Marianas ha intensiona para u adápta komu petmaniente na areklamento yan regulasion siha ni mañechetton i manmapropone na Areklamento/Regulasion siha, sigun gi manera siha gi Ákton i Administrative Procedure, 1 CMC § 9104(a). I Kuetpon i Regents ha intensiona para u adápta siha komu petmaniente, yan ha nána'i trenta(30) dihas na notisian intension-ña. (Id). I Areklamento/Regulasion siha para u efektibu gi halom i dies(10) dihas despues di adáptasion. 1 CMC § 9105(b)

**KONSTITUSIONÁT YAN ÁTURIDÁT ESTATUA:** I Kuetpon i Regents mamánda para u "fotma areklamento para i nesisidát i takhilo' na edukasion gi halom i Commonwealth gi Sangkattan na Islas Marianas." Gi Sangkattan na Islas Marianas na Konstitusion, gi Attikulu XV, Seksiona 2(a).

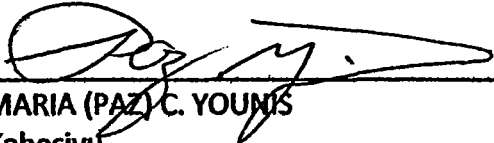
Unu na obligasion gi estauan i Kuetpon i Regents i "Para u ma'estapblesi i areklamenton procurement para i kolehu, yan para u gásta propiu i fondu siha ginen i federát pat i gobietnamenton Commonwealth pat u ná'i guatu i kolehu ginen i otro na entity" 3 CMC § 1316 (v)

**KONDISION YAN SUSTÁNSIAN I PALÁBRA:**

Este i areklamenton procurement /regulasion siha manmafa'tinas para:

1. Para u difina i areklamento yan i prinaktikan i procurement i kolehu siha;
2. Para u dekrabi i áturidát yan responsáplidát i personnel i Kolehu ni sãonáo gi acquisition of goods, setbisio siha, konstruksion, yan cooperative agreements;
3. Para u estapblisa un areklo siha para u efektibu i minanehan i finahan i kolehu yan contracting na aktibidát siha;
4. Para u na'siguru na makomple i lain Commonwealth yan i Federát siha, areklamento yan regulasion siha komu i areklamenton i Kuetpon i Regents siha;
5. Para u na'siguru na fair yan mamparehu i trátamento para todú petsona siha ni chumochog'gue i sisteman procurement i kolehu;
6. Para u pribeniyi humátsa i ekonomia gi halom i Kolehu ni aktibidát i procurement siha yan para u maximize i balen mamáhan gi fondon pupbliku ni ma'angokko para ayu.
7. Para u pribeniyi na ha pulan siguru para maintenance i sisteman procurement gi kuálidát yan integrity.

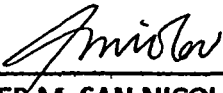
**PARA U MAPRIBENIYI OPIÑON SIHA:** Todu maninteresão na petsona siha siña mana'háлом i tinige' imfotmasion siha gi este i manmapropone na areklamento/regulasion siha guatu gi as Maria (Paz) C. Younis, Kabesiyu gi Kuetpon i Regents, P.O. Box 501250, Saipan MP 96950, pat fax guatu gi (670) 234-1270. Todu imfotmasion siha debi na u marisibi ni Kuetpon i Regents gi halom i trenta dihas(30) gi fetchan este na notisia ni mapublika gi halom i Rehistran Commonwealth.

Nina'háлом as:   
MARIA (PAZ) C. YOUNIS  
Kabesiyu

12/13/10  
Fecha

Rinisibi as:   
ESTHER S. FLEMING  
Espisiát Na Ayudánte Para I Atministrasion

12/13/10  
Fecha

Pine'lo Yan  
Rinikot as:   
ESTHER M. SAN NICOLAS  
Rehistran Commonwealth

12-14-10  
Fecha

Sigun i 1 CMC § 2153(e), I manmapropone na areklamento/regulasion siha ni mañechetton guini ni manmarebisa yan manma'aprueba komu fotma yan suficiente ligát ginen i CNMI Ofisinan Abugádu Henerát.

Mafecha guini gi diha 13, gi ~~Nubembre~~ 2010

  
EDWARD BUCKINGHAM  
Abugádu Henerát

**COMMONWEALTH TÉÉL FALÚW KKA FALÚWASCH EFÁNG MARIANAS**  
**NORTHERN MARIANAS COLLEGE PROCUREMENT AND PROPERTY**  
**MANAGEMENT ARONGOL TOULAP REEL POMWOL ALLÉGH KKAAL ME**  
**AMMWELIL NORTHERN MARIANAS COLLEGE**

**MÁNGEMÁNGIL IHGA EBWE FILLÓÓY:** Mwiischil Regents mellól Northern Marianas College e tipeli ebwe schéshéél fillóóy alléghúl me ammwelil kka e appasch, bwelle reel mwóghutul Administrative Procedure Act, 1 CMC Tálil 9104(a). Mwiischil Regents e mwuschel ebwe schéshéél fillóóy, me ebwe yoor eliigh rááilil arong yeel. (Id). Alléghúl kkaal ebwe kkamalló llól seigh (10) rááilil mwiril yaar fillóóy. 1 CMC Talil 9105(b).

**AWEEWEL ME BWÁNGIL:** E alléghewow bwe Mwiischil Regents ebwe “fféér alléghúl ye e ghil ngáli gakkó ye llang mellól Commonwealth Téél falúw kka falúwasch Efáng Marianas. “Northern Mariana Islands Allégh Lapalap, Ghilighil XV, Tálil (2)(a).

Eew angaangal Mwiischil Regents ebwe “Ayoora ammwelil wiisal (procurement) college, me atoropa (expend ) salapial federal Commonwealth government me ngáre akkatéélong (donated) llól college sáangi akkááw lamal” 3 CMC Talil 1316 (v).

**KKEPASAL ME ÓUTOL:**

Alléghúl procurement nge aa fféerlo bwele ebwe:

1. Abwáári wiisal alléghúl college me mwóghutul
2. Affata bwángil me ghuleey tool bwangiir schooy angaangal llól college reel bweibwoghol wiseer (supplies), services, construction, me cooperative agreements;
3. Fféér alléghúl igha college ebwe ammwela bweibwoghol me contracting activities;
4. Ebwe ffat yaar tabweey alléghúl Commonwealth me alléghúl Federóód alléghúl kkaal, fengál me ammwelil Mwiischil Regents;
5. Affat ghatch me aweewe ppagh ngáliir schóókka re ghal féérú alléghúl procurement llól college.
6. Alapaló ekkonomial college sangi procurement me ebwe alapaló alughulughul bweiboghol salapial public fund.
7. Fféér ammwelil procurement bwe ebwe alughulugh ghatch.

**MÁNGEMÁNG:** Schóókka re tipeli nge emmwel rebwe ischilong pomwol allégh kkaal ngáli Maria (Paz) C. Younis, Assamwoolul, Mwiischil Regents. P.O Box 501250. Seipél MP 96950, me ngáre fax reel (670) 234-1270. Ischil mángemáng nge Mwiischil Regents rebwe bwughil llól eliigh (30) ngáre schagh arong yeel akkatééló llól Commonwealth Register.

Isaliyallong:   
MARIA (PAZ) C. YOUNIS  
Assamwool

12/13/10  
Rál

Mwir sáangi:   
ESTHER FLEMING  
Sów Alillist Sów Lemelem


12/13/10  
Rál

Ammwel sáangi:   
ESTHER SAN NICOLAS  
Commonwealth Register

12-14-10  
Rál

Sáangi allégh ye 1 CMC Tálil 2153(e), pomwol allégh kkaal nge raa takkal amweri fischi me allégheló mereel CNMI Bwulasiyool Sów Bwungul Allégh Lapalap.

Rállil ye 13 ilól maramal Aremwoy 2010.

  
EDWARD BUCKINGHAM  
Sów Bwungul Allégh Lapalap headlines

**SECTION ONE**  
**001- General Information**

**95-50.1-100 Purpose**

These procurement policies & procedures have been developed to:

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

**95-50.1-105 Authority**

CNMI Public Law 9-53, Section 6(v), authorizes Northern Marianas College to establish its own procurement policies. Public Law 9-53 specifically permits the institution "To establish procurement policies for the College and to expend funds appropriated by the Federal or Commonwealth government or donated to the College by any other entity."

**95-50.1-110 Applicability**

These policies & procedures apply to all expenditures of College funds irrespective of fund source, including federal assistance monies. It is noted however that should any conflict arise between the policies and procedures contained herein and federal procurement policies, procedures and regulations or specific conditions of a federal grant or award, the federal procurement policies, procedures and regulations and/or grant or award expectations shall prevail. These policies & procedures do not apply to contracts between the College and other government agencies or educational institutions (e.g., Memorandums of Understanding and Memorandums of Agreement) or for services provided to entities within the organization by departments or units. These policies and procedures also do not apply to employment contracts.

### **95-50.1-115 Public Access to Procurement Information**

Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper bidding procedures. The Procurement and Property Manager shall make this decision in consultation with the Chief Financial and Administrative Officer

### **95-50.1-120 Requirement of Good Faith**

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

### **95-50.1-125 Validity of Contract**

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

### **95-50.1-130 Remedy Against Employee**

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

### **95-50.1-135 Inspection and Audit**

#### **1. Right to Inspect Place of Business**

The College may, at reasonable times, inspect the place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by the College.

#### **2. Right to Audit Records**

As required by Section 404 of Public Law No. 3-91 (1 CMC §7845), the contractor and subcontractor or grantee and sub-grantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data, or papers relevant to a college contract or grant for a period of three (3) years after the final payment under the contract or grant. A clause to this effect shall appear in all College contracts and obligations.





## **95-50.1-140 Reports and Records**

### **1. Report of Anti-competitive or Deceptive Practices**

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

- A. Unfair methods of competition;
- B. Deceptive acts; or
- C. Unfair business practices.

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

### **2. Retention of Procurement Records**

The Procurement and Property Management Office shall maintain all procurement records for a minimum of three (3) years. Records for real property, capitalized property, selected non-capitalized property, designated non-capitalized property, shall be retained for three (3) years after final disposition. The College official with expenditure authority shall also keep copies of all procurement records for their respective office and shall keep such records until all audits have been completed. However should an action be initiated against the College, the related records shall be maintained until such action is resolved.

The Procurement and Property Management Office shall maintain a record listing all contracts for a minimum of three (3) years. The records shall contain:

- A. Each contractor's name;
- B. The amount and type of each contract; and
- C. A listing of the supplies, services, or construction procured under each contract.

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

## **95-50.1-145 Supplementary General Principles of Law Applicability**

Unless displaced by the particular provisions of these policies, the principles of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth and common

law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement these policies & procedures.

**95-50.1-150 Severability**

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

**SECTION TWO**  
**002- Definitions**

**95-50.2-100 Definitions**

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

<b>Adjunct</b>	A person providing temporary services to the college as an instructor, administrator, manager or administrative support staff.
<b>Appeal</b>	A written request to the Public Auditor for a ruling on a decision made by the College regarding an award of a contract.
<b>Bid</b>	The executed document submitted by a bidder in response to an Invitation for Bids.
<b>Bid Security</b>	The legally sufficient form of security furnished by an offeror as a warranty of good faith that the offeror will enter into a contract with Northern Marianas College and supply the necessary performance and payment bonds should its offer be accepted and which amount will be forfeited in the event of failure or refusal of the offeror to enter into a contract.
<b>Bid Opening</b>	The process of opening and reading bids at the time and place specified in the Invitation for Bids.
<b>Bidder or Offeror</b>	Any individual, partnership, or corporation submitting directly or through a duly authorized representative or agent, a bid or proposal in response to an Invitation for Bids or a Request for Proposals.
<b>Capital Item</b>	All non-consumables with a value of \$5,000.00 and above.
<b>Check Request</b>	A document used to request payment for intangibles.
<b>College</b>	Northern Marianas College.
<b>Commonwealth</b>	The Commonwealth of the Northern Mariana Islands and its respective government.

<b>Competitive Sealed Bidding</b>	A procurement method by which vendors submit sealed bids or proposals (offers) in response to an advertised solicitation.
<b>Confidential Information</b>	Any information which is available to an employee only because of the employee's status as an employee of the College and is not a matter of public knowledge or available to the public on request.
<b>Confirming Purchase Order</b>	A purchase order that is prepared for goods or services already purchased without following the College's normal procurement processes regardless of cost and type of purchases. Does not apply to exempt purchase order.
<b>Conflict of Interest</b>	A situation when a College official's responsibilities, duties, or activities conflict with the official's private interests whether they are of a business, family, social, or other nature.
<b>Conspicuously</b>	Conspicuously means written in such special or distinctive form, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
<b>Construction</b>	The process of building, altering, repairing, improving or demolishing of a College structure, building, or improvement to real property. It does not include the routine maintenance of existing structures, buildings, or real property.
<b>Consultant Contract</b>	A contract engaging the services of a consultant where the only (or predominant) service to be rendered is advice or counsel in either verbal or written form. Included under this definition shall be contracts engaging individuals or firms to perform studies or evaluations of College programs, systems, or procedures.
<b>Contract</b>	A legally enforceable agreement for the procurement of goods, services, or construction between the College and a Contractor.
<b>Contractor</b>	Any person or legal entity having a contract with the College.
<b>Cost-Plus-Percentage Contract</b>	An agreement on a construction project in which the contractor is provided a specified percentage profit over and above the actual costs of construction.
<b>Cost-Reimbursement Contract</b>	A contract under which a contractor is reimbursed for costs, which are allowable, and in accordance with the contract terms and these regulations, and a fee, if any.
<b>Days</b>	Calendar days unless otherwise specified.

<b>Designated Non-Capitalized Property</b>	Non-capitalized property with a purchase value of less than \$1, 000.00, which is designated for control for physical accountability.
<b>Direct or Indirect Participation</b>	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.
<b>Dispute</b>	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.
<b>Emergency</b>	A situation that threatens the health and safety of any person or the preservation or protection of buildings or property of the College and other situations that would cause adverse effects to College programs or activities if not remedied immediately.
<b>Emergency Purchase</b>	A purchase made without following the normal purchasing procedures in order to obtain goods, services, or construction immediately to meet an emergency.
<b>Employee</b>	An individual receiving salary and benefits from the College.
<b>Exempt Purchase Order</b>	Refer to 95-50.4-115
<b>Expendable Items/Supplies</b>	All tangible supplies which, when put to use, is consumed, loses its identity, or becomes an integral part of another property.
<b>Expenditure Authority</b>	A College official authorized to purchase goods or services for his/her respective program.

