



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boe.admin@cnmipss.org



MEMORANDUM TRANSMITTING OFFICIAL BOARD ACTION

Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative


Ronald E. Snyder, EdD
Non Public School Rep.

Vacant
Student Representative

NO. 2023-18-001

November 6, 2023

TO: Commissioner of Education

FROM: Chairperson, CNMI State Board of Education 

SUBJECT: Transmittal of Official Board Action -Notice of Certification and Adoption [**60-40 Procurement Rules and Regulations**]

Attached herewith is the Public Notice of Certification and Adoption for 60-40 which are amendments to the Procurement Rules & Regulations of the CNMI Public School System and the relevant regulations, found on pages 050538-050539 of the Commonwealth Register, Volume 45, Number 10, October 28, 2023. Said Public Notice adopts as permanent regulations, Regulation No. 60-40, which the Board adopted at its October 13, 2023 Regular Board meeting.

Pursuant to 1 CMC § 9105(b)(2), these adopted regulations are effective 10 days after publication in the Commonwealth Register (October 28, 2023); thus, these regulations are effective November 7, 2023.

PLEASE BE GUIDED ACCORDINGLY AND REFER ANY QUESTIONS TO THE OFFICE OF THE LEGAL COUNSEL.

ATTACHMENTS:

- (1) COMMONWEALTH REGISTER, VOLUME 45, NUMBER 05, PAGES 049766-049788
- (2) COMMONWEALTH REGISTER, VOLUME 45, NUMBER 10, PAGES 050538-050539



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*
PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boe.admin@cnmipss.org



PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-40 PUBLIC SCHOOL SYSTEM RULES AND REGULATIONS

Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

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

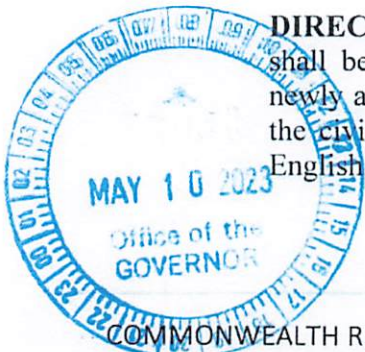
INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective ten (10) days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

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

THE TERMS AND SUBSTANCE: The proposed amendments make changes to the Public School System’s procurement regulations. Grammar errors are corrected and changes are made to reflect changes in the regulations of the Central Government’s procurement regulations.

THE SUBJECTS AND ISSUES INVOLVED: Grammar changes are made and changes are made to update the regulations to reflect changes made in the Central Government’s procurement regulations. The Purpose section is changed to reflect CNMI Supreme Court caselaw. Changes are also made to regulations dealing with: Application of Regulations; Duties of the Chief; Contract Oversight; Competitive Sealed Bidding advertisement; Small Purchase levels; Sole Source Procurement; Cancellation; Computer Software; Protests to the Commissioner; Appeals of Commissioner of Education’s Decisions to the Board; and Authority to Debar or Suspend.

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





STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*
PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boe.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

TO PROVIDE COMMENTS: All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, State Board of Education, via mail at P.O. Box 501370 CK, Saipan, MP 96950, via phone at 670-664-3711 or via email to boe.admin@cnmipss.org within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a) (2))

These proposed regulations were approved for publication in the Register for public comment at the State Board of Education Regular Meeting on November 18, 2022.


Submitted by:  05/05/2023
Antonio L. Borja
Chairman, State Board of Education
Date

Received by:  5/10/23
Oscar Babauta
Special Assistant for Administration
Date

Filed and Recorded by:  5.22.23
Esther R.M. San Nicolas
Commonwealth Register
Date

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

Dated this 16th day of May, 2023.


Edward E. Manibusan
Attorney General

PROPOSED CHANGE #1

§ 60-40-001 Purpose

(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 the regulations in this chapter are:

- (1) To provide for public confidence in the procedures followed in public procurement;
- (2) To ~~insure~~ ensure the fair and equitable treatment of all persons who deal with the procurement system of the Public School System;
- (3) To provide increased economy in Public School System procurement activities and to maximize to the fullest extent practicable the purchasing value of public 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.
- (6) To establish a system of procurement for the convenience of the Public School System and protection of the taxpaying public, not for the benefit and enrichment of vendors. Accordingly, nothing herein is meant to, nor shall it be interpreted to, create any substantive or procedural right of any kind.
- (7) Nothing herein shall be interpreted to reduce or affect in any particular instance the authority, judgment, or discretion of the Board or Commissioner to control the Public School System guaranteed by the CNMI Constitution and Commonwealth Code.

PROPOSED CHANGE #2

§ 60-40-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Public School System funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding. The regulations in this subchapter do not apply to employment contracts or contracts for personal services under an excepted service.

PROPOSED CHANGE #3

§ 60-40-045 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~~ ensure proper bidding procedures. This decision shall be made only by the Board of Education.

