

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



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**COMMONWEALTH REGISTER**

**VOLUME 43  
NUMBER 09  
SEPTEMBER 28, 2021  
Addendum**

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VOLUME 43

NUMBER 09

SEPTEMBER 28, 2021

Addendum

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# Commonwealth Utilities Corporation

P. O. Box 501220, Third Floor, Joeten Dandan Building, Saipan, MP 96950  
Tel: (670) 664-4282 • Fax: (670) 235-5131  
CUC is an Equal Opportunity Provider and Employer.



## PUBLIC NOTICE

### PROPOSED AMENDMENTS TO THE PROCUREMENT REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION

The Executive Director of the Commonwealth Utilities Corporation (“CUC”) hereby notifies the public that CUC intends to promulgate amendments to its Procurement Regulations under Northern Mariana Islands Administrative Code (“NMIAC”) Title 50-50.

**INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE PROCUREMENT REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION.** Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Utilities Corporation intends to promulgate the following additional provisions and revisions to its Procurement Regulations.

**TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED.** These proposed regulations authorizes and prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts. Such contracts are generally referred to as “IDIQ” contracts. Nothing in the proposed amendments regarding IDIQ contracts limits the use of other than competitive procedures authorized by Title 50 and nothing restricts the authority of CUC to enter into schedule, multiple awards, or task or delivery order contracts under any provision of law. The proposed regulations also state procedures for CUC to follow in issuing orders, such as, but not limited to, task orders, including the ordering media, and if multiple awards may be made, state the procedures and selection criteria that CUC will use to provide awardees a fair opportunity to be considered for each order. The proposed regulations also discuss certain exceptions to the fair opportunity requirement.

In addition, the proposed regulations add clarifying language to NMIAC § 50-50-305, which governs the procurement of architect-engineer services. These proposed regulations provide clarifications as to what qualifies as “architect-engineer services,” provides specific factors for evaluation of an architect-engineer firm, and allows CUC to recover costs caused attributed by design errors or deficiencies caused by the architect-engineer contractor.

**AUTHORITY.** The following proposed regulations and amendments have been fully reviewed by the CUC Board of Directors, which exercises all powers vested in the Commonwealth Utilities Corporation. During the Board of Director’s meeting held on September 3, 2021, the Board of Directors approved the proposed amendments to CUC’s Procurement Regulations for publication in the Commonwealth Register for notice and comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Utilities Corporation has the authority to promulgate these regulations pursuant to 4 CMC §§ 8122 and 8123.

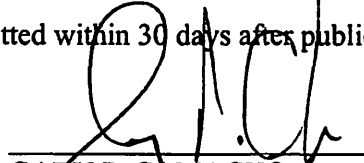
**DIRECTIONS FOR FILING AND PUBLICATION.** These proposed regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district,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

**TO PROVIDE COMMENTS:** Persons or entities wishing to submit comments must do so in writing to Mr. Gary P. Camacho, Executive Director of CUC, and to the Chairwoman of the CUC Board of Directors by means of the following: email, fax, mail or hand-delivery to the CUC Office of the Executive Director and CUC Board of Directors Administrative Office located on the Third Floor of the Joeten Dandan Commercial Building with the subject line **“Comments on Proposed Amendments to CUC’s Procurement Regulations”**.

Commonwealth Utilities Corporation  
Third Floor, Joeten Dandan Commercial Bldg.  
P.O. Box 501220 CK  
Saipan, MP 96950  
Fax: (670) 235-5131  
Email: [gary.camacho@cucgov.org](mailto:gary.camacho@cucgov.org)

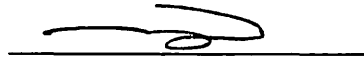
All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:

  
GARY P. CAMACHO  
Executive Director, CUC

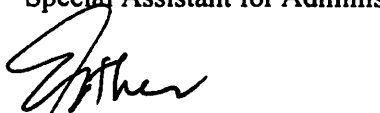
9/23/2021  
Date

Received by:

  
MATHILDA A. ROSARIO  
Special Assistant for Administration


09/29/21  
Date

Filed and Recorded by:

  
ESTHER SN. NESBITT  
Commonwealth Registrar

9.30.21  
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), 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).

