

## **ALASKA FEDERATION OF NATIVES PURCHASING AND PROCUREMENT POLICY**

### **1. SCOPE**

**1.1 Purpose and Implementation of Policy.** This Policy establishes authority and rules relating to the procurement of equipment, supplies, services and construction services by AFN. Policies, practices and procedures in connection with employment matters are discussed elsewhere in other AFN policies. The authority to implement this policy is delegated to the President. This policy is designed to achieve maximum uniformity of procurement practices throughout the AFN.

**1.2 Procedures:** AFN may issue further procurement procedures to supplement this policy. Compliance with AFN procurement policy and guidelines is required of all AFN employees. Violation of these procurement policies or procedures may result in disciplinary action up to and including dismissal from employment.

**1.3 Compliance with Federal or State Procurement Requirements.** Where applicable, AFN shall comply with the procurement and program requirements of federal or state agencies, and with the terms and conditions of any state or federal grant, including, without limitation 45 CFR 74.40-48. In the event of a conflict between these policies and an applicable federal or state law, regulation or grant, the latter shall control.

**1.4 Purchase of Necessary Items.** It is AFN's policy to avoid purchasing unnecessary items. Where appropriate, an analysis will be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for AFN.

**1.5 Competitive Procurement Policy.** Competitive procurement using a method set out in Sections 4, 5 or 6 below and consistent with the needs of AFN is the preferred method to obtain goods and services. Competitive procurement awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the AFN, price, quality and other factors considered. Solicitations of goods or services shall involving federal grants shall comply with the provisions of 45 CFR 74.44.

Contracts for small purchases and for Professional Services (by a Memorandum of Agreement) as set out in Section 7 are permitted. If competition is to be restricted, or not utilized, procedures, the facts and justification supporting this must be documented in detail. Justification must be based upon unique technical or performance characteristics. Personal preference for certain brands or products does not adequately justify limiting competition.

**1.6 Code of Conduct.** AFN's Code of Conduct governing the performance of its employees engaged in the award and administration of contracts is set out below in Section 11.

**1.7 Disqualification of Persons Engaged in Preparation of Proposals.** In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

**1.8 Definitions.** Terms as used in this policy shall have the meaning given in the section entitled "Definitions."

## **2. ADMINISTRATION**

**2.1 Authority to Delegate** (a) Except as otherwise provided by the Board of Directors or this Policy, the President may, in her discretion, delegate authority under this policy to other employees of AFN charged with procurement responsibilities (hereinafter "Vice President of Administration").

(b) The President may revoke a delegation of authority at any time.

(c) An employee delegated authority under this section may exercise that authority only in accordance with the delegation, and these policies.

**2.2 Responsible Contractors.** AFN shall award contracts only to responsible entities-possessing the capacity to successfully perform the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance (including past performance for AFN), and financial, administrative, and technical resources. AFN will not award a contract to a person or firm on the List of Parties Excluded from Federal Procurement and Non Procurement Programs compiled, maintained, and distributed by the General Services Administration. Contractors barred from bidding or contracting with the State of Alaska will also be disqualified. AFN may use informal methods to assess and evaluate a proposed contractor's past performance for AFN. If a contractor is found non-responsible due to past performance with AFN, the contractor's exclusive remedy shall be the protest procedure provided in this Policy.

**2.3 Indian-Owned, Small, Economically Disadvantaged, or Women-owned Business Enterprises.** AFN may take affirmative steps to contract with Indian-owned, small, economically disadvantaged or women-owned businesses, and may require its prime contractors to take similar steps to maximize subcontractor participation by Indian-owned, small, economically disadvantaged and women-owned businesses.

**2.4 Approval and Documentation.** All AFN contracts shall be approved in writing the President of AFN or her designee. All procurements must be documented in writing through a Requisition for Purchase (for goods and services) or a Memorandum of Agreement (for Professional Services). The Vice President of Administration will maintain the corporate file of procurement contracts currently in force. Procurement records of completed transactions for contracts of \$25,000 or more must be retained for a minimum of seven (7) years after final payment or conclusion of litigation or settlement, if any, whichever is later. Unless a specific funding agency requires AFN to retain its procurement documents for a different period of time, procurement documents will be retained for a minimum of three (3) years after final payment or conclusion of litigation or settlement if any, whichever is later.

**2.5 Cost Estimates and Analysis.** A cost or price analysis will be performed in connection with procurement actions, including contract modifications, in the manner determined by the Vice President of Administration. The method and degree of analysis depends on the amount of costs and facts surrounding the particular procurement. In general, independent AFN cost estimates will be

made for Major Procurement Transactions in excess of \$100,000. The "cost-plus-a-percentage-of cost" or "percentage of construction cost" method of contracting will not be used.

