NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 22-08

AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY AMENDING THE BOROUGH CODE TO UPDATE THE BOROUGH PROCUREMENT CODE AT CHAPTER 6.16, AND FOR RELATED PURPOSES.

WHEREAS: the Northwest Arctic Borough Assembly is the governing body for the Northwest Arctic Borough; and

WHEREAS: Chapter 6.16 of the Borough Code sets the Borough’s procurement and contracting standards; and

WHEREAS: the Borough is obligated to contract for goods and services on a daily basis in accordance with NABC 6.16 and current Borough financial thresholds are significantly lower than similarly sized and smaller municipalities across the state; and

WHEREAS: in order to more effectively administer programs and services, the Borough wishes to update its procurement, contracting, and purchasing procedures; and

WHEREAS: additional sections of the current procurement ordinances require updating and expansion to ensure the Borough is adequately protected as it contracts in accordance with NABC 6.16; and

WHEREAS: the Borough Assembly wishes to update the financial thresholds in the Borough Code in order to more closely parallel those of similar municipalities and to ease the administration of ordinary contracts in the Borough’s day-to-day business.

NOW THEREFORE BE IT ENACTED: by the Northwest Arctic Borough Assembly as follows:

Section 1: Chapter 6.16 of the Borough Code is amended as follows with additions indicated by underlining in bold and deletions by strikethrough in bold:
Chapter 6.16

PROCUREMENT

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Article VI. Definitions

Article I. Procurement Process Generally

6.16.090 Statement of policy.
A. It is the declared policy of the borough to:
1. Discourage collusive bidding and sale practices and to encourage full and open competition whenever practical between all borough contractors and vendors by competitive bidding practices, and to centralize purchasing, sales, and contracting to realize the economies resulting from that process;

2. Purchase quality supplies, materials, equipment, and services to reduce its total cost. Purchasing solely on the basis of price without taking into consideration quality and the reduction of maintenance costs may lead to increases in the borough’s operating costs; and

3. Minimize the social and economic costs due to the borough’s extreme climate, its distance from urban areas of the state and the contiguous 48 states, the distance between its communities, and its necessary reliance on air travel by
supporting qualified local contractors whose timely performance is not as frequently impacted by distance, weather, and the variability of air travel.

6.16.100 Contracting and procurement authority.
A. The borough may, pursuant to an award in accordance with this chapter, procure any supplies, services or construction required by the offices, departments and agencies of the borough government.

B. The mayor or the mayor's designee shall serve as the procurement officer and shall conduct all procurements of supplies, services and construction for the borough under this chapter.

C. Subject to assembly approval where required under this chapter, the procurement of all supplies, services and construction shall be conducted either by the procurement officer, or a specifically designated contracting officer.

D. The mayor may designate a department head as procurement officer for the purposes of purchasing supplies and services up to $10,000. The mayor may also designate a contracting officer for a particular contract or project. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

6.16.110 Procurement officer – Other powers and duties.
A. The procurement officer shall:

1. Procure supplies, services and construction required by the borough;

2. Sell, trade, or otherwise dispose of surplus 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. Prescribe the time, manner, authentication, and form of making requisitions for supplies and services and construction; and

6. Act so as to procure for the borough all state and federal tax exemptions to which the borough is entitled.

B. The procurement officer shall inspect, as far as possible, and supervise the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the contract.

C. The procurement officer may authorize an agency having adequate staff and facilities to inspect deliveries to the agency. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

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6.16.120  Requisitions and estimates.
Repealed by Ord. 13-11. (Ord. 03-08 § 1, 2003)

Article II. Contracting

6.16.200  Execution of contracts.
All borough contracts for supplies, services and construction, and any amendments thereto, shall be signed by the mayor. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

6.16.210  Assembly approval of contracts.
No contract for supplies, services or construction which obligates the borough to pay more than $50,000.00, per single transaction or in the aggregate, may be executed unless the assembly has passed a resolution setting forth the following essential terms of the contract:

A. The identity of the contractor;

B. The contract price;

C. The nature and quantity of the performance that the borough shall receive under the contract; and

D. The time for performance under the contract. (Ord. 17-12 § 1, 2017; Ord. 17-02 § 1, 2017; Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

A. All amendments to contracts for supplies, services and construction, including change orders, shall be approved in writing by the procurement officer, subject to assembly approval where required under this section. Contract amendments shall not be used to avoid procurement by the competitive bid procedures established under this chapter.