  
EDWARD MANIBUSAN  
Attorney General

9/29/2021  
Date



# Commonwealth Utilities Corporation

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## NUTISIAN PUBLIKU

### MANMAPROPONI NA AMENDA SIHA PARA I REGULASION PROCUREMENT GI COMMONWEALTH UTILITIES CORPORATION

I Eksakatibun Direktot nu i Commonwealth Utilities Corporation (i “CUC”) manmanafanungu’ guini i publiku na i CUC ha intensiona para u cho’gui i amenda siha para iyon-ñiha Regulasion Procurement gi pãpa’ i Administrative Code i Sangkattan na Islas Mariãnas (“NMIAC”) Titulu 50-50.

**I AKSION NI MA’INTENSIONA PARA U ADãPTA ESTI SIHA I MANMAPROPONI NA AMENDA GI REGULASION PROCUREMENT NU I COMMONWEALTH UTILITIES CORPORATION:** Manã’i guini i nutisia sigun para i I CMC § 9104(a) gi Åkton Administrative Procedure na i Commonwealth Utilities Corporation ha intensiona para cho’gui i mantinattiya na provisions yan tinilaika siha para iyon-ñiha Regulasion Procurement.

**TEMA, SUSTãNSIAN I PALãBRA SIHA, YAN DISKRIPSION NU I SUHETU NI MASUMãRIA YAN ASUNTU NI TINEKKA:** Esti i manmapropo ni na regulasion siha ha aturisa yan estapblesi areklamentu yan manera para mama’tinas “awards” nu “indefinite-quantity” na kuntrãta siha. Esti siha na kuntrãta henerãt mariferi para komu “IDIQ” na kuntrãta. Tãya gi halum i manmapropo ni na amenda siha put IDIQ na kuntrãta ha “limit” i usun nu ottru ki i “competitive procedures” ni ma’aturisa ni Titulu 50 yan tãya rumistikta i aturidãt nu CUC para u mana’hãlum i “schedule, multiple awards,” osino “task” pat i “delivery order” na kuntrãta siha gi papa’ kuatkuet na “provision” nu lai. I manmapropo ni na regulasion lokkui’ ha mensiona na i manera siha para i CUC para u tattiyi i nina’i na otdin siha, tãtkomu, lão ti chi’ña para, “task orders,” ingkluklusu i “ordering media,” yan yanggin “multiple awards” siña mafa’tinas, mamensiona i manera siha yan sileksion “criteria” nai i CUC siempri ma’usa para u pribeni “awardees” gi parehu na uputunidãt para u makunsidera para kada’ na otdin. I manmapropo ni na regulasion siha lokkui’ madiskuti i fitmi na manmakuenta siha para i dinimãndan i parehu na uputunidãt.

Yan mãs, i manmapropo ni na regulasion siha ha na’klarifikão i lingguãhi para i NMIAC § 50-50-305, ni ha gubietna siha i “procurement” nu “architect-engineer” na sitbisiu siha. Esti i manmapropo ni a regulasion siha ha pribeniyi klarifikasion siha komu para hãfa na kuãlififikão siha komu “architect-engineer” na sitbisiu siha, pribeniyi espisifikão na “factors” para ibaluasion nu i “architect-engineer firm,” yan sedi siha i CUC para u marecover i gãstu ni fina’tinas ginen i “design errors” pat i difisienti siha ni fina’tinas ginen i “architect-engineer contractor.”

**ATURIDãT:** I mantinattiya na manmapropo ni na regulasion yan amenda siha manmaribisa ni Kuetpun Direktot i Commonwealth Utilities Corporation, ni manma’infuetsa tod u i bittut na aturidãt gi halum i Commonwealth Utilities Corporation. Gi durãntin i hentan Kuetpun Direktot gi Septembri 3, 2021, ma’aprueba i manmapropo ni na amenda siha para i Regulasion

Procurement CUC para publikasion gi halum Rehistran Commonwealth para nutisia yan upiñon sigun para i Akton Administrative Procedure yan para inapueba ginen i Abugadu Henerat sigun para i CMC § 2153(e). I Commonwealth Utilities Corporation gai aturidat para u macho'gui esti siha na regulasion sigun para i 4 CMC §§ 8122 yan 8123.

