

TITLE 50 COMMONWEALTH UTILITIES CORPORATION

CHAPTER 50-50 PROCUREMENT REGULATIONS

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Chapter Authority: 4 CMC §§ 8122 and 8123; 4 CMC § 8157.

Chapter History: Adopted 29 Com. Reg. 26582 (June 18, 2007);* Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

* The regulations were not published for comment prior to adoption. See Commission comment to this chapter.

Commission Comment: For the history of the regulatory authority of the Commonwealth Utilities Corporation in the Commonwealth, see the general comment to chapter 50-10.

On January 27, 2006, Governor Fitial issued Executive Order No. 2006-1 (Reorganization Plan No. 1 of 2006). In Executive Order No. 2006-1, Governor Fitial allocated CUC to the Department of Public Works (DPW), as a division of DPW; abolished the Board of Directors of CUC; and transferred the Board's functions to DPW. 28 Com. Reg. 25520 (Feb. 28, 2006).

On January 27, 2006, Governor Benigno R. Fitial signed Emergency Declaration No. 2006-2 (28 Com. Reg. 25519 (Feb. 28, 2006)). In Emergency Declaration No. 2006-2, Governor Fitial assumed full control of the CUC; suspended "all regulatory statute provisions and regulations applicable to the CUC, including procurement regulations"; suspended the authority of the Board of Directors; and reprogrammed all necessary money to provide CUC with funds to address the imminent fuel shortage. 28 Com. Reg. 25519 (Feb. 28, 2006).

On March 29, 2006, Governor Fitial signed Executive Order No. 2006-03. Governor Fitial ordered that the utilities division of DPW (formerly CUC) be under a state of emergency in Executive Order No. 2006-03. 28 Com. Reg. 25527 (Mar. 30, 2006).

On May 5, 2006, Governor Fitial issued Executive Order No. 2006-4 which rescinded Reorganization Plan No. 1 of 2006 (Executive Order No. 2006-1). Executive Order No. 2006-4, the "Commonwealth Utilities Corporation Reorganization Executive Order," reestablished CUC as a public corporation and set forth its duties and powers. 28 Com. Reg. 25626 (May 19, 2006). Executive Order No. 2006-4 addressed corporate directors, officers and employees; general corporate operations and miscellaneous matters, including providing the executive director of CUC with the power to issue regulations necessary to carry out the purposes of the Commonwealth Utilities Corporation Reorganization Executive Order.

Executive Order No. 2006-4 § 4 provides:

§ 8152. Procurement and Audits.

(a) The corporation shall comply with the procurement regulations of the Commonwealth or such other procurement regulations as may be issued by the executive director and approved by the Secretary of Finance and Attorney General.

In June 2007, CUC published a notice of adoption in the Commonwealth Register with an exact copy of NMIAC, title 50 chapter 50. 29 Com. Reg. 26582 (June 18, 2007). The notice indicates approval of the Attorney General as required by Executive Order No. 2006-4 § 4 (§ 8152). 29 Com. Reg. 26582 (June 18, 2007). The notice provides:

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The issuance of the procurement regulations is effective upon the approval of the Secretary of Finance and the Attorney General. See 4 CMC sec. 8152(a), as amended by Executive Order 2006-4.

...

The Executive Director of CUC has determined the continued application of such procurement regulations is in the best interests of CUC and the CNMI Government and that such regulations should be adopted as permanent under the authority provided by Executive Order 2006-4.

However, CUC does not appear to have complied with the Administrative Procedure Act (1 CMC §§ 9101 et seq.) when readopting the regulations set forth in this chapter. The adoption notice does not include any reference to the date of publication of proposed regulations or demonstrate compliance with the 30 day notice and comment period required by 1 CMC § 9104(a). Moreover, the notice did not address the requirements for emergency regulations set forth in 1 CMC § 9104(b). Consequently, the validity of the regulations set forth in this chapter is questionable because the adoption procedure following the suspension of the regulations imposed by Emergency Declaration No. 2006-2 did not meet the requirements of the Administrative Procedure Act (1 CMC §§ 9101 et seq.).