<b>Financial Interest</b>	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  B. Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.
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<b>Fixed Price Contract</b>	A lump sum award that provides for a price to be determined in advance for specific services. The contract amount is not subject to adjustment based on the contractor's actual costs incurred, thereby placing the risk on the contractor to perform within the fixed price. This type of contract is suitable only when definite performance requirements are available and when fair and reasonable prices can be established at the outset.
<b>Goods</b>	All property, including but not limited to equipment, materials, apparels, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or disposal of real and personal property.
<b>Gratuity</b>	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.
<b>Immediate Family</b>	Spouse, children, parents, brothers, and sisters.
<b>Independent Contractor</b>	<p>Any service provider having a contract with the College who is subject to the control and direction of the College for which services are performed only as to the result of the work and not as to the means. Among the most frequently used categories of independent contractors are:</p> <p>Consultant: An individual or firm possessing expertise in a particular field for which it is engaged to give expert or professional advice or counsel in return for an established fee.</p> <p>Speaker: an individual having specialized knowledge of a particular subject who is engaged to convey this knowledge by discourse to an audience in return for an established fee. Note: The Internal Revenue Service (IRS) has ruled that, in most cases, adjunct faculty is considered employees.</p> <p>Technical Service: an individual or firm rendering technical service for a fee.</p>
<b>Intangible</b>	Untouchable; not tangible such as services and bills for utilities, telephone service, subscription or registration and renewal etc.
<b>Invitation for Bid</b>	A written solicitation, including all documents, whether attached or incorporated by reference, to prospective bidders requesting bids on College requirements.

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



	discounts, date of performance, transportation terms, and all other information pertinent to the purchase and its execution by the vendor. Written acceptance of a purchase order or shipment of all or any portion of the items or services covered by a purchase order by a vendor constitutes a contract.
<b>Quotation</b>	A current official vendor document indicating cost of goods and/or services.
<b>Request for Proposals</b>	A written solicitation, including all documents, whether attached or incorporated by reference, to prospective offerors requesting proposals on College requirements.
<b>Responsible Bidder or Offeror</b>	A bidder or offeror who meets minimum or special standards as may be pre-scribed.
<b>Responsive Bidder or Offeror</b>	A bidder or offeror whose bid or offer conforms in all material respects to the invitation for bids or request for proposals.
<b>Selected Non-Capitalized Property</b>	Non-capitalized property with a purchase value between \$1,000.00 and \$5,000.00, that is controlled for physical accountability.
<b>Services</b>	The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, plans, and incidental documents.
<b>Sole Source</b>	A procurement process where a contract may be awarded without competition when there is only one source for a required good, service, or construction or when the College seeks to maintain continuity with an existing vendor or contractor or other circumstances which warrant securing the services or goods from a particular vendor or service provider
<b>Solicitation</b>	An invitation for bids, a request for proposals, or any other document issued by the College for the purpose of soliciting bids or proposals to perform a College requirement.
<b>Specifications</b>	The directions, provisions, and requirements of the College pertaining to the method and manner of performance and to quantities and qualities of materials to be furnished under a contract.

<b>Subcontractor</b>	An individual, partnership, firm, corporation, joint venture or other legal entity which enters into an agreement with the contractor to perform a portion of the work for the contractor.
<b>Tangible</b>	Material assets, touchable, capable of being treated as fact, real, concrete and physical.

**SECTION THREE**  
**003- Procurement Organization**

**95-50.3-100 Contracting and Expenditure Authorities**

The President, or his/her designee, is the ONLY formally recognized Contracting Officer of the College.

The President has the authority to expend funds for designated purposes of the College. However, the President has delegated expenditure authority for certain funds to other College officials as indicated in the College's "Budget and Expenditure Handbook".

**95-50.3-105 Procurement Organization**

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

**95-50.3-110 Procurement and Property Manager Responsibilities**

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

1. Oversee and implement College procurement and property management policies;
2. Develop guidelines and procedures for areas including:
  - A. Purchasing, receiving, and inspecting goods
  - B. Vendor requirements and selection
  - C. Bid and proposal evaluations; and
  - D. Property management
3. Conduct bidding, procurement, negotiation, or administration of College contracts upon request of the College official with expenditure authority,
4. Review procurement documents such as contracts and purchase orders for compliance with College policies,
5. Provide general oversight over capital equipment and supply inventories,
6. Sell, trade, or otherwise dispose of surplus physical assets,

7. Assist in the review and response to protests or disputes pertaining to bids, sealed quotations, or proposal evaluations.

**SECTION FOUR  
004- General Principles**

**95-50.4-100 Procurement Planning**

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

**95-50.4-105 Local Vendors**

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

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

**95-50.4-110 Methods of Source Selection**

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

1. SECTION FOUR – Procurements Exempt from Procurement Policies & Procedures.
2. SECTION SIX - Small Purchases
3. SECTION SEVEN - Sole Source and Expedited Purchasing in Special Circumstances Procurements
4. SECTION EIGHT - Emergency Procurements
5. SECTION TEN – Competitive Requests for Proposals
6. SECTION ELEVEN - Contracting for Services
7. SECTION TWELVE - Construction and Architect-Engineer Services

Every expenditure of College funds, irrespective of their source, unless exempt under Section 95-50.4-115, shall be made in accordance with one of the seven methods of source selection, which are discussed in detail in sections to follow.

**95-50.4-115 Procurements Exempt from Procurement Policies and Procedures**

The following items are exempt from the College's procurement & procedures:

1. Payment of obligations, which the College is required to pay by law, including paying fees, claims, making refunds, and returning funds held by the College as trustee, custodian, or bailee;
2. Payment of dues or fees of professional organizations of which the College is a member;
3. Disbursement of funds to financial institutions for deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
4. Disbursement of funds to government agencies of the Commonwealth;
5. Procurement of goods, services, or construction from a Commonwealth government agency, federal government, a state or other type of government, or another educational institution.
6. Services of expert witnesses for potential or actual litigation of legal matters involving the College and its officers and employees;
7. Educational materials used in the classrooms, laboratories, and libraries including textbooks, workbooks, visuals, kits, guides, and tests, in print, video, audio, magnetic, or electronic form;
8. Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
9. Utility services, including but not limited to telephone, power, water, sewer, whose rates or prices are fixed by regulatory processes or agencies.
10. Performances, including entertainment, speeches, and cultural and artistic presentations;
11. Goods for commercial resale by the College (e.g., textbooks);
12. Sub-grants and contracts to organizations directed by the funding agency;
13. Used and surplus government items that are advantageous, only available on short notice, and subject to sale, such as through an auction.
14. Professional service contracts for adjuncts.

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

**SECTION FIVE**  
**005- Limitations in Purchasing**

**95-50.5-100 Items Not to Be Purchased**

The following items will not be purchased or paid for with College funds:

1. Alcoholic beverages, except those purchased by the President or his/her designee for entertainment of official College guests or for special College events;
2. Attaché/briefcases;
3. Cigarettes and other tobacco products;
4. Clothing, except those purchased for program use or by the bookstore for resale to promote the College and its programs or where such purchases are necessary for the promotion and performance of activities specific to a federal, state or local grant;
5. Coffee-making equipment including all devices for making and serving coffee;
6. Contributions or donations to various causes;
7. Desk clocks.
8. Personal holiday cards, and office or holiday decorations;
9. Library fines.
10. Medication except for the first aid kit;
11. Personally inscribed appointment books;
12. Personally inscribed stationery and related supplies, except official business cards.
13. Personal type purchases;
14. Repairs to personally owned property.
15. Repairs to College property where the assigned employee is determined by proper authority to be at fault; and
16. Traffic fines.

\*The above prohibitions apply to all funds expensed by the College unless specifically authorized otherwise by the funding agency.

**95-50.5-105 Unauthorized Purchases**

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

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

**SECTION SIX**  
**006- Small Purchases**

**95-50.6-100 Conditions for Use**

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

**95-50.6-105 Adequate and Reasonable Competition**

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

**Quotations may be obtained via the following methods:**

1. Hard Copy – vendors may provide a hard copy of their price quotation via telephone facsimile, personal delivery, the United States Postal Service.
2. Electronically – vendors may transmit their price quotation via telephone facsimile or electronic mail.
3. If a project or procurement is deemed URGENT, requestors may telephonically call vendors for price quotations. The following information must be written in a cost comparison/quotation worksheet:
  - A. Name and telephone number of the Vendor.
  - B. Name of the person representing the vendor who provided the price information.
  - C. List of the goods and/or services being sought.
  - D. Price and quantity of the goods and/or services being sought.

E. Date and time of the call.

F. Name and signature of the caller.

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

<u>Dollar Amount</u>	<u>No. Of Quotations Required to be Solicited</u>
\$0.01 - \$2,499.99	At least one (1) written quotation should be obtained.
\$2,500 - \$24,999.99	At least three (3) written quotations must be obtained; or two (2) written quotations plus a written statement indicating reason(s) for not being able to obtain a third quotation or (1) quotation and a sole source justification.
\$25,000 or more	Formally advertised procurement (Invitation for Bids or Request for Proposals).

### **95-50.6-110 Purchase Orders**

#### **1. Purchasing Expenditure Authority**

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

#### **2. Approval of Purchase Orders**

The College official with expenditure authority must approve each purchase order for the program to indicate that the expenditure is consistent with the program it is intended to support.

All purchases of \$25,000.00 and above must be approved by the President and the Chairperson of the Board of Regents.

#### **3. Open Purchase Orders**

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

- A. The nature but not the precise amount of the requirement is known;
- B. The source of supply has been determined; and



- C. A number of repetitive orders are anticipated by the program during the period of time that the open purchase order is in effect.

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

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

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

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

5. Confirming Purchase Orders

Confirming purchase orders should not be used.

**95-50.6-115      Receipt and Payment of Goods and Services**

1. Open Purchase Orders

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

2. Other Purchase Orders

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

**SECTION SEVEN**  
**007- Sole Source and**  
**Expedited Purchasing in Special Circumstances**  
**Procurements**

**95-50.7-100 Conditions for Use**

1. Sole Source

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

- A. The particular goods, services, or construction have specific, unique feature, characteristic or capability that is essential in order for the program to accomplish its work.
  - B. The particular goods, services, or construction having the unique feature, characteristic, or capability are available from only one supplier or source.
2. A written sole source procurement memorandum shall be prepared by the official expenditure authority.

The written justification sole source memorandum shall contain:

- A. The specific, unique feature, characteristic or capability of the vendor/contractor selected.
- B. The specific reasons why such unique capabilities are required for the particular procurement;

- C. What specific efforts were made to obtain competition, and what other specifically named sources, both on island and off-island, have been considered and why they were not selected. Generalized statements are not adequate, and documents to support the statements justifying the sole source procurement are mandatory.

Examples of particular goods, services, and construction, which have a unique feature, characteristic, or capability, are:

- (1) Proprietary items;
- (2) Compatibility with existing equipment; and
- (3) Public utility repairs or construction that can only be provided by the utility company
- (4) Contracts solely for the purpose of obtaining expert witnesses for litigation;
- (5) Contracts for legal defense, legal advice, or legal services.

## 2. Sole Source Justification

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

### **95-50.7-105 Expedited Purchasing in Special Circumstances**

When special circumstances require the expedited purchasing of goods and/or services, the College official with expenditure authority must request in writing, or electronically, the Procurement and Property Manager to approve expedited procurement without the solicitation of bids or proposals.

Factors to be considered by the Procurement and Property Manager in approving or disapproving this request are:

1. The urgency of the College's need for the goods or services;
2. The comparative costs of procuring the goods or services from a sole source or through the competitive process.
3. The availability of the goods or services in the Commonwealth and the timeliness in acquiring it; and
4. Any other factors establishing that the expedited procurement is in the best interest of the College.

## **95-50.7-110 Procedures**

### **1. Sole Source**

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

- A. Unique capabilities required and why they are required; and
- B. Considerations given to alternative sources.

### **2. Expedited Purchasing in Special Circumstances**

Upon the Procurement and Property Manager determination that the factors in Section 95-50.7-100 (1) above justify an expedited purchase, she/he shall process a Sole source justification memorandum and assist the College official with the expenditure authority in procuring the required goods or services in the most efficient manner.

If the Procurement and Property Manager determines that the request for the expedited procurement did not meet the criteria in 95-50.7-100 (1) above, she/he should notify the College official with expenditure authority of his/her disapproval in writing.

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

## **SECTION EIGHT**

### **008- Emergency Procurements**

#### **95-50.8-100 Conditions for Use**

Normal procurement procedures may be suspended for the purchase of goods, services, or construction in bona fide emergency situations.

Emergency procurement may be utilized only to purchase that which is necessary to cover the emergency; subsequent requirements shall be obtained using normal purchasing procedures. An emergency procurement must be as competitive as practicable under the circumstances.

For this purpose, emergency procurement shall be considered only when the following conditions exist:

1. A situation which creates a threat to public health, welfare, or safety such as may arise by reason of major natural disaster, epidemic, riot, or fire; and
2. The existence of such condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods, the lack of which would seriously threaten the continued function of the College, the preservation or protection of property, or the health or safety of any person.

#### **95-50.8-105 Procedures**

A written justification, addressed to the Procurement and Property Manager, stating the basis for the emergency and for the selection of the particular vendor or contractor must be made by the appropriate Expenditure Authority. The written justification must contain the following information:

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

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

### **SECTION NINE 009- Purchase Order and Contract Administration**

#### **95-50.9-100 General**

Purchase order and contract administration consists of the management of all facets of purchase orders and contracts to assure that the vendor's products meet purchase order requirements and that the contractor's performance is in accordance with its contractual commitments and that the obligations of the College are fulfilled.

It includes the monitoring and supervision of contract actions from award of the contract to completion of the work required. It also includes, but is not limited to, the following:

1. Ensuring timely delivery;

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

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

## **SECTION TEN**

### **010- Competitive Sealed Bidding**

#### **95-50.10-100 Conditions For Use**

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

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

## **95-50.10-105 Split Purchases**

The parceling of a purchase to avoid competitive bidding requirements is strictly prohibited. If the Procurement and Property Manager determines that a contract has been split into subcontracts for the purpose of avoiding bidding or if a change order or modification is unreasonably being made in a contract to increase the contract price where a contract has been bid and awarded to the lowest responsible and responsive bidder, then she/he may require the contract or the modification to be competitively bid. An unreasonable modification or change order would be, for example, one which would have been reasonably foreseeable at the time of the formation of the contract.

## **95-50.10-110 Invitation for Bids Procedures**

### **1. Overview**

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

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

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

### **2. Preparing the Invitation for Bids**

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

A. An Invitation for Bids number;

- B. Date of issuance;
- C. Name, address, and location of the 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 full and open competition and allow bidders to properly respond;
- 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.

3. Public Notice

Adequate and reasonable public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publications of notice in a newspaper of general circulation in the Commonwealth once in each week over a period of thirty -(30) calendar days shall be deemed to be adequate and reasonable notice, unless it is determined by the Procurement and Property Manager that a shorter period is reasonable and necessary.

4. Bidding Time

Bidding time is the period of time between the date of publication of the Invitation for Bids and the time and date set for the opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A bidding time of -thirty -(30) calendar days shall be provided, unless the Procurement and Property Manager determines a shorter period is reasonable and necessary, however, shall never be less than fourteen calendar days.

5. Bid Receipt

All bids shall be submitted to the Procurement and Property Manager. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at the office. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set in the Invitation for Bids and must be received within seven (7) working days of that date. Bidders outside the Commonwealth must notify the Procurement and Property Manager in writing of their intent to bid in order to receive an additional seven (7) days for



the receipt of the actual bid documents. This notice of intent to bid may be by any mode of written communication including telex, facsimile, or other electronic transmission.