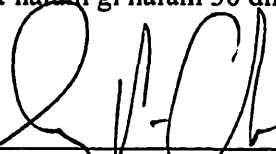
**DIREKSION SIHA PARA U MAPO'LU YAN MAPUPBLIKA:** Esti i manmaproponi na regulasion siha debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona gi Manmaproponi yan Nuebu na Ma'adapta na Regulasion siha, i CMC § 9102(a)(1), yan u mapega gi kumbinienti na lugat gi halum civic center yan i ufisinan gubietnamento gi kada' distritun senadot, parehu gi finu' Inglis yan i prinsipat na lingguahi natibu. i CMC § 9104(a)(1).

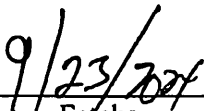
**PARA U MAPRIBENIYI UPIÑON SIHA:** I petsona siha pat hayi malagu' muna'halum upiñon debi na u macho'gui gi tinigi' para as Siñot Gary P. Camacho, i Eksakatibun Direktot nu CUC, yan para i Kabesiyun nu i Kuetpun Direktot nu CUC gi tinattiyi na manera: email, fax, katta osino intrega halum gi Ufisinan CUC i Eksakatibun Direktot yan Ufisinan Atministradot Kuetpun Direktot CUC gi Mina'tres na bibienda gi Joeten Dandan Commercial Building yan i suhetu na raya "Upiñon gi Manmaproponi na Amenda siha para i Regulasion Procurement CUC".

Commonwealth Utilities Corporation  
Third Floor, Joeten Dandan Commercial Bldg.  
P.O. Box 501220 CK  
Saipan, MP 96950  
Fax: (670) 235-5131  
Email: [gary.camacho@cucgov.org](mailto:gary.camacho@cucgov.org)

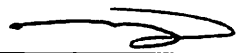
Todu i tinigi' na upiñon siha debi na u mana'halum gi halum 30 dihas dispues di publikasion nu esti na nutisia.

Nina'halum as:

  
\_\_\_\_\_  
GARY P. CAMACHO  
Eksakatibun Direktot, CUC


  
\_\_\_\_\_  
Fetcha

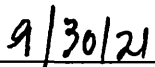
Rinisibi as:

  
\_\_\_\_\_  
MATHILDA A. ROSARIO  
Espisiat na Ayudanti para i Atministrasion

  
\_\_\_\_\_  
Fetcha

Pine'lu yan Ninota as:

  
\_\_\_\_\_  
ESTHER SN. NESBITT  
Rehistran Commonwealth

  
\_\_\_\_\_  
Fetcha



# Commonwealth Utilities Corporation

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## ARONGORONGOL TOULAP

### PPWOMWOL LIIWEL NGÁLI MWÓGHUTUGHUTÚL PROCUREMENT REEL COMMONWEALTH UTILITIES CORPORATION

Executive Director-il Commonwealth Utilities Corporation (“CUC”) e aronga toulap bwe CUC re mángemángil rebwe arongawow liiwel ngáli Mwóghutughutúl Procurement faal Northern Mariana Islands Administrative Code (“NMIAC”) Title 50-50.

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMWOL LIIWEL NGÁLI MWÓGHUTUGHUTÚL PROCUREMENT REEL COMMONWEALTH UTILITIES CORPORATION.** Arongorong yeel nge sáangi 1 CMC § 9104(a) reel Administrative Procedure Act iye Commonwealth Utilities Corporation e mángemángil ebwe aronga mwiril aar aschuulong “provisions” me liiwel ngáli Mwóghutughutúl Procurement.

**KKAPASAL, AWEEWEL, ME AUTOL:** Ppwomwol mwóghutughut e ayoorai bwángil me ayoorai mwóghutughutúl afal me mwóghutughut ngáli fféerúl “awards” reel “indefinite-delivery contracts”. Tappal “contract” kkal nge re ghal aita bwe “IDIQ” “contracts”. Esóór me llól ppwomwol liiwel iye e ssúl ngáli “IDIQ contracts” e ayoorai mwotal yááyál akkááw “competitive procedures” ikka eyoor bwángil sáangi Title 50 me esóór mwotal bwángil CUC reel rebwe toolong llól “schedule”, “multiple awards”, ngáre “task” ngáre afangal “order contracts” faal allégh. Ppwomwol mwóghut ebwal ayoora mwóghutughut ngáli CUC reel rebwe attabweey ngáli llól isiisowul “orders”, aweey schagh, nge ese ffat mwotal, “task orders”, ebwal schuulong “ordering media”, me ngáre essogh “awards” ikka rebwe fféer, ebwe ffat mwóghutughutúl me afilil iye CUC ebwe yááyá me ayoorai ngáliir “awardees” “fair opportunity” reel rebwe amwuri fischiiy ghal eew “order”. Ppwomwol mwóghutughut ebwal apasa akkááw “exceptions” ngáli “fair opportunity requirement”.