**2.67 Cancellation of Solicitations.** Upon determination that cancellation of a solicitation is in AFN's best interest, the affected solicitation (whether formal or informal) will be canceled. Cancellation may be based upon a change in AFN's requirements, lack of funding, changed circumstances, mistake or ambiguity in the solicitation of such magnitude as to make amendment of the solicitation impracticable, or any other sound business reason as determined by the Vice President of Administration to be in the best interest of AFN.

**2.7 Rejection of All Bids or Proposals.** AFN may reject any and all bids or proposals received under any procurement method upon written determination by the Vice President of Administration or designee setting forth justification for rejection.

**2.8 Required Procurement and Contract Clauses.** Contracts and solicitations will include clauses required by state or federal statutes, executive orders, grant conditions, and these policies.

**2.9 Confidentiality.** During the procurement process, information contained in proposals will be confidential, and will not be publicly disclosed or available until the Vice President of Administration determines that disclosure will not prejudice the open and competitive procurement process. For example, the Vice President of Administration may elect to make proposals public only after a notice of award has issued or the applicable contract has been negotiated. Information contained in sealed bids will become public information at the time of public bid opening.

(a) Proprietary and source selection information will be protected from unauthorized disclosure to the extent feasible.

(b) Offerors who believe that information provided to AFN contains proprietary information must clearly mark the cover page and each page that contains protected information with the phrase "PROPRIETARY INFORMATION."

(c) Nothing in this subsection will be construed to require the withholding of any information requested through subpoena, court order, request of Congress or any committee or subcommittee thereof, or any state or federal agency providing funding.

### **3. ALASKA NATIVE/AMERICAN INDIAN PREFERENCE**

**3.1 Scope of Preference.** Procurement preference for Alaska Native/American Indian entities under Section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEA), 25 U.S.C. § 450e(b), will be applied to the fullest extent permitted by the grant or by prevailing law. In administering State grants or programs, or other procurements not governed by the ISDEA, application of Alaska Native/American Indian Preference is discretionary, but shall be utilized to the fullest extent consistent with the best interests of AFN.

**3.2 List of Alaska Native/American Indian Entities.** To promote maximum participation by qualified Alaska Native/American Indian entities, AFN may at its election, prepare and adopt solicitation lists of Alaska Native/American Indian sources of supplies and services.

**3.3 Set-aside for Alaska Native/American Indian Entities.** The Vice President of Administration may set aside competitive contracts and purchases exclusively for Alaska Native/American Indian entities, upon determining that two or more qualified tribes, tribally-owned organizations or Indian/Alaska Native owned economic enterprises are likely to respond to the solicitation. When the solicitation is for the benefit of a particular tribe(s) or region(s), the set-aside provided for in this subsection may be limited to Alaska Native/American Indian entities that are owned or controlled by members of the tribe or tribes intended to benefit or by Alaska Native/American Indians residing in the tribal communities intended to benefit.

**3.4 Applying Preference in Openly Competed RFPs and IFBs.** When AFN does not limit the request for proposals (RFP) or invitation for bids (IFB) to Alaska Native/American Indian entities, the evaluation method may include an evaluation point preference for such firms in an amount to be determined in advance of the solicitation.

**3.5 Notices.** Where applicable, advertisements and notices of pending procurement should contain a Notice of Native/Indian preference by stating "Preference will be given to qualified Alaska Native/American Indian entities." Advertisements should state any evaluation method used to apply the preference.

**3.6 Indian Preference requirements.** For state or federal grants with Indian Preference requirements, AFN's contracts shall include the following: "Contractor agrees to comply with the provisions of 48 CFR Chapter 3, Pt. 352.270-2 and -3 ("Indian Preference")"

#### **4. SMALL PURCHASE PROCEDURES**

**4.1 General Procedure.** For procurement of services, supplies, or property in an amount less than \$100,000, AFN may use Small Purchase Procedures. Under Small Purchase Procedures, competitive price or rate quotations will be obtained from three or more qualified sources to determine fairness and reasonableness of price. Formal bidding or advertising is not required for Small Purchase Procedures.

**4.2 Minor Purchases.** Purchases under \$10,000 may be considered minor. Price quotations from three or more qualified sources are not required for minor purchases.

