

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



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 05
May 31, 2023**

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PROPOSED

Public Notice of Proposed Amendments to Temporary Occupancy Rules to Revise Rent & Fees for Telecommunications Leases and Easements Department of Public Lands	049759
Public Notice of Proposed Amendments regarding Chapter 60-40 Public School System Rules and Regulations State Board of Education CNMI Public School System	049766

DOL/PUA/CAC ORDERS

PUA Case No. 22-0223 Subject: Administrative Order In the Matter of: Priscilla Pangelinan v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	049790
PUA Case No. 23-0224 Subject: Administrative Order In the Matter of: Quifang Ma v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	049796
Labor Case No. 19-038 Subject: Order of Dismissal In the Matter of: Shi Yunxiao v. Donghui Jewelry Group Corporation Department of Labor	049797
Labor Case No. 22-018 Subject: Final Agency Decision In the Matter of: Wenhua Wu v. Fengze Corporation Department of Labor	049802

Labor Case No. 23-001
Subject: Judgment
In the Matter of: Sherwin P. Resurreccion v. C Pacific Corporation
Department of Labor **049805**



Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



**PUBLIC NOTICE OF PROPOSED AMENDMENTS
TO TEMPORARY OCCUPANCY RULES
TO REVISE RENT & FEES FOR TELECOMMUNICATIONS LEASES AND EASEMENTS**

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Department of Public Lands (DPL) intends to amend the Temporary Occupancy Rules and Regulations pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a) to authorize DPL to waive certain requirements for rent and annual fees assessed for leases and easements for non-governmental telecommunications service providers.

AUTHORITY: These amendments are promulgated under the authority of the Department of Public Lands pursuant to 1 CMC § 2806 to develop administrative policies, procedures, and controls related to public land.

TERMS AND SUBSTANCE: These proposed amendments will authorize DPL to waive the BGR additional rent requirement for non-governmental telecommunications service providers and the annual fee for underground telecommunication cable wires and related telecommunication equipment upon a determination by DPL that such a waiver is in the best interest of the public land beneficiaries.

CITATION OF AFFECTED REGULATIONS: The proposed amendments will revise existing regulatory language in the following regulations:

- | | |
|--------------------------|--|
| NMIAC § 145-70-110(e)(9) | Lease Agreement Requirements |
| NMIAC § 145-70-205(b) | Occupancy and Easements for Private Telecommunications |

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9201(a)(1)) and posted in convenient places in the civic center and in local governmental offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

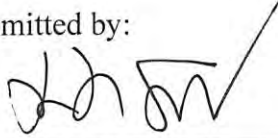
COMMENTS: Interested parties may submit written comments on the proposed amendments to Teresita A. Santos, Department of Public Lands Acting Secretary, to the following address, fax, or email address, with the subject line “Proposed Amendments to the Temporary Occupancy Rules to Revise Rent for Telecommunications Leases and Easements”:

DEPARTMENT OF PUBLIC LANDS
PO Box 500380, Saipan, MP 96950
Fax: (670) 234-3755
Email: dpl@dpl.gov.mp

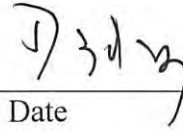
Comments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2).

P.O. Box 500380, Saipan, MP 96950 • 2nd Floor, Joeten Dandan Commercial Building
Website: www.dpl.gov.mp • E-mail: dpl@dpl.gov.mp • Facebook: www.facebook.com/DplCnmi
Tel: (670) 234-3751/52/53/54 • Fax: (670) 234-3755

Submitted by:



Ms. Teresita A. Santos
Secretary, Department of Public Lands

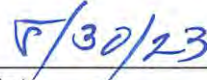


Date

Received by:



Mr. Oscar Babauta
Special Assistant for Administration



Date

Filed and Recorded by:



Ms. Esther R.M. San Nicolas
Commonwealth Registrar



Date

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.



Mr. Edward Manibusan
Attorney General



Date



Commonwealth gi Sankattan na Islas Mariãnas
Ufisinan Gubietnu
DIPÀTTAMENTUN TANU' PUPBLIKU



**NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA AMENDA SIHA
GI TEMPURÀRIU NA AREKLAMENTUN OCCUPANCY PARA U MARIBISA I ATKILON &
ÀPAS PARA I ATKILON YAN EASEMENTS I TELECOMMUNICATION SIHA**

I AKSIÓN NI MA'INTENSIONA: I Commonwealth gi Sankattan na Islas Mariãnas, i Ufisinan Gubietnu, i Dipàttamentun Tanu' Pupbliku (i DPL) ha intensiona para u amenda i Tempuràriu na Areklamentu yan Regulasion Occupancy siha sigun gi manera nu i Àkton Administrative Procedure (APA), 1 CMC § 9104(a) para u ma'aturisa i DPL marinunsia metun na dinimànda siha para inatkila yan àpas i kada sàkkan ni ma'ibaluha para i atkilon yan easements siha para i non-governmental telecommunications service providers.

ÀTURIDÀT: Esti siha na amenda manmacho'gui gi pàpa' i àturidàt nu i Dipàttamentun Tanu' Pupbliku sigun gi 1 CMC § 2806 para u dibelop i areklamentun administrative, manera, yan gubietna siha i manasosiàt para i tanu' pupbliku.

I TEMA YAN SUSTÀNSIAN I PALÀBRA SIHA: Esti i manmaproponi na amenda siha siempri ha aturisa i DPL para u rinunsia i otru na dinimàndan atkilon i BGR para non-governmental telecommunications service providers yan i àpas kada sàkkan para papa' tanu' telecommunication cable wires yan manasosiàt na tràstis gi ditetminasiòn ginen i DPL na tãtkomu i rinunsia para i minãolekña i manprubechosu i tanu' pupbliku.

SITASIÒN NU MANINAFEKTA NA REGULASION SIHA: I manmaproponi na amenda siha siempri maribisa i maneksissisti na lingguãhi regulatori gi halum i mantinãttiya na regulasion siha:

NMIAC § 145-70-110(e)(9) Dinimàndan Kuntrãtan Atkilon
NMIAC § 145-70-205(b) Occupancy and Easements for Private Telecommunications

DIREKSION PARA U MAPO'LU YAN PUPBLIKASIÒN: I maproponi na amenda siha debi na u mapublika gi halum i Rehistran Commonwealth gi seksiona gi maproponi yan nuebu na ma'adãpta na regulasion siha (1 CMC § 9201(a)(1)) yan mapega gi kumbinienti na lugãt siha gi halum civic center yan gi ufisinan gubietnamentu siha gi kada distritun senadot, parehu gi Inglis yan i lingguãhin natibu (1 CMC § 9104(a)(1)).