B. No contract amendment which will cause the total price of the contract, as amended, to exceed the greater of $25,000 or 100 percent of the original contract price may be executed unless the assembly has passed a resolution setting forth any modifications to the essential terms of the contract. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

6.16.230  Contracts enforceable against borough.
No contract for supplies, services or construction, or any amendment thereto, may be enforced against the borough unless its terms have been approved in accordance with this chapter and unless the contract or amendment has been set forth in a writing on behalf of the borough in accordance with this chapter. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)
6.16.240 Availability of funds.
No contract for supplies, services or construction may be approved or executed unless funds have been appropriated for the borough’s performance under the contract. No contract amendment that will increase the contract price may be approved or executed unless funds are available to fulfill the borough’s performance under the contract as amended. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

6.16.250 Multiyear contracts.
A. The borough may enter into contracts for a term exceeding one year; provided, that the finance director certifies in writing at the time of contract execution that funds are available for the contract’s first fiscal year. The borough’s payment and performance obligations for succeeding fiscal years shall be subject to the borough’s appropriation of funds for that contract.

B. Multiyear contracts requiring the payment of funds from an appropriation at a later fiscal year or for more than one fiscal year shall be approved by ordinances as required under NABC 6.04.020(A).

C. By resolution, the assembly may approve a borough grant-funded contract that terminates at the end of the borough’s fiscal year to extend up to 120 days past the end of the fiscal year. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

Article III. Purchasing

6.16.300 Sole source procurements
The borough may procure supplies, services or construction having a value of $10,000 or less without competition where the mayor or the procurement officer determines in writing that one of the following circumstances applies:

A. Supplies, services or construction that reasonably meet the borough’s requirements are available from only one vendor;

B. The supplies, services or construction have a uniform price wherever purchased;

C. The supplies, services or construction may be purchased from or through another governmental unit at a price lower than that obtainable from private vendors; or

D. The price of the supplies, services or construction is fixed by a regulatory authority. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.410)

6.16.305 Waiver of Competitive Bids
A. The mayor may determine that it is in the best interest of the borough to waive competitive bidding for:

1. Contractual services or purchases where no competition exists;

2. Contractual rates that are fixed by law or ordinance;

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3. Professional services;

4. Supplies, materials, equipment, or services when the mayor determines that an emergency threatening the public health, safety or welfare requires that a contract be awarded without delay;

5. Contracts with local governments, tribal governments or councils, the states, or the United States, or any agency or instrumentality of these governments; and

6. Grants to be made by the borough.

B. All best interest determinations to waive competitive bids must comply with the requirements of §6.16.210.

6.16.310 Open market procurements.
A. The procurement officer may procure on the open market without formal advertising or other formal bid procedures all supplies, services and construction having an estimated value of $25,00075,000 or less.

B. Whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section. The solicitation shall be written and in a form reasonably calculated to yield the lowest responsive bid by a responsive quotation. Whenever practicable, purchases shall be made from vendors, service companies, and contractors at the lowest and best quotation. The procurement officer shall keep a written record of all bids or quotations received and awards made under this section.

C. Grant-Funded Micro-Purchases. Procurement for grant-funded micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as defined by Uniform Guidance, as issued and updated periodically by the Federal Office of Management and Budget. To the extent practicable, the borough shall distribute grant-funded micro-purchases equitably among qualified suppliers. Grant-funded micro-purchases may be awarded without soliciting competitive quotes if the procurement officer considers the price to be reasonable.