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

6. Bid Opening

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

7. Bid Acceptance and Bid Evaluation

Bids shall be unconditionally accepted without alteration or correction, except as authorized in these policies. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended.

8. Bid Rejection

A bid may be rejected for any of the following reasons:

- 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 College. For example, bids shall be rejected in which the bidder:
  - (1) Protects against future changes in conditions, such as increased costs;
  - (2) Fails to state a price and indicates that price shall be the price in effect at the time of delivery;
  - (3) States a price but qualifies it as subject to price in effect at time of delivery; or
  - (4) Limits the rights of the College.

C. Unreasonableness as to the price; or

D. A bid from a non-responsible bidder.

9. Correction or Withdrawal of Bids; Cancellation of Awards

Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be approved by the Procurement and Property Manager in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the College or fair competition shall be allowed. Whenever a bid mistake is suspected, the College shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the College shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (A) or (B).

A. Correction of Bids

Correction of bids shall only be permitted when:

1. 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
2. The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from any error in judgment.

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.

C. Cancellation of Awards

Cancellation of awards or contracts shall only be permitted when:

- (1) Evidence as to the existence of the mistake is not discovered until after the award;
- (2) There exists no clear and convincing evidence to support the bid intended; and
- (3) Performance of the contract at the award price would be unconscionable.

10. Award

The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid fully meets the requirements and criteria set forth in the Invitation for Bids and these regulations. Unsuccessful bidders shall also be promptly notified.

Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made. No acceptance of an offer shall occur nor shall any contract be formed until a College contract is written and has been approved by all the College officials required by these regulations. College contracts shall contain a clause, which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required College officials.

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 re-solicitation of work of a reduced scope, the Procurement and Property Manager may be authorized by the President or his/her designee to negotiate an adjustment of the bid price including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

#### **11. Cancellation of Invitation for Bids**

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

- A. Inadequate or ambiguous specifications contained in the solicitation;
- B. Specifications, which have been revised;
- C. Goods or services being procured which are not longer required;
- D. Inadequate consideration given to all factors of cost to the College in the solicitation;
- E. Bids or proposals received indicate that the needs of the College can be satisfied by a less expensive good or service;
- F. All offers with acceptable bids or proposals received are at unreasonable prices;
- G. Bids were collusive; or

H. Cancellation is determined to be in the best interest of the College.

## 12. Qualifications and Duties

### A. Responsibilities of Bidders and Offerors

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

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Ability to comply with the required delivery or performance schedule;
- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics;
- (5) Have the necessary organization, experience, and skills (or the ability to attain them) required to successfully perform the contract;
- (6) Have the necessary production, construction, and technical equipment facilities, or the ability to attain them; and
- (7) Be otherwise qualified and eligible to receive an award under applicable laws and rules.
- (8) Not be disbarred from conducting official business with the US Government when such services involve federal funds. This determination shall be made by the Procurement and Property Manager based on a review of information available on entities disbarred at the time of review. Additionally, prospective bidders shall provide assurance in writing that they are not disbarred from conducting official business with the US Government at submission of their interest to provide goods or services to the College as part of a procurement process.

### B. Obtaining Information

Prior to award, the Procurement and Property Manager shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in paragraph (A) above. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or offeror.

### C. Right of Non-disclosure

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

#### D. Non-responsibility Determination

When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the Procurement and Property Manager stating the basis for the determination and this shall be placed in the contract file.

### 13. Pre-qualification of Contractors

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

## SECTION ELEVEN 011- Competitive Sealed Proposals

### 95-50.11-100 Conditions for Use

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

### 95-50.11-105 Procedures

#### 1. Request for Proposals

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

#### 2. Public Notice

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

#### 3. Receipt of Proposals

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

#### 4. Evaluation Factors

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

5. 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.

6. Award

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the College taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation, and the contract file shall contain the basis on which the award is made.

7. Cancellation of Request for Proposals

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

**SECTION TWELVE  
012- Contracting For Services**

**95-50.12-100 General**

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

For the purposes of classification, services are categorized as professional services or independent contracts.

**95-50.12-105 Applicability**

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

**95-50.12-110 Procedures for Contracting for Services and Service Contract  
Addendum/Change Orders**

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

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

3. Subsequent to completion of the appropriate source selection process, the following procedure shall apply:

**A. Professional Services**

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

- (a) Scope of work and Deliverables
- (b) Total obligation of the College
- (c) Account number for certification funds
- (d) Business license
- (e) Tax (Federal/Local) Identification number

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

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

- (a) College official with expenditure authority of the program
- (b) Procurement and Property Manager
- (c) The Funds Certification Officer
- (d) The Chief Financial and Administrative Officer
- (e) Legal Counsel
- (f) President
- (g) Chairperson of the Board of Regents if the contract amount exceeds \$24,999.99
- (h) Contractor

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

## B. Non-Professional Services

- (1) The Procurement and Property Manager shall issue an award letter to the independent contractor selected to provide the services and a declination letter to those not chosen.
- (2) A contract for Independent Services shall be prepared by the Procurement and Property Manager.
- (3) The contract shall be signed by the following individuals in the same order:
  - (a) College official with expenditure authority of the program
  - (b) Procurement and Property Manager
  - (c) Funds Certification Officer
  - (d) Chief Financial and Administrative Officer
  - (e) Legal Counsel
  - (f) President
  - (g) Chairperson of the Board of Regents if the contract amount exceeds \$24,999.99
  - (h) Contractor
  - (i) Procurement and Property Manager – for signature verification

## C. Limitations

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

## 95-50.12-115 Exceptions

### 1. Honoraria

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

## 95-50.12- 120 Responsibility

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

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

## **SECTION THIRTEEN 013- Types of Contracts**

### **95-50.13-100 General**

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

### **95-50.13-105 Types of Contracts**

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

#### **1. Fixed-Price Contracts**

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

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## 2. Leases

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

## 3. Lease-Purchase Contract

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

#### 4. Installment-Purchase Contract

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

#### 5. Cost Reimbursement Contract

A cost reimbursement contract may be used when the Procurement and Property Manager determines in writing which is attached to the contract that:

- 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; or
- B. Use of a cost reimbursement contract is likely to be less costly to the College than any other type due to the nature of the work to be performed under the contract.

#### **95-50.13-110 Contracts Not Allowed**

##### 1. Cost-Plus-Percentage of Cost

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

#### **95-50.13-115 Addendum/Change Order**

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

(2) Before adding significant new work to existing contracts, the program shall thoroughly assess whether or not it would be more prudent to seek competition. Change orders on Construction and A & E contracts which exceed 25 percent of the cumulative contract price shall automatically be procured through competitive procedures Section 95-50.10-100, except when the procurement of the additional work is authorized without using full and open competition under Section 3 Item 95-50.4-110.

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

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Extension of Services. Award of contracts for continuing service requirements are often delayed due to circumstances beyond control of the contracting program. In order to avoid negotiation of short extension to existing contracts, the contracting program may include an option clause in the contract which will enable the college to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance there under shall not exceed 6 months.

## SECTION FOURTEEN 014- Construction and Architect-Engineer Services

### 95-50.14-100 Policy

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

### 95-50.14-105 Procedures: Construction

#### 1. Invitation For Bids

##### A. Contents

The invitation for bids shall be prepared in accordance with Section 9 - C. In addition, the following items shall be included in the Invitation for Bids:

- (1) Notice to Bidders. General information regarding the project;
- (2) Instruction to Bidders. Information on the preparation of bids, bid security requirements, and forms and certifications that must be submitted with the bid;
- (3) General Conditions. Standard contract clauses governing the performance of work;
- (4) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
- (5) Technical Specifications. Specifications governing the technical aspects of the work to be performed.

#### 2. Bid Security

##### A. Requirement.

Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the Procurement and Property Manager to exceed \$25,000.00 or when the Procurement and Property Manager, in consultation with the Chief Financial and Administrative Officer, determines it is in the interest of the College. Bid security shall be on a bid bond, in cash, by certified check, cashiers check or other form acceptable to the College. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Attorney General.

**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 Invitation 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 non-responsive.

**3. Contract Performance and Payment Bonds**

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

- A. A performance bond satisfactory to the College, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the College, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
- B. A payment bond satisfactory to the College, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the College, for the protection of all persons supplying labor and material to the contractor of its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (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 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

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the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however that any person having a direct contractual relationship with a subcontractor of contractor but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (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.

#### 5. Suits on Payment Bonds; Where and When Brought

Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one (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 Chief, Financial and Administrative Officer as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the price under consideration; provided, however, that with respect to the validity, as to the contractor of any executed contract modification, change order, or adjustment in price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

### **95-50.14-110 Procedures: Architect-Engineer Services**

#### 1. Procurement Method

Architect-Engineer services shall be procured as provided in section 95-50.14-105 except when authorized as a small purchase or emergency procurement.

## 2. Policy

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

## 3. Selection

The Procurement and Property Manager will maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirement for architect-engineer services, current statements shall be reviewed together with those submitted by other firms in response to the announcement. Discussions shall be conducted with at least three (3) of the firms regarding the contract requirements and technical approach and selection made there from, in order of preference, of no less than three (3) firms determined to be the most highly qualified to perform the service required, unless the number of qualified vendor/service providers is less than (3).

## 4. Negotiation

The Procurement and Property Manager shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the College. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, then the Procurement and Property Management Manager shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon. In the event only one qualified vendor/service provider is available, the College may at its discretion elect to reject the vendor/service provider or may alternatively choose to negotiate and enter into a contract with the sole vendor/service provider.

**SECTION FIFTEEN**  
**015- Protests and Disputes**

**95-50.15-100 Protests**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the President.

**95-50.15-105 Disputes**

Any dispute between the College and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of these regulations, must be filed in writing with the President within ten (10) calendar days after knowledge of the facts surrounding the dispute.

**95-50.15-110 Procedures: Bid Protests and Appeals**

**Protests to the President**

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 President. The protest shall be received by the President in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The President shall consider all protests or objections to the award of a contract, whether submitted before or after award (within the timeframe provided herein).
- 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 President within a specified period of time. Normally, the time specified will be one calendar (1) week.
- C. The President, in consultation with Procurement and Property Manager, the Chief Financial and Administrative Officer and Legal Counsel, shall decide on the protest within twenty (20) calendar days after all interested parties have submitted their views unless she/he certifies that the complexity of the matter requires a longer time, in which event she/he shall specify the appropriate longer time.
- D. When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the President is requested to submit a report, the President should include with his/her report a copy of:

- (1) The protest;



- (2) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is for award, or whose bid is being protested;
- (3) The solicitation, including the specifications on portions relevant to the protest;
- (4) The abstract of offers or relevant portions;
- (5) Any other documents that are relevant to the protest; and
- (6) The President's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the President's report will include the determination prescribed in subparagraph (2) (B) below.

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 President's decision has been taken to the Public Auditor, the President shall immediately begin compiling the information necessary for a report as provided in subsection (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 President deems must be confidential in order to benefit from competitive bidding) to the protester. In such instances, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the President.

2. Protests before Award

- A. When a proper protest against the making of an award is received, the award will be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subparagraph (B) below.
- B. When a written protest is received, award shall not be made until the matter is resolved, unless the President determines that:
  - (1) The materials and services to be contracted for are urgently required;
  - (2) Delivery or performance will be unduly delayed by failure to make award promptly;  
or
  - (3) A prompt award will otherwise be advantageous to the College.

- C. If award is made under subparagraph (b) above, the President shall document the file to explain the need for an immediate award. The President shall also give written notice to the protester and others concerned of the decision to proceed with the award.

### 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 President, 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 College's interest, the President 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 College. 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.

## **95-50.15-115 Appeals to the Public Auditor**

### 1. Jurisdiction; Exhaustion of Remedies

A written appeal to the Public Auditor from a decision by the President may be taken provided that the party taking the appeal has first submitted a written protest to the President as provided in 95-50.15-110 (1) (A) of these Procedures, and the President has denied the protest or has failed to act on the protest within the time provided for in 95-50.15-110 (1) (A) 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
- D. Specifically request a ruling by the Public Auditor.

3. Time for Filing Appeal

An appeal from the President's decision must be received by the office of the Public Auditor not later than ten (10) days after the appellant receives the decision of the President or, in the event that the President has not decided the protest within ten (10) days from the date that s/he should have decided the protest pursuant to 95-50.15-110 (1) (C) above. Any appeal received after these time limits shall not be considered by the Public Auditor, unless good cause is shown or the Public Auditor determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the College should the appeal be considered.

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

- A. The Public Auditor shall notify the President by telephone and in writing within one (1) day of the receipt of an appeal, requesting the President to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The President shall be requested to furnish in accordance with 95-50.15-110 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 the appellant will not be withheld from any Commonwealth or federal agency that may be involved in the appeal except to the extent that the withholding of information is permitted or required by law or regulation. If the appellant considers that the protest contains material that should be withheld, a statement advising of this fact must be affixed to the front page of the appeal document and the allegedly proprietary information must be so identified wherever it appears.
- C. The Public Auditor shall request the President to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 25 working days) in accordance with 95-50.15-110 1(D) of these Procedures and to furnish a copy of the report to the appellant and other interested parties as defined in 95-50.15-110 1(B).
- D. Comments on the College report shall be filed with the Public Auditor within ten (10) days after the Public Auditor's receipt of the report, with a copy to the agency office that furnished the report and to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Public Auditor within five (5) days after receipt of the comments to which rebuttal is directed, with a copy to the agency office that furnished the report, the appellant, and interested parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within five (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 President will not make an award prior to resolution of the protest except as provided in this section. In the event the President determines that award is to be made during the pendency of an appeal, the President will notify the Public Auditor.

6. Furnishing of Information on Protests

The Public Auditor shall, upon request, make available to any interested party information bearing on the substance of the appeal that has been submitted by interested parties or agencies except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten (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 President, 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 President. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The Public Auditor will determine whether a conference is necessary for resolution of the appeal.
- 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 appropriately 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.

9. Time for Decision; Notice of Decision

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

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 President, and any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.
- 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.

**95-50.15-120 Remedies**

1. Remedies Prior to Award

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

- A. Cancelled; or
- B. Revised to comply with law or policies.

2. Remedies After an Award

If after an award the President or the Public Auditor determines that a solicitation or award of a contract is in violation of law or policies, then:

- A. If the person awarded the contract has not acted fraudulently or in bad faith:
  - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the College; or

(2) 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:

(1) The contract may be declared null and void; or

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

### 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.

#### **95-50.15-125 - Effective Date**

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

#### **95-50.15-130 - DISPUTES**

##### 1. Filing of Disputes

Any dispute between the College and a contractor relating to the performance, interpretation of or compensation due under a contract which is the subject of these policies and procedures, must be filed in writing with the President within ten (10) calendar days after knowledge of the facts surrounding the dispute.

##### 2. Resolution of Disputes

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

A. Description of the dispute;

B. Reference to pertinent contract terms;

7. Kickbacks.

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

8. Restrictions on Employment of Present and Former Employees

A. Present Employees

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

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

B. Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement and Property Manager a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may at the same time, apply to the Chief Financial and Administrative Officer for an advisory opinion as to what further participation, if any the employee may have in the transaction.