#### **5. SEALED BIDS (Invitation for Bids)**

**5.1 Standards for Use.** Competitive sealed bidding/negotiation is used in Major Procurement Transactions (and other procurement transactions when appropriate) where (1) a complete and realistic specification or purchase description is available, (2) two or more responsible bidders are willing and able to compete effectively for the work, (3) the procurement lends itself to a firm fixed price contract, (4) it will not be necessary to conduct discussions with responding offerors about their bids, and (5) the selection of the successful bidder can be made principally on the basis of publicly-opened bid prices. If these conditions are not present, the Vice President of Administration may negotiate the procurement under procedures in Section 6 below.

**5.2 Procedure.** Sealed bids shall be solicited as follows:

**5.2.1 Content and Timing.** The Invitation For Bid (IFB) will define the items or services sought and provide notice sufficient to insure timely responses by qualified bidders. Solicitations for goods and services shall provide:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured.

(ii) Requirements which the bidder/offeror must fulfill and all other factors or preferences to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

**5.2.2 Advertisement.** A summary of the IFB shall be advertised in publications selected with the goal of obtaining an adequate number of qualified responses. Insurance, performance, payment, and bid bonding requirements, if any, shall be stated in the IFB.

**5.2.3 Bid Opening Date and Time.** The IFB will state the date and time for the bid opening. The date and time will be set so as to allow sufficient time for an adequate number of qualified responses to be submitted.

**5.2.4 Modifications and Withdrawals.** The offeror may modify or withdraw a bid only by delivering a written notice of the modification or withdrawal to the Vice President of Administration no later than the time set for bid opening. Modifications or withdrawals of bids or proposals are effective only if timely and actually received by the Vice President of Administration. In using facsimile communications for this purpose, the proposed contractor assumes all risks associated with faxing documents to AFN, including (1) loss or misrouting (2) failure in transmission (3) staff error (4) unreadability (5) delayed delivery to the Vice President of Administration.

**5.2.5 Use of Facsimile.** Unless specifically authorized by the solicitation, faxed bids are ineffective and unacceptable.

**5.2.6 Late Bids.** A bid received after the time set for bid opening is late. Late bids will not be considered, and will be held unopened and retained with other unsuccessful bids. The Vice President of Administration may (but is not required to) consider a late bid if it (a) was sent by registered or certified mail no later than two working days before the bid opening date, or (b) was timely sent by mail or authorized telegram to AFN and was lost, delayed or mishandled by AFN staff or the U.S. Postal Service.

**5.2.7 Waiver of Formalities.** In determining the successful bidder, the Vice President of Administration may waive formalities, and allow correction of obvious typographical or clerical errors. Correction of bidder or offeror errors in judgment shall not be permitted.

**5.2.8 Award.** Award will be made to the lowest responsible, responsive bidder, subject to applicable preference requirements. Payment discounts will not be used to determine the low bid unless the Vice President of Administration determines prior to solicitation that the discount can

and will be taken at time of payment by AFN. If equal or low bids are received, the Vice President of Administration may select the contractor by documented and witnessed drawing of lots.

**5.2.9 Single Bid.** If only one bid is received, or only one responsible bidder has submitted a bid, the Vice President of Administration may, at his/her option, convert the competitive process to a negotiated procurement. The award will be made only if the single bidder is determined to be responsible and the price bid or offered is determined by the Vice President of Administration to be fair and reasonable.

## **6. COMPETITIVE PROPOSALS (Requests for Proposals) or NEGOTIATED PROCEDURES**

**6.1 Standard for Use.** Competitive proposals may be used, with the prior written approval of the Vice President of Administration, where the procurement decision will be based on other factors in addition to price and it is determined to be in the interests of AFN to procure services or goods other than by the Sealed Bid method.

**6.2 Procedure.** Competitive proposals must be solicited as follows:

(a) **Advertisement.** A written request for proposal ("RFP") must identify the principal evaluation factors and their relative importance, including any preference. A summary of the RFP must be advertised in publications selected with the goal of obtaining an adequate number of qualified responses while limiting advertising costs. Insurance and bonding requirements, if any, will be stated in the RFP. The RFP must state the date and time for receipt of proposals. The date and time will be set so as to allow sufficient time for an adequate number of qualified responses to be submitted.

(b) **Evaluation.** A method for evaluating the proposals received will be established and documented in advance of advertisement.

(c) **Award.** Awards will be made to the qualified, responsible, responsive firm whose proposal is most advantageous to AFN, with qualifications, price and other factors considered.

(d) **Negotiation.** AFN may negotiate with one or more top-ranked offerors whose proposal indicates that the offeror is potentially qualified. If AFN negotiates with more than one offeror, no other offeror will be provided price information about another offeror's proposal, pending completion of negotiations and execution of the contract.