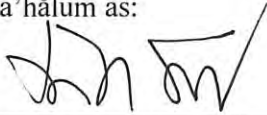
I UPIÑON SIHA: I manintires na pattida siha siña manna'halum upiñon tinigi' siha gi manmaproponi na amenda guatu as Teresita A. Santos, i Sekretãrian Dipàttamentun Tanu' Pupbliku, gi tinãttiya na address, fax, osino email address, yan i suhetu na rãya "Manmaproponi na Amenda gi Tempuràriu na Areklamentun Occupancy para u Maribisa i Atkilon para i Telecommunications Leases yan Easements".

DEPARTMENT OF PUBLIC LANDS
PO Box 500380, Saipan, MP 96950
Fax: (670) 234-3755
Email: dpl@dpl.gov.mp


I upiñon siha debi na u fanhãlum gi halum trenta (30) dihas ginen i fetcha nu pupublikasion esti na nutisia. 1 CMC § 9104(a)(2)).

P.O. Box 500380, Saipan, MP 96950 • 2nd Floor, Joeten Dandan Commercial Building
Website: www.dpl.gov.mp • E-mail: dpl@dpl.gov.mp • Facebook: www.facebook.com/DplCnmi
Tel: (670) 234-3751/52/53/54 • Fax: (670) 234-3755

Nina'hålum as:



Ms. Teresita A. Santos
Sekritáriu, Dipáttamentun Tanu' Pupbliku



Fetcha

Rinisibi as



Mr. Oscar Babauta
Ispisiát na Ayudánti para i Atministrasi6n

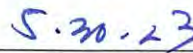


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Pine'lu yan Ninota as:

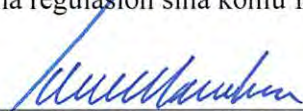


Ms. Esther R.M. San Nicolas
Rehistran Commonwealth



Fetcha

Hu aprueba, sigun gi 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), na hu ribisa yan aprueba esti na regulasi6n siha komu fotma yan ligát sufisienti.



Mr. Edward Manibusan
Abugádu Hiniránt



Fetcha



Commonwealth Téel Falúw kka Efáng Ilól Marianas
Bwulasiyol Soulemelem
BWULASIYOL AMMWELIL FALUWEER TOULAP



**ARONGORONGOL TOULAP REEL PPWOMMWOL LIIWEL
NGÁLI ALLÉGHÚL OCCUPANCY IKKA E LO BWE TEMPORARY
REBWE SIIWELI ATKKILOON ME ÓBWÓSS NGÁLI ATKKILÓÓNOL
TELECOMMUNICATION ME EASEMENTS**

ARONGORONGOL MÁNGEMÁMGIL MWÓGHUT: Commonwealth Téel Falúw kka Efáng Ilól Marianas, Bwulasiyol Soulemelem, Bwulasiyol Ammwelil Faluweer Toulap (DPL) re mángemángil rebwe liiweli Alléghúl me Mwoghutughutúl Temporary Occupancy sángi mwóghutughutúl Administrative Procedure Act (APA), 1 CMC § 9104(a) ebwe ayoorai bwángil DPL rebwe siiweli akkáaw requirements ngáli rent me annual fees ikka re amwuri ngáli leases me easements ngáli non-governmental telecommunications service providers.

BWÁNGIL: Ebwe arongowow liiwel kkaal faal bwángil Bwulasiyol Ammwelil Faluweer Toulap sángi 1 CMC § 2806 ebwe ayooraa administrative policies, procedures, me lemelem ikka e ffil ngáli faluweer toulap.

KKAPASAL ME AWEEWEEL: Ppwommwol liiwel kkaal e ayooraa bwángil DPL rebwe siiweli BGR additional rent requirement ngáli non-government telecommunications service providers me annual fee ngáli underground telecommunication cable wires me peiráágh ikka e ffil ngáli telecommunication ebwe itittiw sángi DPL bwe waiver e lo bwe llól ghatchúl public land beneficiaries.

KKAPASAL MWÓGHUT IKKA E LIIWEL: Ppwommwol liiwel e siiweli kkapasal regulatory ikka e lo llól mwóghutughut ikka e amwirimwiritiw:

NMIAC § 145-70-110(e)(9)

Lease Agreement Requirements

NMIAC § 145-70-205(b)

Occupancy and Easements for Private Telecommunications

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ppwommwol liiwel kkaal ebwe akkatééwow me llól táilil ppwommwol me ffél mwóghutughut ikka ra adóptáali (1 CMC § 9201(a)(1)) me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC § 9104(a)(1)).

KKAPAS: Schóó kka re tipáli rebwe isiisilong ischil kkapas wóól ppwommwol liiwel rebwe isiis ngáli Teresita A. Santos, Sekkretóoriyal Bwulasiyol Ammwelil Faluweer Toulap, ngáli féléfél, ngáre email address, ebwe lo wóól subject line bwe “Proposed Amendments to the Temporary Occupancy Rules to Revise Rent for Telecommunications Leases and Easements”:

DEPARTMENT OF PUBLIC LANDS

PO Box 500380, Saipan, MP 96950

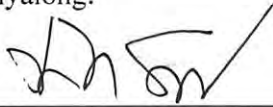
Fax: (670) 234-3755

Email: dpl@dpl.gov.mp

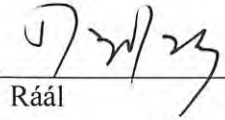
Ebwe toolong kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. 1 CMC § 9104(a)(2).