D. Grant-Funded Small Purchases. Grant-funded small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold (as set by the federal government). If grant-funded small purchase procedures are used, price or rate quotes must be obtained from at least three vendors. If less than three quotes are obtained, the procurement officer must provide sufficient documentation to establish why less than the minimum number of quotes was obtained. (Ord. 17-16 § 1, 2017; Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.400)
6.16.320 Professional services.
A. Professional services shall be procured in accordance with the terms of this section.

B. For professional services having an estimated value of $150,000 250,000 or less, the borough may procure the services without competition. Whenever practicable, at least three informal bids or quotations shall be solicited for a procurement under this subsection.

C. Except as provided under subsection (D) of this section, professional services having an estimated value above $150,000 250,000 shall be acquired through the competitive sealed bid process in NABC 6.16.400 through 6.16.480.

D. Subject to assembly approval by resolution, the mayor may determine it is in the best interest of the borough to waive competitive bidding for professional services. The mayor shall make specific best interest findings as to the reasons for not using the competitive bid process.

E. Subject to assembly approval by resolution, the mayor may renew a professional service contract without a competitive process if the mayor determines that renewal is in the best interests of the borough.

F. This section shall not apply to Chapters 2.20 and 6.20 NABC. (Ord. 13-11 § 1, 2014)

6.16.330 Informal bid requirements.
In this chapter, when informal bids or quotations are solicited for a procurement, the same information shall be provided to all bidders; and bids shall be submitted in writing or by electronic means. (Ord. 13-11 § 1, 2014)

Upon issuance of an emergency declaration by the mayor or assembly, the borough may procure supplies, services, or construction without competition, formal advertising, or other formal procedures where to protect public or private property, or when the mayor determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay. The mayor shall at no time expend emergency funds in excess of appropriated funds for the current fiscal year without assembly approval. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.420)

6.16.350 Credit card usage.
A. The purpose of this section is to establish the procedures utilized by the procurement officer in the distribution, authorization, control and payment of bills related to the use of credit cards issued to or for the benefit of the borough and used by borough elected officials and employees.
B. The authority to assign credit cards is the responsibility of the procurement officer or designee. Credit cards may be distributed to those borough elected officials and employees who, in the opinion of the procurement officer, have official borough duties and responsibilities that would benefit or otherwise be facilitated by use of a credit card. The activation and administration of all credit cards shall be coordinated through the finance department. The individual to whom the card is issued is responsible for the card and its proper use.

C. All elected officials and employees who use borough credit cards shall satisfy the criteria established for credit card use. Prior to the assignment and activation of a credit card, all persons assigned a credit card must sign and agree to specific conditions and requirements as determined by the procurement officer or designee.

D. All credit cards shall have a credit limit of up to $3,000, except the assembly president whose credit card shall have a credit limit of $5,000, principal staff whose credit card shall have a credit limit of $9,000, and the borough mayor whose card may have a credit limit of up to $15,000. The borough clerk’s and travel clerk’s credit cards shall have a limit of $50,000; provided, that the cards can only be used to purchase flights, make hotel and rental car reservations, register for events, and make meeting arrangements and other purchases directly related to staff and public official travel.

E. The use of a borough credit card is for official borough business only, and all credit card purchases must be within established appropriations. Issuance of a borough credit card does not indicate preapproval of expenditures or expenses. Individual borough officials and employees are responsible for using their own per diem for meals and travel expenses that fall under the general category of those intended for per diem. Use of credit cards for group meal purchases for borough officials and employees should be minimized. A borough credit card may not be used to purchase a meal for a group of more than six people unless the meal has been prearranged by the borough mayor as a formally sponsored borough event. Under no circumstances may a borough credit card be used to purchase alcohol.

F. All credit balances shall be paid in full each month according to each monthly statement received and shall not become debts of the borough. The original monthly statements shall be kept on file in the borough finance department. The borough treasurer or designee is responsible for verifying and reconciling all credit card usage and charges pursuant to this section and the borough code.

