

**The Brooks Act:
Federal Government Selection of Architects and Engineers**

**Public Law 92-582
92nd Congress, H.R. 12807
October 27, 1972**

An Act

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IX – SELECTION OF ARCHITECTS AND ENGINEERS

"DEFINITIONS

"Sec.901. As used in this title

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term "architectural and engineering services" means –

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.

"POLICY

"Sec.902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"NEGOTIATIONS OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

State of Alaska Statutes

Sec. 36.30.270. Architectural, engineering, and land surveying contracts.

(a) Notwithstanding conflicting provisions of AS 36.30.100-36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the procurement officer shall consider the

- (1) proximity to the project site of the office of the firm or person unless federal law prohibits this factor from being considered in the awarding of the contract; and
- (2) employment practices of the firm or person with regard to women and minorities.

(b) If negotiations with the most qualified and suitable firm or person under (a) of this section are not successful, the procurement officer shall negotiate a contract with other qualified firms or persons of demonstrated competence, in order of public ranking. The procurement officer may reject all or part of a proposal.

(c) This section does not apply to contracts awarded in a situation of public necessity if the procurement officer certifies in writing that a situation of public necessity exists.

(d) Notwithstanding the other provisions of this section, a procurement officer may include price as an added factor in selecting architectural, engineering, and land surveying services when, in the judgment of the procurement officer, the services required are repetitious in nature, and the scope, nature, and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required. In order to include price as a factor in selection, a majority of the persons involved by the procurement officer in evaluation of the proposals must be registered in the state to perform architectural, engineering, or land surveying services.

(e) This section does not apply to a contract that incorporates both design services and construction.

State of Alaska Administrative Code

Title 2 Administration

ARTICLE 5 COMPETITIVE SEALED PROPOSALS FOR ARCHITECT, ENGINEER, OR LAND SURVEYING SERVICES

12.320	Procurement of architect, engineer, or land surveying services
12.330	Determinations required before procurement of services
12.340	Public announcement of required architect, engineer, or land surveying services
12.350	Architect, engineer, or land surveyor selection committee
12.360	Evaluation of statements of qualifications and performance data; selection of firms or persons for discussions
12.370	Discussions
12.380	Selection of the most qualified and suitable firms or persons
12.390	Negotiation and award of contract

2 AAC 12.320 PROCUREMENT OF ARCHITECT, ENGINEER, OR LAND SURVEYING SERVICES

- (a) Except as otherwise provided in this section, architect, engineer, or land surveyor services must be procured under 2 AAC 12.220 - 2 AAC 12.310, 2 AAC 12.320 - 2 AAC 12.390, and 2 AAC 12.400. In the case of inconsistency, the provisions of 2 AAC 12.320 - 2 AAC 12.390 control.
- (b) Procurement of minor or incidental architect, engineer, or land surveying work associated with and performed during construction, is not subject to 2 AAC 12.320 - 2 AAC 12.390. *(Eff. 1/1/88, Register 104)*

Authority

AS 36.30.040
AS 36.30.270

2 AAC 12.330 DETERMINATIONS REQUIRED BEFORE PROCUREMENT OF SERVICES

Before announcing the need for architect, engineer, or land surveying services, the head of the purchasing agency must determine

- (a) that the services to be acquired are services subject to AS 36.30.270 ;
- (b) that a reasonable inquiry has been conducted, and it has been determined that state personnel are unable or unavailable to perform the services required under the proposed contract;
- (c) that the purchasing agency has developed, and fully intends to implement, a written plan for use of the services. *(Eff. 1/1/88, Register 104)*

Authority

AS 36.30.040
AS 36.30.270

**2 AAC 12.340 PUBLIC ANNOUNCEMENT OF REQUIRED ARCHITECT,
ENGINEER, OR LAND SURVEYING SERVICES**

- (a) Notice of the need for architect, engineer, or land surveying services shall be given as described in 2 AAC 12.130.
- (b) A solicitation must be prepared which describes the state's requirements, sets out the evaluation criteria, and includes notice of any conference to be held.
- (c) The procurement officer may require a payment of a fee or deposit to supply a solicitation.
(Eff. 1/1/88, Register 104)