B. Former Employees

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

- (1) judicial or other proceeding, application, request for ruling or other determination,
- (2) contract,
- (3) claim; or
- (4) charge or controversy.

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the College is a party or has a direct or substantial interest.

9. Disqualification of Business

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

- A. judicial or other proceeding, application, request for ruling or other determination,
- B. contract,
- C. claim; or
- D. charge or controversy.

In which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the College is a party or has a direct or substantial interest.

10. Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The official with the expenditure authority may declare the contract void if he/she finds sufficient evidence after a contract has been awarded that the contract was obtained by a bidder or bidders by reason of collusive or secret arrangement among the bidders to the disadvantage of the College.

11. Civil and Administrative Remedies

A. College Employees

A College employee is any person whether appointed in an excepted service arrangement. An employee who violates the provisions of these rules and regulations is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of College money, or criminal prosecution.

B. Contractors



- 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.

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

3. Duty to Continue Performance

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

**SECTION SIXTEEN  
016- Ethics in Contracting**

**95-50.16-100 Standards of Conduct**

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

1. Gifts

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

2. Confidential Information

No employee shall disclose information which by law or practice is not available to the public and which the employee acquires in the course of the employee's official duties, or use the information for the employee's personal gain or for the benefit of anyone.

3. Fair Treatment

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

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

4. **Conflict of Interest**

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

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

5. **Disclosure**

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

6. **Discovery of Actual or Potential Conflict of Interest.**

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement and Property Management Manager a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

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

C. All proceedings under this section must be in accordance with due process requirements.

## 12. Authority to Debar or Suspend

### A. Authority

After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedures Act, the President after consultation with the College Legal Counsel shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The President, after consultation with the College Legal Counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for suspension. The suspension shall not be for a period exceeding three (3) months.

### B. Causes for Debarment or Suspension

The causes for debarment or suspension include the following:

- (1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under Commonwealth or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC §5101 et. seq.), violation of any unfair business practices as prescribed by 4 CMC §5202, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects its responsibility as a College contractor;
- (3) Conviction under Commonwealth or federal anti-trust statutes arising out of the submission of bids or proposals such as in Chapter 2 of Division 5 of Title 4 of the Commonwealth Code;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement and Property Management Manager to be so serious as to justify debarment action:
  - (a) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or

- (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment.
- (5) Any other cause that the Procurement and Property Manager determines to be so serious and compelling as to affect responsibility as a College contractor, including debarment by another governmental entity; and
- (6) For violation of any of the ethical standards set forth in this Section.
- (7) Debarment from participation or conduct of business with the US Government or its entities by a federal authority legally empowered to make such a decision. The Procurement Property Management Office shall periodically review the list of entities debarred from conducting business with the US Government or its entities issued by a duly authorized entity or agency of the federal government.

### 13. Decision

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

### 14. Notice of Decision

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

## **95-50.16-105 Purchase Order and Contract Administration**

### 1. General

Purchase order and contract administration consists of the management of all facets of purchase orders and contracts to assure that the vendor's products meet purchase order requirements and that the contractor's performance is in accordance with its contractual commitments and that the obligations of the College are fulfilled.

It includes the monitoring and supervision of contract actions from award of the contract to completion of the work required. It also includes, but is not limited to, the following:

- A. Ensuring timely delivery;
- B. Inspection and acceptance of goods;
- C. Reconciling of invoices with orders;
- D. Making payment (progress payments for construction);

- E. Clarifying contract plans and drawings;
- F. Issuing amendments or contract modifications, if necessary;
- G. Resolving disputes;
- H. Processing claims;
- I. Issuing stop work orders;
- J. Interpreting contract provisions;
- K. Assessing liquidated damages;
- L. Terminating contracts; and
- M. Closing the contract file.

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

## **SECTION SEVENTEEN**

### **017- Requirements of Federally Funded Purchases**

#### **95-50.17-100 Federal Flow-down Provisions**

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

#### **95-50.17-105 Purchases Using Federal Funds**

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

#### **95-50.17-110 Federal Acquisition Regulations Applicable to Northern Marianas College**

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

As Northern Marianas College is an institution of higher education, federal acquisition regulations applicable to institutions of higher education, related OMB Circulars and, as applicable, pertinent sections of the Circulars codified in the Code of Federal Regulations apply to federal grants/awards received and administered by Northern Marianas College.

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

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



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

1       **EXECUTIVE ORDER 2010-18**

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**DECLARATION OF A STATE OF DISASTER EMERGENCY;  
COMMONWEALTH UTILITIES CORPORATION'S  
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO  
PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER  
SERVICES**

10       CONTINUATION #29

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I BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

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This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13, and EO 2010-01 through -06, -08 through -10, and 16-17, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of

1 my signature. The following findings and conclusions further support continuation of the  
2 Declaration and issuance of directives.

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47



1  
2 **FINDINGS**

3  
4 I find that:

5  
6 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01  
7 through -06, and -08 through -10, and 16-17 are incorporated by reference, except as specifically  
8 varied in this Executive Order.

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11 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

12  
13 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers  
14 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater  
15 and power transmission and distribution networks have underscored the importance of having in  
16 place a well-funded and functioning preventive maintenance program. Skilled workers and a  
17 responsive support system are key to the success of the operations, particularly of preventive  
18 maintenance. Presently CNMI law (3 CMC § 4532, as most recently amended by PL 17-1)  
19 prohibits CUC from hiring any more non-US technical workers than the skilled professionals  
20 recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute  
21 regulating the Government's workforce, to no avail. Further, errors in wording in the CUC  
22 enabling legislation recently re-enacted, PL 16-17, as amended, would bar the Executive  
23 Director from day-to-day management of the corporation, effectively shutting CUC down. This  
24 EO eliminates these problems while it is in effect.

25  
26 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned  
27 generating capacity, which losses created intermittent blackouts on portions of its system. It  
28 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in  
29 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per  
30 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance  
31 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and  
32 supplies.

33  
34 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction  
35 of the US District Court and the US EPA, pursuant to two sets of consent, or "stipulated", orders.

- 36  
37  
38 a. The first requires the upgrade and smooth functioning in virtually all aspects of  
39 CUC's water and wastewater divisions. The second requires CUC to properly  
40 eliminate over 400,000 gallons of used oil and to institute measures to avoid  
41 uncontrolled buildup of such inventories. Failure to meet the requirements of the

- 1 federal court orders could subject CUC and the CNMI to substantial fines and  
2 charges, and, in the extreme, to a federal takeover of their finances. Presently  
3 CUC is “accruing” substantial fines. Most of the fines have not been levied; but  
4 they could be. The EPA has, however, levied two fines, in the amount of \$29,000  
5 and \$140,000 (June 2010 letter).  
6
- 7 b. On February 24, 2010, the US District Court entered an additional stipulated  
8 order. It provided, among other things, that a professionally-developed Interim  
9 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by  
10 March 26, 2010. The final version of that document must be filed by November  
11 30, 2010. This additional stipulation requires CUC to meet a number of  
12 deadlines, each involving the application of technical expertise. CUC has timely  
13 filed the IFP. It now has the task of implementing the IFP and meeting these  
14 deadlines. Failure to meet these requirements would subject CUC to the  
15 described sanctions.  
16
- 17 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil  
18 Management) projects that are funded by a \$4.05 million CIP grant awarded in  
19 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.  
20 The funding is to assist CUC in disposing of the used waste oil discussed in this  
21 Executive Order. Failure to meet the deadlines could subject CUC to additional  
22 EPA sanctions.  
23
- 24 d. The coordination of the approvals from the various agencies calls for a responsive  
25 procurement system at CUC, including the trained technical staff to implement  
26 the system.  
27
- 28 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).  
29 The regulator has plenary power over CUC rates, charges, fees, operations and capital  
30 investments. CUC’s failure to timely and competently meet CPUC orders and other  
31 requirements can result in severe rate discipline, and fines and other penalties. For example, the  
32 Commission required CUC to meet certain requirements, including the filing of a technically  
33 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.  
34 CUC was required to file an additional, complex electric power rate case in the fall of 2010. It  
35 filed the case on November 10, 2010.  
36
- 37 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public  
38 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the  
39 CNMI’s businesses and homes. While some businesses and agencies own backup generators,  
40 they are not generally organized to use the backups as permanent power sources; and the diesel

1 oil purchased to run these generators is substantially more expensive than that used for CUC  
2 power.

3  
4 7. Without CUC electricity:

- 5  
6 a. most CNMI economic activity would come to a halt, the courts would soon close,  
7 much refrigeration and air conditioning would end, and the airports and ports  
8 would be forced to rely on emergency generation and the limited, expensive oil  
9 supply for it;
- 10  
11 b. the CNMI's health and safety would immediately be at risk, since traffic signals  
12 and street lighting would cease to function, emergency, fire and police facilities  
13 and their communications systems, and the Hospital and island clinics would have  
14 to rely on limited oil supplies for emergency generation and then cease  
15 functioning, much refrigeration of food and medicines would end, as would air  
16 conditioning for the elderly and medically fragile;
- 17  
18 c. the public schools and the Northern Marianas College would close. Other  
19 educational institutions would close as their backup oil supplies for emergency  
20 generators were exhausted; and
- 21  
22 d. water and sewage treatment would soon end. One of CUC's largest electric  
23 customers is the combined CUC Water and Wastewater Divisions. CUC is the  
24 sole supplier of electricity for these systems. CUC's water system relies on  
25 electricity to maintain the system pressure needed to avoid the backflow of  
26 pathogens, to chlorinate, and to pump, store and to distribute water supplies.  
27 CUC's wastewater system requires electricity to collect, pump, process, treat and  
28 discharge sewage. The lack of electricity could result in sewage overflows,  
29 contamination of land and water and rendering unsafe the CNMI's beaches,  
30 which are also principal tourist destinations.

31  
32 8. As discussed below, CUC is currently advertising for about 20 vacancies, including the  
33 Executive Director, the Water Distribution Manager, the Wastewater Manager, five engineers, a  
34 general counsel, an internal auditor, a grants writer and/or a grants specialist, two wastewater  
35 level 2 treatment operators, two wastewater level 2 collection operators, and two water treatment  
36 /distribution levels 1 and 2 operators for Rota. CUC also seeks to renew 18 technical and  
37 professional contracts for non-US citizens. Without these positions filled CUC's operations  
38 would be severely compromised.

39  
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1       **Staffing CUC with the technical experts to permit continued electric service**  
2

3       9. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain  
4       and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to  
5       buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in  
6       September 2009. In October 2009 four other units began required overhaul, a 12-month  
7       program.

8  
9       10. In November 2009, the following work started: The critical replacement of the PP #1  
10       anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation  
11       repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water  
12       separators began. All of this work has been essential.

13  
14       11. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine  
15       8's critical foundation repair and anchor bolt replacement have been completed. The major  
16       engine overhaul is under way, to finish by the end of 2010..

17  
18       12. In effect, CUC management, with generous federal financial assistance, has brought its  
19       generation back from the brink of system failure. There are adequate reserves. If maintained  
20       properly, the system can provide the CNMI's citizens and residents with adequate power.

21  
22       13. Adequate technical staff is essential to this work. A major challenge to carrying out this  
23       rehabilitation has been finding the trained technicians needed to carry out these rehabilitation  
24       projects, and maintain and run the equipment. The technicians must be ready for service when  
25       needed and their services must be affordable. Any significant reduction in CUC's present  
26       technical workforce could seriously compromise CUC's ability to generate and distribute power.  
27       Therefore, in November 2010 management interviewed 5 more foreign trade technicians to  
28       replace technicians who had resigned or were terminated. Also, CUC hired 7 trade assistants, all  
29       US citizens, who were converted from contract to career service employee trade technicians.

30  
31       14. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit  
32       ("T & D"), including many vehicles, is dilapidated and unsafe. There is an insufficient number  
33       of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US  
34       standards. Fortunately, a federal DOI/OIA grant paid for some *lineman training* in June. The  
35       critical upcoming projects in T & D include the replacement of the antiquated, rundown and  
36       unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the  
37       replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and  
38       the installation of efficient LED street lighting.

39  
40       15. For example, Saipan's early-September 2009 brush with Typhoon Choi-Wan 15W that  
41       passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October

1 2009, underscored the extreme vulnerability of CUC's power transmission and distribution  
2 system. In September 2009, over 150 calls of no- power and line faults were fielded by crews  
3 when, for a storm of this size, there should have been no more than a score. Fortunately, last  
4 year's typhoon season ended with no direct hits on the CNMI and the power distribution system.  
5 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,  
6 would allow CUC to "harden" the system in anticipation of a bigger storm event. The  
7 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.  
8 The year 2010 has seen no problems of concern from the typhoon season.  
9

10 16. In 2010 outages due to Power Transmission & Distribution have been extremely low: May  
11 saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven  
12 years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work  
13 group.  
14

15 17. Utility industry safety margins for isolated, island systems typically require a reserve equal  
16 to the capacity of the two largest generating units. In CUC's case this would be another 15 MW  
17 of load, equivalent to the departed Aggreko temporary units. Meeting this reserve requirement  
18 means CUC must have an adequate repair and maintenance staff.  
19

20 18. The Legislature, through PL 17-1 (Mar. 22, 2010), has limited CUC's ability to hire  
21 technical staff; eliminating prior statutory permission to hire up to 19 foreign workers, and  
22 reinstating a moratorium on the Government's hiring of foreign nationals, even if needed for  
23 highly technical positions for which no local or Mainland citizens are available. The CUC Act,  
24 as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons  
25 as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h).  
26

27 19. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent  
28 Power Producers (IPPs), are not subject to the Legislature's limitation or prohibition on foreign  
29 workers. Nor are consulting firms that provide specialty utility industry services.  
30

31 20. There are not enough US-citizen or US-resident technical specialists at CUC to get the  
32 power generation work done, particularly specialists with experience in the type of engines that  
33 CUC uses. CUC believes that the vast majority of skill sets must come from non-US personnel.  
34

35 21. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding  
36 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after  
37 interviews - 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator  
38 candidates were US citizens.  
39

40 22. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the  
41 Executive Director and earlier versions of Directive 10. But hiring qualified technical experts

1 from the pool of US citizens and permanent residents is extremely difficult due to the CNMI's  
2 competitive disadvantages, including salary/benefit packages and the distance from the  
3 Mainland. For instance, in October 2010 the top candidate for Manager of Drinking Water &  
4 Wastewater turned down CUC's offer. The targeted recruit for the Health, Safety and  
5 Environment Officer also turned down a CUC offer. Last month, November 2010, CUC's Oil  
6 Manager resigned. The challenge to CUC is that it is recruiting for positions from a US labor  
7 pool in which the targeted candidates are already gainfully employed, as opposed to the other  
8 professionals in other segments of the US economy. For instance, one of CUC's own local  
9 employees, a supervisor in Wastewater, moved to Oregon early in 2010 and was soon hired by  
10 the local wastewater & water district.