PROPOSED CHANGE #4

§ 60-40-110(b) Duties of the Chief

~~(b) Hear all appeals of protests and disputes~~ Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the Public School System;

PROPOSED CHANGE #5

§ 60-40-115(f) Contract Oversight

(f) The Public School System's legal counsel shall certify the form and legal capacity of every Public School System 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.~~

PROPOSED CHANGE #6

§ 60-40-115(g) Contract Oversight

(g) The Personnel Officer shall not approve all ~~contracts for employment or personal services, including excepted services contracts and~~ contracts for services by an independent contractor in a non-employment status.

PROPOSED CHANGE #7

§ 60-40-115(j) Contract Oversight

(j) No contract is effective against the Public School System until all the Public School System officials whose signatures appear on the contract form have signed the contract. Officials may withhold signing the contract for any reason deemed in the best interest of the Public School System. A contract shall contain a right to audit records clause.

PROPOSED CHANGE #8

§ 60-40-205(b) Competitive Sealed Bidding

(b) Public Notice. (1) 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 shall be on the Public School website over a continuous period of four weeks shall be deemed to be adequate notice.

(2) If the Chief determines that a shorter advertisement period is reasonable and necessary, such shortened time is allowable. Such shortened period shall allow vendors a reasonable opportunity to respond considering the circumstances of the procurement, such as its complexity and urgency. The advertisement period shall never be less than 7 calendar days.

(3) The Chief may extend an advertisement period by not more than 60 calendar days should circumstances warrant, considering factors such as the degree of urgency, complexity, expected increase of vendor participation, anticipated extent of subcontracting, the geographic distribution of vendors, and the like.

PROPOSED CHANGE #9

§ 60-40-210(b) Small Purchases

(b) Purchases not exceeding ~~500.00~~ \$1,000.00 may be made without securing bids or price quotations if the Chief of Procurement and Supply considers the price reasonable. Such determination shall be made in writing and shall indicate:

- (1) the reason why price quotations were not sought;
- (2) the utility of the purchase;
- (3) an explanation of why the price is reasonable under the circumstances.

PROPOSED CHANGE #10

§ 60-40-210(d) Small Purchases

(d) Bidding is not required but is encouraged for procurement under ~~\$10,000~~ \$25,000. Price quotations from at least three vendors must be obtained and the selection based on competitive price and quality for procurement valued at under ~~\$10,000~~ \$25,000. Any price quotations obtained must be written, documented, and submitted to the Chief for approval. However, if it is an emergency and three price quotations are not practicable, the purchase shall function as an emergency procurement and follow § 60-40-220.

PROPOSED CHANGE #11

§ 60-40-215(a) Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when: (1) the Chief determines in writing that there is only one source for the required supply, service or construction item; (2) the purpose is to obtain expert witnesses for litigation; (3) the purpose is to obtain legal services; (4) the purpose is to obtain the services provided by lecturers, speakers, trainers, or facilitators when the vendor uses specialized training methods or techniques or has expertise in the subject matter; or (5) the purpose is to purchase registration or workshop fees for conferences or training.

PROPOSED CHANGE #12

§ 60-40-225(f) Competitive Sealed Proposals

(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~~ ensure 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.

PROPOSED CHANGE #13

§ 60-40-235 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 by the Chief Procurement & Supply and approved by the Commissioner of Education to be in the best interests of the Public School System based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to the Public School System in the solicitation;
- (e) Bids or proposals received indicated that the needs of the Public School System 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; or
- (h) Any other reason cancellation is determined to be in the best interest of the Public School System.

PROPOSED CHANGE #14

§ 60-40-310 Computer Software

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

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

(c) In acquiring commercial software, PSS shall not generally require contractors to: (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

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

(d) Competitive bidding, or competitive procurement is not required for commercial software, including Software-as-a-Service, upon a showing that: (1) The software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet; (2) Proof of contemporaneous pricing which is available to CNMI purchasers is supplied in the contract package; and (3) The prices being compared are within 10% of the pricing selected, or the selected vendor will provide support for the software of a value which compensates for the difference in price.

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

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

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

(3) An extension of maintenance services for previously purchased software; and

(4) Computer hardware maintenance agreements for existing equipment.

(f) Contracts for extensions of maintenance service agreements, license renewals, or updates to previously purchased software as provided for in § 60-40-310(e) may proceed as a new sole source contract, or small purchase, as provided for in these Regulations.

