

Title 3

Purchasing Procedures

Chapters:

3.02 Purchasing Procedures

Title 3

Purchasing Procedures General Provisions

Sections:

- 3.02.010 Definitions
- 3.02.020 Purpose and Interpretation
- 3.02.030 Authority of Purchasing Officer
- 3.02.031 Disposal of Surplus, Obsolete, or Unneeded Supplies
- 3.02.040 Centralization of Procurement Authority
- 3.02.050 Standard Specifications
- 3.02.060 Contract Authority, in General
- 3.02.070 Contracts Enforceable Against the Borough
- 3.02.080 Availability of Funds
- 3.02.090 Execution of Contracts
- 3.02.100 Assembly Approval of Contracts
- 3.02.110 Contract Amendments; Assembly Approval
- 3.02.120 Multiyear Contracts
- 3.02.130 Competitive Sealed Bidding Required: exceptions
- 3.02.140 Solicitation and Acceptance of Bids
- 3.02.150 Award Only to Qualified Responsive and Responsible Bidder
- 3.02.160 Local Bidder Preference Award
- 3.02.170 Procedures for Award
- 3.02.180 Waiver of Irregularities
- 3.02.190 Competitive Sealed Proposals; Negotiated Procurement
- 3.02.200 Open Market Procedure
- 3.02.210 Proprietary Requirements
- 3.02.220 Emergency Procurements
- 3.02.230 Professional Services
- 3.02.240 Award of Contracts or Purchases Without Competitive Bids
- 3.02.250 Bonds
- 3.02.260 Waiver of Formal Bidding Procedures
- 3.02.270 Appeals
- 3.02.280 Assembly Report
- 3.02.290 Intergovernment Contracts
- 3.02.300 Borough Preference Policy
- 3.02.310 Contracts; Employment Preferences
- 3.02.320 Refund for Local Hire
- 3.02.330 General Provisions
- 3.02.340 Definitions
- 3.02.350 General Provisions
- 3.02.360 Grant Administration

3.02.010 Definitions

- (a) For the purposes of this chapter, the following definitions shall apply unless the content clearly indicates or requires a different meaning.
- (1) “Agency” means any department or office of the borough.
 - (2) “Agency head” means the department director or other chief administrative officer of an agency.
 - (3) “Architectural-engineering-land surveying services” means those professional services within the scope of the practice of architecture, engineering or land surveying, as defined by Alaska law.
 - (4) “Certifying officer” means the Finance Director of the borough or the officer’s designee.
 - (5) “Construction” means the on-site erection, alteration, extension or repair of improvements to real property, including painting or redecorating buildings, highways or other improvements, under contract for the borough, but does not include:
 - i. routine operation, repair or maintenance of existing buildings or improvements which are recurring services nominally performed in connection with the ownership, occupancy or use of the building or improvement;
 - ii. building or installation of an improvement to real property by the property owner when the improvement is expressly required by this code.
 - (6) “Contract” means all types of borough agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction, but does not include collective bargaining agreements, subdivision agreements, water or sewer main extension agreements or other similar agreements in which the owner or a person acting under the direction of the owner of real property agrees to construct improvements of a public nature on property to be dedicated to the borough.
 - (7) “Contract amendment” means any change in the terms of a contract accomplished by agreement of the parties, including change orders.
 - (8) “Person” means any individual, or any business or non-business association recognized by law, whether or not organized for profit or any governmental unit or entity.

- (9) “professional service” means those advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.
- (10) “Purchasing officer” means the borough administrator or the borough administrator’s designee.
- (11) “Services” means those services of a non-professional nature which are described within contract specifications and which are needed or desired by the municipality.
- (12) “Supplies” means any tangible personal property.

3.02.020 Purpose and Interpretation

- (a) The purposes of this chapter are:
 - (1) To implement code provisions requiring that the assembly by ordinance provide for competitive bidding for goods and services and for exceptions to the bidding process;
 - (2) To maximize fair and open competition and to discourage collusive bidding for borough contracts consistent with the efficient operation of the municipal government; and
 - (3) To maximize the purchasing value of borough funds.
- (b) This title shall be construed and applied to promote the purposes stated in this section.