11  
12 23. CUC has hired skilled trade technicians needed on Saipan for power plant operations and  
13 maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical  
14 operator. As more units begin working after the power plant rehabilitations are largely  
15 complete, CUC will need more staff to operate and maintain them. For the foreseeable future,  
16 CUC needs to maintain its complement of skilled workers. In the meantime, CUC continues to  
17 work with the Northern Marianas Trade Institute ("NMTP") to find local trainees, part of a multi-  
18 year apprenticeship program. CUC has had about a dozen of these trainees, but requires fully  
19 trained, experienced technicians to keep the power plants running.

20  
21 24. With generous grant funding and the use of in-house technical specialists and outside  
22 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects  
23 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting  
24 streetlights with low-wattage LED's, and restoring power generation and adequate distribution  
25 on Rota. Even if contractors do the work, CUC technical staff must research and prepare bid  
26 documents, review technical proposals, and oversee the work.

27  
28 25. The bottom line on CUC's technical work has been a substantial increase in reliability,  
29 specifically the availability of CUC's generation. CUC's transmission and distribution has  
30 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April 2010 saw one  
31 minute. It was critical to this latter improvement that CUC had the skilled, trained work force to  
32 maintain power lines.

33  
34 26. But even as power becomes more reliable, CUC must employ technical experts to reduce its  
35 distribution losses (electricity that CUC "loses", and does not bill to identified customers, means  
36 that all customers must pay for it). With world oil prices increasing CUC's power costs, such  
37 losses have accounted roughly for \$4.8 million annually, which CNMI customers must cover.  
38 CUC requires a team of skilled technicians to find and eliminate power theft and line losses.  
39 CUC has assembled electrical crews from power generation to help Power T & D with Operation  
40 Sweep. The electrical crews also help with the electrical wiring or re-wiring and make it easier  
41 for the meter technicians to perform their job of meter installation. CUC crews are also speeding

1 up the installation of Watt-hour meters for all water and wastewater facilities, as ordered by the  
2 CPUC.

3  
4 27. All of this activity will cut costs and/or properly allocate them, removing pressure on rates.  
5 For example, line losses continue to fall. For year 2009 CUC's power utility consultant recently  
6 found that the line losses were 15%. But for calendar year 2010 through October the losses  
7 dropped to 10%. One reason is that CUC's staff technical experts determined the proper charges  
8 for many commercial customers, correcting meter multipliers. Secondly, Operation Sweep  
9 began in earnest in February 2010. Operation Sweep audited the Watt-hour meters and service  
10 connections to the densely populated and commercial areas of Saipan. Of the 1,000 services  
11 inspected, 100 were found to have tampered meters or bypasses. CUC corrected all of these  
12 immediately. The police and attorney general's office are pursuing prosecution of power theft.  
13

14 ☐

15 28. The impact of an inadequate workforce would be five-fold:

- 16  
17 a. First, there would be a direct negative effect on the existing consumers. There  
18 would be brownouts, or area blackouts, with the above-mentioned loss of service.  
19  
20 b. Second, the power plants would again degrade, producing more of these outages.  
21  
22 c. Third, there would be an indirect effect, increasing rates over the longer term,  
23 because small consumers would have to shoulder more of the fixed costs of the  
24 CUC system. First, there would be loss of large customers. By contrast, if the  
25 hotels were to become part of the system, they could help pay CUC fixed costs,  
26 which would lower everyone else's rates. The hotels need reliable, 24/7 power.  
27 But with unreliable power, CUC would be unable to convince large commercial  
28 customers, particularly the hotels, to join, or rejoin, its system. Second, would  
29 come additional expenses. If CUC fails to meet federal court deadlines for the  
30 stipulated orders, the Court could appoint a federal receiver and its consulting  
31 team – with all expenses charged to CUC customers. The EPA has already  
32 imposed stipulated order penalties; it recently required the payment of a \$140,000  
33 penalty. Thus, the indirect effect of an inadequate workforce would be to boost  
34 rates.  
35  
36 d. Fourth, the loss of CUC's technical experts would shut down, or, at least, cripple  
37 the company's increasingly successful efforts to cut losses, particularly theft of  
38 service.  
39  
40 e. Fifth, with the recovery of the world economy, advise CUC experts, oil prices can  
41 be expected to rise. If CUC's generators become less efficient, because technical

1 staff are unavailable to maintain CUC's engines' efficiency, that much more oil  
2 would be needed to generate a given amount of electricity. The price rise will  
3 thereby harm CUC's customers and electricity-dependent services with higher  
4 rates. (Unfortunately, the mid-September 2010 CUC and CPUC experts'  
5 estimates of flat oil prices over the following six months has proven optimistic, so  
6 that LEAC fuel rates are presently about 10% below costs.)  
7

8 29. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts  
9 from inadequate generator maintenance. The power plant's other facilities and the island's  
10 distribution system similarly need the attentions of additional manpower. The Rota power plant  
11 needed additional generating sets to come on line, as there are only 1.5 dependable sets in the  
12 plant. The third of two feeders was, until June 2010, powered by the Rota Resort, a private  
13 resort, at a cost of \$200,000/month to CUC. The revenues to CUC from the customers on this  
14 feeder fall far below this cost. CUC has negotiated with a Mainland supplier for a new  
15 generating set, with funding from the US Department of the Interior. The alternative for Rota  
16 was akin to Saipan's recent Aggreko situation – purchasing higher cost, reliable power from the  
17 Rota Resort. Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported  
18 from Power Plant 4 on Saipan to Rota in order to augment the power generation. These two  
19 generating sets were commissioned by the end of July, 2010.  
20

21 30. Since EO 2009-8 and the more recent suspension of the harmful legislative employment  
22 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and  
23 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it  
24 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return  
25 to those which overworked its limited staff. For example, over pay period numbers 2 through 11  
26 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who  
27 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a  
28 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,  
29 producing injury or death.  
30

31 31. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The  
32 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set  
33 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6  
34 million-per-year benefit of terminating the Aggreko temporary power contract.  
35

36 32. CUC points out that the power distribution system is highly vulnerable because, like the  
37 sewer system, so much of the maintenance and replacement was deferred for one reason or  
38 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing  
39 major improvements to the power lines; only five have seen those improvements. Power T & D  
40 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12  
41 termination cables on the Kiya Substation (Transformer One). A power outage to the southern



1 parts of Saipan lasted from one to five hours. CUC management states that the excellent  
2 response from the crews in both Power Generation and Power T & D demonstrated the  
3 importance of having skilled workers. The top two engineers were non-residents. Without this  
4 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of  
5 such valuable individuals.

6  
7 33. The extended dry season this year (see below) meant that vegetation needed to be cleared  
8 away from the lines early and often. Brush fires can damage the power lines, telephone  
9 facilities, and television cables. Tree-trimming was also necessary to protect lines from the  
10 effects of high winds. Meanwhile, CUC crews must replace failing insulator bolts and failing  
11 switches in order to avoid distribution-related power outages.

12  
13 34. CUC has demonstrated that the required workers are available as nonresident workers, and  
14 cost-effectively so. In the last months it was able to renew the contracts for approximately two  
15 dozen essential foreign expert workers, thereby sustaining the integrity of CUC's systems. Thus,  
16 continued relief from the legislative prohibition of hiring foreign national workers is necessary to  
17 ensure the delivery of uninterrupted power services to the people of the Commonwealth.



20 **Complying with the federal court order on disposal of used oil**

21  
22 35. CUC has taken concrete steps to address the storage and disposal of used oil, consonant  
23 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil  
24 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.  
25 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an  
26 adequate complement of trained technical employees, complemented by expert contractors, CUC  
27 believes that it can meet the Stip Order requirements. On August 12, 2010, the Court issued the  
28 Second Joint Stipulation ("SJS"), which replaced many otherwise unattainable deadlines, but  
29 provided other deadlines and stiff penalties for a host of technical and management positions.  
30 The SJS also provided for firm dates for reporting on the use of grant funds, on the progress of  
31 secondary containment facilities, providing a facilities response plan ("FRP"), and cleaning out  
32 Tank 104.

33  
34 36. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of  
35 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional  
36 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean  
37 from Power Plants 1, 2 and the power plant on Rota. Further, since October 2009, CUC has  
38 faced the following staffing needs in this area: It critically needs the resources to inspect and  
39 redesign the entire fuel storage, pumping and handling system in order to meet the more  
40 stringent requirements of today. The clean fuel storage tanks at Lower Base were originally  
41 designed for another application. The fuel line from the oil company's terminal is in danger of

1 rupturing during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this  
2 requires trained CUC staff.

3  
4 37. Serious deficiencies in the waste oil handling system at Lower Base have come to light in  
5 the past year and are being addressed by both CUC and EPA. One deficiency is that the oily  
6 water separators were not functioning as such because of the excessive amount of oil (as  
7 opposed to water) entering the system. As a result, oil was spilling onto the ground rather than  
8 being separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any  
9 waste oil from leaving the plant and flowing into the oily water separators. To prevent oil from  
10 accumulating uncontained in the plant itself, emergency measures have been taken to store waste  
11 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and  
12 baffles are being cleaned out so that the entire system can be carefully inspected and  
13 re-engineered. All of the additional work is expensive. Regardless of who does the work  
14 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained  
15 workers for the clean-up. Failure to correct this situation could harm the nearby environment,  
16 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.  
17 CUC hired an Oil Technical Manager, but he turned in his resignation in November 2010.

18  
19 38. Incinerators play a crucial role in helping CUC meet Stip Order 2. After substantial  
20 progress in removing and incinerating Tank 104 oil in the year 2010, the rate dropped  
21 substantially, as the remaining oil proved to be more like grease. This EO has permitted Power  
22 Generation the flexibility of hiring skilled non-US-citizens to not only repair and overhaul the  
23 generating sets, but to fix and supervise such important auxiliary equipment as the incinerators.  
24 CUC technical staff, with EPA help, solved the slowdown.

25  
26 39. The EPA on February 18, 2010, filed a status report with the US District Court for the  
27 Northern Mariana Islands which was highly critical of the progress in CUC's efforts to comply  
28 with Stip Order 2's requirements to solve the used oil situation. Since that report CUC has  
29 contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA strongly urged  
30 CUC to accelerate the removal. CUC found two additional special double-walled "ISO" tanks  
31 for use in the project, to add capacity to the contractor's six tanks. As a result, GRESCO  
32 transferred just under 180,000 gallons of used oil to Guam by July 15. But, with success came  
33 additional technical difficulties, as the remaining 70,000 gallons of oil became more  
34 concentrated, and grease-like, and, therefore, increasingly difficult to pump out. However, after  
35 CUC engineers tested methods of incineration, with EPA help, the incineration resumed at a  
36 faster pace, and CUC believes that it will clean the tank out by February 2011.

37  
38 40. Presently CUC is in process on these specific efforts to comply with Stip Order 2's  
39 requirements, with federal funding authorized: Technical Manager secured for the oil disposal  
40 management position; secondary containment (new and repair) has received permits and NEPA  
41 clearance, and construction has begun; oil disposal for Saipan's Tank 104; oil transfer pipeline

1 for Lower Base design work commenced, construction contract under review by CPUC, with a  
2 target in-service date of February 24, 2011; oil handling and training commenced; used oil  
3 sampling laboratory in California contracted; used oil tank system integrity testing and  
4 cleanout's RFP published; oil-water separators in planning stage; the section of the facility  
5 response plan ("FRP") which provides services for oil spills from a new Saipan-based firm has  
6 been executed and approved by the CPUC.



10 **Complying with the federal court order on managing the water and wastewater systems**

11  
12 41. As long as the Water and Wastewater Divisions can hire competent staff and receive power  
13 from the Power Division, they can function.

14  
15 42. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has  
16 sued CUC in federal court to come into compliance with critical water and sewage treatment  
17 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order  
18 1"). See also [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). In July 2008 CUC, the CNMI  
19 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this  
20 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This  
21 order requires CUC to implement a series of improvements to its water and wastewater systems  
22 that respond to years of neglect, for which it presently lacks the funds and the complete technical  
23 capability. On August 12, 2010, the Court issued the Second Joint Stipulation ("SJS"), which  
24 replaced many otherwise unattainable deadlines, but provided other deadlines and stiff penalties  
25 for a host of technical and management positions. The SJS also provided for firm dates for an  
26 Interim Financial Plan, Reorganization Plan, full metering and billing, a complete chlorination  
27 and disinfection program, the hiring of qualified operators in direct responsible charge ("DRC"),  
28 and procedures to generate the scope of work for CUC's Master Plan.

29  
30 43. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater  
31 Division must respond to acid damage in the asbestos cement piping system, the product of over  
32 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and  
33 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex  
34 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration  
35 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and  
36 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says  
37 CUC, procurement for such repair work would constitute a significant impediment.

38  
39 44. Providing and improving water service presents new challenges. With DEQ's classification  
40 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality  
41 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC

1 experienced failures in water pipes as the Cross-Island road project's contractors' equipment  
2 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to  
3 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,  
4 requiring an emergency procurement to hire an outside firm to make the repair. As of October  
5 15, 2010, repair work reached 90 % completion.

6  
7 45. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.  
8 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the  
9 facility while the contractor repairs the only unit. Such work has to be conducted within strict  
10 parameters by properly trained technicians to prevent contamination of the environment. Due to  
11 equipment malfunctions, sludge is not pressed, which may have produced unacceptably high  
12 recent levels of enterococci in effluents from both the Sadog Tasi and Agingan Point treatment  
13 plants.

14  
15 46. The Division also needs serviceable vehicles to move its workers to and from job sites.  
16 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced  
17 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job  
18 sites on time. Starting in September 2010, CUC has had to rent vehicles in order to get its crews  
19 to trouble areas. Even more alarming is that during the past months both of the CUC-owned  
20 backhoes (one for Water Operations, and one for Wastewater Operations) have been broken,  
21 gone out of service, and await repair parts. CUC has had to rent backhoes for simply performing  
22 routine water and wastewater operations functions on a daily basis during the past month.

23  
24 47. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.  
25 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant  
26 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But that  
27 construction will not occur for approximately one year. In July there was a sewer blockage in  
28 the CK and Susupe areas, and CUC lacked the equipment to repair it; its usual contractor also  
29 suffered equipment problems.

30  
31 48. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix  
32 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of  
33 three engineers, in order to fix the poor condition of the CUC sanitation assets. Significant  
34 engineering resources have been focused on addressing EPA Stip Order issues. These issues  
35 include staffing plans, pre-treatment programs, materials management programs, customer  
36 inventory, and cross-connection control programs. CUC water and wastewater engineers are the  
37 lead professionals on several on-going construction projects, which also stretches the limited  
38 engineering resources. These include the Well Isolation Project, Sadog Tasi Sewer Plant  
39 Rehabilitation, and Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention  
40 of engineering staff to meet these challenges is difficult.

41

1 49. Nonetheless, CUC engineering and operations departments hired 4 new engineers these past  
2 months, with one engineer assigned to the wastewater projects grants and construction  
3 management, one assigned to design, one to water operations, and one to wastewater operations.  
4 However, given the extensive engineering department workload many more engineer staff  
5 members are still needed. CUC has just hired another, with the employee scheduled to arrive in  
6 January 2011.