In 2008 and 2009, Governor Benigno R. Fitial issued several emergency declarations affecting CUC procurement in response to the Commonwealth PUC Act of 2006 specifically requiring the declaration of a disaster emergency pursuant to 3 CMC § 5121. See Executive Order No. 2008-10 (30 Com. Reg. 28775 (Sept. 2008)), Executive Order No. 2008-13 (30 Com. Reg. 28785 (Sept. 2008)), Executive Order No. 2008-17 (30 Com. Reg. 28901 (Oct. 2008)), Executive Order No. 2008-20 (30 Com. Reg. 28963 (Dec. 1, 2008)), Executive Order No. 2008-21 (31 Com. Reg. 29474 (Apr. 2009)), Executive Order No. 2008-22 (31 Com. Reg. 29467 (Apr. 2009)), Executive Order No. 2009-01 (31 Com. Reg. 29184 (Jan. 2009)), Executive Order No. 2009-02 (31 Com. Reg. 29458 (Apr. 2009)), Executive Order No. 2009-03 (31 Com. Reg. 29448 (Apr. 2009)), Executive Order No. 2009-04 (31 Com. Reg. 29593 (May 2009)), Executive Order No. 2009-05 (31 Com. Reg. 29842 (Aug. 2009)), Executive Order No. 2009-06 (31 Com. Reg. 29855 (Aug. 2009)), Executive Order No. 2009-07 (31 Com. Reg. 29869 (Aug. 2009)), and Executive Order No. 2009-08 (31 Com. Reg. 29908 (Sept. 2009)). On August 1, 2008, the Governor declared a state of disaster emergency for thirty days regarding CUC's power generation failure and suspended the procurement regulations in this chapter and enabled CUC, within PL 16-9, to sign a power contract relating to the Aggreko temporary wholesale generation power contract. See EO No. 2008-10 (30 Com. Reg. 28775 (Sept. 2008)). The ensuing emergency declarations, EOs 2008-13, -17, -20 through -22 and EOs 2009-01 through -08, extended the state of emergency for another 30 days with the same effect as EO 2008-10 on the regulations in this chapter, and incorporated all findings and conclusions of the preceding Executive Orders, some with modifications.

Public Law 17-34 (effective March 10, 2011), codified at 4 CMC § 8191, amended PL 16-17 § 3, codified at 4 CMC § 8191.

On December 3, 2011, PL 17-62 was enacted to authorize the Executive Director to execute a loan in the absence of an organized board of directors.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

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On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

Part 001 - General Provisions

Subpart A - General

§ 50-50-001 Purposes

- (a) Interpretation. The regulations in this chapter shall be construed and applied to promote their underlying purposes and policies.
- (b) Purposes and Policies. The underlying purposes and policies of this chapter are:
- (1) To provide for increased public confidence in the procedures followed in CUC procurement;
 - (2) To ensure the fair and equitable treatment of all persons who deal with the procurement system of CUC;
 - (3) To provide increased economy in CUC procurement activities and to maximize to the fullest extent practicable the purchasing value of CUC funds;
 - (4) To foster effective broad-based competition within the free enterprise system; and
 - (5) To provide safeguards for the maintenance of a procurement system of quality and integrity.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-005 Authority

This chapter is promulgated under the authority of 4 CMC §§ 8122 and 8123, which give CUC the duties and powers to be in control of and be responsible for procurement and supply for utility services in the Commonwealth; and 4 CMC § 8157, which empowers the Board to issue regulations.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission changed “gives” to “give” to correct a manifest error.

§ 50-50-010 Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this chapter, the principle of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth and common

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law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement this chapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission corrected the capitalization of “Uniform Commercial Code” pursuant to 1 CMC § 3806(f).

§ 50-50-015 Requirement of Good Faith

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

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

§ 50-50-020 Application of Regulations

Except as otherwise specified by law, this chapter applies to every expenditure of CUC funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. Nothing in this chapter shall be construed to prevent CUC from complying with the terms and conditions of any grant, cooperative agreement, or memoranda of understanding.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

§ 50-50-025 Validity of Contract

No CUC contract covered by this chapter shall be valid unless it complies with this chapter.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-030 Remedy Against Employee

Any procurement action of an employee of CUC in violation of this chapter is an action outside the scope of his or her employment. Should such wrongful acts be demonstrated to be willful on

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the part of a CUC employee, the CUC will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed such wrongful act.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart B - Definitions

§ 50-50-035 Definitions

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

- (a) “Attorney General” means the Attorney General of the Northern Mariana Islands.
- (b) “Construction” means the process of building, altering, repairing, improving or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.
- (c) “Contract” means all types of agreements regardless of what they may be called for the procurement of supplies, services or construction.
- (d) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter, and a fee, if any.
- (e) “CUC” means the Commonwealth Utilities Corporation of the Commonwealth government.
- (f) “Director” means the Executive Director of the Commonwealth Utilities Corporation or his designee.
- (g) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.
- (h) “Employee” means an individual receiving a salary from CUC and non-salaried individuals performing personal services of the government. This definition extends to the members of the Board. Consultants, independent contractors, and part-time workers shall be considered employees.
- (i) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind of nature, printing, insurance, leases of real and personal property, and sale or other disposal of personal property.