3.02.030 Authority of Purchasing Officer

- (a) Except as this code provides otherwise, the purchasing officer shall:
 - (1) Procure all supplies, services and construction required by the borough;
 - (2) Sell, trade or otherwise dispose of surplus, obsolete or unneeded supplies belonging to the borough;
 - (3) Maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies by the borough;
 - (4) Join with other units of government in cooperative purchasing ventures where the best interests of the borough would be served;

- (5) Compile and maintain, to the extent practicable, bidders' and vendors' lists for supplies, services, professional services and construction utilized by the borough;
 - (6) Compile and maintain a log of all contracts awarded for supplies, services, professional services or construction, together with any amendments to the contracts.
- (b) The purchasing officer shall perform any other authorities and responsibilities which this chapter assigns the purchasing officer.

(Ord. 18-03 (Amended Ord. 04-03), Section 3.02.030)

3.02.031 Disposal of Surplus, Obsolete, or Unneeded Supplies

- (a) Notwithstanding any other provision in this code, the Purchasing Officer may authorize the abandonment or destruction of borough property which has no commercial value or of which the estimated cost of continued care, handling, repair, maintenance or storage would exceed the estimated proceeds of sale.
- (b) Supplies which are deemed by the Purchasing Officer to be sold as surplus, obsolete or unneeded, may be sold or otherwise disposed of by the Purchasing Officer upon approval by the Assembly by resolution.
- (c) Upon a determination by the Purchasing Officer that the best interests of the public would be served, the Purchasing Officer may, upon approval by the Assembly by resolution, transfer any surplus, obsolete or unneeded supplies to another governmental or quasi-governmental unit, or to a charitable, civic, nonprofit organization.
- (d) Any supplies, materials, equipment, or other personal property designated to be sold, must be advertised for sale either in a newspaper of general circulation, electronic means, or other means to provide reasonable public notice to adequately reach prospective buyers to provide an opportunity to submit bids for purchase. All bids shall be sealed and shall be opened in public at a designated time and place, except when the sale is by auction. The Purchasing Officer may repeatedly reject all bids and advertise or give notice again. The Purchasing Officer shall sell such surplus supplies, materials, equipment, or other personal property to the highest responsible bidder for cash. In case of a tie, the successful bidder shall be determined by publicly drawing lots at a time and place specified by the Purchasing Officer, always selling to the highest responsible bidder or bidders for cash. If there are no bidders, the Purchasing Officer is authorized to sell such supplies, materials, equipment or other personal property for the minimum value established prior to sealed bidding.

(Ord. 18-03, New Section 3.02.031)

3.02.040 Centralization of Procurement Authority

Except as this code provides otherwise, all rights, powers and authority pertaining to the procurement of supplies, services and construction required by the borough are vested in the purchasing officer.

3.02.050 Standard Specifications

- (a) Every using agency shall propose, insofar as practicable, standard specifications for the supplies, services, professional services and construction that it requires.
- (b) The purchasing officer shall adopt standard specifications for supplies, services and construction wherever practicable. The standard specifications adopted by the purchasing officer shall be based upon those proposed by using agencies, modified as necessary to maximize clarity, uniformity and open competition, while effectively serving the needs of the using agencies and the efficient operation of the municipal government.

3.02.060 Contract Authority, in General

The borough may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services, professional services or construction required by the borough.

3.02.070 Contracts Enforceable Against the Borough

A contract for supplies, services, professional services or construction, or any amendment to the contract, may not be enforced against the borough unless its terms have been approved in accordance with this chapter, and unless the contract or amendment to the contract has been set forth in writing, executed in accordance with this chapter.

3.02.080 Availability of Funds

A contract for supplies, services or construction may not be approved or executed unless the certifying officer has certified in writing that funds are available for the borough's performance under the contract.

3.02.090 Execution of Contracts

All borough contracts for supplies, services, professional services and construction, and any amendments to the contracts shall be signed by the borough administrator.