G. Whenever possible, credit cards will not be used in lieu of the normal procurement and purchasing procedures of the borough. The use of credit cards shall be limited to those instances in which there is a demonstrated need to perform essential borough business, to improve borough management efficiency in the best interest of the borough, or in situations in which necessary purchases and procurement cannot be provided by any other procurement means.
H. All credit card holders are responsible for delivery of all original credit card receipts or other appropriate documentation for every credit card purchase describing and appropriately coding each transaction to the procurement officer or designee not later than 10 days after use. In the event of a lost or missing receipt, the credit card holder must complete a statement explaining the absence of the documentation and confirming that the expenses were legitimately incurred in the conduct of borough business. Any purchases made without such documentation may be cause for deactivation of that credit card. Failure to comply with this section may constitute grounds for disciplinary action and may subject the violator to be held responsible for the cost of said purchases.

I. Borough elected officials and employees who are assigned credit cards are required to immediately report any damaged, lost or stolen credit card to the procurement officer, or designee. All damaged, lost or stolen credit cards shall be deactivated. When the borough elected official or employee no longer requires use of a credit card, it is the responsibility of the elected official or employee to ensure that the credit card is immediately returned to the procurement officer. Failure to comply with this section shall constitute grounds for disciplinary action and may subject the violator to be held responsible for monetary losses incurred by the borough caused by a delay in reporting the theft or loss or returning a credit card.

J. The procurement officer or mayor may immediately cancel or order the surrender of any card that appears to have been misused. If any credit card holder uses a borough credit card for purchases for personal business, personal purchases of any kind or purchases otherwise contrary to public policy forbidden by law or otherwise disallowed, the procurement officer reserves the right to set aside such purchase and hold the person authorizing the purchase personally liable for any charges, interest, fees, fines or any other damages caused by the unauthorized purchase and may subject the card holder to disciplinary action under applicable borough and state law.

K. The procurement officer is authorized to implement any additional policies or administrative procedures necessary to implement the provisions of this section, including developing any specific administrative guidelines and accounting controls to ensure the proper usage of credit cards and borough funds. (Ord. 18-14 § 1, 2019; Ord. 18-06 § 1, 2018; Ord. 17-01 § 1, 2017; Ord. 13-11 § 1, 2014; Ord. 09-04 § 1, 2009; Ord. 03-08 § 1, 2003. Formerly 6.16.430)

Article IV. Competitive Procedure

6.16.400 Competitive sealed bidding.

Unless otherwise authorized under this chapter or another provision of law, all borough contracts for supplies, services and construction having an estimated value of more than $25,000 shall be awarded by competitive sealed bidding. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.300)
6.16.410 Solicitation and acceptance of competitive sealed bids.
A. The procurement officer shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall:

1. State, or incorporate by reference, all material specifications and contractual terms and conditions applicable to the procurement;

2. State the time and place where the bid must be submitted; and

3. State the time and place of the bid opening.

B. Notice of the invitation for bids shall be provided as follows:

1. Publication of the notice at least once not less than 14 days before the last day on which bids will be accepted using one or more of the following methods to ensure there is sufficient notice to create competitive conditions:

   a. In a newspaper of general circulation either in the borough or elsewhere, depending on the purpose of the procurement;

   b. Posting the notice at prominent local public notice boards or such other place that is accessible to the public;

   c. Mailing the notice to prospective bidders known to the borough; or

   d. Posting by electronic means.

2. 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 obtaining bid documents.

3. The procurement officer shall keep a written record of each publication, posting, and the name of each person receiving notice and of the date and manner of delivery. The failure of any person to receive notice under this subsection shall not affect the validity of any award or contract.

4. In the event of substantial compliance with this chapter, failure to comply with the full notice requirements of this section does not otherwise invalidate a bid or the award of a contract.

C. The terms of an invitation for bids may be modified or interpreted only by written addendum issued by the procurement officer. Addenda to bids shall be sent to each recipient of the original bid documents and publicized and posted in the same manner as the original invitation for bid. Bidders are required to acknowledge receipt of all addenda in their bid documents.
D. Sealed bids shall be signed by the bidder and shall be submitted by mail, electronic delivery, delivery service or in person at the place and not later than the time specified in the invitation for bids. Upon receipt by the borough, sealed bids will be forwarded immediately to the borough clerk, who will mark on the sealed bid the time and date of receipt. Bids not submitted at the proper place or within the time specified shall not be opened or considered.