(g) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) or CNMI Government blanket contract that was negotiated by the federal or CNMI government, is presumptively concluded to follow the competitive procurement requirements of these Regulations. This presumption applies not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

PROPOSED CHANGE #15

§ 60-40-401(a)(1) Protests to the Commissioner of Education

(a) General

(1) (i) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved or will be aggrieved in connection with the solicitation or award of a contract may shall protest to the Commissioner of Education. A formal written protest to the Commissioner is a prerequisite to any appeal per § 60-40-405 or petition or complaint in the Superior Court. The protest shall be received by the Commissioner of Education in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to award. The written protest shall state fully the factual and legal grounds for the protest. Any argument, claim, or theory not presented to the Commissioner or presented with insufficient factual or legal support is deemed waived and abandoned.

(ii) Protest Bond. A protest bond executed by a surety company authorized to do business in the Commonwealth, or a check payable to the CNMI Public School System, in an amount equal to at least fifteen percent of the protestor's bid price or offer, in a form and substance that is acceptable to the Commissioner shall be delivered to the Commissioner at the time of filing a protest. The protest bond shall be immediately payable to the Public School System, or the check may be cashed by the System, upon a decision by the Commissioner or Appeal Committee, if the Commissioner's decision is appealed, that a protest or appeal has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Bad Faith in this instance shall include, but is not limited to, multiple protests with a calendar year by the same vendor which are found to be without merit, protests intended to delay or mislead the Public School System, and protests by the same vendor which repeatedly do not adhere to the Public School System's Procurement Regulations. The Commissioner shall hold a protest bond for at least thirty days after the date of the final determination of the protest.

PROPOSED CHANGE #16

§ 60-40-405(a) Appeals of Commissioner of Education's Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Commissioner of Education may be taken provided that the party taking the appeal has first submitted a written protest to the Commissioner of Education and otherwise fully complied with § 60-40-401, and the Commissioner of Education has denied the protest or has failed to act on the protest within the time provided. A decision from a formal written appeal to the Appeal Committee is a prerequisite to any appeal, petition, or complaint in the Superior Court.

PROPOSED CHANGE #17

§ 60-40-405(c) Appeals of Commissioner of Education's Decisions to the Board

(c) An appeal from the Commissioner of Education's decision must be received by the Appeal Committee not later than five ten calendar days after the appellant received the decision of the Commissioner of Education, or, in the event that the Commissioner of Education has not decided the protest, within three ten calendar days from the date that the Commissioner should have decided the protest pursuant to § 60-40-401. Any appeal received after these time limits shall not be considered by the Appeal Committee unless good cause is shown or unless the Appeal Committee determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Public School System should be appeal be considered.

PROPOSED CHANGE #18

§ 60-40-505(a) Policy

(a) ~~Insure~~ Ensure fair competitive access to Public School System procurement by reasonable contractors; and

PROPOSED CHANGE #19

§ 60-40-560(b)(5) Authority to Debar or Suspend

(5) Any other cause that the Commissioner of Education determines to be so serious and compelling as to effect responsibility as a Public School System contractor, including debarment by another ~~Public School System~~ procurement entity within the Commonwealth or federal government; and



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 . Tel. 670 664-3711 . E-mail: boc.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

ARONGORONGOL TOULAP REEL PPWOMMWOL ALLÉGH ME MWÓGHUTUGHUT IKKA RA LIWELI NGÁLI ALLÉGH ME MWÓGHUTUGH IKKA E SÚLLÚNGÁLI CHAPTER 60-40 PUBLIC SCHOOL SYSTEM ALLÉGH ME MWÓGHUTUGHUT

PPWOMMWOL ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efáng llól Marianas Public School System re schuungi bwe:

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMMWOL ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efáng llól Marianas Public School System re mángemángil rebwe adóptááli mwóghutughut kkaal bwe ebwe lléghló ikka e appasch bwe Ppommwol Mwóghutughut, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló Mwóghutughut kkaal seigh (10) ráál mwiril aar adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Ppwommwol liiwel ikka ngáli mwóghutughutúl PSS ebwe arongowow sáangi bwángil Board reel iye e tutto me reel Article XV reel CNMI Constitution, Alléghúl Toulap 6-10 me CNMI Administrative Act.

KKAPASAL ME AWEEWEEL: Ppwommwol liiwel e ayoora siiwel ngáli mwóghutughutúl procurement me Public School System.

KKAPASAL ME AUTOL: Aa yoor liiwel ngáli Alléghúl Isch me re ayoora siiwel kkal ebwe súllúngáli aal mwóghutughut Central Government. Tánil wóól Purpose nge e liiwel ebwe súllúngáli CNMI Supreme Court caselaw. Ewal yoor siiwel ngáli mwóghutughut ikka e súllúngáli: Application of Regulations; Duties of the Chief; Contract Oversight; Competitive Sealed Bidding advertisement; Small Purchase levels; Sole Source Procurement; Cancellation; Computer Software; Protest ngáli Commissioner; Appeals of Commissioner of Education's Decisions to the Board; me Authority to Debar or Suspend.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Ppwommwol Mwóghutughut kkaal me llól Commonwealth Register llól tánil ppwommwol me ffél mwóghutughut ikka ra adóptáánil. (1 CMC § 9102(a) (1) me ebwe appaschetá me llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me





STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boc.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM (Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

REEL ISIISILONGOL KKAPAS: Schóó kka re tipáli rebwe amwuri ppwommwol liiwel me isiisilong ischil kkapas, positions, ngáre kkapasal aweewe ngáli ngáre konturali ppwommwol liiwel kkaal rebwe isiis ngáli Chairperson, State Board of Education, via email me P.O. Box 501370 CK, Saipan, MP 96950, ngáre bwal reel tilifon me 670-664-3711 ngáre email me boe.admin@cnmipss.org llól eliigh (30) ráál mwiril aal akkatééwow liiwel kkaal me llól Commonwealth Register. (1 CMC § 9104(a)(2))

Aa átirow ppwommwol mwóghutughut kkaal ngáli ebwe akkatééwow me llól Register ngáliir toulap reel kkapas me State Board of Education Regular Meeting wóól Aremwoy 18,2022.


Isáliyalong:  05/05/2023
Antonio L. Borja
Chairperson, State Board of Education
Ráál

Bwughiyal:  5/10/23
Oscar Babauta
Special Assistant ngáli Administration
Ráál

Ammwelil:  5.22.23
Esther R.M. San Nicolas
Commonwealth Registrar
Ráál

Sángi 1 CMC § 2153(e) (sángi átirowal mwóghutughut me reel AG bwe aa lléghló reel fféerúl) me 1 CMC § 9104(a) (3) (sángi átirowal AG) reel ppwommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me legal sufficiency sángi Soulemelemil Allégh Lapalap CNMI me ebwe akkatééwow (1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Ghikill wóól 16th ráálil Sééta, 2023.


Edward E. Manibusan
Soulemelemil Allégh Lapalap

PROPOSED CHANGE #1

§ 60-40-001 Purpose

(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 the regulations in this chapter are:

(1) To provide for public confidence in the procedures followed in public procurement;

(2) To ~~insure~~ ensure the fair and equitable treatment of all persons who deal with the procurement system of the Public School System;

(3) To provide increased economy in Public School System procurement activities and to maximize to the fullest extent practicable the purchasing value of public 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.

(6) To establish a system of procurement for the convenience of the Public School System and protection of the taxpaying public, not for the benefit and enrichment of vendors. Accordingly, nothing herein is meant to, nor shall it be interpreted to, create any substantive or procedural right of any kind.

(7) Nothing herein shall be interpreted to reduce or affect in any particular instance the authority, judgment, or discretion of the Board or Commissioner to control the Public School System guaranteed by the CNMI Constitution and Commonwealth Code.

PROPOSED CHANGE #2

§ 60-40-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Public School System funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding. The regulations in this subchapter do not apply to employment contracts or contracts for personal services under an excepted service.

PROPOSED CHANGE #3

§ 60-40-045 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~~ ensure proper bidding procedures. This decision shall be made only by the Board of Education.

PROPOSED CHANGE #4

§ 60-40-110(b) Duties of the Chief

~~(b) Hear all appeals of protests and disputes~~ Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the Public School System;

PROPOSED CHANGE #5

§ 60-40-115(f) Contract Oversight

(f) The Public School System's legal counsel shall certify the form and legal capacity of every Public School System 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.~~

PROPOSED CHANGE #6

§ 60-40-115(g) Contract Oversight

(g) The Personnel Officer shall not approve ~~all contracts for employment or personal services, including excepted services contracts and~~ contracts for services by an independent contractor in a non-employment status.

PROPOSED CHANGE #7

§ 60-40-115(j) Contract Oversight

(j) No contract is effective against the Public School System until all the Public School System officials whose signatures appear on the contract form have signed the contract. Officials may withhold signing the contract for any reason deemed in the best interest of the Public School System. A contract shall contain a right to audit records clause.

PROPOSED CHANGE #8

§ 60-40-205(b) Competitive Sealed Bidding

(b) Public Notice. (1) 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 shall be on the Public School website over a continuous period of four weeks shall be deemed to be adequate notice.

(2) If the Chief determines that a shorter advertisement period is reasonable and necessary, such shortened time is allowable. Such shortened period shall allow vendors a reasonable opportunity to respond considering the circumstances of the procurement, such as its complexity and urgency. The advertisement period shall never be less than 7 calendar days.

(3) The Chief may extend an advertisement period by not more than 60 calendar days should circumstances warrant, considering factors such as the degree of urgency, complexity, expected increase of vendor participation, anticipated extent of subcontracting, the geographic distribution of vendors, and the like.