7 █  
8 50. Incipient failures include the failure of 98 submersible pumps in the water system over a  
9 period of 12 months. Higher grade stainless steel grates have to be specified that are resistant to  
10 pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC has  
11 had to purchase higher quality equipment, rather than the cheap units that fail prematurely.  
12 Motor protection continues to be challenging. During September 2010 one of the newly  
13 installed 30 HP motors with the higher grade stainless steel was damaged by an apparent lighting  
14 strike after only a month's operation.

15  
16 51. CUC must be able to hire the staff to perform the required technical functions. But CUC  
17 has found that, regardless of salary levels, a nationwide shortage of such techs requires that it  
18 look overseas. The Water and Wastewater Divisions cannot carry out their missions without  
19 adequate staff; the EPA requires adequate technical staff. These staff are essential to producing  
20 clean, safe water supplies and removal of stormwater and sewage in a safe, timely manner.  
21 While the bulk of CUC employees are drawn from local and US populations, the Division  
22 management estimates that at least six trained technicians will be required – three experienced  
23 Level 3 wastewater treatment operators, two Level 3 wastewater collections operators, and an  
24 instrumentation /low voltage controls specialist. CUC lacks enough experienced plumbers and  
25 pipe-fitters. Skilled pipe-fitters are needed to repair failing CUC piping and related  
26 infrastructure, such as valves and hydrants. An experienced Water/Wastewater Division  
27 operations manager is required. CUC requires a chemist to meet federal requirements, but has  
28 been unable to find a qualified one in the local population, or a cost-effective professional from  
29 the US Mainland. CUC announced a vacancy of the position for Deputy Director for Water and  
30 Wastewater, and has been interviewing candidates. CUC was required to hire this professional  
31 soon in order to meet EPA requirements.

32  
33 52. There have been special reasons why the water system had to be adequately staffed and  
34 maintained this year. This was an El Nino year, and water was relatively scarce. As predicted in  
35 the Pacific ENSO bulletin forecast back in February 1, 2010, the CNMI dry season brought  
36 below normal rainfalls into June 2010. CUC went into an emergency mode, conserving water,  
37 accelerating water line replacements, and locating and repairing leaks. There was greater danger  
38 of fires this year, with less water available to fight them. For Capital Hill, the drought and a tank  
39 rehabilitation project required that the distribution system in this area be reconfigured in June  
40 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of  
41 Navy Hill were without water for several days until leaks were repaired. With the rainy season

1 the aquifers are only slowly replenished. As a result Garapan saw fewer hours of water service.  
2 Unfortunately, the leaks were noted several months before, but lack of manpower and funds  
3 prevented the pressurization required for leak repair. In July the Kagman booster pump failed,  
4 and until it is replaced the Papago area will see less water delivered.

5  
6 53. Recently CUC suffered severe setbacks in its ability to supply water and to develop a  
7 system for 24/7 water supply. For example, CUC has not been able to serve San Jose under  
8 standard "Water Watch" scheduled valve opening practice. There had to be a second opening of  
9 the Kannat Tabla tank in mid-September 2010 in order to provide San Jose two hours of water in  
10 one week. But this second opening of Kannat Tabla for San Jose created conditions that would  
11 impede opening the next day from the Kannat Tabla tank for Chalan LauLau and Southern  
12 Garapan. Also, September 2010 saw system water leaks, and pump and motor failures. CUC  
13 nearly failed to provide water to the Tanapag School on the first day of classes, and to the San  
14 Roque and Oleai Schools in mid-September 2010.

15  
16 54. CUC continues to suffer an unprecedented number of waterline breaks and resultant water  
17 leaks.

- 18  
19 a. During one day in September 2010 there were six new leaks reported which  
20 required repair crews to work significant overtime. All repair work was  
21 performed using rental backhoes, as CUC's backhoes were broken.  
22  
23 b. A 16" PVC waterline ruptured on As Terlaje Hill on the morning of October 23,  
24 2010, at approximately 4:00 am. An entire length of 16" PVC piping ruptured,  
25 resulting in the loss of the Kannat Tabla Tank water volume contents, and  
26 producing significant damage to the As Terlaje Hill Roadway. The water rupture  
27 resulted in a cost to CUC of approximately \$100,000, of which asphalt repair  
28 alone was over \$87,000. The specific cause of the waterline rupture has not been  
29 determined, but CUC believes it was likely a result of improper installation and  
30 fatigued infrastructure.  
31  
32 c. CUC professionals consider that the number of leaks the company experiences to  
33 be excessive, particularly because CUC does not provide 24-hour water and does  
34 not properly pressurize the water system. These leak repair projects stress  
35 CUC's limited staff and finances.



38 55. Put simply, Saipan does not have enough water. CUC professionals categorize much of the  
39 Saipan water distribution system as "fatigued". They do not believe that the number of breaks in  
40 the system will decline in the foreseeable future. Pump and motor problems perpetuate the

1 problem. There were 13 pumps down in October 2010, including four big ones (over 30 hp).  
2 CUC's water system in mid-September 2010 experienced several pump/motor failures.  
3

4 56. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order  
5 #1, the CPUC, and its own need for system revenue. Water metering and billing of customer  
6 water usage by volume continues to be a challenge for CUC. The water meters installed in the  
7 Saipan water system over the past five years have experienced nearly complete failure. Nearly  
8 10,000 water meters by serial number have been reported to the Water Task Force ("WTF") by  
9 CUC as failed. The WTF, in turn, has reported these meters to the manufacturer for warranty  
10 purposes. While CUC has made huge strides in the past months with replacing approximately  
11 1,000 broken meters with warranty supplied meters, and reducing the number of customers  
12 whose water bills are *not* based on consumption to 3,117 (as of Nov. 13, 2010), there are still  
13 many customer meters to address. Compounding the challenge, CUC recently experienced  
14 nearly 400 water meter failures of the warranty meters provided by the manufacturer as  
15 replacement meters. The manufacturer has begun to indicate opposition to providing more  
16 replacements.  
17

18 57. CUC lacks water staff and recently lost staff. CUC's water & wastewater workforce is  
19 shrinking. It takes a long time to recruit. Sadly, one of CUC's "Water Watch" supervisors died  
20 suddenly in mid-September 2010. Skeleton crews are handling system repairs. Having access to  
21 foreign skilled and semi-skilled technicians and trades people is critical, as with CUC's Power  
22 Division's generation operations. CUC's foreign contract employees have good formal training  
23 and education, and they show up to work religiously, in order to provide the services our  
24 population requires.  
25

26 58. For its water and wastewater businesses, CUC has tried to hire water and wastewater  
27 certified operators. There has not been enough interest by qualified professionals. But CUC  
28 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the  
29 latest version of the Stipulated Orders. Those professionals whom CUC can identify – more  
30 likely these are foreign nationals – do not necessarily have the skill sets needed to actually  
31 perform the skilled hands-on tasks of operating a utility. Thus, CUC will be looking for  
32 plumber/pipefitters and mechanics (including a master who is skilled in maintaining and fixing  
33 hydraulic systems on heavy equipment), specialized electricians and others. Having these skills  
34 in-house, instead of at contracted local shops can save enormous amounts of money, as well.  
35 While in the long run these CUC needs provide opportunities for locals who wish to stay on our  
36 islands, CUC's needs, including the federal requirements, are immediate.  
37

38 59. CUC also requires a constant supply of electricity to run its water and wastewater treatment  
39 systems. CUC has very limited on-site emergency generation capability, and for only portions  
40 of these systems.  
41

1 60. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing  
2 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost  
3 recovery for the water and wastewater systems through the processes of the CPUC. CUC filed a  
4 wastewater rate increase request, complete with hundreds of pages of written expert witness  
5 testimony and technical support, on January 31, 2010. The Commission addressed the filing on  
6 May 28, 2010, authorizing a June 21, 2010, rate increase in wastewater rates and full cost  
7 recovery for the electric costs of the water and wastewater divisions.

8  
9 61. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for  
10 the Northern Mariana Islands which was highly critical of the progress of CUC's efforts to  
11 comply with Stip Order 1's requirements to solve the water and wastewater situations. It  
12 included a statement that tests in June and July each showed violation of the maximum  
13 contaminant level drinking water standard for total coliform bacteria. (7-21-10 Status Report, p  
14 6 fn 5) The Court held a hearing which began on August 5, 2010, and continued for five days  
15 until a Second Joint Stipulation ("SJS") was reached and executed by the DOJ/EPA, CUC and  
16 the Attorney General on behalf of the CNMI.

17  
18  
19 ☐  
20 **Meeting US District Court and CNMI Public Utilities Commission requirements to**  
21 **produce timely, accurate financial reports**

22  
23 62. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,  
24 beginning in September, 2009. The "IFP" must develop over time, becoming more than  
25 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial  
26 experts who can gather data, put the data in the required form and generate the IFP and its later  
27 versions. EPA is reviewing CUC's most recent version of the IFP. CUC was required to submit  
28 its final IFP on or before November 30, 2010.

29  
30 63. Further, CUC is comprehensively regulated by the CPUC. The CPUC is charged by statute  
31 to oversee carefully CUC's operations and capital expenditures, and to develop rates that fully  
32 pay the costs of safely operating CUC's water and wastewater systems.

33  
34 64. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC  
35 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in  
36 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s  
37 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this  
38 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead  
39 witness in the case, having filed written testimony (on January 31, 2010) and supplemental  
40 testimony (on April 1, 2010).

41



1 65. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained  
2 accounting and other financial experts who can gather data, put the data in the required form and  
3 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting  
4 staff with the data required for their oversight. CUC has obligated itself to provide an updated,  
5 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,  
6 to the US District Court, and most recently, according to the August 12, 2010, SJS. CUC filed  
7 its IFP by November 30, 2010. EPA has yet to approve it.

8  
9 66. CUC's procurement system is lengthy and complex. A relic of other decades, with their  
10 own challenges, it requires extensive technical experience in specifications and the procurement  
11 process, and often must be coordinated with the CNMI's separate procurement procedures,  
12 adding months to processes that must respond to the immediate challenges outlined in this  
13 Executive Order.

14  
15 67. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing  
16 department in August 2009 was reduced by one staffer, having advertised for a replacement for 4  
17 weeks to no avail. While it appeared that CUC might have to look to employing foreign  
18 technical specialists, CUC hired back 2 former accountants in September 2009 and brought a  
19 third person aboard in October 2009. All are US citizens. Nonetheless, CUC must have the  
20 flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an  
21 accounting assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief  
22 Financial Officer reported for duty.

23  
24 68. CUC's decades-old financial and accounting system computer failed repeatedly during the  
25 second half of 2010, including for a complete week. Already-over-committed finance and  
26 accounting staff were required to put in days of extra time in hand-recording customer payments  
27 and hand-generating bills. CUC bought a reconditioned replacement, which awaits proper  
28 software. CUC lacks the in-house expertise to generate the software. Further, in order to  
29 "query" its system for CPUC-required financial reports, CUC must depend on its IT manager, a  
30 foreign national who programs in SQL.

31  
32 69. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for  
33 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to  
34 comply with Stip Order 2's requirements to provide timely and complete financial and other  
35 operating reports and plans.

36  
37 70. To summarize: Without properly trained technical staff CUC's ability to supply power is at  
38 risk. So is its ability to manage the rest of its systems, including its complex procurement, its  
39 finances and accounting. CUC's services could not be adequately staffed without the lifting of  
40 the artificial legislative regulation of CUC's workforce, in Directive #10, suspending the

1 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be  
2 continued.

3  
4 71. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,  
5 technical specialists required renewal. Failure to timely renew could have crippled CUC's  
6 efforts to provide service and meet federal requirements. More such contracts must be executed.  
7 There is no indication that any of the above manpower situation will be resolved in the next  
8 month without continuing in effect this EO and Directive #10.

9  
10 72. As an example of the criticality of this Executive Order's providing CUC with the authority  
11 to hire foreign workers and the Executive Director with the power and authority to manage CUC,  
12 the US District Court reviewed CUC's compliance in a hearing held on December 9, 2010,  
13 observing that CUC had met 35 of 36 milestones, including the timely filing of its IFP, a highly  
14 positive performance. Without the authority provided by the continuing Executive Order  
15 virtually none, if any, of those accomplishments would have been possible, due to the lack of in-  
16 house technical expertise and the inability of management to order and supervise the compliance  
17 activities.

18  
19 ■  
20 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

21  
22 73. **Summary:** CUC is a \$70 million-per-year business, critical to the CNMI's economy and  
23 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors  
24 in the position of day-to-day management of the corporation, and requires a complex mix of  
25 technical, geographic and other qualifications for Board membership. There is no Board because  
26 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot  
27 take a critical step toward solvency and the ability to borrow to finance its work.

28  
29 ■  
30 **Forestalling corporate paralysis**

31  
32 74. A critical concern is that the CUC Act's constricted scope of authority for the Executive  
33 Director, and the complementary daily management by a host of Board volunteers, would  
34 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before  
35 CUC.

36  
37 75. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC  
38 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and  
39 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133  
40 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and  
41 property), demonstrates that the Executive Director is to be left with little more to do than  
42 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70

1 million/year corporation, on a day-to-day basis. This includes such decision-making as  
2 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning  
3 work crews, connecting customers, deciding on making repairs, collecting debts, complying with  
4 the details of federal Stipulated Orders and CPUC regulatory requirements, making and funding  
5 long-term technical power and water/wastewater plans, overseeing filings with the CPUC,  
6 including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the  
7 sewage is treated.

8  
9 76. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and  
10 a public health care crisis, as corporate activity and the CNMI's only hospital's operations  
11 ground to a halt – with or without a Board in place. The complex technical problems listed  
12 above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For  
13 example, the Executive Director had to be available to renegotiate CUC's fuel oil contract last  
14 year, and insure that fuel supplies reached Tinian and Rota, as well as Saipan. Also, as a key  
15 witness in the recent CPUC dockets, and in future rate cases, the Executive Director must be  
16 enabled to testify in favor of the requested rate increase in order to fully present the required  
17 evidence. Finally, the Executive Director's hiring and role was mandated by the US District  
18 Court in the Stipulated Orders.

19  
20 77. No private or public utility company in the United States runs this way – with a group of  
21 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in  
22 the United States has mandated this form of corporate management for a public utility.

23  
24 78. CUC has applied for and become eligible for millions of dollars of US ARRA and  
25 Department of the Interior grants, which can substantially benefit the CNMI's infrastructure,  
26 help meet US EPA and Stipulated Order requirements, and create jobs needed in the CNMI's  
27 stressed economy. CUC has been awarded \$11 million in grants from the EPA. But developing  
28 the grant requests and implementing the grants requires management attention and expertise, part  
29 of a professionally-run business organization. CUC has placed its grants out for bid, so that  
30 these benefits can start flowing. CUC must evaluate its needs, and hire and contract for the  
31 needed technical specialists to manage the grant-funded projects. This requires a corporate  
32 structure capable of making and sustaining important decisions.