## **7. EXCEPTIONS TO COMPETITIVE PROCUREMENT METHODS**

**7.1 Non-Competitive Procurements.** AFN may use noncompetitive methods of procurement (i.e., methods other than Small Purchase Procurement, Competitive Negotiations or Sealed Bid method set out in Paragraphs 4 and 6 above) upon the President's or her designee's written determination that full competition is not feasible, or is contrary to AFN's interests. Written approval of the President will be required for noncompetitive procurements which exceed \$10,000. If federal or state funding is involved in the procurement it may be necessary to obtain approval from the appropriate governmental agency and also state in the justification that the appropriate agency has authorized noncompetitive solicitation. The following circumstances, among others, may support such a determination:

(a) Emergency circumstances. These include, without limitation, circumstances where immediate delivery or performance of the service is required; a compelling need or unusual urgency for a supply or service is present, or the time delays associated with regular procurement procedures would be contrary to AFN's best interests.

(b) Sole Source of supply. The Vice President of Administration, or for procurements which exceed \$10,000 the President, has determined that only one source of supply or services is available or qualified.

(c) Unsolicited Proposals. An unsolicited proposal to provide services or supplies is offered, and it is determined that: (1) the proposal is a unique approach not otherwise or previously available to AFN; (2) negotiating a noncompetitive contract is in the best interest of AFN; (3) the offeror invested substantial initiative, creativity, ingenuity, or inventiveness in presenting the offer, such that advertising competitively would be inequitable or unfair; and (4) a fair price can be negotiated. An independent price analysis must be performed. Written approval of the President must be obtained prior to acceptance of an unsolicited proposal.

**7.2 Professional Services** Procurement of professional services, as defined below, are not subject to the competitive procurement methods in Paragraphs 4, 5 and 6.

## **8. REQUIRED CLAUSES FOR CONSTRUCTION CONTRACTS**

(a) Alaska Native/American Indian Preference Clause.

(b) Copeland "Anti Kickback" Act (18 U.S.C. 874) clause, as supplemented in Department of Labor regulations (29 CFR Part 3)

(c) (for contracts over \$2,000) Davis-Bacon Act clause (40 U.S.C 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)

## **9. CONTRACT TERMINATION**

**9.1 Termination.** Unless specifically waived by the President or her designee, all contracts shall contain a termination for convenience clause, in addition to termination for default provisions. Written approval by the Procurement President or her designee will be obtained prior to issuance of any termination notice, and the President shall effectuate terminations when termination is found to be in AFN's best interest.

**9.2 Termination for Default.** All terminations for default will comply with the applicable contract clause and applicable law, which shall supersede any inconsistent provisions of this Policy.

## **10. PROTEST PROCEDURES**

Potential contractors or suppliers who wish to protest awards by AFN will submit their complaints in accordance with the following procedure:

**10.1 Written Protest Required; Time for Filing.** A bid protestor must file a written statement, describing the protest, with the Comptroller. The Comptroller will consider all protests whether submitted before or after award. Protests based on alleged improprieties in any type of

solicitation which are apparent before bid opening or the closing date for receipt of proposals must be filed before bid opening or before the closing date for receipt of proposals. In all other cases, protests must be filed no later than ten (10) calendar days after the basis of the protest is known or should have been known, whichever is earlier.

**10.2 Comptroller's Final Decision.** The Comptroller shall determine the issues raised by the protest and notify the protestor of his/her decision within fifteen (15) days after receipt of the written protest, unless additional time is needed for administrative reasons. The decision of the Comptroller will be final unless appealed in accordance with this policy. Unless expressly stated otherwise in the solicitation the Protestor's sole monetary remedy in a bid protest shall be recovery of bid preparation costs reasonably and necessarily incurred during the preparation of the bid.

**10.3 Appeal of Comptroller 's Decision.** If the protestor is dissatisfied with the decision of the Comptroller , the protestor may, within fifteen (15) calendar days, submit an appeal to the AFN President. On appeal, the President may revise, reverse, or ratify the decision of the Comptroller . If the President elects to conduct further investigation, she will notify the protestor within fifteen (15) calendar days after receipt of the appeal notice.

**10.4 Procurement Action Pending Protest Decision.** Unless it is in the best interest of AFN to delay the award, the Vice President of Administration shall proceed with contract award prior to decision in a pending protest.

## 11. CONTRACT DISPUTES

**11.1 Timing.** AFN contracts shall provide that all contractor claims from disputes arising under a contract or its performance shall be submitted to the Comptroller no later than thirty (30) days after the dispute arises. This provision shall not reduce a contractor's obligation to provide prompt notice of newly discovered conditions, to submit change order requests or claims, or to timely provide other notices, requests or claims which may be required or authorized on a different time frame by the implied or express provisions of the contract.