PROPOSED CHANGE #9

§ 60-40-210(b) Small Purchases

(b) Purchases not exceeding ~~\$500.00~~ \$1,000.00 may be made without securing bids or price quotations if the Chief of Procurement and Supply considers the price reasonable. Such determination shall be made in writing and shall indicate:

- (1) the reason why price quotations were not sought;
- (2) the utility of the purchase;
- (3) an explanation of why the price is reasonable under the circumstances.

PROPOSED CHANGE #10

§ 60-40-210(d) Small Purchases

(d) Bidding is not required but is encouraged for procurement under ~~\$10,000~~ \$25,000. Price quotations from at least three vendors must be obtained and the selection based on competitive price and quality for procurement valued at under ~~\$10,000~~ \$25,000. Any price quotations obtained must be written, documented, and submitted to the Chief for approval. However, if it is an emergency and three price quotations are not practicable, the purchase shall function as an emergency procurement and follow § 60-40-220.

PROPOSED CHANGE #11

§ 60-40-215(a) Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when: (1) the Chief determines in writing that there is only one source for the required supply, service or construction item; (2) the purpose is to obtain expert witnesses for litigation; (3) the purpose is to obtain legal services; (4) the purpose is to obtain the services provided by lecturers, speakers, trainers, or facilitators when the vendor uses specialized training methods or techniques or has expertise in the subject matter; or (5) the purpose is to purchase registration or workshop fees for conferences or training.

PROPOSED CHANGE #12

§ 60-40-225(f) Competitive Sealed Proposals

(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~~ ensure 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.

PROPOSED CHANGE #13

§ 60-40-235 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 by the Chief Procurement & Supply and approved by the Commissioner of Education to be in the best interests of the Public School System based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to the Public School System in the solicitation;
- (e) Bids or proposals received indicated that the needs of the Public School System 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; or
- (h) Any other reason cancellation is determined to be in the best interest of the Public School System.

PROPOSED CHANGE #14

§ 60-40-310 Computer Software

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

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

(c) In acquiring commercial software, PSS shall not generally require contractors to: (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

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

(d) Competitive bidding, or competitive procurement is not required for commercial software, including Software-as-a-Service, upon a showing that: (1) The software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet; (2) Proof of contemporaneous pricing which is available to CNMI purchasers is supplied in the contract package; and (3) The prices being compared are within 10% of the pricing selected, or the selected vendor will provide support for the software of a value which compensates for the difference in price.

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

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

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

(3) An extension of maintenance services for previously purchased software; and

(4) Computer hardware maintenance agreements for existing equipment.

(f) Contracts for extensions of maintenance service agreements, license renewals, or updates to previously purchased software as provided for in § 60-40-310(e) may proceed as a new sole source contract, or small purchase, as provided for in these Regulations.

(g) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) or CNMI Government blanket contract that was negotiated by the federal or CNMI government, is presumptively concluded to follow the competitive procurement requirements of these Regulations. This presumption applies not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

PROPOSED CHANGE #15

§ 60-40-401(a)(1) Protests to the Commissioner of Education

(a) General

(1) (i) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been or will be aggrieved in connection with the solicitation or award of a contract may shall protest to the Commissioner of Education. A formal written protest to the Commissioner is a prerequisite to any appeal per § 60-40-405 or petition or complaint in the Superior Court. The protest shall be received by the Commissioner of Education in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to award. The written protest shall state fully the factual and legal grounds for the protest. Any argument, claim, or theory not presented to the Commissioner or presented with insufficient factual or legal support is deemed waived and abandoned.

(ii) Protest Bond. A protest bond executed by a surety company authorized to do business in the Commonwealth, or a check payable to the CNMI Public School System, in an amount equal to at least fifteen percent of the protestor's bid price or offer, in a form and substance that is acceptable to the Commissioner shall be delivered to the Commissioner at the time of filing a protest. The protest bond shall be immediately payable to the Public School System, or the check may be cashed by the System, upon a decision by the Commissioner or Appeal Committee, if the Commissioner's decision is appealed, that a protest or appeal has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Bad Faith in this instance shall include, but is not limited to, multiple protests with a calendar year by the same vendor which are found to be without merit, protests intended to delay or mislead the Public School System, and protests by the same vendor which repeatedly do not adhere to the Public School System's Procurement Regulations. The Commissioner shall hold a protest bond for at least thirty days after the date of the final determination of the protest.

PROPOSED CHANGE #16

§ 60-40-405(a) Appeals of Commissioner of Education's Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Commissioner of Education may be taken provided that the party taking the appeal has first submitted a written protest to the Commissioner of Education and otherwise fully complied with § 60-40-401, and the Commissioner of Education has denied the protest or has failed to act on the protest within the time provided. A decision from a formal written appeal to the Appeal Committee is a prerequisite to any appeal, petition, or complaint in the Superior Court.