33  
34 79. I can only conclude that the legislation's extraordinary structure for CUC is the result of a  
35 drafting error, and the People, through their elected representatives, wish their utility company to  
36 continue to supply them with essential power, water and wastewater services at a reasonable  
37 cost, meeting industry standards.  
38

1 □  
2 **Fixing CUC's technical insolvency**  
3

4 80. CUC has been unable to borrow money to run its operations since the inception of this State  
5 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books  
6 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115  
7 million. This situation may be corrected if the Executive Director is recognized to have the  
8 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely  
9 because the Executive Director was empowered by this Executive Order to do so.

10  
11 81. Meanwhile, billings and collections are substantially below the levels required to prudently  
12 manage CUC's current operations and provide for system repairs, replacements and upgrades.  
13 For example, billings alone for water and wastewater were less than 70% of requirements to run  
14 those two systems. This has changed slowly as the CPUC's June 2010 rate increase takes effect.  
15 CUC's cash position continues to be perilous.

16  
17 82. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed  
18 insolvent, CUC could not borrow money. But CUC must be able to borrow money to bridge the  
19 gap between (a) the need to spend money on essential goods and services to provide electricity,  
20 water and sewage service, and (b) the lagged collection of revenues from the sale of those  
21 services. Recent improvements in CUC finances, including the issuance of audit reports, have  
22 been insufficient to allow CUC to go to market.

23  
24 83. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-  
25 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's  
26 Board to agree to it.

27  
28 84. There is no Board. CUC has functioned without a Board of Directors, because it has had to.  
29 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no  
30 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find  
31 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.  
32 Nonetheless, CUC must continue to function, including borrowing money.

33  
34 85. Directive # 9 provides the required authority to the Executive Director. It also permits him  
35 to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for  
36 fuel oil and purchased power, and do all the things necessary to providing power, water and  
37 wastewater services, until the remaining members of a properly constituted Board can be  
38 identified, confirmed, and convened for business. Without a fully empowered Executive  
39 Director, CUC would be unable to attain financial and operational health. For example:  
40

- 1 a. In February 2010 the Executive Director delivered to CDA management the stock  
2 certificates required for the debt-equity conversion. CUC has received the fully  
3 executed copy of the Stipulated Notice of Dismissal (with prejudice) in CDA v.  
4 CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the CPUC  
5 has required that CDA provide to make effective the conversion of the CDA debt  
6 to preferred equity. CUC sought CPUC final approval. The Commission  
7 provided that approval in the rate order authorized at its May 28, 2010, business  
8 meeting. Soon, CUC must be able to demonstrate to the financial community that  
9 it is properly managed, so that it can borrow and pay back long term capital.  
10  
11 b. On May 28, 2010, the CPUC issued a rate increase order that was critically  
12 required to return CUC's water and wastewater operations to financial health.  
13 The Executive Director oversaw and approved of the complex rate request and  
14 approved the resulting stipulation supporting the rate order.  
15  
16 c. On November 10, 2010, CUC filed a petition with the CPUC for an electric side  
17 rate increase which, if granted, would support in critical part CUC's securing \$15  
18 million in long term financing. The debt would pay for necessary equipment and  
19 construction, including measures required by the US District Court and the EPA  
20 in the federal Stipulated Orders. For example, Power Plant #1 has no more spare  
21 parts, the roof of Power Plant 1's control room leaks, presenting the potential for  
22 shorting out critical control instruments, CUC's power poles and their insulator  
23 pins have degraded, are shorting out, and must be replaced, and CUC's vehicle  
24 fleet is failing, must be replaced, and is unsafe to the point where recently a wheel  
25 broke free of a moving truck. The Executive Director oversaw and approved the  
26 filing and served as CUC's lead expert witness.  
27  
28 d. CUC has approached the US Department of Agriculture ("USDA") to determine  
29 whether CUC can borrow approximately \$15 million at highly attractive rates.  
30 This funding will be necessary to provide CUC with the additional equipment and  
31 other installations necessary to provide its services. Without an adequate staff of  
32 technical professionals and without an executive director with the power to run  
33 the company, the USDA will not provide such funding.



35 **Providing the basis for proper CPUC oversight**

36  
37  
38 86. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,  
39 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC  
40 activities, particularly financial activities.  
41

1 87. This extensive oversight satisfies the policy need for a body of arms-length, well-informed  
2 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's  
3 error-infused creation of a volunteer Board which would run the corporation on a day-to-day  
4 basis, becomes much less important than satisfying CPUC requirements.

5  
6 88. What becomes very important is CUC's capability to provide the CPUC with accurate and  
7 timely financial and accounting information. But such reporting is not possible without a  
8 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered  
9 Executive Director to lead them.

10  
11 ¶

12 **Addressing a critical financial challenge**

13  
14 89. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.  
15 Without oil CUC would be forced to shut down its generation, bringing the economy of the  
16 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –  
17 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the  
18 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and  
19 health clinics. The principal reason for the shortage was the Government's failure to pay  
20 millions of dollars of utility bills. The Government was in arrears about four months on its bills.  
21 Only by eliminating restrictions on the Governor's power to reprogram funds to address this  
22 issue was crisis averted.

23  
24 90. CUC only had a day or two's worth of purchased oil to power its system because it lacked  
25 the funds to buy oil from its sole, cash-only supplier.

26  
27 91. The Executive Director was required to spend substantial time on a concentrated basis  
28 interacting with high CNMI government officials as well as developing contingency plans for  
29 the orderly shut-down of the CUC system.

30  
31 92. Fortunately, the Administration was able to develop a multi-stage plan to enable the  
32 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall  
33 disaster. (The Government is once again over two months in arrears on its bills.)

34  
35 93. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency  
36 (June 8, 2010).

37  
38 94. Development of this temporary financial rescue plan would not have been possible without  
39 the dedicated, focused effort of a properly empowered Executive Director. Such financial  
40 conditions may continue unless the Government, and other large CUC customers, can be brought  
41 current, and remain current, on their bills. This may present a challenge for CUC, given the

1 stressed financial conditions of the Commonwealth. A properly empowered Executive Director  
2 will be required to address this challenge.

3  
4 95. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and  
5 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for  
6 failing to submit timely such a plan. EPA has yet to approve a master plan for CUC. In a July  
7 1, 2010, official letter EPA stated its belief that CUC still lacked the technical capability to put  
8 together “adequate” submissions. The EPA required the hiring of a new Executive Director by  
9 October 29, 2010; this was accomplished. But EPA disapproved of a CUC “Reorganization  
10 Plan” by its letter of November 5, 2010.

11  
12 96. Importantly, CUC requires a functioning management, including a properly empowered  
13 Executive Director, to forestall additional EPA punitive action.

14  
15 ▣

16 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

17  
18 97. There is no Legislative relief coming. For months CUC has repeatedly asked the  
19 Legislature for such relief, including submission of draft legislation in July 2010. The  
20 Legislature has declined to respond. There is no alternative to providing this relief other than an  
21 order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its  
22 critical community services. Directives # 9 and #10 were designed to avert this crisis. (The  
23 other Directives, #1 through #8, are no longer relevant, and were discontinued.)

24  
25 98. This Declaration is necessary to protect the health and safety of our children, our senior  
26 citizens, businesses and all other CNMI residents and visitors.

27  
28  
29 ▣

30 **CONCLUSION AND ORDER**

31  
32 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth  
33 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat  
34 facing the Commonwealth of the Northern Mariana Islands.

35  
36 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the  
37 issuance of Executive Directives setting forth the measures to be taken to address the State of  
38 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

39  
40 (f) In addition to any other powers conferred upon the Governor by law, the Governor  
41 may, during a state of disaster emergency:

1 (1) Suspend the provisions of any regulatory statute prescribing the procedures  
2 for conduct of the Commonwealth's business, or the orders, rules, or regulations  
3 of any Commonwealth activity or agency, if strict compliance with the provision  
4 of any such statute, order, rule or regulation would in any way prevent, hinder, or  
5 delay necessary action in coping with the emergency;

6  
7 (2) Utilize all available resources of the Commonwealth as reasonably necessary  
8 to cope with the disaster emergency of the Commonwealth;

9  
10 (3) Transfer the direction, personnel, or functions of the Commonwealth  
11 departments and agencies or units thereof for the purpose of performing or  
12 facilitating emergency services;

13  
14 3 CMC § 5121(f)(1)-(3).

15  
16 By today's disaster emergency declaration, I intend to enable CUC to continue to provide  
17 necessary service to the people of the Commonwealth.

18  
19 This Declaration of a State of Disaster Emergency shall take effect immediately and all  
20 memoranda, directives and other measures taken in accordance with this Declaration shall  
21 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the  
22 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of  
23 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1  
24 CMC § 7403(a); 3 CMC § 5121(c).

25  
26 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the  
27 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

28  
29  
30 **DIRECTIVES**

31 I direct the following:

32  
33 Directive 1: Deleted.

34  
35 Directive 2: Deleted.

36  
37 Directive 3: Deleted.

38  
39 Directive 4: Deleted.

40  
41



1 Directive 5: Deleted.

2  
3 Directive 6: Deleted.

4  
5 Directive 7: Deleted.

6  
7 Directive 8: Deleted.

8  
9 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,  
10 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)  
11 the confirmation and convening of an operating CUC Board, or (2) the termination of the  
12 authority of this order. In particular, the Executive Director shall have full power and authority  
13 to agree to swap CDA debt and related obligations for preferred stock and related features and  
14 rights.

15  
16 Directive 10: The following strike-out-formatted language of the quoted provisions of the  
17 following statute regulating government employment is, as indicated, suspended immediately:

18  
19 § 4532. Exemptions.

20  
21 Persons other than citizens and permanent residents may be exempted from the  
22 employment restriction in 3 CMC §4531 and employed within the following government  
23 entities and positions, on a case by case basis:

24  
25 ~~(a) Department of Public Health: United States or Canadian board-certified physicians~~  
26 ~~and dentists licensed to practice in the Commonwealth.~~

27 ~~(b) Department of Commerce: Temporary or part-time employees as needed for censuses~~  
28 ~~and statistical surveys.~~

29 ~~(c) Government translators. Approved foreign national translators for: the Department of~~  
30 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~  
31 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~  
32 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General shall~~  
33 ~~establish guidelines for the approval of foreign national translators for the Executive~~  
34 ~~Branch. The Supreme Court may establish guidelines for the approval of foreign national~~  
35 ~~translators for the Judiciary.~~

36  
37  
38 3 CMC § 4532, as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,  
39 the following language is suspended: “the following”, “ on a case by case basis” and the  
40 following listing:

1 “ (a) Department of Public Health. United States or Canadian board-certified physicians  
2 and dentists licensed to practice in the Commonwealth.

3 “ (b) Department of Commerce. Temporary or part-time employees as needed for censuses  
4 and statistical surveys.

5 “ (c) Government translators. Approved foreign national translators for: the Department of  
6 Labor, the Office of the Attorney General, the Office of the Public Defender, the Department of  
7 Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the  
8 Marianas Visitors Authority.”

9  
10 I further suspend and delete the "moratorium" of sec. 4601:

11  
12 § 4601. Moratorium.

13  
14 ~~There is hereby enacted a moratorium on the hiring of foreign national workers,~~  
15 ~~as defined in 3 CMC §4911. This moratorium shall be read in conjunction with~~  
16 ~~Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly~~  
17 ~~construed and adhered to by all agencies and instrumentalities of the~~  
18 ~~Commonwealth government.~~

19  
20 3 CMC § 4601 as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,  
21 the following language is suspended immediately: “There is hereby enacted a moratorium on the  
22 hiring of foreign national workers, as defined in 3 CMC §4911. This moratorium shall be read in  
23 conjunction with Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly  
24 construed and adhered to by all agencies and instrumentalities of the Commonwealth  
25 government.”

26  
27 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall  
28 have the complete power, without regard to citizenship or otherwise lawful immigration status,  
29 to hire engineers, professional employees in technical or trade areas, power plant mechanics and  
30 utility technicians, either directly or indirectly. I further direct that these professional employees  
31 may include, but shall not be limited to, sanitarians, engineers, accountants, financial experts,  
32 information technology specialists, mechanics, electricians, well-drillers, pipefitters, plumbers,  
33 wastewater treatment facilities operators, laboratory specialists and other trades technicians and  
34 their professional managers.  
35

1 I further direct generally that the suspension of the language for specified agencies and  
2 the specified positions shall not be held as a limitation as to unnamed agencies and  
3 instrumentalities, but shall continue to permit other government entities to continue to fill  
4 needed positions, particularly in the areas of health care, census and  
5 translation/interpretation. Additionally, suspension of the term "on a case by case basis"  
6 shall permit government entities, including, notably, CUC, to develop programs and  
7 procedures that avoid the delays inherent in creating or obtaining case-by-case reviews  
8 and approvals. Finally, suspension of the moratorium is not intended to impede the efforts  
9 of CNMI agencies and instrumentalities in lawfully identifying and filling positions with  
10 qualified citizens and legal residents.

11  
12 Done this 19<sup>th</sup> day of December, 2010.



BENIGNO R. FITIAL

# DIRECTIVE

DATE: 24 AUG 1994  
NO. 101

**TO** : President, Northern Marianas College  
Chairperson and Members, NMC Board of Regents

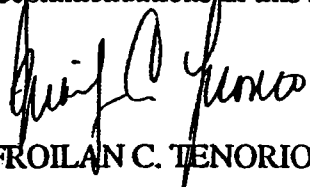
**FROM** : Governor

**SUBJECT** : Withdrawal of Directive No. 47 - Re-issuance of Directive on Executive Order 94-3,  
Section 211, Scholarship Functions Transferred and Scholarship Advisory Board  
Established

**This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 211, effective immediately, all functions of the College relating to student scholarships, except those donated, bequeathed, or granted to the College by parties outside the Commonwealth Government, are hereby transferred to the Office of the Governor.**

**The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505. Please contact this office so that we can arrange for the transfer to be made in an orderly manner.**

**Within the Office of the Governor, there shall be a Scholarship Advisory Board, which shall review scholarship applications and shall set forth objective standards for the award of scholarships. I will be making the initial appointments to this Board in the near future. If you have any suggestions or recommendations in this matter, please don't hesitate to bring them to my attention.**



FROILAN C. TENORIO

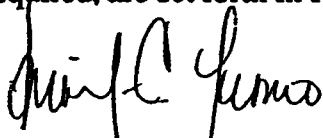
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 102

**TO** : Special Assistant for Women's Affairs  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 48 - Re-issuance of Directive on Executive Order 94-3, Section 204(a)(2), Office of Women's Affairs Transferred

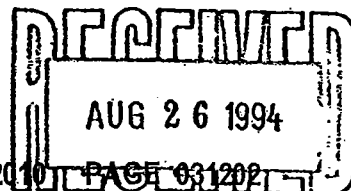
This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 204(a)(2), effective immediately, the Office of Women's Affairs is transferred to the Department of Community and Cultural Affairs. Other applicable provisions that should be consulted are Sections 204(b) and (c).