3.02.100 Assembly Approval of Contracts

- (a) A contract or contract amendment for supplies, services, professional services, or construction which obligates the borough to pay more than \$100,000 may not be executed unless the assembly has approved a memorandum setting forth the essential terms of the contract. To the extent applicable for particular contracts, the following essential terms shall be set forth:
 - (1) The identity of the contractor;
 - (2) The contract price;
 - (3) The nature and quantity of the performance that the borough shall receive under the contract;
 - (4) The using agency; and
 - (5) The time for performance under the contract.
- (b) If contracts are awarded to more than one bidder pursuant to an invitation for bids, contracts with different bidders shall be considered separately for purposes of determining the application of subsection (a). If any contract to be awarded under a given bid is subject to assembly approval, the award of other contracts pursuant to the same invitation for bids may, at the discretion of the purchasing officer, be delayed pending assembly approval.
- (c) A grant to a governmental or quasi-governmental agency or to a private nonprofit corporation under the provisions of this chapter for more than \$100,000 may not be issued unless the assembly has approved a memorandum setting forth:
 - (1) The identity of the grantee;
 - (2) The grant amount;
 - (3) The purpose to which grant funds are to be devoted; and
 - (4) The agency charged with administration of the grant.

3.02.110 Contract Amendments; Assembly Approval

- (a) Contract amendments shall not be used to avoid procurement by the competitive procedures established under this title.
- (b) Except for emergency procurements authorized under this chapter, contracts for supplies, services, professional services and construction may be amended by the purchasing officer with the approval of the assembly, as set forth in this chapter, only for the following reasons:

- (1) To change the quantity ordered or date of delivery under contract for supplies, where necessary to meet unforeseen borough requirements;
- (2) To change the quantity of services or professional services to be rendered, or to change the scope of a project under a contract for services or professional services where necessary to meet unforeseen changes in borough requirements;
- (3) To change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen borough requirements, or to change the specifications under a construction contract because unforeseen conditions render the original specifications impracticable;
- (4) To change the time for completing a project under a contract for services, professional services, or construction;
- (5) To correct an error in contract specifications made by the borough in good faith or to resolve a good faith dispute between the borough and a contractor as to a party's rights and obligations under the contract; and
- (6) To change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the borough.

3.02.120 Multiyear Contracts

- (a) The borough may enter into contracts for a term exceeding one year provided that funds for the borough's performance during the fiscal year in which the contract term commences are certified in writing by the finance director as being available.
- (b) The borough's payment and performance obligations for succeeding fiscal years after issue of a multiyear contract shall be subject to the availability of funds lawfully appropriated therefor.
- (c) Contracts for construction are not to be construed as multiyear contracts; however, lawfully appropriated funds must be available for the term of the contract.

3.02.130 Competitive Sealed Bidding Required: Exceptions

Unless otherwise authorized under this chapter or other provisions of law, all borough contracts in excess of One Hundred Thousand Dollars (\$100,000.00) for supplies, services and construction shall be awarded by competitive sealed bidding.

3.02.140 Solicitation and Acceptance of Bids

- (a) The purchasing officer shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.
- (b) Public notice of the invitation for bids shall be published at least once in a newspaper of general circulation in the borough at least 14 calendar days before the last day on which bids shall be accepted. Notice shall also be posted by the borough clerk's office. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured and the procedure for submitting a bid. The purchasing officer shall mail or otherwise deliver notices to a sufficient number of prospective bidders from a current bidders or vendors mailing list maintained in the purchasing office to afford equitable opportunity for competition. The failure of any person to receive notice under this subsection shall not affect the validity of any award or contract.
- (c) The purchasing officer shall establish and maintain a list of contractors who indicate a wish to provide goods or services to the borough. Upon an invitation for bids, each contractor on the list with the indicated necessary qualifications to bid shall receive a notice of the invitation.
- (d) The purchasing officer may provide for a pre-bid conference to be held at least seven calendar days before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the purchasing office, the terms of an invitation for bids may be modified or interpreted only by written addenda issued by the purchasing officer. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the purchasing officer, would have no material effect on the terms of the bid.
- (e) Sealed bids shall be designated as such on the outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the time specified shall not be opened or considered and shall be returned to the respective bidders.
- (f) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Any bidder, prior to award, may review bids after the purchasing officer has tabulated or summarized them. The purchasing officer shall tabulate the amount of each bid and shall record other information as may be necessary or desirable for evaluation together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder upon request.

- (g) Bids shall be accepted unconditionally without alteration or correction. For purposes of determining the low bidder and the responsiveness of bids, no criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used.