**11.2 Contents.** Contract claims for relief must be in writing. A claim must specifically identify the nature of the claim, provide the factual and legal basis for the claimed relief, cite the applicable contract provisions, and state the specific remedy requested.

**11.3 Response.** The Comptroller will issue a decision within sixty (60) calendar days after date of receipt of a request for final decision unless additional time is required for administrative reasons. The decision of the Comptroller shall be final unless appealed in accordance with this policy.

**11.4 Appeal.** If the contractor is dissatisfied with the Comptroller's decision, he/she may file a written appeal to the President no later than twenty (20) calendar days after date of receipt of the Comptroller's decision. The appeal must identify the reason(s) alleged as to why the Comptroller's decision is in error.

On appeal, the President may revise, reverse, or ratify the decision of the Comptroller . If the President elects to conduct further investigation, he/she will notify the contractor within sixty (60) calendar days after receipt of the appeal notice. The President's written decision in the appeal will be final.

**11.5 Other Dispute Resolution Mechanisms.** A contract may specifically provide for dispute resolution in a manner which supplements or modifies this procedure. To the extent practicable, the contract procedure and this Policy will be construed together. In the event of irreconcilable differences, the contract will govern. The Comptroller may propose alternative dispute resolution procedures including mediation or arbitration to resolve any contract dispute.

## **12. DEFINITIONS**

**12.1 Alaska Native/American Indian.** A person who is a member of a Tribe or is a person recognized by the federal government as eligible for the special programs, services, or rights provided by the federal government to Alaska Natives because of their status as Alaska Natives, including any person who is a "Native," as that term is defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1601(b), or the lineal descendant of a Native.

**12.2 Alaska Native/American Indian Entity.** Any of the following entities:

- (1) a commercial, industrial, or business activity established or organized for the purpose of profit that is no less than 51 percent owned, controlled, and actively managed in its entirety by Alaska Natives or American Indians, including ANCSA corporations and their subsidiaries.
- (2) the governing body of any Indian tribe or an entity established or recognized by such governing body.
- (3) a nonprofit that is 51 percent controlled and actively managed in its entirety by Alaska Natives or American Indians for the benefit of Alaska Natives or American Indians.

**12.3 Comptroller.** An individual who is designated in writing by the President to exercise delegated procurement authority and to execute AFN procurement transactions and contracts.

**12.4 Claim.** A written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

**12.5 Invitation for Bids (Sealed Bidding) ("IFB").** Solicitation for sealed bidding, where selection is based primarily on price.

**12.6 Effective Date of Termination.** The date on which the notice of termination requires the contractor to stop performance under the contract.

**12.7 Major Procurement Transaction.** Any procurement of services, supplies, or property of more than \$100,000, or \$100,000 per year for contracts extending over more than a 12-month period.

**12.8 Procurement.** The process of obtaining or acquiring property (personal, real, and supplies) services, or construction under a contract, contracts, or other purchase arrangements between AFN and parties external to AFN, including the acquisition, purchase or use of governmental services or supplies.

**12.10 Vice President of Administration.** The positions at AFN, if any, which are assigned responsibility for administering procurements.

**12.11 Professional Services.** Any professional, technical or consultant services which are predominately intellectual in character, including analysis, evaluation, predicting, planning or recommendation resulting in the production of a report or the completion of a task. The term embraces those professions having a recognized status based upon acquiring professional knowledge through prolonged study.

**12.12 Protest.** A formal objection against award or proposed award of a contract by actual or prospective bidder or offeror whose direct economic interest would be affected by the award of or failure to award a particular contract.

**12.13 Request for Proposals ("RFP").** Solicitation for proposals where price is not the sole determining factor in selection.

**12.14 Responsive Bidder.** A firm or person who has submitted a bid that conforms in all material respects to the solicitation.

**12.15 Service.** The furnishing of labor, time or effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. It includes, but is not limited to, the following: maintenance/replacement of equipment, maintenance/repair of real property, construction, housekeeping, telecommunications, transportation, and research and development.

**12.16 Small Purchase.** A procurement of services, supplies, or property that does not exceed \$100,000, in its total amount.

**12.17 Specification.** A description of the physical or functional characteristics, or of the nature of a supply, service, professional service or construction project. It may include requirements for licensing, inspecting, testing and delivery.

**12.18 Tribal Organization.** The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

**12.19 Tribe.** Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.