PROPOSED CHANGE #17

§ 60-40-405(c) Appeals of Commissioner of Education's Decisions to the Board

(c) An appeal from the Commissioner of Education's decision must be received by the Appeal Committee not later than ~~five~~ ten calendar days after the appellant received the decision of the Commissioner of Education, or, in the event that the Commissioner of Education has not decided the protest, ~~within three~~ ten calendar days from the date that the Commissioner should have decided the protest pursuant to § 60-40-401. Any appeal received after these time limits shall not be considered by the Appeal Committee unless good cause is shown or unless the Appeal Committee determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Public School System should be appeal be considered.

PROPOSED CHANGE #18

§ 60-40-505(a) Policy

(a) ~~Insure~~ Ensure fair competitive access to Public School System procurement by reasonable contractors; and

PROPOSED CHANGE #19

§ 60-40-560(b)(5) Authority to Debar or Suspend

(5) Any other cause that the Commissioner of Education determines to be so serious and compelling as to effect responsibility as a Public School System contractor, including debarment by another ~~Public School System~~ procurement entity within the Commonwealth or federal government; and



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boc.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

NUTISIAN PUPBLIKU PUT I MAN MAPRONI NA AREKLAMENTU YAN REGULASION NI MAN MA'AMENDA PARA AREKLAMENTU YAN REGULASION SIHA PUT I PATTIN 60-40 GI AREKLAMENTU YAN REGULASION I SISTEMAN ISKUELAN PUPBLIKU

I MAN MAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Sistemán Iskuelan Pupblíku ("PSS") ha sodda' na:

I AKSION NI MA INTENSIONA PARA U MA ADAPTA ESTI I MAN MAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas siha, I Sistemán Iskuelan Pupblíku ha intensiona para u adapta komu petmanienti I regulasion siha ni manechettiun na man maproponi na Regulasion siha, sigun gi maneran I Akton Administrative Procedures, I CMC § 9104(a). I Regulasion siha para u ifektibu gi halum dies (10) dihas despues di adaptasion yan publikasion gi halum I Rehistran Commonwealth. (I CMC § 9105(b))

ATURIDAT: I man maproponi na amenda siha para I regulasion PSS manmacho'gui sigun gi aturidat I Kuetpu komu mapribeniya ginin I Attikilu XV gi Konstitusion CNMI, Lai Pupblíku 6-10 yan i Akton I CNMI Administrative Procedures.

I TEMA YAN SUSTANSIAN I PALABRA SIHA: I proposito ni matulaika mana' gu'aha tinilaika para I Sistemán Iskuelan Pupblíku para I areklamentun I procurement. Man matulaika I ti mandinanchi yan I tinailaika man ma arekla para u riniflekta I tinilaika gi Gubietnun Sentral gi i reglamentu i procurement.

I SUHETU NI MASUMARIA YAN ASUNTU NI TINEKKA SIHA: I tinilaikan gramatika nai manmatulaika yan I tinilaika nu I manmatulaika para u ma rebisa I reglamentu para u riniflekta I tinilaika nu I ma cho'gui gi reglamentu i Gubiernu Sentral gi reglamentun I procurement. I Proposito na seksion para u matulaika para u riniflekta kaosan I CNMI Supreme Court. Lokkui' I tinilaika gi reglamentu gi: Aplikasion i Reglamentu; Che'chu' i Manehanti; Mamonitoria i Kuntrato; Kompititibat i Sealed Bidding na anunsio; Dididi' para u Mafahan; Sole Source Procurement; Kanselasion; Kampot i Komputa; Protesta para i Kumisina; Apelasion i Disision i Kumisinan Idukasion guatu gi Kuetpu; yan I Aturidat para Debar pat sino Suspende.

DIREKSION PARA U MAPO'LU YAN PUBLIKASION: Esti I man maproponi na regulasion siha debi na u mapupblika gi halum I Rehistran Commonwealth gi seksiona ni man maproponi yan nuebu na ma'adapta na regulasion siha. (I CMC §





STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boc.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members


Dora B. Miura, PhD
Teacher Representative

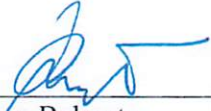
Ronald E. Snyder, EdD
Non Public School Rep.


Ryan Michael Nuera
Student Representative

9102(a) (1)) yan mapega gi halum I kumbinienti na lugat siha gi halum I civic center yan halum ufisinin gubietnamentu gi kada distritun senadot, parehu inglis yan I dos na lingguahin natibu. (1 CMC § 9104 (a) (1)).