E. **Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the borough.**

F. **Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted.** After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the borough or fair competition may not be permitted. A decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the mayor. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bidding security.

G. Bids shall be opened at the time and place designated in the invitation for bids. All bid openings shall be open to the public. Bids are not open to public inspection until after the notice of intent to award a contract is issued. The bids shall be opened and read aloud by the procurement officer. A borough employee shall tabulate the amount of each bid and shall record such other information as may be necessary or desirable for evaluation together with the name of each bidder. The tabulations shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder. To the extent the bidder designates in writing and other provisions of law permit, trade secrets and other proprietary data contained in a bid document shall be withheld from public inspection.

**FH.** A bid may be considered nonresponsive if it is illegible, missing information requested, missing pages, lacking acknowledgment of addenda, or is otherwise incomplete. Upon determination by the procurement or contracting officer that a bid is nonresponsive, it shall be immediately rejected.

**GI.** Bids shall be accepted unconditionally without alteration or correction. No criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used in determining the low bidder and the responsiveness of bids; **invitations for bids may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.** (Ord. 13-11 § 1, 2014; Ord. 05-02 § 1, 2005; Ord. 03-08 § 1, 2003. Formerly 6.16.310)
6.16.420 Procedure for award.
A. Contracts shall be awarded by written notice issued by the procurement officer to the lowest responsive and responsible bidder, where practicable, or to the bidder offering the best value, taking into account the specification and criteria described in the solicitation document. The notice shall be in the form of an “Intent to Award” letter. The bidder shall have a valid Alaska business license at the time the contract is awarded. Assembly approval of the contract and the execution of a signed contract by the bidder and the mayor are required before the award is finalized.

B. If the lowest responsive and responsible bid exceeds the amount of funds available for the procurement, and if sufficient additional funds are not made available, the procurement officer may:

1. Reject all bids, as further described in NABC 6.16.350

2. Issue a new invitation for bids that reduces the scope of the procurement so that its estimated cost does not exceed the amount of available funds; or

3. Upon finding that the efficient operation of the borough requires that the contract be awarded without delay, negotiate a reduced procurement with the lowest responsive and responsible bidder, starting first with the lowest bidder and then proceeding to the second and third lowest responsive and responsible bidders, if any, and award the reduced procurement based on the best negotiated price and terms.

(Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.320)

6.16.430 Competitive sealed proposals.
A. If the procurement officer determines in writing, with particularity, that the 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 procurement officer shall solicit competitive sealed proposals by issuing a request for proposals; the request must contain the date, time, and place for delivering proposals. The request for proposals shall state, or incorporate by reference, all material specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice shall be given in accordance with NABC 6.16.410(B). A request for proposals may be modified or interpreted only in the manner provided in NABC 6.16.410(C).

C. Sealed proposals shall be submitted by mail, electronic delivery, delivery service 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 so specified shall not be opened or considered.
D. Proposals shall be opened so as to avoid disclosing their contents to competing proposers before notice of intent to award a contract is issued. Proposals, tabulations and evaluations thereof shall be open to public inspection only after notice of intent to award a contract is issued. To the extent the proposer designates in writing and other provisions of law permit, trade secrets and other proprietary data contained in a proposal document shall be withheld from public inspection.

E. In the manner provided in the request for proposals, the procurement officer may negotiate with those responsible proposers whose proposals are determined by the procurement offices to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and ensure full understanding of the requirements of the request for proposals.

F. Award shall be made by written notice to the responsible and responsive proposer whose final proposal is determined to be the most advantageous to the borough. No criteria other than those set forth in the request for proposals, including all specifications and addenda, may be used in proposal evaluation. The offeror shall have a valid Alaska business license at the time the contract is awarded. An offeror for a construction contract shall submit proof of the offeror's registration as a contractor under AS 08.18 before the contract may be awarded. (Ord. 13-11 § 1, 2014; Ord. 05-02 § 2, 2005; Ord. 03-08 § 1, 2003. Formerly 6.16.330)

6.16.435 Discussion with responsible offerors and revisions to 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 to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors.