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- (j) “Governor” means the Governor of the Northern Mariana Islands.
- (k) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (l) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.
- (m) “Procurement” means buying, purchasing, renting, leasing, or acquiring construction, goods, or services. It also includes all functions that pertain to the obtaining of construction, goods, or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (n) “Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.
- (o) “Responsible” in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (p) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- (q) “Services” means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans and incidental documents.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (b), the Commission moved the period after “capital improvements” inside of the closing quotation mark. The Commission inserted commas after the words “contractors” in subsection (h), “association” in subsection (l), “leasing” and “goods” in subsection (m), “services” in subsection (n), and “labor” and “plans” in subsection (q) pursuant to 1 CMC § 3806(g).

Subpart C - Public Access

§ 50-50-040 Public Access to Procurement Information

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 100 - Procurement Organization

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§ 50-50-101 Responsibility for Procurement and Supply Functions

The Executive Director of the Commonwealth Utilities Corporation (CUC), hereafter referred to as Director is hereby designated as the responsible officer for the procurement and supply function of the CUC to assist the Board of Directors in the execution of those duties and exercise powers authorized under 4 CMC §§ 8122 and 8123.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: On December 3, 2011, PL 17-62 was enacted to authorize the Executive Director to execute a loan in the absence of an organized board of directors.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

§ 50-50-105 Procurement and Supply Manager

The Director may designate a procurement and supply manager in his office to administer and coordinate the day-to-day activities of the procurement and supply functions. The procurement and supply manager may be assisted in carrying out his functions and duties by other employees.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-110 Duties of the Procurement and Supply Manager

The duties and responsibilities of the procurement and supply manager include, but are not limited to, the following:

- (a) Oversee that this chapter is observed in all CUC procurement;

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- (b) Hear all appeals of protests and disputes;
- (c) Conduct bidding, procurement, negotiation, or administration of CUC contracts upon request of the official with expenditure authority;
- (d) Provide advanced planning for the centralized purchase of CUC supplies;
- (e) Exercise general supervision and control over all inventories of supplies belonging to CUC; and
- (f) Establish and maintain programs for the inspection, testing, and acceptance of supplies.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted commas after the words “negotiation” in subsection (c) and “testing” in subsection (f) pursuant to 1 CMC § 3806(g).

§ 50-50-115 Contract Oversight

- (a) Before the execution of a contract, it must be reviewed and approved by the Director or his designee. The Director shall review all contracts for construction, the procurement of goods, leases, the sale of goods, and for services by an independent contractor to insure compliance with this chapter, that the contract is for CUC purpose, and does not constitute a waste or abuse of CUC funds.
- (b) A contract shall next be approved by the Comptroller who shall certify the availability of funds.
- (c) The Attorney General or the legal counsel for the Corporation shall certify the form and legal capacity of every CUC contract, change order, or purchase order. No contract for personal services or employment shall be approved if it is retroactive for more than thirty days.
- (d) A contract shall be approved first by the Director, and the Chairman, Board of Directors before it is signed by the contractor. The Director shall cause such review to occur in a prompt and timely manner.
- (e) Upon his own initiative or upon the request of the Public Auditor, the Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract.
- (f) The Director or his designee shall approve of all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a non-employment status.

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(g) A contract may be referred back to the Director by the Chairman, Board of Directors, Attorney General or the legal counsel of the Corporation, or Public Auditor for further review based on additional evidence that it may not comply with this chapter. If the Director withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.

(h) It is the responsibility of the Director to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the Director.

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

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted a comma after the word “goods” in subsection (a) pursuant to 1 CMC § 3806(g). On December 3, 2011, PL 17-62 was enacted to authorize the Executive Director to execute a contract for a loan in the absence of an organized board of directors.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

§ 50-50-120 Split Contracts

If the Director 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 bidder, then the Director 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.