PARA U MAPRIBENIYU UPINON SIHA: Todu I manitirisao na petsona siha ma'eksamina I manmaproponi na amenda siha yan intrega halum I tinigi' upinon pat sinangan siha para pat kinentran I manmaproponi na amenda siha guatu gi Kabesiyu, i State Board of Education, mail gi P.O. Box 501370 CK, Saipan, MP 96950, pat agang gi 670-664-3711, pat email para boc.admin@cnmipss.org gi halum I trenta (30) dihas gi fuetsan kalendariu ni' tinattitiyi ni pupublikasion esti siha na amenda gi halum I Rehistran Commonwealth. (1 CMC § 9104(a) (2))


Nina'halum as: 
Antonio L. Borja
Kabesiyu, State Board of Education
05/05/2023
Fetcha

Rinisibi as: 
Oscar Babauta
Ispisiat Na Ayudantin I Atministrasion
5/10/23
Fetcha

Pine'lu yan
Ninota as: 
Esther R.M. San Nicolas
Rehistran Commonwealth
5.22.23
Fetcha

Sigun i 1 CMC § 2153(e) (Inaprueba i regulasion yan siha ni Abugadu Henerat ni para u macho'gui kumu fotma) yan 1 CMC § 9104 (a) (3) (hentan inaprueba Abugadu Henerat) I man maproponi na regulasion siha ni manchetun guini ni man maribisa yan man ma'aprueba kumu fotma yan sufisienti ligat ginin I CNMI Abugadu Henerat yan debi na u mapuplika (1 CMC § 2153(f) (pupublikasion I areklamentu yan regulasion siha).

Mafetcha guini gi diha 16th gi Mayu, 2023.


Edward E. Manibusan
Abugadu Henerat

PROPOSED CHANGE #1

§ 60-40-001 Purpose

(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 the regulations in this chapter are:

(1) To provide for public confidence in the procedures followed in public procurement;

(2) To ~~insure~~ ensure the fair and equitable treatment of all persons who deal with the procurement system of the Public School System;

(3) To provide increased economy in Public School System procurement activities and to maximize to the fullest extent practicable the purchasing value of public 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.

(6) To establish a system of procurement for the convenience of the Public School System and protection of the taxpaying public, not for the benefit and enrichment of vendors. Accordingly, nothing herein is meant to, nor shall it be interpreted to, create any substantive or procedural right of any kind.

(7) Nothing herein shall be interpreted to reduce or affect in any particular instance the authority, judgment, or discretion of the Board or Commissioner to control the Public School System guaranteed by the CNMI Constitution and Commonwealth Code.

PROPOSED CHANGE #2

§ 60-40-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Public School System funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding. The regulations in this subchapter do not apply to employment contracts or contracts for personal services under an excepted service.

PROPOSED CHANGE #3

§ 60-40-045 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~~ ensure proper bidding procedures. This decision shall be made only by the Board of Education.

PROPOSED CHANGE #4

§ 60-40-110(b) Duties of the Chief

~~(b) Hear all appeals of protests and disputes~~ Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the Public School System;

PROPOSED CHANGE #5

§ 60-40-115(f) Contract Oversight

(f) The Public School System's legal counsel shall certify the form and legal capacity of every Public School System 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.~~

PROPOSED CHANGE #6

§ 60-40-115(g) Contract Oversight

(g) The Personnel Officer shall not approve ~~all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a non-employment status.~~

PROPOSED CHANGE #7

§ 60-40-115(j) Contract Oversight

(j) No contract is effective against the Public School System until all the Public School System officials whose signatures appear on the contract form have signed the contract. Officials may withhold signing the contract for any reason deemed in the best interest of the Public School System. A contract shall contain a right to audit records clause.

PROPOSED CHANGE #8

§ 60-40-205(b) Competitive Sealed Bidding

(b) Public Notice. (1) 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 shall be on the Public School website over a continuous period of four weeks shall be deemed to be adequate notice.

(2) If the Chief determines that a shorter advertisement period is reasonable and necessary, such shortened time is allowable. Such shortened period shall allow vendors a reasonable opportunity to respond considering the circumstances of the procurement, such as its complexity and urgency. The advertisement period shall never be less than 7 calendar days.

(3) The Chief may extend an advertisement period by not more than 60 calendar days should circumstances warrant, considering factors such as the degree of urgency, complexity, expected increase of vendor participation, anticipated extent of subcontracting, the geographic distribution of vendors, and the like.

PROPOSED CHANGE #9

§ 60-40-210(b) Small Purchases

(b) Purchases not exceeding ~~\$500.00~~ \$1,000.00 may be made without securing bids or price quotations if the Chief of Procurement and Supply considers the price reasonable. Such determination shall be made in writing and shall indicate:

- (1) the reason why price quotations were not sought;
- (2) the utility of the purchase;
- (3) an explanation of why the price is reasonable under the circumstances.

PROPOSED CHANGE #10

§ 60-40-210(d) Small Purchases

(d) Bidding is not required but is encouraged for procurement under ~~\$10,000~~ \$25,000. Price quotations from at least three vendors must be obtained and the selection based on competitive price and quality for procurement valued at under ~~\$10,000~~ \$25,000. Any price quotations obtained must be written, documented, and submitted to the Chief for approval. However, if it is an emergency and three price quotations are not practicable, the purchase shall function as an emergency procurement and follow § 60-40-220.