P.O. Box 500380, Saipan, MP 96950 • 2nd Floor, Joeten Dandan Commercial Building
Website: www.dpl.gov.mp • E-mail: dpl@dpl.gov.mp • Facebook: www.facebook.com/DplCnmi
Tel: (670) 234-3751/52/53/54 • Fax: (670) 234-3755

Isáliyalong:



Ms. Teresita A. Santos
Sekretóriyo, Bwulasiyol Ammwelil
Faluweer Toulap



Ráál

Bwughiyal:

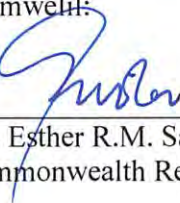


Mr. Oscar Babauta
Special Assistant ngáli Administration

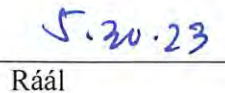


Ráál

Ammwelil:




Ms. Esther R.M. San Nicolas
Commonwealth Registrar

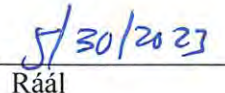


Ráál

I átirow, sáangi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3), bwe I ya takkal amwuri fischiiy me átirowa mwóghutughut kkal bwe aa lléghló fféerúl me “legal sufficiency”.



Mr. Edward Manibusan
Soulemelemil Allégh Lapalap



Ráál

NMIAC § 145-70-110(e) Lease Agreement Requirements

(9) Additional Rent – Percentage of Business Gross Receipts – due to the scarcity of public lands and in accordance with its fiduciary duties owed to its beneficiaries, DPL shall charge additional rent that allows its beneficiaries to participate in the revenues generated as a result of the lease. This rent shall be charged as a percentage of Lessee’s Business Gross Receipts (BGR) and shall also apply to the BGR of Lessee’s subtenants, concessionaries and others permitted to engage in commercial activity upon the leased premises. DPL may cap the additional rent due at \$5 million for a large development project that will require more than two years to complete if DPL determines that the capital investment in the project will be no less than \$36 million and will benefit the economic development of the Commonwealth. [DPL may grant a waiver from the BGR additional rent requirement for non-governmental telecommunications service providers upon a determination by DPL that such a waiver is in the best interest of the public land beneficiaries.](#) For the sake of clarity, BGR includes enterprise BGR, not just BGR derived from parts of the enterprise situated on public lands. The additional rent per year for every year of the lease term shall be as follows:

Business Gross Receipt Payment Schedule

<u>Annual BGR Amounts</u>				<u>% of</u>	<u>Minimum</u>
<u>Tier</u>	<u>From</u>	<u>To</u>		<u>BGR</u>	<u>Per Tier</u>
1	\$ -	\$ 50,000.49		1.50%	
2	\$ 50,000.50	\$ 100,000.49		1.45%	\$ 750
3	\$ 100,000.50	\$ 200,000.49		1.39%	\$ 1,445
4	\$ 200,000.50	\$ 400,000.49		1.34%	\$ 2,780
5	\$ 400,000.50	\$ 800,000.49		1.28%	\$ 5,340
6	\$ 800,000.50	\$ 1,600,000.49		1.22%	\$ 10,240
7	\$ 1,600,000.50	\$ 3,200,000.49		1.17%	\$ 19,520
8	\$ 3,200,000.50	\$ 6,400,000.49		1.11%	\$ 37,280
9	\$ 6,400,000.50	\$ 12,800,000.49		1.06%	\$ 71,040
10	\$ 12,800,000.50	and Over		1.00%	\$ 135,040

NMIAC § 145-70-205 Occupancy and Easements for Private Telecommunications

(b) Underground Telecommunication Cables – The activity involving the use of public lands to lay, maintain and operate underground telecommunication cable wires and related telecommunication equipment. Upon promulgation of these regulations the annual fee for buried cable trenches shall be 5.0% per year of 50.0% of average market price of lands on the island where the trenching will occur. [DPL may grant a waiver from the annual fee for underground telecommunication cable wires and related telecommunication equipment upon a determination by DPL that such a waiver is in the best interest of the public land beneficiaries.](#) Average market price shall be an area-weighted average determined by DPL based on recent publicly available real estate sales data for fee simple land transaction.



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.

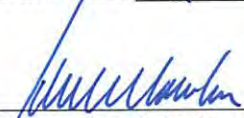
Submitted by:  05/05/2023
Antonio L. Borja
Chairman, State Board of Education
Date

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 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



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Member

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Teacher Representative

Ronald E. Snyder, EdD
Non Public School Rep.

Ryan Michael Nuera
Student Representative

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

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

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMMWOL ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Téel Falúw kka Efáng Ilól 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. Tálil wóól Purpose nge e liiwel ebwe súllúngáli CNMI Supreme Court caselaw. Ebwal 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 tálil 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 mwállaasch.





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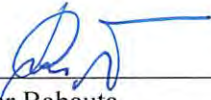
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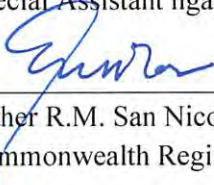
Ryan Michael Nuera
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REEL ISIISILONGOL KKAPAS: Schóó kka re tipáli rebwe amwuri ppwommwol liiwel me isiisilong ischil kkapas, positions, ngáre kkapasal aweewe ngáli ngáre konturali ppwommwol liiwel kkaal rebwe isiis ngáli Chairperson, State Board of 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](mailto:boc.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

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

Ghikkil 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:

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NUTISIAN PUBLIKU 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 PUBLIKU

I MAN MAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Sistemán Iskuelan Públiku ("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 Públiku ha intensiona para u adapta komu petmanienti I regulasion siha ni manechettun 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 manmácho'gui sigun gi aturidat I Kuetpu komu mapribeniya ginin I Attikilu XV gi Konstitusion CNMI, Lai Públiku 6-10 yan i Akton I CNMI Administrative Procedures.

I TEMA YAN SUSTANSIAN I PALABRA SIHA: I proposito ni matulaika mana' guãha tinilaika para I Sistemán Iskuelan Públiku para I areklamentun I procurement. Man matulaika I ti mandinanchi yan I tinilaika 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 Manehãnti; Mãmõnitoria i Kuntrãto; Kompititibat i Sealed Bidding na anunsio; Dididi' para u Mafãhãn; Sole Source Procurement; Kanselasion; Kãmpot i Komputã; Protesta para i Kumisina; Apelasion i Disision i Kumisinan Idukasion guatu gi Kuetpu; yan I Aturidãt para Debar pat sino Suspende.