Authority

AS 36.30.040
AS 36.30.270

**2 AAC 12.350 ARCHITECT, ENGINEER, OR LAND SURVEYOR SELECTION
COMMITTEE**

- (a) If a contract for architect, engineer, or land surveying services is expected to exceed \$100,000, the Chief Procurement Officer, Commissioner of Transportation and Public Facilities, or Commissioner of Natural Resources, as appropriate, shall designate a minimum of three individuals to serve as members of an architect, engineer, and land surveying selection committee for that contract. The committee must consist of
 - (1) a majority of registered persons if registration is required under AS 36.30.270 (d), or, if registration is not required under AS 36.30.270 (d), a majority of state employees who are well qualified in architecture, engineering, or land surveying, as appropriate; and
 - (2) a procurement officer representing the purchasing agency requiring the services, and preferably qualified in architecture, engineering or land surveying, and other members as appropriate.
- (b) The Chief Procurement Officer, Commissioner of Transportation and Public Facilities, or Commissioner of Natural Resources, as appropriate, shall designate one member to chair the committee and to negotiate a contract with the most qualified and suitable firm or person in accordance with AS 36.30.270. *(Eff. 1/1/88, Register 104; am 3/27/93, Register 125; am 4/25/97, Register 142)*

Authority

AS 36.30.040
AS 36.30.270

**2 AAC 12.360 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND
PERFORMANCE DATA; SELECTION OF FIRMS OR PERSONS
FOR DISCUSSIONS**

- (a) The selection committee shall evaluate

(1) statements submitted in response to the solicitation for architect, engineer, or land surveying services, including proposals for joint ventures; and

(2) supplemental statements of qualifications and performance data, if submission of such statements was required.

(b) All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set out in the solicitation.

(c) Criteria to be used in evaluating the statement of qualifications and performance data may include

(1) experience in providing the required services;

(2) qualifications and competence of the individuals who would be assigned to perform the services, as reflected by technical training and education;

(3) ability to perform the services expeditiously, as reflected by workload and the availability of adequate personnel, equipment, and facilities; and

(4) past performance, as reflected by the evaluations of private persons and officials of other government entities that have retained the services of the firm or person, with respect to such factors as control of costs, quality of work, and ability to meet deadlines.

(d) The selection committee may select firms or persons evaluated as being professionally and technically qualified for discussions and reasonably susceptible for award of a contract. The procurement officer shall notify each firm or person in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm or person with additional information on the project and the services required. The notice may provide that a representative of a firm or person must attend discussions in order for the firm or person to be considered further. (*Eff. 1/1/88, Register 104*)

Authority

AS 36.30.040

AS 36.30.270

2 AAC 12.370 DISCUSSIONS

The selection committee may hold discussions regarding the proposed contract with the firms or persons selected. The purpose of such discussions is to explore the scope and nature of the required services and the relative utility of alternative methods of approach. The conditions, terms, or price of the proposed contract may be altered or otherwise changed during the course of the discussions. (*Eff. 1/1/88, Register 104*)

Authority

AS 36.30.040

AS 36.30.270

2 AAC 12.380 SELECTION OF THE MOST QUALIFIED AND SUITABLE FIRMS OR PERSONS

After discussions, if held under 2 AAC 12.370, the selection committee shall reevaluate and select, in order of preference, no fewer than three firms or persons that the committee considers

to be the most highly qualified and suitable to provide the required services. The selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the ranking of the three most highly qualified and suitable firms or persons. The memorandum shall be included in the procurement file. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125*)