6.16.440 Award to responsible bidder or proposer.
A. A contract award under this chapter shall be made only to a responsible bidder or proposer. The procurement officer shall evaluate whether a bidder or proposer is responsible on the basis of the following criteria:

1. The skill and experience demonstrated by the bidder or proposer in performing contracts of a similar nature;

2. The bidder’s or proposer’s record for integrity, judgment, experience and efficiency;
3. The bidder’s or proposer’s capacity to perform in terms of facilities, equipment, personnel and financing;

4. Whether the bidder can perform the contract within the time specified, without delay or interference;

5. The past and present compliance by the bidder or proposer with laws and ordinances related to its performance under the contract;

6. The bidder’s or proposer’s past performance under other contracts, including whether the bidder or proposer has failed in any material way to perform its obligations under any other contract; and

7. The bidder’s past performance under borough contracts, including whether, at the time of the award, the bidder is delinquent, overdue or in default on the payment of any money, debt or liability to the borough.

B. If the bidder or proposer has failed in any material way to fulfill the criteria established in subsections (A)(1) through (A)(7) of this section, the procurement officer may recommend to the mayor that the bidder be considered not a responsible bidder.

C. The mayor shall make all final decisions regarding the responsibility of a bidder or proposer. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.340)

6.16.450 Rejection of bids or proposals.
If the procurement officer makes a written recommendation and the mayor concurs in writing that it is in the best interest of the borough to do so, the Rejected -- borough may reject all bids or proposals submitted for a procurement Repealed by Ord. 22-08. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.350)

6.16.460 Waiver of irregularities.
The procurement or contracting officer may waive irregularities in any and all bids or proposals, except that timelines and manual or electronic signature requirements shall not be waived. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.360)

6.16.470 Local bidder preference.
All evaluations of bids or proposals based on price shall be made after a local bidder preference of five percent has been applied. In this section, “local bidder” means a person, business, or firm who:

A. Holds a current State of Alaska business license;

B. Submits a bid or proposal for supplies, services or construction under the name that appears on the firm’s current business license;

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C. Has maintained a place of business within the borough, which is the primary place of business staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid; and

D. Not less than 40 percent of the ownership of a bidder is held directly or indirectly by a natural person or persons who reside in the borough. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003. Formerly 6.16.370)

6.16.480 Evaluation committee. 
A. The procurement officer shall determine the composition for an evaluation committee in each solicitation for bids or request for proposals. Whenever practicable, the appropriate assembly committee chair or the chair’s designee shall participate on the evaluation committee.

B. The procurement officer is responsible for ensuring that no member of a procurement evaluation committee has a conflict of interest as defined in Chapter 2.36 NABC. (Ord. 13-11 § 1, 2014)

6.16.490 Solicitation cancellation, bid and proposal rejection, and delay of opening bid or proposal. 
An invitation to bid, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part or the date for opening bids or proposals may be delayed when it is in the best interests of the borough. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Article V. Legal and Contractual Remedies

6.16.500 Applicability of protest and appeal procedures. 
Except for sole source procurements made under NABC 6.16.300 and open market procurements made under NABC 6.16.310, the provisions of this Article apply to a solicitation, a proposed contract award, and an award of a contract for supplies, services, professional services, or construction.