DIREKSION PARA U MAPO'LU YAN PUBLIKASION: Esti I man maproponi na regulasion siha debi na u mapublika 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: boe.admin@cnmipss.org



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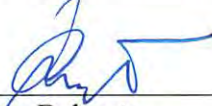
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9102(a) (1)) yan mapega gi halum I kumbinienti na lugat siha gi halum I civic center yan halum ufisinan gubietnamentu gi kada distritun senadot, parehu inglis yan I dos na linguahin natibu. (1 CMC § 9104 (a) (1)).

PARA U MAPRIBENIYU UPINON SIHA: Todu I manintirisao 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 boe.admin@cnmipss.org gi halum I trenta (30) dihas gi fuetsan kalendariu ni' tinattitiyi ni pupnlikasion esti siha na amenda gi halum I Rehistran Commonwealth. (1 CMC § 9104(a) (2))


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

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

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

Sigun i 1 CMC § 2153(e) (Inapruaba i regulasion yan siha ni Abugadu Henerat ni para u macho'gui kumu fotma) yan 1 CMC § 9104 (a) (3) (hentan inapruaba Abugadu Henerat) I man maproponi na regulasion siha ni manechetun guini ni man maribisa yan man ma'apruaba kumu fotma yan sufisienti ligat ginin I CNMI Abugadu Henerat yan debi na u mapuplika (1 CMC § 2153(f) (pubplikasion 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;
- (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

1 March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended
2 the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility
3 in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
4 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
5 appeals of agency decisions.

6 Upon review of the records, Appellant’s appeal of the Determination is timely filed. Accordingly,
7 jurisdiction is established.

8 **III. PROCEDURAL BACKGROUND & ISSUES**

9 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
10 December 19, 2022, the Department issued a Disqualifying Determination, effective from August 1,
11 2021 to August 28, 2021. On December 29, 2022, Appellant filed the present appeal and the matter
12 was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether
13 Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

14 **IV. FINDINGS OF FACT**

15 In consideration of the evidence provided and credibility of witnesses’ testimony, the undersigned
16 issues the following findings of fact:

- 17 1. Prior to the COVID-19 pandemic, Appellant, a citizen of the U.S. or U.S. territory, was self-
18 employed as a gig entertainer.⁵
- 19 2. Due to the impact of the COVID-19 pandemic, Appellant’s work hours and income were
20 reduced.⁶
- 21 3. On or around October 24, 2020, Appellant submitted an initial application for benefits under
22 the PUA and FPUC programs administered by the Department.⁷ In her initial application,⁸
23 Appellant self-certified under penalty of perjury that:
 - 24 a. Her employment was directly affected by COVID-19 because her place of
25 employment closed as a direct result of the COVID-19 public health emergency; and
26

27
28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for
Unemployed Workers Act of 2020” or “Continued Assistance Act”).

29 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
30 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

31 ⁵ See Exhibits 3-4.

⁶ See Exhibits 3-4.

⁷ Exhibit 1.

32 ⁸ *Id.*

- 1 b. She last performed work on March 26, 2020.
- 2 4. On or around February 27, 2021, Appellant submitted additional application⁹ for
3 unemployment benefits.¹⁰ In this application, Appellant self-certified to the same claims.
- 4 5. In each of these applications,¹¹ Appellant acknowledged that it is her responsibility to read the
5 PUA Benefit Rights Information Handbook (“Handbook”)¹² and any other official written
6 material provided. Notably, the Handbook was publicly available throughout the program and
7 included important information regarding program requirements and processes—including
8 appeals process. Moreover, the Department issued a number of press releases¹³ to clarify the
9 appeals process and directed claimants to the BRI Handbook and applicable forms.
10 Additionally, the Department issued a number of press releases to clarify the work search
11 contact requirement.
- 12 6. In support of her continuing claims, Appellant submitted to the Department her Record of
13 Contacts Made for Work.¹⁴
- 14 7. On December 19, 2022, the Department issued a Determination¹⁵ disqualifying Appellant
15 from benefits effective August 1, 2021 to August 28, 2021 because Appellant failed to comply
16 with the requirement to conduct three work search contacts per week claimed.
- 17 8. On December 29, 2022, the Appellant filed an appeal of that Determination.¹⁶
- 18 9. Upon filing the Appeal, the matter was scheduled for an Administrative Hearing.¹⁷
- 19 10. As discussed during the Administrative Hearing and in her Request to Appeal Form,¹⁸
20 Appellant was appealing the Department’s Determination only because her accountant
21 explained that she may still receive PUA relief.
- 22 11. Appellant conducted work search contacts only on September 3, 2021.¹⁹ By her own
23 testimony and admission, Appellant did not conduct any other work search contacts and she
24 has no other records.

26 ⁹ See Exhibit 2.

27 ¹⁰ See *id.*

28 ¹¹ Exhibits 1-2.

29 ¹² Exhibit 12.

30 ¹³ See Exhibits 10-11.

31 ¹⁴ See Exhibit 5.

32 ¹⁵ Exhibit 6.

¹⁶ See Exhibit 7.

¹⁷ See Exhibit 8.

¹⁸ Exhibit 6.

¹⁹ See *id.*

1 12. With respect to the overpayment issue, the Department's Benefit Payment Control Unit
2 conducted further review and confirmed that no overpayment occurred in this case.²⁰

3 **V. CONCLUSIONS OF LAW**

4 In consideration of the above-stated findings and applicable law, the undersigned issues the
5 following conclusions of law:

6 **1. From August 1 to 28, 2021, Appellant is not able and available to work in the CNMI**
7 **because she did not meet the requirement for a minimum of three work search contacts**
8 **for each of these claimed weeks.**

9 In accordance with the CARES Act, an individual must be able and available to work in the CNMI
10 during the week that benefits are claimed. "An individual shall be deemed able and available for work
11 . . . if the individual is able and available for suitable work during the customary work week of the
12 individual's customary occupation which falls within the week for which a claim is filed."²¹ "An
13 individual shall be deemed *able* to work if the individual has the physical and mental ability to perform
14 the usual duties of the individual's customary occupation or other work for which is the individual is
15 reasonably fitted by training and experience."²² "An individual shall be deemed *available* for work
16 only if the individual is ready and willing to accept employment for which the individual is reasonably
17 fitted by training and experience. The individual must intend and wish to work, and there must be no
18 undue restrictions either self-imposed or created by force of circumstances which prevent the
19 individual from accepting employment."²³

20 Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA claimants.
21 Specifically, "[a]n individual may be considered *available* for work any week in which the individual
22 has met the work search requirement."²⁴ Because the CNMI follows Hawaii state law with respect to
23 unemployment benefits, CNMI claimants must "make a minimum of three work search contacts each
24 week, unless²⁵ otherwise provided" to demonstrate availability.²⁶ With respect to work search
25 contacts, "the [claimant] shall maintain a record of all work search contacts and may be required to
26 submit such records upon request by the Department."²⁷ Activities that are considered "work search
27

28 ²⁰ See Exhibit 9.