Ebwal schuu, ppwomwol mwóghut e ayoora kkapas bwe ebwe ffat ngáli NMIAC § 50-50-305, iye e lemeli mwóghutughut sáangi angaangil “architect-engineer”. Ppwomwol liiwel e affata meeta iye e ffil bwe angaangil “architect engineer”, ebwal ayoorai “factors” ikka e ffat ngáli sóssótol “architect-engineer firm”, me lighiti ngáli CUC reel rebwe bwughi sefááli méél ikka eyoor sáangi “design errors” ngáre “dificiencias” iye e tutto sáangi “architect-engineer contractor”.

**BWÁNGIL:** Ra amwuri fischiiy ppwomwol mwóghutughut me liiwel kkal sáangi CUC Board-il Directors, iye re yááli bwángiir sáangi Commonwealth Utilities Corporation. Atol aar yéelágh Board of Directors wóól Maan 3, 2021, Board ra átirowa ppwomwol liiwel ngáli aar CUC Mwóghutughutúl Procurement reel ebwe akkatéewow me llól Commonwealth Register ngáli Allégh Lapalap sáangi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Utilities Corporation reel rebwe arongawow mwóghutughut kkal sáangi 4 CMC §§ 8122 me 8123.

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisienti ligât ginin i Abugâdu Henerât CNMI yan debi na u mapupblika, 1 CMC § 2153(f).

  
EDWARD MANIBUSAN  
Abugâdu Henerât

9/29/2021  
Fetcha

**[Proposed addition  
to Part 300 of  
NMIAC Title 50-50.  
See § 50-50-310  
below in its entirety]**

**§ 50-50-310  
Indefinite Delivery,  
Indefinite Quantity  
Contracts**

**(a) Scope**

(1) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts. Such contracts are generally referred to as “IDIQ” contracts.

(2) This subpart does not limit the use of other than competitive procedures authorized by this title.

(3) Nothing in this subpart restricts the authority of the CUC to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(4) The regulatory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in § 50-50-305. However, CUC shall not be precluded from making multiple awards for architect-

engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with § 50-50-305.

**(b) Definitions.**

As used in this Title.

(1) *Delivery-order contract* means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

(2) *Task-order contract* means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

**(c) General.**

(1) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

(2) The various types of indefinite-delivery contracts referenced in Section 50-50-310(c) offer the following advantages as all three types permit:

(i) Inventory stocks to be maintained at minimum levels; and

(ii) Direct shipment to CUC.

(3) Indefinite-quantity contracts and requirements contracts also permit-

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of supplies or services after requirements materialize.

(4) Indefinite-quantity contracts limit the CUC's obligation to the minimum quantity specified in the contract.

(5) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under § 50-50-250. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart, such as but not limited to fixed pricing or cost reimbursement contract, subject to the conditions in Section 250(c).

## (d) Definite-quantity contracts.

(1) Description. A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(2) Application. A definite-quantity contract may be used when it can be determined in advance, and in writing, that-

(i) A definite quantity of supplies or services will be required during the contract period; and

(ii) The supplies or services are regularly available or will be available after a short lead time.

## (e) Requirements contracts.

(1) Description. A requirements contract provides for filling all actual purchase requirements of designated CUC activities for supplies or services during a specified contract period (from one contractor), with deliveries or performance to be scheduled by placing orders with the contractor.

(i) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(ii) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the CUC's obligation to order. The contract may also specify maximum or minimum quantities that the CUC may order under each individual order and the maximum that it may order during a specified period of time.

(2) Application.

(i) A requirements contract may be appropriate for acquiring any supplies or services when the CUC anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated CUC activities will need during a definite period.

(ii) No requirements contract in an amount estimated to exceed \$3 million (including all options) may be awarded to a single source unless aligned with (b)(iii) below.

(iii) Any contract in excess of \$3 million shall be awarded as either an emergency procurement, competitive sealed proposal, or invitation to bid, unless the Director makes a written determination that (1) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work; (2) the contract provides only for a firm-fixed price task or delivery orders for products for which unit prices are established in the contract; or services for which prices are established in the contract for the specific tasks to be performed.