PROPOSED CHANGE #11

§ 60-40-215(a) Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when: (1) the Chief determines in writing that there is only one source for the required supply, service or construction item; (2) the purpose is to obtain expert witnesses for litigation; (3) the purpose is to obtain legal services; (4) the purpose is to obtain the services provided by lecturers, speakers, trainers, or facilitators when the vendor uses specialized training methods or techniques or has expertise in the subject matter; or (5) the purpose is to purchase registration or workshop fees for conferences or training.

PROPOSED CHANGE #12

§ 60-40-225(f) Competitive Sealed Proposals

(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~~ ensure 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.

PROPOSED CHANGE #13

§ 60-40-235 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 by the Chief Procurement & Supply and approved by the Commissioner of Education to be in the best interests of the Public School System based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to the Public School System in the solicitation;
- (e) Bids or proposals received indicated that the needs of the Public School System 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; or
- (h) Any other reason cancellation is determined to be in the best interest of the Public School System.

PROPOSED CHANGE #14

§ 60-40-310 Computer Software

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

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

(c) In acquiring commercial software, PSS shall not generally require contractors to: (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

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

(d) Competitive bidding, or competitive procurement is not required for commercial software, including Software-as-a-Service, upon a showing that: (1) The software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet; (2) Proof of contemporaneous pricing which is available to CNMI purchasers is supplied in the contract package; and (3) The prices being compared are within 10% of the pricing selected, or the selected vendor will provide support for the software of a value which compensates for the difference in price.

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

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

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

(3) An extension of maintenance services for previously purchased software; and

(4) Computer hardware maintenance agreements for existing equipment.

(f) Contracts for extensions of maintenance service agreements, license renewals, or updates to previously purchased software as provided for in § 60-40-310(e) may proceed as a new sole source contract, or small purchase, as provided for in these Regulations.

(g) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) or CNMI Government blanket contract that was negotiated by the federal or CNMI government, is presumptively concluded to follow the competitive procurement requirements of these Regulations. This presumption applies not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

PROPOSED CHANGE #15

§ 60-40-401(a)(1) Protests to the Commissioner of Education

(a) General

(1) (i) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved or will be aggrieved in connection with the solicitation or award of a contract may shall protest to the Commissioner of Education. A formal written protest to the Commissioner is a prerequisite to any appeal per § 60-40-405 or petition or complaint in the Superior Court. The protest shall be received by the Commissioner of Education in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to award. The written protest shall state fully the factual and legal grounds for the protest. Any argument, claim, or theory not presented to the Commissioner or presented with insufficient factual or legal support is deemed waived and abandoned.

(ii) Protest Bond. A protest bond executed by a surety company authorized to do business in the Commonwealth, or a check payable to the CNMI Public School System, in an amount equal to at least fifteen percent of the protestor's bid price or offer, in a form and substance that is acceptable to the Commissioner shall be delivered to the Commissioner at the time of filing a protest. The protest bond shall be immediately payable to the Public School System, or the check may be cashed by the System, upon a decision by the Commissioner or Appeal Committee, if the Commissioner's decision is appealed, that a protest or appeal has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Bad Faith in this instance shall include, but is not limited to, multiple protests with a calendar year by the same vendor which are found to be without merit, protests intended to delay or mislead the Public School System, and protests by the same vendor which repeatedly do not adhere to the Public School System's Procurement Regulations. The Commissioner shall hold a protest bond for at least thirty days after the date of the final determination of the protest.



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*

PO Box 501370 Saipan, MP 96950 . Tel. 670 661-3711 . E-mail: boc.admin@cnmipss.org



Voting Members

Antonio L. Borja
Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

Andrew L. Orsini
Member

Maisie B. Tenorio
Member

Non-Voting Members

Dora B. Miura, PhD
Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Vacant
Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE STATE BOARD OF EDUCATION – PUBLIC SCHOOL SYSTEM REGULATIONS CHAPTER 60-40

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 45, Number 05, pp 049766-049788, of May 31, 2023

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, ("CNMI"), State Board of Education ("Board"), HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached.

I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of October 13, 2023.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None. The regulations were adopted as proposed and published.

AUTHORITY: The Board has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article XV of the CNMI Constitution, Public Law 6-10 as amended and the CNMI Administrative Procedure Act.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Board has considered fully all written and oral submissions respecting the proposed regulations of which it was aware. The Board was not aware of any written or oral submissions. Upon this adoption of the regulations, the Board, if requested to do so by an interested person, either prior to adoption or within 30

days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS:

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form and legal sufficiency) . As such, further approval is not required.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th day of October, 2023, at Tinian, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Submitted by:


ANTONIO L. BORJA
Chairperson, State Board of Education

10.24.2023
Date

Filed and Recorded by:


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10.28.23
Date