29 ²¹ HAR § 12-5-35(a)

30 ²² HAR § 12-5-35(a)(1) (emphasis added).

31 ²³ HAR § 12-5-35(a)(2) and (b) (emphasis added).

32 ²⁴ HAR § 12-5-35(c).

²⁵ See HAR §12-5-35(c)(4).

²⁶ HAR §12-5-35(c)(1).

²⁷ HAR §12-5-35(c)(2).

1 contacts” include: (1) registering for work at the Department, other employment agency, or work
2 placement program; (2) apply for work, submitting resumes, or interviewing with potential employers;
3 (3) attending job search seminars or relevant employment seminars; or (4) other similar work search
4 activities which are generally made by individuals in a similar occupation who are genuinely
5 interested in obtaining work.²⁸ Ultimately, a claimant who fails to make a minimum of three work
6 search contacts each week is not available for work and may be held ineligible for benefits.²⁹

7 Here, it is Appellant’s responsibility to be informed about the program by reading the Handbook
8 and other official written material regarding the program, including press releases and newspaper
9 articles regarding the work search requirements. It is also Appellant’s responsibility to provide true,
10 accurate, and complete answers in her applications and weekly certifications, including completing
11 and maintaining her Record of Contacts and Work Search History and retaining documentation to
12 show that she conducted the work search contacts. The undersigned finds that the Department
13 demonstrated that Appellant was provided with information and instructions on the requirement,
14 including keeping accurate records for the weeks claimed. Ultimately, based on the evidence and
15 testimony presented, including Appellant’s own admission that she conducted work searches only on
16 September 3, 2021, the undersigned finds that Appellant failed to comply with the work search
17 requirement for the claimed weeks from August 1, 2021 to August 28, 2021. Accordingly, based on
18 the applicable law and available evidence, the undersigned finds that Appellant was not able and
19 available to work for the period of August 1 to 28, 2021 because she failed to conduct the required
20 three work search contacts.

21 VI. DECISION

22 For the reasons stated above, it is ORDERED that:

- 23 1. The CNMI Department of Labor’s Disqualifying Determination, dated December 19, 2022,
24 is **AFFIRMED**; and
- 25 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits from August 1, 2021 to
26 August 28, 2021.

27 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
28 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
29 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
30

31 _____
²⁸ HAR §12-5-35(c)(3).

32 ²⁹ HAR §12-5-35(c)(5).

1 written request must be submitted to the Administrative Hearing Office, either in person at Building
2 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

3 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
4 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
5 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
6 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
7 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
8 court rule.

9 So ordered this **25th** day of April, 2023.

10 /s/

11 **CATHERINE J. CACHERO**
12 Administrative Hearing Officer

13 **List of Documents Admitted into Evidence**

14 The following documents were admitted into evidence:

- 15 1. Exhibit 1: Copy of Appellant's Application Snapshot (new), filed October 24, 2020;
- 16 2. Exhibit 2: Copy of Appellant's Application Snapshot (reopen), filed February 27, 2021;
- 17 3. Exhibit 3: Copies of Appellant's 5 Self-Certification Letters (various dates)
- 18 4. Exhibit 4: Copies of Employment Certification Letters from Commonwealth Council for Arts
19 and Culture;
- 20 5. Exhibit 5: Copy of Appellant's Record of Contacts Made for Work (2 pages) (all conducted on
21 September 3, 2021)
- 22 6. Exhibit 6: Copy of Department's Disqualifying Determination, dated December 19, 2022
23 (effective August 1, 2021 to August 28, 2021);
- 24 7. Exhibit 7: Copy of Appellant's Request to file an Appeal, filed December 29, 2022;
- 25 8. Exhibit 8: Copy of the Notice of Hearing, issued December 29, 2022;
- 26 9. Exhibit 9: Copy of Email from Department's Benefit Payment Control Unit, dated February 28,
27 2023 (confirming no overpayment).
- 28 10. Exhibit 10: Copy of Department's Press Release FAQ: PUA Work Search Requirement
- 29 11. Exhibit 11: Copy of Newspaper Articles re: Work Search Requirement posted on Marianas
30 Variety & Saipan Tribune on July 22, 2021; and
- 31 12. Exhibit 12: Copy of Benefits Rights Information Handbook.
- 32

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re the Matter of:

) **Labor Case No. 19-038**

Shi Yunxiao,

Complainant,

) **ORDER OF DISMISSAL**

v.

Donghui Jewelry Group Corporation,

Respondent.

I. INTRODUCTION

This matter came for an Administrative Hearing on February 22, 2023 at approximately 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant Shi Yunxiao (“Complainant”) was not personally present but represented by Attorney Michael Dotts. Respondent Donghui Jewelry Group Corporation (“Respondent”) was not personally present but represented by Attorney Samuel Mok¹ and paralegal Ardel Ciolo. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist Arlene Rafanan.

II. BACKGROUND

This case concerns a claim for unpaid wages.² The matter was referred to Enforcement for further investigation.³ On August 6, 2019, Enforcement issued a deficient determination which simply repeated contradictory statements by the parties and made conclusory findings that wages were owed without any acknowledgement to the applicable law or evidence to support the claim.⁴

¹ Counsel filed an entry for special appearance the morning of the hearing. Respondent’s original counsel was off-island.

² On May 8, 2019, Complainant filed a complaint for unpaid wages, wrongful termination, unsafe work conditions, and retaliation. On January 14, 2022, Complainant filed a First Amended Complaint for Breach of Contract, and Constructive Discharge. On April 22, 2022, Complainant filed a Second Amended Complaint for Unpaid Wages.