Authority

AS 36.30.040

AS 36.30.270

2 AAC 12.390 NEGOTIATION AND AWARD OF CONTRACT

- (a) The procurement officer shall negotiate with the most qualified and suitable offerors in the order in which they are ranked. Contract negotiations shall be directed toward
- (1) making certain that the offeror has a clear understanding of the scope of the work and the requirements involved in providing the required services;
 - (2) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - (3) agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.
- (b) The offeror selected for award shall submit and certify cost and pricing data.
- (c) Upon failure to negotiate a contract with the most qualified and suitable offeror, the procurement officer shall enter into negotiations with the next most qualified and suitable offeror.
- (d) If the procurement officer is unable to negotiate a contract with any of the offerors initially selected as the most highly qualified and suitable offerors, additional offerors may be selected in preferential order based on their respective qualifications.
- (e) Written notice of the intent to award must comply with 2 AAC 12.310 and must be sent to each offeror. Notice of intent to award must be made available to the public.
- (f) After award of the contract, a memorandum setting out the principal elements of the negotiation shall be prepared by the procurement officer. The memorandum shall be included in the procurement file and be made available to the public upon request. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125*)

Authority

AS 36.30.040

AS 36.30.270

TITLE 4 EDUCATION AND EARLY DEVELOPMENT

4 AAC 31.065 SELECTION OF DESIGNERS AND CONSTRUCTION MANAGERS

(a) If a school district determines that it is necessary to engage the services of a private consultant to design or provide construction management for an educational facility with money provided under [AS 14.11.011](#) - [AS 14.11.020](#) , or for a project approved for reimbursement of costs under [AS 14.11.100](#) , and the estimated cost of the contract is more than \$50,000, the selection of the consultant shall be accomplished by soliciting written proposals by advertising in a newspaper of general circulation at least 21 days before the proposals are due. The contract shall be awarded to the most qualified offeror, after evaluating the proposals submitted.

(b) Nothing in this section precludes a school district from retaining the services of a consultant on an as-needed basis under a multi-year contract, if the term of the contract is not more than five years.

(c) The school district shall provide a procedure for administrative review of complaints by aggrieved offerors which allows them to appeal, within 10 days after the notice of intent to award, requesting a hearing with notice to interested parties, for a redetermination and final award in accordance with law.

History: Eff. 12/2/83, Register 88; am 8/31/90, Register 115

Authority: [AS 14.11.017](#)

[AS 14.11.020](#)

[AS 14.11.132](#)

Municipality of Anchorage

Ordinance 7.20.060 Competitive sealed proposals; negotiated procurement.

A. If the purchasing officer determines that use of competitive sealed bidding is either not practicable or not advantageous, the municipality may procure supplies, professional services, general 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 must 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 in accordance with section 7.20.020.B. One or more pre-proposal conferences may be held in accordance with section 7.20.020.C. A request for proposals may be modified or interpreted only in the manner provided in section 7.20.020.C.

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 so 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 proponents during the evaluation, discussion, and negotiation process. Notwithstanding [chapter 3.90](#), the names of the responding firms, contents of the proposals, tabulations and evaluations thereof shall be open to public inspection only after assembly approval of a contract award. However, the purchasing officer shall issue a notice of intent to award to all responding proposers at least seven days prior to assembly approval. Upon request by a competing proponent, the recommended awardee's proposal shall be opened for review. The review by a competing proponent is to assure reasonable access and opportunity to request a debriefing from the purchasing officer prior to assembly action on the proposed award. If an award does not require assembly approval, public inspection shall not be allowed until seven days after the purchasing officer has issued a notice of intent to award and there are no pending reviews or actions from any competing proposer.

E. In the manner provided in the request for proposals, the purchasing officer may enter into discussions with those responsible proponents whose proposals are determined by the purchasing officer to be most reasonably responsive to the request for proposals (short-listed firms). The purchasing officer may issue an interim notice to the remaining firms that a qualified list has been established for discussion purposes. No disclosure of the short-listed firms, contents of proposals, tabulations or evaluations thereof shall be made in accordance subsection D above. Discussions shall be used to clarify and ensure full understanding of the requirements of the request for proposals. The purchasing officer may permit those short-listed firms to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for discussions shall be treated equally regarding any opportunity to discuss and revise proposals. However, if during the discussions it is evident that the proposals, as submitted, will

exceed the available funding, and/or other changes in the terms, conditions, or requirements are needed to clarify or fulfill the requirements of the municipality, the purchasing officer shall issue a written modification to those short-listed firms with an established date and time for the firms to respond. The failure of a short-listed firm to respond or to notify the purchasing officer of a needed time extension may be just cause to remove the proposer from further consideration. In conducting discussions or requesting revisions, neither the purchasing officer nor any other municipal officer or employee shall disclose any information derived from other competing proposals.