6.16.510 Filing of a protest. 
An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction. The protest shall be filed with the procurement officer in writing and include the following information:

A. the name, address, and telephone number of the protester;

B. the signature of the protester or the protester’s representative;
C. identification of the solicitation or contract at issue;

D. a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and

E. the form of relief requested.

6.16.520 Time for filing a protest.
A. A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal. Notwithstanding the other provisions in this subsection, the protest of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal conference is held within 12 days of the due date must be filed before the due date of the bid or proposal if the protest is based on alleged improprieties or ambiguities in the solicitation. A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

B. If the protester shows good cause, the procurement may consider a filed protest that is not timely.

6.16.530 Notice of a protest.
The procurement officer shall immediately give notice of a protest filed to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

6.16.540 Stay of award.
If a protest is filed, the award may be made unless the procurement officer determines in writing that a

A. reasonable probability exists that the protest will be sustained; or

B. stay of the award is not contrary to the best interests of the borough.

6.16.550 Decision by the procurement officer.
A. The procurement officer shall issue a written decision containing the basis of the decision within 15 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.
B. The time for a decision may be extended up to 30 days for good cause by the procurement officer. If an extension is granted, the procurement officer shall notify the protester in writing of the date that the decision is due.

C. If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

6.16.560 Protest remedies.
A. If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement, including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the borough and other impacts on the borough of a proposed remedy, and the urgency of the procurement to the welfare of the borough.

C. Notwithstanding (A) and (B) of this section, if a protest is sustained in whole or part, the protester's damages are limited to reasonable bid or proposal preparation costs.

6.16.570 Appeal on a protest.
A. An appeal from a decision of a procurement officer on a protest may be filed by the protester with the mayor. An appeal shall be filed within 10 days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

B. An appeal must contain the information required under NABC 6.16.510. In addition, the appeal must include

1. a copy of the decision being appealed; and

2. identification of the factual or legal errors in the decision that form the basis for the appeal.

6.16.580 Notice and copy of a protest appeal.
A. The procurement officer shall immediately give notice of an appeal filed to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.
B. The mayor shall, on request, furnish a copy of the appeal to a person notified under (A) of this section, except that confidential material shall be deleted from the copy.

6.16.590 Stay of award during protest appeal.
If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the mayor makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the borough.

6.16.600 Protest report and comments.
A. The procurement officer shall file a complete report on the protest and decision with the mayor within 10 days of a protest appeal being filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal.

B. The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The mayor shall respond to the request in writing. If an extension is granted, the mayor shall list the reasons for granting the extension and indicate the date the protest report is due. The mayor shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

C. The protester may file comments on the protest report with the mayor within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal.

D. The protester may request an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The mayor shall respond to the request in writing. If an extension is granted, the mayor shall list the reasons for granting the extension and indicate the date the comments are due. The mayor shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

6.16.610 Decision without hearing.
A. The mayor shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under NABC 6.16.570(A).

B. The mayor may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of material fact.
C. The mayor shall, within 15 days after the date the appellant’s comments on the protest report are due under NABC 6.16.600(C) and (D), notify the appellant of the acceptance or rejection of the appeal and, if rejected, the reasons for the rejection.

6.16.620 Hearing on protest appeal.
A hearing on a protest appeal shall be conducted in accordance with NABC 6.16.660 and procedures adopted by the borough assembly.

6.16.630 Contract claims.
A. A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor’s knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the borough is liable. Except for a lease rate adjustment called for in the lease, a claim under this section must be filed within 90 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. A lease rate adjustment called for in the lease must be filed prior to the expiration date of the lease.

B. If a claim asserted concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The procurement officer shall make the decision not more than 90 days after receipt of all necessary information from the contractor. If the contractor fails to furnish necessary information requested by the procurement officer, the procurement officer shall proceed to decide the claim and may, in the procurement officer’s discretion, deny all or part of the claim because of the failure to furnish necessary information. During an appeal under this chapter, the contractor may not rely on or introduce information that the contractor has failed to furnish to the procurement officer in support of the claim. Before issuing the decision, the procurement officer shall review the facts relating to the claim and obtain necessary assistance from legal, fiscal, and other advisors.