3.02.150 Award Only to Qualified Responsive and Responsible Bidder

- (a) A contract award under this chapter shall be made only to a qualified, responsive and responsible bidder. The purchasing officer shall determine whether a bidder is qualified, responsive and responsible based on:
 - (1) The skill and experience demonstrated by the bidder in performing contracts of a similar nature;
 - (2) The bidder's record of honesty and integrity;
 - (3) The bidder's capacity to perform in terms of facilities, personnel and financing;
 - (4) At all times the interests of the borough shall be recognized in awarding bids.

3.02.160 Local Bidder Preference Award

- (a) A contract or purchase shall be awarded to a local bidder where the bid by such local bidder is, in all material respects, comparable to the lowest responsible non-local bid if the amount bid by such local bidder does not exceed the lowest non-local bid by more than the following percentages, unless such an award is contrary to state or federal law or regulation, or unless the assembly, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:

<i>Nonlocal bid is:</i>	<i>Local bid is not more than:</i>
\$0-\$5,000,000.00	5 per cent higher than non-local bid
Over \$5,000,000.00	2.5 per cent higher than non-local bid

- (b) "Local bidder," for purposes of this section, means a person or firm who:
 - (1) Holds a current Alaska business license to provide such goods or services, and such other Alaska regulatory licenses as are required to provide such goods or services;
 - (2) Submits a bid for goods or services under the name appearing on the person's or firm's current Alaska business license;

- (3) Has maintained a place of business within the boundaries of the Aleutians East Borough for a period of six (6) months immediately preceding the date of the bid; and
 - (4) Is not delinquent in the payment of any taxes, charges, or assessments owing to the Aleutians East Borough on account of that business.
- (c) The borough administrator may require such documentation or verification by the person or firm claiming to be a local bidder as is deemed necessary to establish the requirements of this section.

3.02.170 Procedures for Award

- (a) Contracts shall be awarded by written notice issued by the purchasing officer to the lowest qualified, responsive and responsible bidder, provided that, if the lowest bids are approximately equal, that is, within the lesser of \$2,000 or 5 percent of each other, preference may be given to local bidders who maintain and operate businesses within the boundaries of the borough.
- (b) The borough may reject any or all bids if the borough administrator determines that it is in the best interest of the borough.
- (c) If the lowest qualified, responsive and responsible bid exceeds the amount of funds certified by the finance director to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing officer shall issue a new invitation for bids for the reduced procurement, or, upon finding that the efficient operation of the borough government requires that the contract be awarded without delay, and the purchasing officer may negotiate with the three lowest qualified, responsive and responsible bidders, and may award, or recommend to the assembly for award, the reduced contract to the best negotiated proposal.

3.02.180 Waiver of Irregularities

The borough administrator shall have the authority to waive irregularities on any and all bids, except that timeliness and manual signature requirements shall not be waived.

3.02.190 Competitive Sealed Proposals; Negotiated Procurement

- (a) If the purchasing officer determines that use of competitive sealed bidding is not practicable, the borough may procure supplies, services, or construction by competitive sealed proposals under this section.
- (b) The purchasing officer shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a

proposal shall respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given as deemed appropriate by the purchasing officer. One or more pre-proposal conferences may be held by the purchasing officer. A request for proposals may be modified or interpreted only in written addenda issued by the purchasing officer.

- (c) Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place, and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time specified shall not be opened or considered.
- (d) Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proposers during the process of negotiation. Proposals, tabulations and associated documentation submitted in response to a proposal requested pursuant to this section may not be disclosed to the public or to proposers until the issuance of a written notice of tentative award of a contract to the apparent successful proposer.
- (e) In the manner provided in the request for proposals, the purchasing officer may negotiate with those qualified and responsible proponents whose proposals are determined by the purchasing officer to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The purchasing officer may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations and requesting revisions, neither the purchasing officer, nor any other borough officer or employee shall disclose any information derived from proposals of competing proponents.
- (f) Awards shall be made by written notice to the qualified and responsible proponent whose final proposal is determined to be most advantageous to the borough. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the borough administrator determines that it is in the best interest of the borough to do so, the borough may reject any or all proposals.