³ See Referral and Scheduling Order (issued May 9, 2019).

⁴ See Determination and Notice of Violation (filed August 6, 2019).

1 The matter was scheduled for a Hearing but Complainant had already departed the CNMI. Since
2 the undersigned required⁵ the parties to be personally present to pursue their claims and testify,
3 the matter remained pending because Complainant was off-island due to travel restrictions⁶ during
4 the height of the pandemic.

5 After motion filings, discovery, and a number of continuances,⁷ the matter was scheduled for
6 an Administrative Hearing on February 22, 2023.⁸ The scheduling order was issued with adequate
7 notice and properly served on October 4, 2022. The scheduling order also indicated that absent
8 extraordinary circumstances, similar requests for continuances based on the parties' inability to
9 prioritize, prepare, and pursue this case, would no longer be granted and failure to appear may
10 result in default judgement, dismissal, or other administrative remedies.

11 Nonetheless, on February 1, 2023, the parties filed a Stipulation to Continue Hearing—despite
12 advance notice of the hearing— because Respondent's counsel scheduled to go off island and
13 Respondent had employment obligations in Oklahoma. Complainant did not contest the
14 continuance. On February 14, 2023, the undersigned found the stipulation to be dilatory and
15 denied the parties' stipulation. On February 21, 2023, Respondent filed a notice that he is unable
16 to personally attend and not going to proceed with the hearing.

17 Based on the reasons discussed above, both parties failed to personally appear to the hearing.
18 During the February 22, 2023 hearing, Complainant's counsel explained that the cost of travel
19 exceeded the requested damages of this case and Complainant now has no intention of returning

20 ⁵ See Order Requiring Party Presence and Testimony to be Made within the CNMI (March 16, 2021).

21 ⁶ While travel to the CNMI is regularly costly and difficult, the travel restrictions during the pandemic imposed more
22 of a burden. Depending on the date and route, travel restrictions could include a battery of vaccination, testing,
23 quarantine and associated out-of-pocket costs. Additionally, the fear of exposure, possibility of illness, and
24 suspension of flights exacerbated the already difficult circumstances.

25 ⁷ Notably, the undersigned has granted approximately ten continuances and extensions due to other court hearings,
26 off-island schedules, and inability to travel during COVID-19. See June 6, 2019 Order granting a continuance because
27 Respondent's counsel would be off-island; see also June 15, 2019 Order granting a continuance because
28 Respondent's counsel would be off-island; see also November 16, 2020 Order granting a continuance because
Complainant could not return to CNMI due to COVID-19 travel restrictions; see also February 10, 2021 Order
granting an extension and continuance to finalize arrangements for legal representation; see also March 16, 2021
Order rescheduling hearing due to a conflict in court schedules and increase in COVID-19 cases; see also September
10, 2021 Order granting a continuance because Respondent's counsel would be off-island; see also March 3, 2022
Order granting a continuance because Respondent's counsel would be off-island; see also March 29, 2022 Order
granting a continuance due to scheduling conflicts with Respondent's counsel; see also May 9, 2022 Order granting
an extension to respond to the second amended complaint; see also October 4, 2022 Order granting parties' stipulation
to reschedule the hearing due to scheduling conflicts.

⁸ See Order Continuing Hearing (issued October 4, 2022) (The Administrative Hearing set for October 27, 2022
was rescheduled to February 22, 2023).

1 to the CNMI. Counsel also confirmed that Complainant was aware that failure to appear could
2 result in dismissal.

3 On February 24, 2023, the parties were ordered to show cause as to why this case should not
4 be dismissed pursuant to NMIAC § 80-20.1-485(a). On April 14, 2023, Complainant filed a
5 response stating that it would be manifestly unjust and a denial of due process if Complainant
6 were not allowed to proceed remotely.⁹ Complainant also argued that the case should be decided
7 on its merits considering the allegations and supporting documents. On April 14, 2023,
8 Respondent argued that the Administrative Hearing Office must dismiss the case as Complainant
9 has failed to establish good cause for failure to appear and the delayed prosecution and increasing
10 attorneys' fees and costs adversely affected Respondent.

11 III. DISCUSSION

12 As further discussed below and in consideration of the parties' arguments and applicable law,
13 the undersigned finds that dismissal for failure to attend the scheduled hearing is appropriate.

14 1. The undersigned declines to reconsider its March 16, 2021 Order disallowing remote 15 hearings for this case.

16 The undersigned recognizes that the Administrative Hearing Office "*may* conduct a hearing
17 telephonically or by video conference." NMIAC 80-20.1-480(b) (emphasis added). In practice,
18 this authority is generally limited to accommodating parties on other islands within the CNMI.
19 As emphasized above, the decision to conduct hearings telephonically or by video conference is
20 discretionary.¹⁰

21 On March 16, 2021, upon full consideration of the circumstances of this case and this office's
22 limits in authority and jurisdiction, the undersigned ultimately declined¹¹ to utilize this
23 discretionary authority for remote hearings to: (1) accommodate parties who have exited the

24 ⁹ Notably, procedural due process does not require a specific process or preferred course of procedure. It simply
25 requires notice and a meaningful opportunity to respond. Here, Complainant had four months advance notice and a
26 hearing was scheduled for Complainant to be fully heard. Complainant failed to appear. Due process was afforded
27 to Complainant.

28 ¹⁰ Decisions about whether and how to organize and conduct proceedings remotely are for the courts to make. Local
needs, conditions, and capabilities must govern. One size does not fit all. Unlike other courts who have been able to
successfully transition to remote hearings during the COVID-19 pandemic, the Administrative Hearing Office
experienced difficulty in effectively conducting remote proceedings due to: (1) broadband limitations; (2) lack of IT
staff and technology; and (3) uncontrollable or unprepared parties. Further, unlike other courts, the Administrative
Hearing Office has limited jurisdiction and questionable authority to conduct hearings outside of the CNMI.

¹¹ See Order Requiring Party Presence and Testimony to be Made Within the CNMI (March 16, 2021).