F. If fair and reasonable compensation, contract requirements and contract documents can be agreed upon with the most qualified proponent, the contract shall be awarded to that firm.

G. If fair and reasonable compensation, contract requirements and contract documents cannot be agreed upon with the most qualified proponent, the purchasing officer shall advise the proposer of the termination of negotiations. If the proposals were submitted by one or more other proponents determined to be qualified, negotiations may be conducted with such other proposers in the order of their respective rankings. The contract may be awarded to the proponent then determined to be most advantageous to the municipality.

H. Awards shall be made by written notice to the proponent whose final proposal is determined to be most advantageous to the municipality. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the mayor determines that it is in the best interest of the municipality to do so, the municipality may reject all proposals.

I. When the service is routine and repetitious, costs of the anticipated service shall be considered during evaluation of proposals. This subsection shall not apply to a qualifications-based selection process.

1. When the source selection is for architectural and/or engineering services, (herein A/E services) a qualifications-based selection process shall be used. Price will not be a factor in the selection of the architect or engineer during the evaluation process.

2. Notwithstanding subsection I.1 of this section, the purchasing officer may include price as an added factor in selecting architectural and engineering services when, in the judgment of the purchasing officer, the services required are repetitious in nature, and the scope, nature, and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required.

(a) In order to include price as a factor in selection of architectural and engineering services, a majority of the persons involved by the purchasing officer in evaluating the proposals must be registered in the state to perform architectural or engineering services.

3. Subsections I.1 and 2 of this section do not apply to a design/build contract.

4. Except as otherwise required by state law in particular situations, this section shall apply to all procurements of architectural and engineering services by the municipality.

J. Legal services shall be procured in accordance with this section. Except for procurement of legal services by the assembly as provided by [section 4.06](#) of the Charter and subsection K of this section, no negotiations or contracts for the services of legal counsel may be pursued or awarded without the prior approval in writing of the municipal attorney. The municipal attorney shall review the responses received by the purchasing officer and shall be assisted by the purchasing officer in the selection process. All bills or invoices for payment for legal services obtained pursuant to this section shall be reviewed and approved by the municipal attorney prior to payment. All funds budgeted, obligated or expended by any municipal department, agency or utility for contract legal services must be charged to a separate legal services budget account within that department, agency or utility. The assembly shall approve in advance, the participation by the municipality in any litigation as plaintiff or intervener, where outside counsel is retained to represent the municipality if the cost, including attorneys' fees and litigation expenses of that representation, is likely to exceed \$30,000.00.

K. Legal service for the assembly shall be procured in accordance with this subsection. The assembly chairman shall, subject to protections of competitive bidding in article 2, section 11, of the Charter and this title, authorize and determine the method of procurement to be used for retention of legal counsel for the assembly, municipal clerk, ombudsman or assembly budget analyst. However, in the event of a conflict between the method prescribed for procurement of professional services and this section, this section shall prevail. The assembly chairman may review the responses received by the department and may assist in the selection process. Any selection must be approved by the assembly prior to commencement of work. The purchasing officer shall provide assistance appropriate to the method of procurement determined by the assembly chairman.

(AO No. 79-203, 1-1-80; AO No. 88-163; AO No. 92-82(S), 1-1-93; AO No. 92-87(S); AO No. 94-174, § 1, 10-25-64; AO No. 2001-122(S-1), § 5, 7-24-01; AO No. 2007-22, § 2, 2-27-07)

Fairbanks North Star Borough

16.55.010 Architectural and engineering services.

A. It is the policy of this borough to publicly announce all requirements for architectural and engineering services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of services, the chief procurement officer or his designee shall request firms to submit a statement of qualifications and performance data.