3.02.200 Open Market Procedure

- (a) The borough administrator may procure all supplies, services, professional services and construction having an estimated value of not more than one hundred thousand dollars (\$100,000.00) on the open market without formal advertising or other formal bid procedures. The borough administrator shall approve a written policy for the implementation of this section.

- (b) Whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid by a qualified and responsible bidder.
- (c) Awards, where practicable, shall be made to the lowest responsive, qualified and responsible bidder. The purchasing officer shall keep a record of all open market bids received and awards made on the bids.
- (d) When requested by the assembly, the purchasing officer shall provide a report to the assembly of all procurements under this section.

3.02.210 Proprietary Requirements

- (a) The borough may award a contract for supplies, services or construction without competition where the purchasing officer determines in writing that the borough's requirements reasonably limit the source for the supplies, services or construction to one person.
- (b) When requested by the assembly, the purchasing officer shall provide a report to the assembly of all procurements under this section.

3.02.220 Emergency Procurements

The borough may award a contract for supplies, services, professional services, or construction without competition, formal advertising or other formal procedure where the borough administrator determines in writing that an emergency threatening the public health, safety, property or welfare requires that the contract be awarded without delay. A report on an emergency contract shall be made to the assembly no later than the next regular meeting following award of the contract.

3.02.230 Professional Services

- (a) Except as authorized by this chapter, professional services shall be procured in accordance with the terms of this section.
- (b) Persons interested in providing professional services for the borough may submit statements of qualifications to the purchasing office.
- (c) To the extent practicable, notice of the need for professional services shall be given by the purchasing office. The notice shall describe the services required and shall list the type of information and data required of each person submitting a proposal.
- (d) The agency head and the purchasing officer may conduct discussions with any person who has submitted a proposal to determine the person's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other persons.

- (e) Award shall be made to the person determined by the agency head and the purchasing officer to be the best qualified, and shall be for an amount of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified person, negotiations shall be formally terminated with that person. If proposals were submitted by one or more other persons determined to be qualified, negotiations may be conducted with the persons, in order of their respective qualification ranking. The contract may be awarded to the person then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
- (f) Legal services may be procured by direct negotiation with an attorney or law firm qualified to handle the type of legal problems presented. No negotiations or contracts for the services of legal counsel may be pursued or awarded without the prior approval in writing of the borough administrator.

3.02.240 Award of Contracts or Purchases Without Competitive Bids

Unless otherwise required by the assembly, contracts and purchases may be made without competitive bidding for the following:

- (a) For professional or specialized services such as, but not limited to, services rendered by accountants, architects, appraisers, engineers, land surveyors, financial consultants, attorneys, planning consultants, economists, computer programmers and system analysts, insurance consultants and risk analysts, and other specialized consultants, which services shall be purchased as provided in 3.02.230 Professional Services Contracts.
- (b) For purchase of insurance.
- (c) For contractual services purchased from a public utility at a rate determined by law, regulation or ordinance.
- (d) For supplies, materials, equipment, construction, or contractual services which can be furnished only by a single provider or dealer or which have a uniform price wherever bought.
- (e) When calling for and obtaining bids on a competitive basis is unavailable, impractical or impossible, including, but not limited to, when rates are set by statute or ordinance, or when like items, equipment or vessels are traded in, or when used items, equipment or vessels are being purchased.
- (f) For work and services on public works or projects performed by employees of the borough.
- (g) When it is advantageous to the borough to enter into a contract or purchase with a bidder for the same supplies, materials, equipment, construction or contractual services, such bidder is providing another Alaskan local government, the state of Alaska, or the United States when such supplies,

materials, equipment, construction or contractual services are being provided to the other governmental unit on the basis of formal competitive sealed bids submitted, and when the borough contract is on substantially the same terms as those bid; or to a contract with or through such other governmental unit so that the benefit of the responsible bid accrues to the borough.

- (h) Supplies, materials, equipment, construction or contractual services which must be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment, construction or contractual services. For purposes of this paragraph, the term "incompatibility" is defined as the inability to (1) interconnect, combine, interchange or join; or (2) that which causes or necessitates maintenance expertise or training where such acquisition would result in substantial duplication. Any purchase which is to be excluded from competitive bidding by the authority of this paragraph which exceeds one hundred thousand dollars (\$100,000) must be first approved by the assembly.
- (i) When competitive procedures have been followed but only one bid is received or no bids are received. In such a case, the borough administrator may proceed to negotiate with the single bidder as to price, scope of work or other terms or conditions or, if no bids were received, to have the supplies, materials, equipment, construction or contractual services purchased or performed without further competitive bidding or quotation.
- (j) For high technology procurements including, but not limited to, computer systems, provided such purchases are made in accordance with 3.02.230, Professional Services Contracts.