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Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission deleted a “2” in the first sentence to correct a typographical error.

§ 50-50-125 Acceptance of Gratuities by the Director and CUC Employees

(a) In addition to the restriction found in § 50-50-525, the Director and the employees of CUC shall be subject to these additional restrictions to avoid the appearance of impropriety.

(b) The Director or the employees of CUC cannot accept from any person any gift of value given with the intent to influence their business judgment.

Modified, 1 CMC § 3806(c).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 50-50-201 Methods of Source Selection

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

- (a) § 50-50-210 (Small Purchases);
- (b) § 50-50-215 (Sole Source Procurement);
- (c) § 50-50-220 (Emergency Procurement);
- (d) § 50-50-225 (Competitive Sealed Proposals);
- (e) § 50-50-230 (Professional Services);
- (f) § 50-50-305 (Architect-Engineer Services).

Modified, 1 CMC § 3806(c).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: Public Law 17-34 (effective March 10, 2011), codified at 4 CMC § 8191, amends PL 16-17 § 3, codified at 4 CMC § 8191.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and

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suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

§ 50-50-205 Competitive Sealed Bidding

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

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

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

(c) Bidding Time. A bidding time of at least thirty calendar days shall be provided, unless the Director determines a shorter period is reasonable and necessary.

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

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(e) Bid Opening. The bid opening shall be conducted by the Director at the CUC conference room. 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 Director or his designee shall be present at the bid opening. The bids received prior to the bid closing date and time 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 Director shall prepare a written summary of the bid opening.

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

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

(1) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;

(2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to CUC. For example, bids shall be rejected in which the bidder:

(i) Protects against future changes in condition, such as increased costs;

(ii) Fails to state a price and indicates that prices shall be the price in effect at the time of delivery;

(iii) States a price but qualifies it as subject to price in effect at time of delivery; or

(iv) Limits the rights of CUC;

(3) Unreasonableness as to price;

(4) A bid from a non-responsible bidder.

(h) Correction or Withdrawal of Bids. Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Director in writing. After the bid opening, no changes in bid price or other provision of bids prejudicial to the interest of CUC or fair competition shall be allowed. Whenever a bid mistake is suspected, CUC shall request confirmation of the bid prior to award. In such instance, if the bidder alleges an error, CUC shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (h)(1) or (h)(2).

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

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

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

(2) Withdrawal of bids. Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is a clear and convincing evidence as to existence of a mistake.

(3) Cancellation of awards. Cancellation of awards or contracts shall only be permitted when:

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- (i) Evidence as to the existence of the mistakes is not discovered until after the award;
 - (ii) There exists no clear and convincing evidence to support what the bid intended; and
 - (iii) Performance of the contract at the award price would be unconscionable.
- (i) Award.
 - (1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders shall also be promptly notified.
 - (2) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a CUC contract is written and has been approved by all the officials required by law and regulations. CUC contracts shall contain a clause which states that the signature of the private contractor shall be last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials.
 - (3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than fifteen percent, and time or economic considerations preclude resolicitation of work of a reduced scope, the official with expenditure authority may be authorized by the Director to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted commas after the words “address” in subsection (a)(3), “hour” in subsection (a)(5), and “place” in subsection (a)(8) pursuant to 1 CMC § 3806(g). In subsection (g)(2), the Commission replaced the semi-colon with a colon to correct a manifest error. In subsection (g)(2)(iv), the Commission replaced the final period with a semi-colon. In subsection (g)(4), the Commission inserted the final period.

Public Law 16-17, effective October 1, 2008, establishes a procurement process for private sector assistance agreements (PSAA) requiring awards pursuant to invitations for bids only. 4 CMC § 8191. The provisions of PL 16-17 supersede this section to the extent that they conflict.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

On August 16, 2012, Acting Governor Eloy S. Inos signed Executive Order No. 2012-10 (34 Com. Reg. 032735 (August 29, 2012)). In Executive Order No. 2012-10, Acting Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34 concerning PUC; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012). This Executive Order was renewed as Executive Order No. 2012-12 (34 Com. Reg. 32795 (Sept. 29, 2012)), Executive Order No. 2012-14 (34 Com. Reg. 32875 (Oct. 29, 2012)); Executive Order No. 2012-16 (34 Com. Reg. 33111 (Nov. 29, 2012)); Executive Order No. 2013-02 (35 Com. Reg. 33135 (Jan. 28, 2013)); and Executive Order No. 2013-03 (35 Com. Reg. 33299 (Mar. 28, 2013)).