C. Upon the written request of the procurement officer, the time for issuing a decision under (B) of this section may be extended up to 60 days by the mayor if the claim concerns an amount in excess of $50,000. Upon the written request of the procurement officer showing that good cause exists for a second extension, the mayor may extend the time for issuing a decision under (B) of this section up to 90 days after the first extension. The contractor shall be provided with an opportunity to oppose or otherwise respond to the request for a second
extension. If a second extension is granted, the mayor shall notify the contractor and the procurement officer in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

D. The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision must include

1. a description of the claim;
2. a reference to the pertinent contract provisions;
3. a statement of the agreed-upon and disputed facts;
4. findings of fact about the claim;
5. a determination of any amount payable;
6. a statement of reasons supporting the decision; and
7. a statement substantially as follows:

“This is the final decision of the procurement officer. This decision may be appealed to the mayor. If you appeal, you must file a written notice of appeal with the mayor within 14 days after you receive this decision.”

E. If the procurement officer does not issue a written decision by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

F. If a claim asserted by the borough concerning a contract awarded under this chapter cannot be resolved by agreement, the matter shall be immediately referred to the mayor.

6.16.640 Appeal on a contract claim.
A. An appeal from a decision of the procurement officer on a contract claim may be filed by the contractor with the mayor. The appeal shall be filed within 14 days after the decision is received by the contractor. An appeal may not raise any new factual issues or theories of recovery that were not presented to and decided by the procurement officer in the decision under NABC 6.16.630, except that a contractor may increase the contractor’s calculation of damages if the increase arises out of the same operative facts on which the original claim was
based. The contractor shall file a copy of the appeal with the procurement officer.

B. An appeal must contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

6.16.650 Hearing on a contract claim; decision without hearing.
A. Except as provided in (B) of this section, a hearing shall be conducted according to NABC 6.16.660 and procedures adopted by the borough assembly.

B. Within 15 days after receipt of an appeal on a contract claim, the mayor may adopt the decision of the procurement officer as the final decision without a hearing.

6.16.660 Hearing procedures.
A. The mayor will assign an attorney to act as a hearing officer for a hearing conducted under this chapter. The hearing officer will arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing will be conducted in an informal manner.

B. The hearing officer may

1. hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

2. require parties to state their positions concerning the various issues in the proceeding;

3. require parties to produce for examination those relevant witnesses and documents under their control;

4. rule on motions and other procedural matters;

5. regulate the course of the hearing and conduct of the participants;

6. establish time limits for submission of motions or memoranda;

7. impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
a. prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;

b. excluding all testimony of an unresponsive or evasive witness; and

c. excluding a person from further participation in the hearing;

8. take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;

9. administer oaths or affirmations.

C. A transcribed record of the hearing will be made available at cost to a party that requests it.

6.16.670 Recommended decision and mayoral action.
A. The hearing officer will recommend a decision to the mayor based on the evidence presented. The recommendation must include findings of fact and conclusions of law.

B. The mayor may affirm, modify, or reject the hearing officer’s recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

6.16.680 Final decision by the mayor.
A decision by the mayor after a hearing under this chapter is final. A decision shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Article VII. Definitions

6.16.5006, 16.700 Definitions.
As used in this chapter:

“Construction” means the process of building, altering, repairing, maintaining, improving or demolishing a public highway, structure, building or other public improvement of any kind to real property, and includes services related to planning and design required for the construction;

“Contract” means all types of borough agreements, regardless of what they may be called, for the procurement of supplies, services or construction;

“Contract amendment,” means any change in the terms of a contract accomplished by agreement of the parties, including change orders;
"Interested party" in NABC 6.16.500-6.16.680 means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances.

"Professional services" means those advisory, consulting, legal, financial, architectural, engineering, research or developmental services that involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, including cultural and traditional knowledge, or expertise or training gained by formal studies or experience;

"Services" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a tangible end product other than reports that are incidental to the required performance; however, employment agreements and collective bargaining agreements are not contracts for services; and

"Supplies" means any tangible personal property. (Ord. 13-11 § 1, 2014; Ord. 03-08 § 1, 2003)

Section 2: This ordinance will be effective upon adoption.


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Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 25th DAY OF Oct 2022.

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Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 25 DAY OF Oct 2022.

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Helena Hildreth, Borough Clerk

ATTEST:

Ord. 22-08 Chapter 6.16