(3) CUC property furnished for repair. When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of CUC property, a failure by CUC to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" shall not entitle the contractor to any equitable adjustment in price.

(4) Limitations on use of requirements contracts.

(i) Except as provided in paragraph (4)(ii) of this subpart, no solicitation for a requirements contract for advisory and assistance services, architectural & engineering services, or construction services in excess of three (3) years and \$15 million (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing, after evaluation of the offers, that the services required are either:

(A) not practicable to make multiple awards using the procedures set forth because only one contractor can reasonably perform the work because the work is so unique or highly specialized the tasks are so integrally related;

(B) only one offeror is capable of providing the services required at the level of quality received; or

(C) only one offer is received.

(ii) The limitation in paragraph (d)(i) of this subpart is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, architect or engineer services, and construction services if the contracting officer or other official designated by the head of the agency determines that such services are necessarily incident to, and not a significant component of, the contract.

## (f) Indefinite-quantity contracts.

(1) Description. An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The CUC places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(i) The contract must require the CUC to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(ii) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the CUC is fairly certain to order.

(iii) The contract may also specify maximum or minimum quantities that the CUC may order under each task or delivery order and the maximum that it may order during a specific period of time.

(iv) A solicitation and contract for an indefinite quantity must-

(A) Specify the period of the contract, including the number of options and the period for which the CUC may extend the contract under each option;

(B) Specify the total minimum and maximum quantity of supplies or services the CUC will acquire under the contract;

(C) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the CUC will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(D) State the procedures that the CUC will use in issuing orders, such as but not limited to task orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the CUC will use to provide awardees a fair opportunity to be considered for each order. CUC should consider the following as to provide all potential bidders with fair opportunity:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control;

(2) potential impact on other orders place with the contractor;

(3) minimum order requirements;

(4) the amount of time needed to make informed business decision son whether to respond to potential orders; and

(5) Other considerations as deemed appropriate

(e.g., proposed conceptual approach, past performance, etc.).

(v) The following are exceptions to the “fair opportunity” requirement referenced immediately above:

(A) the CUC’s need for supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(B) only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(C) the order must be issued on a sole-source basis in the interest of economy and efficiency, since it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order;

(D) it is necessary to place an order to satisfy a minimum guarantee; or

(E) governing law expressly authorizes or requires that the purchase be made from a specified source.

(E) Include a description of the activities authorized to issue orders; and

(D) Include authorization for placing oral orders, if appropriate, provided that the CUC has established procedures for obligating funds and that oral orders are confirmed in writing.

(2) Application. Contracting officers may use an indefinite-quantity contract when the CUC cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the CUC will require during the contract period, and it is inadvisable for the CUC to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(i) Multiple award preference-

(A) Planning the acquisition.

(B) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this subpart, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(C) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(ii) The contracting officer must not use the multiple award approach if-

(A) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(B) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(C) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(D) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(E) The total estimated value of the contract is at or below the simplified acquisition threshold; or

(F) Multiple awards would not be in the best interests of the CUC.

(iii) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards, such as, but not limited to, IT services or new software implementation.

# § 50-50-305

## Architect-Engineer Services

(a) Procurement Method. Architect-Engineer services shall be procured as provided in this subpart except when authorized as a small or emergency procurement. Contracting officer should consider the following services to be “architect-engineer services” subject to the procedures of this subpart:

(i) Professional services of an architectural or engineering nature, as defined by applicable Commonwealth law, which the Commonwealth law requires to be performed or approved by a registered architect or engineer.

(ii) Professional services of an architectural or engineering nature associated with design or construction of real property.

(iii) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance

manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(iv) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to this subpart from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to this subpart. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions set forth in § 50-50-201.

(b) [No Proposed Changes. Language remains the same]

(c) 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. Each potential contractor shall be evaluated in terms of the following:

(i) Professional qualifications necessary for satisfactory performance of required services;

(ii) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, Pollution prevention, Waste reduction, and the use of recovered materials;

(iii) Capacity to accomplish the work in the required time;

(iv) past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(v) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(vi) Any other evaluation criteria that the expenditure authority deems appropriate.

(d) [No Proposed Changes. Language remains the same.]

(e) Liability for CUC costs resulting from design errors or deficiencies. Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable

for CUC's costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and issue a demand for payment of the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the CUC's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.