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On March 22, 2013, Governor Eloy S. Inos signed Executive Order No. 2013-05 (35 Com. Reg. 33318 (Apr. 28, 2013)). In Executive Order No. 2013-05, Governor Inos declared a state of disaster emergency and assumed all of the executive power of CUC and suspended 3 CMC § 4531 regulating government employment. 35 Com. Reg. 33321 (Apr. 28, 2013). This Executive Order was renewed as Executive Order No. 2013-07 (35 Com. Reg. 33325 (Apr. 28, 2013)); Executive Order No. 2013-10 (35 Com. Reg. 33544 (May 28, 2013)); and Executive Order No. 2013-12 (Jun. 28, 2013)).

§ 50-50-210 Small Purchases

- (a) Any procurement not exceeding the amounts established herein may be made in accordance with small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.
- (b) No bidding is required for procurement under \$25,000.00.
- (c) For procurement valued at \$25,000 to \$50,000, the Director must obtain price quotations from at least three vendors and base the selection on competitive price and quality.
- (d) Purchase orders may be utilized for small purchases in subsections (b) and (c) only. In no other instance may purchase orders be utilized instead of contracts.

Modified, 1 CMC § 3806(c), (e).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-215 Sole Source Procurement

- (a) A contract may be awarded for a supply, service or construction item without competition when the Director determines in writing that there is a demonstrated benefit to CUC for sole source procurement for the required supply, service or construction item.
- (b) The written determination shall be prepared by the Director and shall contain the following information:
 - (1) The unique capabilities required and why they are required and the consideration given to alternative sources.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-220 Emergency Procurement

- (a) Notwithstanding any other provision of this chapter, CUC may make emergency procurements when there exists a threat to public health, safety or welfare under emergency conditions. An emergency procurement must be as competitive as practical under the circumstances.

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(b) A written determination of the basis for the emergency and for the selection of the particular contractor must be made by the Director and approved by the Board of Directors.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (a), the Commission changed “an other” to “any other” to correct a manifest error.

§ 50-50-225 Competitive Sealed Proposals

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

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

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

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

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

(f) 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.

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

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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Commission Comment: In subsection (e), the Commission changed “an” to “and” to correct a manifest error. In subsection (g), the Commission deleted the repeated word “shall.”

Public Law 16-17, effective October 1, 2008, establishes a procurement process for private sector assistance agreements (PSAA) requiring awards pursuant to invitations for bids only. 4 CMC § 8191. The provisions of PL 16-17 supersede this section to the extent that they conflict.

On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

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§ 50-50-230 Competitive Selection Procedures for Professional Services

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

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

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

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

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

* So in original.

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (a), the Commission changed “lawyer” to “lawyers” and in subsection (b) the Commission changed “filling” to “filing a” to correct manifest errors. The Commission also deleted the repeated word “in” in subsection (e).

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

§ 50-50-235 Cancellation

An invitation for bids or request for proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined in writing by the Director and approved by the Chairman, Board of Director to be in the best interest of CUC or* any of the following reasons:

*So in original.

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

Modified, 1 CMC § 3806(f), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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Commission Comment: In subsection (e), the Commission deleted the repeated phrase “by a less expensive.”

Subpart C - Qualifications and Duties

§ 50-50-240 Responsibility of Bidders and Offerors

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

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

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

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

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

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (b), the Commission changed “form” to “from” to correct a manifest error. The Commission inserted a comma after the word “experience” in subsection (a)(5) and after the word “construction” in subsection (a)(6) pursuant to 1 CMC § 3806(g).

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

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On May 18, 2012, Governor Benigno R. Fitial signed Executive Order No. 2012-05 (34 Com. Reg. 032412 (May 28, 2012)). In Executive Order No. 2012-05, Governor Fitial declared a state of disaster emergency and assumed all of the executive power of CUC; suspended all provisions in Title 4 of the Commonwealth Code, and P.L. 17-34; and suspended 3 CMC § 4531 regulating government employment. 34 Com. Reg. 032412 (May 28, 2012)

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§ 50-50-245 Pre-qualification of Contractors

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart D - Types of Contracts

§ 50-50-250 Types of Contracts

- (a) Use of a cost-plus-a-percentage-cost and percentage of construction cost methods of contracting is prohibited.
- (b) CUC contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under subsection (c).
- (c) A cost reimbursement contract may be used when the Director determines in writing, which is attached to the contract, that:
 - (1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
 - (2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by CUC for contingencies that never occur; or
 - (3) Use of a cost reimbursement contract is likely to be less costly to CUC than any other type due to the nature of the work to be performed under the contract.