B. The chief procurement officer or his designee shall conduct discussions with no less than three firms regarding the contract and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the chief procurement officer or his designee.

C. The chief procurement officer or his designee shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the chief procurement officer or his designee determines in writing to be fair and reasonable to the borough. In making this decision, the chief procurement officer or his designee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the chief procurement officer or his designee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the chief procurement officer or his designee determines to be fair and reasonable to the borough, negotiations with that firm shall be formally terminated. The chief procurement officer or his designee may then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the chief procurement officer or his designee shall formally terminate negotiations. The chief procurement officer or his designee may then undertake negotiations with the third most qualified firm. Should the chief procurement officer or his designee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the chief procurement officer may select additional firms in order of their competence and qualifications, and the chief procurement officer or his designee may continue negotiations in accordance with this section until an agreement is reached.

(Ord. 2002-29 § 31, 2002; Ord. 89-044 § 4, 1989; Ord. 82-69, 1982)

City and Borough of Juneau

From the Engineering Department Web Site

Professional Contract Services

Professional services are acquired through an open proposal process based primarily upon qualifications. Engineering, architecture, planning, and land surveying compose the majority of professional service contracts handled by this division.

53.50.050 Contract amounts.

Unless otherwise prohibited by this Code:

(a) All contracts for an amount estimated to be \$5,000.00 or less shall be made on the open market with such competition as is reasonable and practical in the circumstances.

(b) All goods and services, other than professional services, shall be awarded as follows:

(1) Contracts in an amount estimated to be greater than \$5,000.00 but not more than \$50,000.00 shall be made when feasible and when in the best interest of the City and Borough in the open market by written quotation, without newspaper advertisement and without observing the procedure prescribed for the award of formal sealed bid purchases. Such open market contracts, whenever practicable, shall be based on at least three competitive quotations and shall be awarded to the lowest qualified bidder. The basis for determining the lowest qualified bidder shall be the same as that used in formal bid purchases, including any preferences established by law.

(2) *Reserved.*

(3) Contracts in an amount estimated to be more than \$50,000.00 shall be by formal competitive sealed bid.

(c) All professional services shall be purchased as follows:

(1) Contracts in an amount estimated to be greater than \$5,000.00 but not more than \$25,000.00 shall be made when feasible and when in the best interest of the City and Borough in the open market by written proposal, without newspaper advertisement and without observing the procedure prescribed for the award of formal sealed bid purchases. Such open market contracts, whenever practicable, shall be based on at least three competitive proposals and shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation or grant requirements, provide that five percent of the total points possible for each proposal shall be awarded if and only if the proposal is submitted by a Juneau proposer.

(2) Contracts in an amount estimated to be more than \$25,000.00 but not more than \$50,000.00 shall be by written proposal after local newspaper advertisement, and shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation or grant requirements, provide that five percent of the total points possible for each proposal shall be awarded if and only if the proposal is submitted by a Juneau proposer.

(3) Contracts in an amount estimated to be more than \$50,000.00 shall be by formal competitive sealed proposal after newspaper advertisement, and shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation or grant requirements, provide that five percent of the total points possible for each proposal shall be awarded if and only if the proposal is submitted by a Juneau proposer.

(CBJ Code 1970, § 53.50.050; Serial No. 71-45, § 4, 1971; Serial No. 80-23, § 2, 1980; Serial No. 93-11am, § 8, 1993; Serial No. 93-44, § 3, 1993; Serial No. 2004-25, § 2, 7-29-2004; Serial No. 2005-08c, § 3, 4-25-2005)

53.50.090 Exceptions to competitive sealed bidding and submission of quotations.

The restrictions and provisions of this chapter shall not apply:

- (a) To contracts involving the obtaining of professional or specialized services such as those rendered by architects, attorneys, engineers, and others requiring advanced training and the exercise of independent judgment and discretion. Except as authorized in writing by the purchasing officer, such services shall be obtained by competitive proposal;
- (b) Where calling for bids on a competitive basis is unavailing or impossible, including situations where rates are set by statute or ordinance or where like items are traded in, or where used items are being purchased;
- (c) Where the City and Borough's requirements can be met solely by an article or process obtainable from a known single source. No purchase shall be made pursuant to this subsection except upon written authorization of the purchasing officer certifying that there is no reasonable substitute for the article or process, and that it is clearly obtainable only from a known single source. Notice of the authorization shall be prominently posted in a public place at the offices of the purchasing officer;
- (d) To placement of insurance coverage;

- (e) When public work is performed by the City and Borough with its own employees;
- (f) When it is advantageous to the City and Borough to enter into a contract with a bidder for the same supplies or services such bidder is providing another Alaskan local government, the State of Alaska, a cooperative purchasing association composed of government agencies, or the United States where such supplies or services are being provided to the other governmental unit or association on the basis of competitive bids submitted, and where the City and Borough contract is on substantially the same terms as those bid; or to contract with or through such other governmental unit or association so that the benefit of the responsible bid accrues to the City and Borough; according to regulations adopted by the Manager pursuant to CBJ [01.60](#)
- (g) When either competitive procedure has been followed, but no bids or quotations are received. In such a case, the manager may proceed to have the services performed or the supplies purchased without further competitive bidding or quotation;
- (h) *Reserved*;
- (i) *Reserved*;
- (j) To electronic data processing software and hardware and software systems;
- (k) To the selection and commission of artists and the purchase and execution of works of art for municipal facilities;
- (l) To purchases of supplies, services or construction items during, and for the purpose of alleviating, a class 2 emergency; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the selection of a particular emergency contractor shall be included in the contract file. A record of all emergency procurements shall be made and shall set forth each contractor's name, the amount and type of the contract, a listing of the items procured under the contract, the record of the manager's justification for the procurement, and the identification number of the contract file;
- (m) To contracts involving lobbying services;
- (n) To services provided by personnel of government agencies, schools, and nonprofit agencies, as authorized by [Section 9.14\(b\)](#) of the Charter. Any contract issued pursuant to this section, including those issued by the docks and harbors department and the Airport, must be approved by the city manager;
- (o) To the purchase of supplies, materials, or equipment by Bartlett Regional Hospital through a Group Purchasing Organization;
- (p) To the purchase of supplies, materials, equipment, or contractual services that are medical in nature and necessary to providing medications, treatment procedures, medical diagnosis, or rehabilitation.

(CBJ Code 1970, § 53.50.090; Serial No. 71-45, § 4, 1971; Serial No. 84-92, § 2, 1984; Serial No. 85-50, § 3, 1985; Serial No. 85-99, § 3, 1985; Serial No. 93-11am, §§ 15—17, 1993; Serial No. 95-32, § 2, 1995; Serial No. 98-31, § 2, 1998; Serial No. 98-35, § 2, 1998; Serial No. 2002-03(am), § 2, 2-11-2002; Serial No. 2005-10, § 2, 4-25-2005)

State law reference— Employment preferences, AS 36.10.005 et seq.

Kenai Peninsula Borough

5.28.250. Proposals for professional services or where bidding not practicable.

- A. If the mayor determines that use of competitive bidding is not practicable or if the procurement is for professional services, the borough may procure supplies, services, professional services, or construction by competitive sealed proposals under this section. Competitive, as used in this section, means evaluation and selection based on the factors specified in this chapter and the request for proposal, and not solely on price.
- B. The purchasing officer or designee shall solicit proposals by issuing a request for proposals. The request for proposals shall be prepared by the requesting agency and shall state, or incorporate by reference, all 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 of a request for proposals shall be given in accordance with [Section 5.28.210\(B\)](#) of this code. One or more preproposal conferences may be held by the purchasing officer, at the request of the agency head. A request for proposals may be modified or interpreted only in written addenda issued by the purchasing officer, at the request of the agency head.
- 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 proponents during the process of negotiation. Notwithstanding [Section 5.28.210](#) of this code, proposals and tabulations thereof shall be open to public inspection only after the contract award.
- E. In the manner provided in the request for proposals, the purchasing officer, at the request of the agency head, or agency head, may negotiate with those qualified and responsible proponents whose proposals are determined by the purchasing officer and agency head 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, at the request of the agency head, 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 mayor determines

that it is in the best interest of the borough to do so, the borough may reject any and all proposals.