1 CNMI; or (2) allow parties to bypass potential default for failure to appear. To do so would
2 contradict and potentially negate applicable regulations. *See* NMIAC § 80-20.1-485(b) (“A
3 dismissal may be entered against any person who has left the CNMI and has been absent for six
4 months or more without having notified the Administrative Hearing Office of their contact
5 information.”); *see also* NMIAC § 80-20.1-480 (l) (“Except for good cause shown, failure of a
6 party to appear at a hearing after timely being served notice to appear shall be deemed to constitute
7 a waiver of any right to pursue or contest the allegations in the complaint.”). Further, the
8 undersigned found that receiving party testimony from outside the CNMI would improperly
9 enlarge the Administrative Hearing Office’s authority and jurisdiction.¹² Instead, to ensure access
10 to justice and provide an opportunity to meaningfully participate, the undersigned: (1) scheduled
11 hearings based on the parties’ confirmed availability; (2) granted an extraordinary number of
12 continuances and extensions; and (3) provided over four months of advance notice of the
13 scheduled Administrative Hearing so that parties’ and counsel could adequately prepare and make
14 the necessary arrangements.

15 During the scheduled hearing, the undersigned heard arguments to reconsider its previous
16 Order Requiring party Presence and Testimony to be Made within the CNMI. However, this oral
17 motion to reconsider is untimely¹³ and the undersigned declines to reopen the issue as the
18 circumstances weighing against remote hearings have not changed.

19 **2. Complainant fails to establish good cause for failure to appear to the scheduled**
20 **hearing.**

21 “A dismissal may be entered against any party failing, without good cause, to appear at a
22 hearing.” NMIAC § 80-20.1-485(b).

23 Complainant filed a notice that he would not be appearing just one day before the scheduled
24 hearing. Complainant chose not to appear for the scheduled hearing because the cost of traveling
25 to the CNMI exceeded the amount of damages requested in this case. Further, during the
26 scheduled hearing, counsel clarified that Complainant no longer has any intention to return to the
27 CNMI.

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¹² *See Northern Marianas College v. Civil Service Commission*, 2006 MP 4 ¶ 10; *see also Semen v. Aldan*, 2 CR 916, *aff’d*, 3 CR 152 (DNMI App. Div. 1987).

¹³ *See* NMIAC § 80-20.1-615.

1 Notably, this reasoning is different from prior circumstances which included factors beyond
2 Complainant's control – such as the COVID-19 pandemic and suspension of flights. At the time
3 of this hearing, the COVID-19 impact on overall travel and operations reduced tremendously.
4 Given the COVID-19 trends, the public health emergency declaration was set to expire on May
5 11, 2023. Further, flights have returned and at the time of the scheduled hearing, a direct route
6 from Japan to Saipan was available.

7 While the undersigned recognizes the financial burden in pursuing claims, Complainant's
8 reasoning is insufficient to establish good cause in this case. First, this hearing date was scheduled
9 approximately four months in advance, based on the parties' confirmed availability, and
10 representations that such time would be sufficient to return to the CNMI. Nonetheless, the
11 undersigned only received notice for non-appearance a day before the hearing. Second, the rising
12 cost in travel is no more significant than the cost of attorneys' fees and extended litigation on both
13 sides. Ultimately, Complainant chose not to appear. Accordingly, Complainant fails to establish
14 good cause for failure to appear.

14 IV. CONCLUSION

15 Accordingly, this matter is hereby **DISMISSED** pursuant to NMIAC § 80-20.1-485(b). Any
16 person or party aggrieved by this Order may appeal to the Secretary by filing the Notice of Appeal
17 form and filing fee with the Administrative Hearing Office within fifteen (15) calendar days from
18 the date of this Order.¹⁴

19 So ordered this 16th day of May, 2023.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Chief Administrative Hearing Officer

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28 ¹⁴ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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)	Labor Case No. 22-018
In Re the Matter of:)	Secretary Appeal No. 23-002
)	
Wenhua Wu,)	
Appellant,)	
)	FINAL AGENCY DECISION
)	
v.)	
)	
Fengze Corporation,)	
Appellee.)	
)	
)	

I. INTRODUCTION

12
13 On December 1, 2022, Wenhua Wu (“Complainant” or “Appellant”) filed an Intake and
14 Complaint form (the “Complaint”) to the Administrative Hearing Office (“AHO”). The
15 Complaint was for labor claims against Fengze Corporation (“Respondent” or “Appellee”) for
16 unpaid wages and unlawful deductions from October 6, 2022 to November 7, 2022. The
17 Complaint was processed and served through Postal Service to Respondent the following day,
18 December 2, 2022. On December 2, 2022, Complainant emailed the AHO regarding his
19 Complaint.

20 On December 14, 2022, an Order to Show Cause was issued to both parties scheduling a
21 hearing for March 9, 2023. On December 19, 2022, Complainant filed a request to change the
22 date of his hearing. The following day, Complainant filed a second request to change the hearing
23 date. On December 21, 2022, an Order Denying Complainant's Request to Change Hearing Date
24 was issued to both parties. On January 11, 2023, a General Order was issued to both parties. On
25 February 13, 2023, Respondent filed a letter in response to the Complaint.

26 On March 9, 2023, the Administrative Hearing Officer issued a Dismissal of Labor Case and
27 Referral to Enforcement Order. Based on applicable law, the Administrative Hearing Officer
28 found that it does not have jurisdiction with respect to the claims of tourists, such as the
Complainant. The Complainant is a foreign national who entered the CNMI as a tourist in 2019.
Complainant never obtained a visa or other legal authorization to continue to stay and work in the
CNMI.

1 After the Dismissal, on March 23, 2023, the Complainant timely filed a Notice of Appeal
2 of the Dismissal stating his reason to stay was due to the fear of persecution if returned to his
3 home country (China) and he is currently staying and applying for asylum status.

4 II. LEGAL STANDARD

5 “An appeal is commenced by filing a notice of appeal on the standard form provided by the
6 Department and payment of the fee...” NMIAC 80-20.1-490(a). “The record before the Secretary
7 consists of the complaint, pleadings filed, exhibits, and order of the hearing officer.” NMIAC §
8 80-20.1-490(c). “When the Secretary is exercising jurisdiction over appeals from final orders of
9 the Administrative Hearing office, the Secretary shall have all the powers and responsibilities of
10 a hearing officer. No hearing or oral argument on an appeal is required.” NMIAC 80-20.1-490(d).
11 “In a review on appeal, the Secretary may restrict review to the existing record, supplement the
12 record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC
13 §9109 and §9110. Upon completion of review, the Secretary shall affirm, reverse or modify the
14 findings, decision, or order of the hearing office.” NMIAC § 80-20.1-490(e).