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Modified, 1 CMC § 3806(c), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart E - Inspection and Audit

§ 50-50-255 Right to Inspect Place of Business

CUC, 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 CUC.

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-260 Right to Audit Records

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

Modified, 1 CMC § 3806(e).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Subpart F - Reports and Records

§ 50-50-265 Report of Anti-competitive or Deceptive Practices

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

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The Commission corrected a semicolon at the end of subsection (a) to a colon pursuant to 1 CMC § 3806(g).

§ 50-50-270 Retention of Procurement Records

(a) All procurement records shall be retained by the Director.

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- (b) The Director shall maintain a record listing all contracts made under sole-source procurement or emergency procurement for a minimum of years. The records shall contain:
- (1) Each contractor's name;
 - (2) The amount and type of each contract; and
 - (3) A listing of the supplies, services, or construction procured under each contract.
- (c) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted a comma after the word "services" in subsection (b)(3) pursuant to 1 CMC § 3806(g).

Part 300 - Procurement of Construction and Architect-Engineer Services

§ 50-50-301 Construction Procurement

- (a) Invitation for Bids.
- (1) Deposit. The Director shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.
 - (2) Contents. The invitation for bids shall be prepared in accordance with § 50-50-205(a). In addition, the following items shall be included in the invitation for bids.
 - (i) Notice to Bidders. General information regarding project;
 - (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and form and certifications that must be submitted with the bid;
 - (iii) The General Conditions. Standard contract clauses governing the performance of work;
 - (iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
 - (v) Technical Specifications. Specification governing the technical aspects of the work to be performed.
- (b) Bid Security.
- (1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the Director to exceed \$25,000.00 or when the Director determines it is in the interest of CUC. Bid security shall be on a bid bond, in cash, by certified check, cashiers' check, or other form acceptable to CUC. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Attorney General.
 - (2) Amount. Bid security shall be an amount to at least fifteen percent of the amount of the bid or other amount as specified in the invitations for bids depending upon the source of funding.
 - (3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.
- (c) Contract Performance and Payment Bonds.

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

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

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

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

*So in original.

(e) Suite 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 not** such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in bond need not be joined as a party in any such suit.

**So in original; probably should be “no.”

(f) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Chairman, Board of Directors, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget

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and/or total contract budget as it existed prior to the price contract modification, change order or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (a)(2)(v), the Commission changed the final semi-colon to a period to correct a manifest error. In subsection (d), the Commission changed “clam” to “claim.” In subsection (e), the Commission changed “oblige” to “obligee.” The Commission corrected the phrase “cashiers check or” in subsection (b)(1) to “cashiers’ check, or” pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “order” in subsection (f) pursuant to 1 CMC § 3806(g).

§ 50-50-305 Architect-Engineer Services

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

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

(c) Selection. The director and the Assistant Directors of Electrical Power, Water, Sewer, Refuse Collection Divisions shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirement for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms, regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required.

(d) Negotiation. The official with expenditure authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to CUC. 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 officer with expenditure authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

Modified, 1 CMC § 3806(e), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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Commission Comment: In subsection (c), the Commission changed the period after “Sewer” to a comma to correct a manifest error.

Part 400 - Protests and Disputes **Subpart A - Bid Protests and Appeals**

Commission Comment: Public Law 16-17, effective October 1, 2008, established a procurement process for private sector assistance agreements (PSAA), including a mechanism for addressing protests. 4 CMC § 8192. The provisions of PL 16-17 supersede this subpart to the extent that they conflict.

§ 50-50-401 Protests to the Director

(a) General.

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

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

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

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

(i) The protest;

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

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

(iv) The abstract of offers or relevant portions;

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

(vi) The Director’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, the Director’s report will include the determination prescribed in subsection (b)(4) below;

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

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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 Director.

(b) Protests Before Award.