(Ord. No. 87-29, § 1(part), 1987)

5.28.260. Professional services.

Professional services shall be procured in accordance with [Section 5.28.250](#) of this code, with the following exceptions:

A. Architectural and engineering services for capital projects specifically pertaining to the Kenai Peninsula Borough School District or to borough-designated service areas may be awarded by the borough assembly upon the recommendation of the school board or the appropriate service area board. Preparation and solicitation of the request for proposal, and subsequent review and negotiation shall be the responsibility of the respective board, with the assistance of the public works director.

B. Legal services may be procured by direct negotiation with an attorney or law firm qualified to undertake the type of legal assistance required. All negotiations or contracts for the services of legal counsel shall be pursued and awarded by the borough attorney.

(Ord. No. 87-29, § 1(part), 1987)

Matanuska-Susitna Borough

3.08.010 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context 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 chief fiscal officer 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:

(a) 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;

(b) 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) “Finance director” means the chief fiscal officer of the borough.

(9) “Grant” means the furnishing by the borough of assistance, whether financial or otherwise, to implement a program authorized by law. The furnishing by the borough of anything of value in exchange for supplies, services, professional services or construction required to perform a function of the borough is a contract and not a grant. (See MSB [3.08.710](#) for definition of “state and federal grants.”)

(10) “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.

(11) **“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.**

(12) “Purchasing officer” means the person appointed by the manager to the regular, full-time position of purchasing officer or the officer’s designee.

(13) “Services” means those services of a non-professional nature which are described within contract specifications and which are needed or desired by the municipality.

(14) “Supplies” means any tangible personal property.

(Ord. 13-087, § 2, 2013; Ord. 94-001AM, § 4 (part), 1994; Ord. 81-109, § 2(B)(part), 1981)

3.08.210 COMPETITIVE SEALED BIDDING REQUIRED; EXCEPTIONS.

Unless otherwise authorized under this chapter or other provisions of law, all borough contracts for supplies, services and construction shall be awarded by competitive sealed bidding.

(Ord. 81-109, § 2(B) (part), 1981)

3.08.260 COMPETITIVE SEALED PROPOSALS; NEGOTIATED PROCUREMENT.

(A) If the purchasing officer determines that use of competitive sealed bidding is not practicable or advantageous, 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 and the public during the process of negotiation. Proposals, tabulations and associated documentation submitted in response to a proposal requested pursuant to this section shall be open to public inspection only after contract award. However, the purchasing officer shall, after notice of successful proposal, and upon request by a competing proponent, make the recommended awardee's proposal, tabulations and associated documents open for review by a competing proponent.

(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 manager determines that it is in the best interest of the borough to do so, the borough may reject any or all proposals.

(Ord. 08-027(AM), § 5, 2008; Ord. 94-001AM, § 4 (part), 1994; Ord. 89-161, § 2, 1989; Ord. 81-109, § 2(B) (part), 1981)

3.08.280 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.

(Ord. 81-109, § 2(B) (part), 1981)

3.08.290 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 manager 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.

(Ord. 94-001AM, § 4 (part), 1994; Ord. 84-55, § 8, 1984; Ord. 81-109, § 2(B) (part), 1981)

3.08.300 PROFESSIONAL SERVICES.

(A) Except as authorized by MSB [3.08.280](#) and [3.08.290](#), 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 manager.

(Ord. 94-001AM, § 4 (part), 1994; Ord. 81-109, § 2(B) (part), 1981)