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TINORIO

CC: Secretary of Community and Cultural Affairs

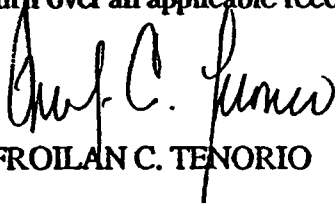


# DIRECTIVE

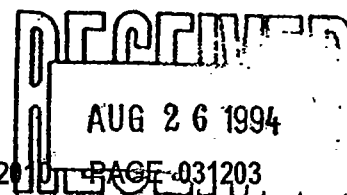
DATE: 24 AUG 1994  
NO. 103

**TO** : Secretary of Commerce  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 49 - Re-issuance of Directive on Executive Order 94-3, Section 208, Weights and Measures Authority Transferred

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 208, effective immediately, all functions of the Governor relating to weights and measures pursuant to Chapter 4 of 4 CMC, Division 5, are transferred to the Secretary of Commerce. My office will turn over all applicable records to the Secretary of Commerce.



FROILAN C. TENORIO



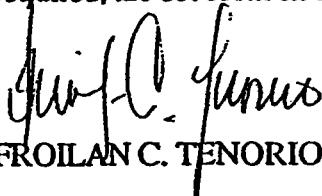
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 104

**TO** : Director of Personnel  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 50 - Re-issuance of Directive on Executive Order 94-3, Section 307(c), Group Health and Life Insurance Programs Transferred

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 307(c), effective immediately, all functions of the Personnel Office relating to administration of group health or life insurance programs for government officials or employees are transferred to the Department of Finance. The Public Auditor has commenced an audit of the health insurance program and will report the results of such audit to the Legislature and the public when it is completed.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

CC: Chairperson and Members Civil Service Commission  
Secretary of Finance

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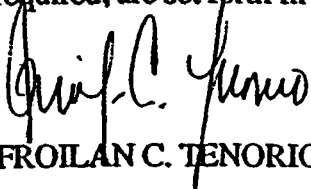
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 105

**TO** : Administrator, Energy Office  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 51 - Re-issuance of Directive on Executive Order 94-3, Section 212 (Misnumbered as second Section 211), Energy Office Transferred

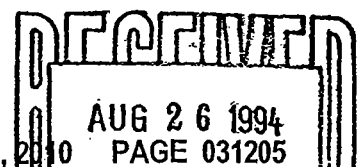
This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 212 (Misnumbered as second Section 211), effective immediately, the Energy Office is transferred to the Department of Public Works.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

CC: Secretary of Public Works





# DIRECTIVE

DATE: 24 AUG 1994  
NO. 106

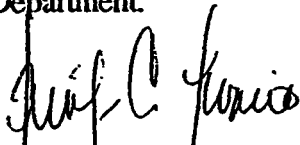
**TO** : Chairperson and Members, State Job Training Coordination Council/Private Industry Council  
Executive Director, JTPA

**FROM** : Governor

**SUBJECT** : Withdrawal of Directive No. 52 - Re-issuance of Directive on Executive Order 94-3, Section 301(b)(4), State Job Training Coordination Council/Private Industry Council and JTPA Office Allocated

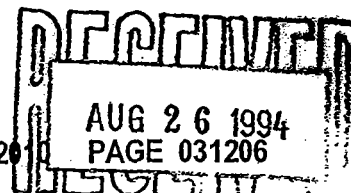
This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 301(b)(4), effective immediately, State Job Training Coordination Council/Private Industry Council and the JTPA Office are hereby allocated to the Department of Labor and Immigration for purposes of administration and coordination.

Section 507 of the Executive Order defines the relationship that will prevail between these entities and the Department.



FROILAN C. TENORIO

CC: Secretary of Labor and Immigration



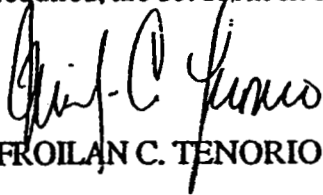
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 107

**TO** : Secretary of Public Health  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 53 - Re-issuance of Directive on Executive Order 94-3, Section 305(a), Board of Health and Environmental Quality Abolished and Functions Transferred

**This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 305(a), effective immediately, the Board of Health and Environmental Quality is abolished and its functions transferred to the Secretary of Public Health.**

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.

  
FROILAN C. TENORIO

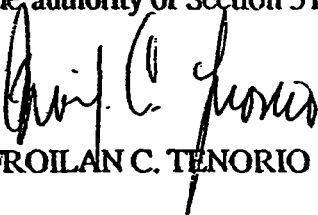
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AUG 26 1994

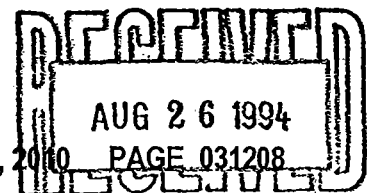
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 108

**TO** : Director of Natural Resources  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 54 - Re-issuance of Directive on Executive Order 94-3, Section 104, Department of Lands and Natural Resources Re-designated

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 104, effective immediately, the Department of Natural Resources is re-designated as the Department of Lands and Natural Resources. Please review the plan to determine what other changes affect your department. Some provisions may be implemented in full and others may be deferred under the authority of Section 511 or Executive Order 94-3.

  
FROILAN C. TENORIO



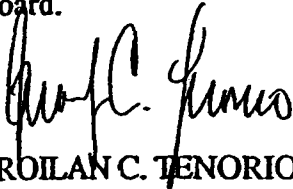
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 109

**TO** : Chairperson and Members, Board of Education  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 55 - Re-issuance of Directive on Executive Order 94-3, Section 403; State Education Advisory Council, the State Interagency Coordinating Council, and the Special Education State Advisory Panel Allocated

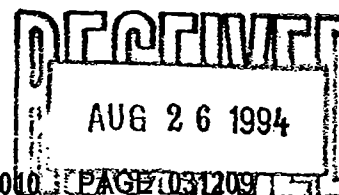
This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 403, effective immediately, for purposes of administration and coordination, the State Education Advisory Council, the State Interagency Coordinating Council, and the Special Education State Advisory Panel are allocated to the Board of Education, which may assign any of them to the Public School System for such purposes.

Section 507 of the Executive Order defines the relationship that will prevail between these entities and the Board.



FROILAN C. TENORIO

CC: Members, State Education Advisory Council  
Members, State Interagency Coordinating Council  
Members, Special Education State Advisory Panel

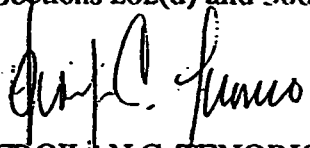


# DIRECTIVE

DATE: 24 AUG 1994  
NO. 110

**TO** : Special Assistant for Planning and Budgeting  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 56 - Re-issuance of Directive on Executive Order 94-3, Section 101, Special Assistant for Management and Budget Re-designation

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 101, effective immediately, the Special Assistant for Planning and Budgeting is re-designated as the Special Assistant for Management and Budget and shall head the Office of Management and Budget. The additional duties and responsibilities of the Special Assistant for Management and Budget are stated in Sections 202(d) and 306(d).

  
FROILAN C. TENORIO

# DIRECTIVE

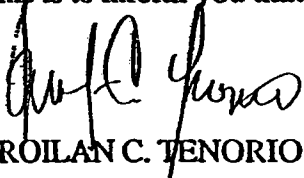
DATE: 24 AUG 1994  
NO. 111

**TO** : Director of Personnel  
Office of Personnel Management

**FROM** : Governor

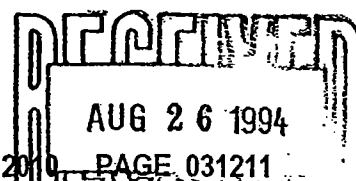
**SUBJECT** : Withdrawal of Directive No. 57 - Group Health and Life Insurance Programs  
Transferred

This is to inform you that DIRECTIVE No. 57 is hereby withdrawn.



FROILAN C. TENORIO

CC: Chairperson and Members, Civil Service Commission  
Secretary of Finance



# DIRECTIVE

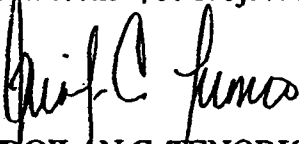
DATE: 24 AUG 1994  
NO. 112

**TO** : Secretary of Community and Cultural Affairs  
Historic Preservation Officer

**FROM** : Governor

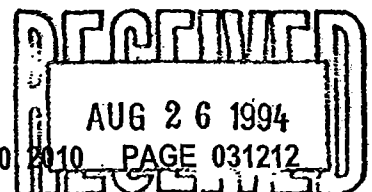
**SUBJECT** : Withdrawal of Directive No. 58 - Re-issuance of Directive on Executive Order 94-3,  
Section 401(f), Historic Preservation Appeals Authority Transferred

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 401(f), effective immediately, the functions of the Governor regarding historic preservation appeals pursuant to 2 CMC §4831(c) are transferred to the Development Appeals Board. Decisions of the Development Review Board relating to historic preservation, shall, in lieu of the procedure set forth in such section, be subject to judicial review as provided in Section 401(h) of Executive Order 94-3.



FROILAN C. TENORIO

CC: Members, Development Appeals Board



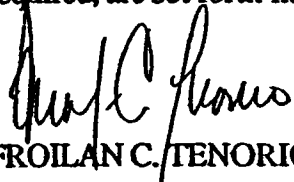
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 113

**TO** : Secretary of Community and Cultural Affairs  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 59 - Re-issuance of Directive on Executive Order 94-3, Section 308(g), Commonwealth Hall of Fame Abolished

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 308(g), effective immediately, the Commonwealth Hall of Fame is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Community and Cultural Affairs.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.

  
FROILAN C. TENORIO

CC: Members, Commonwealth Hall of Fame



# DIRECTIVE

DATE: 24 AUG 1994  
NO. 114

**TO** : Secretary of Finance  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 60 - Re-issuance of Directive on Executive Order 94-3, Section 405, Task Force on Income and Sales Taxation and Business Tax Incentives Abolished

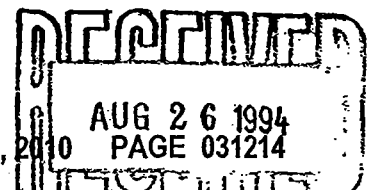
This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 405, effective immediately, the Task Force on Income and Sales Taxation and Business Tax Incentives is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Finance.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

CC: Members, Task Force on Income and Sales Taxation and Business Tax Incentives



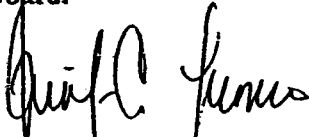
# DIRECTIVE

DATE: 24 AUG 1994  
NO. 115

**TO** : Secretary of Community and Cultural Affairs  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 61 - Re-issuance of Directive on Executive Order 94-3, Section 308(b), Northern Marianas Amateur Sports Association Allocated

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 308(b), effective immediately, the Northern Marianas Amateur Sports Association is allocated to the Division of Sports and Recreation within the Department of Community and Cultural Affairs for purposes of administration and coordination.

Section 507 of the Executive Order defines the relationship that will prevail between these entities and the Board.



FROILAN C. TENORIO

CC: President, Northern Marianas Amateur Sports Association (P.O. Box 2476)

# DIRECTIVE

DATE: 24 AUG 1994  
NO. 116

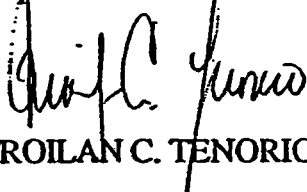
**TO :** Managing Director, Marianas Visitors Bureau  
Chairperson and Members, Marianas Visitors Bureau Board

**FROM :** Governor

**SUBJECT :** Withdrawal of Directive No. 62- Re-issuance of Directive on Executive Order 94-3,  
Sections 302(b), Marianas Visitors Bureau Allocated and Board Membership  
Requirements Amended

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 302(b), effective immediately, the Marianas Visitors Bureau is allocated to the Department of Commerce for purposes of administration and coordination. The composition of the MVB Board is amended per subsections (2)-(4) of this Section.

Section 507 of the Executive Order defines the relationship that will prevail between the Bureau and the Department of Commerce.



FROILAN C. TENORIO

CC: Secretary of Commerce

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# DIRECTIVE

DATE: 24 AUG 1994  
NO. 117

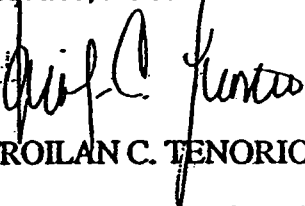
**TO** : Administrator, Board of Professional Licensing  
Chairperson and Members, Board of Professional Licensing

**FROM** : Governor

**SUBJECT** : Withdrawal of Directive No. 63- Re-issuance of Directive on Executive Order 94-3,  
Sections 304(c), Board of Professional Licensing Abolished and Functions  
Transferred

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 304(c), effective immediately, the Board of Professional Licensing is abolished and its functions transferred to a Division of Professional Licensing in the Department of Public Works, which shall have at its head a Director of Professional Licensing.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

CC: Secretary of Public Works  
Director of Professional Licensing, Department of Public Works

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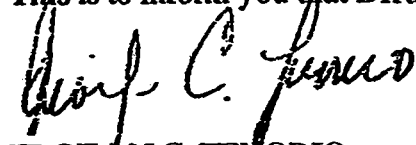
AUG 26 1994

# DIRECTIVE

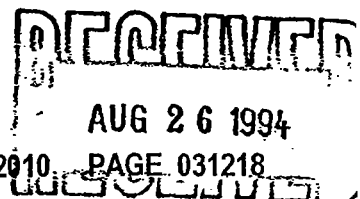
DATE: 24 AUG 1994  
NO. 118

**TO** : Secretary of Commerce  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 64- Divisions of Labor and Employment Services

This is to inform you that DIRECTIVE No. 64 is hereby withdrawn.



FROILAN C. TENORIO



# DIRECTIVE

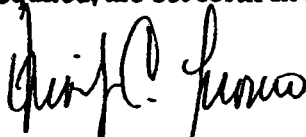
DATE: 24 AUG 1994  
NO. 119

**TO** : Secretary of Commerce  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 65- Re-issuance of Directive on Executive Order 94-3, Section 301(a), Department of Labor and Immigration Established

This is to inform you that, in accordance with Executive Order 94-3, Re-organization Plan No. 2 of 1994, Section 301(a), effective immediately, there is hereby established a Department of Labor and Immigration, which shall have at its head a Secretary of Labor and Immigration.

Section 301(b), dealing with Labor and Employment Services, is deferred until further notice.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part 5 of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

CC: Secretary of Labor and Immigration  
Chief, Division of Labor, Department of Commerce

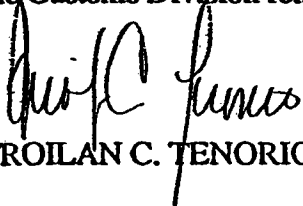
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AUG 26 1994

# DIRECTIVE

DATE: 24 AUG 1994  
NO. 120

**TO** : Secretary of Finance  
**FROM** : Governor  
**SUBJECT** : Withdrawal of Directive No. 66- Re-issuance of Directive on Executive Order 94-3,  
Section 301(d) of Executive Order 94-2

Section 301(d) of Executive Order 94-2, has not been carried over in Executive Order 94-3. Therefore, the Customs Division remains in the Department of Finance



FROILAN C. TENORIO

CC: Secretary of Labor and Immigration

RECEIVED  
AUG 26 1994