3.02.250 Bonds

- (a) The purchasing officer may require that persons submitting bids pursuant to this chapter accompany their bids with a bid bond in an amount and in a form acceptable to the purchasing officer. The bond shall be issued by a company qualified by law to do business as a surety in the state of Alaska, or shall be in the form of a cashier's check or cash deposit. A condition of the bond shall be that if the bidder receives the award, the bidder shall enter into a contract with the borough.
- (b) If a requirement for a performance and payment bond is included in the terms of the invitation to bid, the purchasing officer may require that any person awarded a borough contract furnish a performance and payment bond, issued by a company qualified to do business as a surety in the state. The bond shall be in an amount determined by the purchasing officer and in a form approved by the borough attorney. The bonds shall, at a minimum, guarantee the full and faithful performance of all contract obligations and the payment of all labor and materials to be used under the contract.

- (c) The borough administrator may grant an exemption from bonds pursuant to AS 36.25.025.

3.02.260 Waiver of Formal Bidding Procedures

- (a) The borough administrator may waive, in writing, some or all of the formal bidding procedures of this chapter when there is not sufficient time to comply with the waived requirements, or the best interests of the borough shall be served by the waiver.
- (b) All contracts for which formal procedures are waived under this section shall be reported to the assembly. The report shall contain the information described in this chapter and shall state the reason for proceeding under this section.

3.02.270 Appeals

- (a) *Bids.* Within five (5) days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful bidder may appeal a bid award to the assembly by delivering a written protest to the borough clerk.
- (b) *Requests for proposals.* Within five (5) days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful proposer may appeal a proposal award to the assembly by delivering a written protest to the borough clerk.
- (c) *Deposit Required.* A written protest under (a) and (b) must be delivered along with an appeal deposit of five (5) percent of the low bid or proposal cost, with a minimum of two thousand five hundred dollars (\$2,500.00). If the protest is upheld by the assembly the deposit will be returned. If the protest is rejected, the deposit will be forfeited to the borough.
- (d) *Protests.* A protest under (a) or (b) of this section must state which provision of the Aleutian East Borough Code is alleged to have been violated or misapplied by the proposed award. The protest must state the basis for the protest, explaining how the conduct described establishes that an error has occurred. It must also include copies of any documents or other information which the protesting party believes shows that an error has been made.
- (e) *Effect of Protest.* If a timely protest is filed, the award will be suspended until the assembly has met and issued a decision. Any award which is timely protested must be confirmed by approval or rejection of the award by the assembly after the appeal is decided.

3.02.280 Assembly Report

- (a) In a contract for the purchase of any supplies, services, professional services or construction, if the borough administrator waives formal bidding procedures or if the contract is awarded to other than the low bidder, a report on the procurement contract shall be made to the assembly no later than the next regular meeting following the award of the contract.
- (b) A report to the assembly shall include;
 - (1) The identity of the contractor;
 - (2) The contract price;
 - (3) The nature and quantity of the performance that the borough shall receive under the contract;
 - (4) The using agency;
 - (5) The time for performance under the contract; and
 - (6) A description of the waiver, emergency or other procedure followed.

3.02.290 Intergovernment Contracts

Notwithstanding the other provisions of this chapter, the borough may enter into procurement agreements with the federal, state or other municipal governments when it is in the best interest of the borough to do so.

3.02.300 Borough Preference Policy

It is the policy of the borough to give preference to local residents, workers, businesses, contractors, producers and dealers to the extent consistent with the law and interests of the public.

3.02.310 Contracts; Employment Preferences

In the performance of contracts awarded by the borough for construction, repairs, preliminary surveys, and engineering studies for maintenance work, 95 percent of residents shall be employed where the residents are available and qualified. If ten or fewer persons are employed under the contract, then 90 percent of residents shall be employed where available and qualified. In all cases of public works projects, preference shall be given to residents of the borough and of the state to the extent authorized by law.