(1) The Director shall require that written confirmation of an oral protest be submitted by the time specified in subsection (a)(1) and may inform the protester that the award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded. An award may be made in the normal manner unless the Director finds it necessary in his discretion to take remedial action.

(2) When a proper protest against the making of an award received,* the award will be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (b)(3) below.

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

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

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

(iii) A prompt award will otherwise be advantageous to CUC.

(4) If award is under subsection (b)(3) above, the Director shall document the file to explain the need for an immediate award. The Director also shall give written notice to the protester and others concerned of the decision to proceed with the award.

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

(d) Computation of Time.

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Commonwealth government. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

(2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (a)(1), the Commission changed "or before after" to "before or after," and in subsection (a)(5), the Commission changed "form" to "from" and "I" to "In" to correct manifest errors.

In subsection (a)(4)(i), the Commission inserted the final semi-colon. In subsection (a)(4)(vi), the Commission replaced the final period with a semi-colon.

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In subsection (b)(1), the Commission changed “disregard” to “disregarded” and in subsection (b)(4) the Commission changed “concern” to “concerned” to correct manifest errors.

§ 50-50-405 Appeals of Director’s Decisions to the Public Auditor

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Public Auditor from a decision by the Director may be taken provided that the party taking the appeal has first submitted a written protest to the Director as provided in § 50-50-401 of these procedures, and the Director has denied the protest or has failed to act on the protest within the time provided for in § 50-50-401(a)(3) above.

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

- (1) Include the name and address of the appellant;
- (2) Identify the number of the solicitation or contract;
- (3) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
- (4) Specifically request a ruling by the Public Auditor.

(c) Time for Filing Appeal. An appeal from the Director’s decision must be received by the Office of the Public Auditor not later than ten days after the appellant receives the decision of the Director, or, in the event that the Director has not decided the protest within ten days from the date that he should have pursuant to § 50-50-401(a)(3) above. Any appeal received after these time limits shall not be considered by the Public Auditor unless good cause is shown or unless the Public Auditor determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to CUC should the appeal be considered.

(d) Notice of Protest. Submission of Director’s Report and Time for Filing of Comments on Report.

(1) The Public Auditor shall notify the Director by telephone and in writing within one day of the receipt of an 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 Director shall be requested to furnish in accordance with § 50-50-401(a)(2) of these procedures copies of the protest and appeal documents to such parties with instruction to communicate further directly with the Public Auditor.

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

(3) The Public Auditor shall request the Director to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 25 working days) in accordance with § 50-50-401(a)(4) of these procedures and to furnish a copy of the report to the appellant and other interested parties as defined in § 50-50-301(d).**

(4) Comments on CUC report shall be filed with the Public Auditor within ten days after the Public Auditor’s receipt of the report, with a copy to CUC office which furnished the report and

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to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Public Auditor within five days after receipt of the comments or which rebuttal is directed,*** with a copy to CUC office which furnished the report, the appellant, and interested parties, as the case may be. Unsolicited CUC rebuttals shall be considered if filed within five days after receipt by the CUC of the comments to which rebuttals directed.

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

*So in original; probably should be “is.”

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

***So in original.

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

(f) **Furnishing of Information on Protests.** The Public Auditor shall, upon request, make available to any interested party information on the substance of the appeal which has been submitted by interested parties or agencies, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten days.

(g) **Time for Submission of Additional Information.** Any additional information requested by the Public Auditor from the appellant or interested parties shall be submitted no later than five days after the receipt of such request. If it is necessary to obtain additional information from the Director, the Public Auditor that such information be furnished as expeditiously as possible.

(h) **Conference.**

(1) A conference on the merits of the appeal with the Public Auditor may be held at the request of the appellant, any other interested party, or the Director. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on CUC report. Except in unusual circumstances, request for a conference received after such time will not be honored. The Public Auditor will determine whether a conference is necessary for resolution of the appeal.

(2) Conferences normally will be held prior to expiration of the period allowed for filing comments on CUC report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on an appeal.

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

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

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(i) Request for Reconsideration.

(1) Reconsideration of a decision of the Public Auditor may be requested by the appellant, any interested person who submitted comments during consideration of the protest, the Director, and any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds specifying any errors of law information not previously considered.