14 III. DISCUSSION

15 Here, Appellant claimed unpaid wages and unlawful deductions against Appellee from
16 October 6, 2022 to November 7, 2022. Appellant also candidly indicated in the Intake and
17 Complaint packet and the Request to Proceed *In Forma Pauperis* document, that he entered the
18 CNMI as a tourist. In Appellant’s Notice of Appeal of the Dismissal, Appellant also stated his
19 reason for overstaying was due to the fear of persecution if returned to his home country (China)
20 and he is currently applying for asylum status. For the reasons stated below, the undersigned finds
21 the Administrative Hearing Officer’s decision was proper.

21 1. Appellant fails to establish jurisdiction over the subject matter on appeal.

22 Here, based on applicable law, the Administrative Hearing Office does not have jurisdiction
23 with respect to Appellant’s claims against Appellee. See NMIAC § 80-20.1-450(e) (“The
24 Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists.
25 Those claims are pursued in the Commonwealth Superior Court.”). “It is the intent of the
26 legislature that the [Commonwealth Employment Act of 2007] shall not apply to persons admitted
27 to the Commonwealth as tourists, or to persons employed illegally...it is the intent of the
28 Legislature that...illegally employed be prohibited from using the terms of this Act to receive or
avail themselves of a legal right or benefit...” PL 15-108. The Appellant admitted that he is a
foreign national who entered the CNMI as a tourist in 2019. Appellant also stated that he never
obtained a visa or any other legal authorization to stay and work in the CNMI. Accordingly,

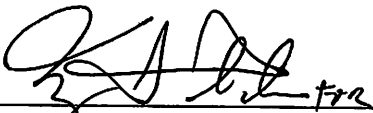
1 Appellant was a tourist and he was not lawfully employed by Appellee. Thus, the AHO does not
2 have jurisdiction over Appellant's claims and dismissal by the Administrative Hearing Officer
3 was proper and warranted.

4 **IV. CONCLUSION**

5 Accordingly, pursuant to NMIAC § 80-20.1-490(e), the Administrative Hearing Officer's
6 decision is **AFFIRMED**.

7 This Order constitutes a **FINAL AGENCY DECISION**. In the event a party is aggrieved by
8 this Order and would like to dispute or contest this decision, said party may seek judicial review
9 with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC §
10 9112. All forms, filing fees, and filing deadlines for judicial review will be as established by the
11 applicable law and court rule.

12 So ordered this **1st** day of May, 2023.



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14 **Leila P. Staffler**
15 Secretary of Labor
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)	Labor Case No. 23-001
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Sherwin P. Resurreccion,)	
)	
Complainant,)	JUDGMENT
)	
v.)	
)	
C Pacific Corporation,)	
)	
Respondent.)	
)	

This matter came for a Status Conference on May 18, 2023 at 1:30 p.m. at the Administrative Hearing Office in Saipan. Complainant Sherwin P. Resurreccion was present and self-represented. Respondent C Pacific Corporation (“Respondent”) was present and represented by Freddie Z. Cataluna and Attorney Juan Lizama.¹ The Department’s Enforcement, Compliance and Monitoring Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist Arlene Rafanan.

On February 17, 2023, the Complainant filed a claim alleging wrongful termination, unpaid or underpaid wages, and unlawful deductions. The matter was referred to Enforcement for further investigation. On May 12, 2023, Enforcement filed a Determination finding: (1) the claim for wrongful termination should be dismissed for failure to state a claim; (2) Respondent made wrongful deductions marked as Cash Advances; and (3) Complainant was underpaid and owed the total of \$2,156.11 for the relevant time period. The status conference was called to discuss issues in the Complaint and Determination.

Based on the discussion during the status conference, this matter can be resolved without additional proceedings. Specifically, during the hearing, Respondent admitted to making the unlawful deductions. Further, Respondent stated they did not contest Enforcement’s findings and agreed to pay Complainant \$2,156.11. In response, Complainant agreed to dismissal of the

¹ On May 16, 2023, Attorney Juan Lizama filed a special appearance to represent the Respondent for this hearing as Respondent’s other counsel was off-island and could not appear.

1 wrongful termination claim for failure to state a claim and the amount of damages. Lastly,
2 Enforcement did not initiate a compliance agency case and seek additional sanctions at this time
3 because they are still investigating compliance issues.²

4 Based on above and the applicable law:

- 5 1. The claim for wrongful termination is dismissed;³
- 6 2. Judgment is entered against Respondent for unlawful deductions;⁴ and
- 7 3. Complainant is awarded \$2,156.11 in damages.

8 Respondent shall pay the judgment, in full, by check or money order to Complainant. Payment
9 shall be delivered to the Administrative Hearing Office, on or before **June 2, 2023**. The
10 Administrative Hearing Office staff will inform the Complainant as soon as payment is ready for
11 pick-up.

12 Any person or party aggrieved by this Order may appeal by submitting the Notice of Appeal
13 form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date
14 of this Order.⁵

15 So ordered this **22nd** day of May, 2023.

16 /s/

17 **JACQUELINE A. NICOLAS**
18 Chief Administrative Hearing Officer
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21 ² Nothing in this labor case is meant to preclude Enforcement from completing their investigation and initiating a
22 larger agency case within the applicable time frame.

23 ³ Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to
24 the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” Pursuant to NMIAC §
25 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2)
26 lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5)
27 failure to state a claim upon which relief can be granted. *See also* NMIAC § 80-20.10485(b). Here, Complainant
28 alleges insufficient facts to demonstrate a violation of CNMI labor laws and regulations as to his termination.

⁴ Foreign national workers are to be paid biweekly in the lawful amount specified in the employment contract. *See* 3
CMC § 4931; *see also* NMIAC § 80-20.1-330(l). Employers shall not deduct wages in violation of Commonwealth
law. 3 CMC § 4963. Any wage deductions must be made in accordance with the requirements under 3 CMC § 4931(g)
and NMIAC §80-20.1-330(m). In this case, the deductions labeled cash advances were not made in accordance to
the aforementioned law.

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.