3.02.320 Refund for Local Hire

- (a) Where the entire funding for a project is obtained from borough property tax revenues, the borough administrator shall, for all contracts awarded under the formal competitive bidding procedures in this chapter, on the contractor's

request, refund to the contractor 5 percent of the cost of salary paid by the contractor directly or through the subcontractors to residents of the borough, who were directly employed on the project for which the referenced contract applies.

- (b) Refunds may be requested at the same time as periodic payments, if any, are authorized under the contract. The contractor shall detail all employee costs for which refunds are requested and shall submit supporting documentation as required by the finance director.
- (c) In this section, “bona fide borough residents” means an employee of the contractor, who during the time the employee performed services to the contractor in connection with performance of the contract work was a registered voter in the Aleutians East Borough, or was, by virtue of the employee’s residency, qualified to become a registered voter of the Aleutians East Borough during that time.

3.02.330 General Provisions

- (a) The assembly may appropriate funds to nonprofit service organizations. Any funds appropriate to nonprofit service organizations shall be expended only for a public purpose permitted by Article IX, Section 6 of the constitution of the state of Alaska, and pursuant to a power granted to or assumed by the borough. The organization shall be a nonprofit corporation organized under the laws of the state, whose purpose is:
 - (1) To foster the general community welfare of the borough; and
 - (2) To serve as a funding agency, the primary purpose of which is to channel money or services to other nonprofit service organizations whose purpose is to foster the general community welfare.
- (b) If the organization is a funding agency for other organizations it shall be specifically found to:
 - (1) Have established fair and objective guidelines approved by the assembly for the disbursement of funds to other nonprofit service organizations;
 - (2) Follow a policy of forwarding funds or services only to those nonprofit service organizations which provide services designed for the benefit of the residents of the borough.
- (c) To qualify for an appropriation, an organization shall ensure that it:
 - (1) Is organized to meet a certain need within the community;
 - (2) Has a program designed to meet that specific need;

- (3) Is the best qualified organization within the community to meet the identified need;
 - (4) Has provided a functional work program, has a responsible organizational structure, and, in the case of previously existing organizations, can demonstrate a record of financial responsibility; and
 - (5) Has the capacity and willingness to account for moneys to establish that all moneys spent are spent only for the public purpose designated by the assembly and only pursuant to a power granted to or assumed by the municipality.
- (d) Funds which have been appropriated by the assembly to nonprofit organizations for the benefit and welfare of the public shall be controlled by regulations proposed by the administrator. Funds appropriated to nonprofit service organizations shall be subject in all cases to audit by the borough, and for nonprofit organizations which require independent financial audits, a copy of the audits shall be furnished to the borough.

3.02.340 Definitions

- (a) For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) “Grant” means the furnishing by the state and federal government of financial or other assistance to the borough to implement a project or program authorized by law, excluding revenue-sharing programs, required compliance with terms and conditions under a grant agreement.
 - (2) “Grant agreement” means the contract document including, but not limited to, rules, regulations and laws pertaining to the grant, between the borough and the granting agency.
 - (3) “Grantee” means the Aleutians East Borough.
 - (4) “Granting agency” means the state and federal department administering the grant.
 - (5) “Grantor” means the state and federal government agency offering the grant to the grantee.

3.02.350 General Provisions

- (a) The assembly shall appropriate funds and accept grant offers from state and federal granting agencies.

- (b) The assembly may authorize the mayor or borough administrator to enter into grant agreements.
- (c) The assembly may authorize the borough administrator to enter into contracts with incorporated entities, including organized cities, to assist the borough in performing under the terms and conditions of grant agreement.
- (d) The borough administrator shall establish policies and procedures under this chapter.

3.02.360 Grant Administration

- (a) Except as this code provides otherwise, all rights, powers and authority pertaining to grants are vested in the borough administrator.
- (b) The borough administrator or the borough administrator's designee shall administer all facets of grants from preapplication through final grant audit.
- (c) The borough administrator or the borough administrator's designee shall have the responsibility to assure full compliance by the borough with the terms and conditions of the grant agreement.

(Ord. 04-03, Chapter 3.02)