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

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

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (d)(3), the Commission changed “he” to “the” to correct a manifest error. The starred citation in subsection (d)(3) is incorrect. The original regulations reference section 4-101(4)(c), which did not exist. Original section 4-101(4) is codified at § 50-50-301(d); however, reference to that section does not make sense.

In subsection (d)(5), the Commission changed “interest” to “interested” to correct a manifest error.

§ 50-50-410 Remedies

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

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

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

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

- (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of CUC; or
- (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

- (i) The contract may be declared null and void; or
- (ii) The contract may be ratified and affirmed if such action is in the best interests of CUC, without prejudice to CUC’s rights to such damages as may be appropriate.

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

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Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-415 Effective Date

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

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission corrected the spelling of “judgment” pursuant to 1 CMC § 3806(g).

Subpart B - Disputes

§ 50-50-420 Disputes

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

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

- (1) Description of the dispute;
- (2) Reference to pertinent contract terms;
- (3) Statement of the factual areas of disagreement or agreement; and
- (4) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

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

(d) Duty to Continue Performance. A contractor that has a dispute pending before the Director or an appeal before the Director must continue to perform according to the terms of the contract and failure to do so continue shall be denied to be a material breach of the contract unless he obtains a waiver of this provision by the official with expenditure authority.

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Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Part 500 - Ethics in Public Contracting

Subpart A - Definitions

§ 50-50-501 Definition of Terms

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

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

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

(d) “Financial interest” means:

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

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

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

(f) “Immediate family” means spouse, children, parents, brothers, sisters, mother-in-law, father-in-law, sister-in-law and brother-in-law, or any member of the household.

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission inserted commas after the words “print” in subsection (b), “auditing” in subsection (c), “like” in subsection (d)(2), “services” in subsection (e), and “brother-in-law” in subsection (f) pursuant to 1 CMC § 3806(g).

Subpart B - Standards of Conduct

§ 50-50-505 Policy

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

§ 50-50-510 General Standards

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

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-515 Employee Disclosure Requirements

- (a) **Disclosure of benefit received from contract.** Any employee who has, or obtains any benefit from, any CUC contract with a business in which employee has a financial interest shall report such benefit to the Director.
- (b) **Failure to disclose benefit received.** Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-520 Employee Conflict of Interest

- (a) **Conflict of interest.** It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
 - (1) The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the employee’s immediate family has a financial interest pertaining to the procurement; or
 - (3) Any other person, business or organization with whom the employee or any of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

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(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 Director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-525 Gratuities and Kickbacks

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

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

§ 50-50-530 Prohibition Against Contingent Fees

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

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

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§ 50-50-535 Contract Clauses

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-540 Restrictions on Employment of Present and Former Employees

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

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

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

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

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

Modified, 1 CMC § 3806(f), (g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (c)(4), the Commission changed "responsible" to "responsibility" to correct a manifest error. The Commission inserted commas after the word "investigation" in subsections (b)(4) and (c)(4) pursuant to 1 CMC § 3806(g).

§ 50-50-545 Use of Confidential Information

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

§ 50-50-550 Collusion by Bidders

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

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: The Commission changed “he” to “the” to correct a manifest error.

§ 50-50-555 Penalties

(a) CUC employees. CUC employee is any person whether appointed, excepted service or civil service. An employee who violates the provisions of this chapter 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 CUC money, or criminal prosecution.

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

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

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

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

§ 50-50-560 Authority to Debar or Suspend

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Director, after consultation with the Board of Directors and the Attorney General or the CUC legal counsel, shall have authority to debar a person for cause from consideration for award of

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contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with the Board of Directors and the Attorney General or the CUC legal counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

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

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

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

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

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

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

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

(5) Any other causes that the Director determines to be so serious and compelling as to effect responsibility as a CUC contractor, including debarment by another governmental entity; and

(6) For violation of any of the ethical standards set forth in this part 500.

*So in original; probably should be “as.”

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

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

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

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).

Commission Comment: In subsection (a), the Commission deleted the repeated word “have,” and changed “Procedures” to “Procedure.” The Commission inserted a comma after the word “seriously” in subsection (b)(2) pursuant to 1 CMC § 3806(g). In subsection (b)(6) the Commission changed “se” to “set” to correct a manifest error.

Part 600 - Miscellaneous Provisions

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§ 50-50-601 Severability

If any provision of the regulations in this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the regulation which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7853 (Aug. 15, 1991); Proposed 12 Com. Reg. 7069 (June 15, 1990).