

Changes to the ANTHC Procurement Policy

Section 7.3 General Exceptions is added, see pages 9 and 10.

Section 7.3 is list of exceptions to the competitive procurement process. This section is added because, in general, these items do not require competition for the lowest cost acquisition. These items generally require the completion of a non-competitive justification. Adding this section is intended to speed up the procurement and acquisition process.

These items still require contractual agreements to be negotiated by the ANTHC Contracting department.

**Tom Erickson
Procurement Manager**

ALASKA NATIVE TRIBAL HEALTH CONSORTIUM PURCHASING AND PROCUREMENT POLICY

1. SCOPE

The ALASKA NATIVE TRIBAL HEALTH CONSORTIUM (ANTHC) is a nonprofit Native organization established by Section 325, P.L. 105-83, 111 Stat. 1543, 1579-99 for the purpose of managing all statewide health services and programs provided by the Indian Health Services through the Alaska Native Medical Center and the Alaska Area Office. As a Native organization and non-profit corporation, ANTHC's procurement practices are generally governed by prudent business standards and the Indian Self-Determination and Education Assistance Act (ISDEA), P.L. 93-638, as amended (codified at 25 U.S.C. § 450 *et seq.*).

ANTHC's Purchasing and Procurement Policy is intended to secure open, competitive, and conflict-free procurement, consistent with the ISDEA.

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 ANTHC. The authority to implement this policy is delegated to the Chairman/President, who shall in turn re-delegate it to the CEO. The CEO may, in turn, re-delegate this authority to the Procurement Manager of ANTHC. The CEO may withdraw the procurement authority of the Procurement Manager or designee in writing at any time without seeking prior approval of the Board of Directors. This policy is designed to achieve maximum uniformity of procurement practices throughout the ANTHC.

1.2 Procedures. The Procurement Manager shall issue uniform procurement procedures to supplement this policy. Compliance with ANTHC procurement guidelines is required of all ANTHC employees. Violation of the uniform procurement procedures may result in disciplinary action up to and including dismissal from employment.

1.3 Compliance with Other Procurement Requirements. Nothing in this Policy shall prevent ANTHC from complying with the procurement and program requirements of federal or state agencies, or with the terms and conditions of any grant, contract, gift, or bequest as required, and consistent with, applicable state or federal law.

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

2. ADMINISTRATION

2.1 Authority to Delegate (a) Except as otherwise provided by the Board of Directors or this Policy, the CEO and the Procurement Manager may, in their discretion, delegate their authority under this policy to other employees of ANTHC. A delegation of authority must be in writing. Any authority so delegated may be further delegated unless otherwise prohibited by law or by the initial delegation.

(b) The CEO and the Procurement Manager may revoke a delegation of authority at any time by issuing a written notice to the employee delegated authority under this section.

(c) An employee delegated authority under this section may exercise that authority only in accordance with the written delegation, and these policies. Persons exercising procurement authority under these delegations are required to provide documentation to the Procurement Manager or designee for inclusion in the corporate procurement files maintained in the Procurement Office.

2.2 Responsible Contractors. ANTHC 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 ANTHC), and financial, administrative, and technical resources. ANTHC 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. ANTHC may use informal methods to assess and evaluate a proposed contractor's past performance for ANTHC or for the IHS at ANTHC facilities. If a contractor is found non-responsible due to past performance with ANTHC or IHS, the contractor's exclusive remedy shall be the protest procedure provided in this Policy.

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

2.4 Use of Governmental or Consolidated Sources of Supply. ANTHC may procure equipment and supplies without competitive solicitation, through federal, state or local government sources of supply. (See Intergovernmental Sources)

2.5 Documentation. All procurements must be documented in writing. Current forms, formats, and procedures for procurement and contracting will be prepared by the Procurement Manager and updated as appropriate. The Procurement Manager 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 ANTHC to retain its procurement documents for a different period of time, all other 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.

2.6 Cost Estimates and Analysis; Cost and Price Analysis; Cost Plus Contracting. A cost or price analysis will be performed in connection with procurement actions, including contract modification, in the manner determined by the Procurement Manager. The method and degree of analysis depends on the facts surrounding the particular procurement. In general, independent ANTHC cost estimates will be made for large procurements. Where appropriate, an analysis will be made of lease versus purchase alternatives to determine the most economical approach. The "cost-plus-a-percentage-of-cost" method of contracting will not be used.

2.7 Cancellation of Solicitations. Upon the Procurement Manager's determination that cancellation of a solicitation is in ANTHC's best interest, the affected solicitation (whether formal or informal) will be canceled. Cancellation may be based upon a change in ANTHC'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 Procurement Manager to be in the best interest of ANTHC.

2.8 Rejection of All Bids or Proposals. ANTHC may reject any and all bids or proposals received under any procurement method upon written determination by the Procurement Manager or designee setting forth valid justification for rejection.

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

2.10 Confidentiality. During the procurement process, information contained in proposals will be confidential, and will not be publicly disclosed or available until the Procurement Manager or designee determines that disclosure will not prejudice the open and competitive procurement process. For example, the Procurement Manager 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 ANTHC 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 extent authorized by prevailing law or ANTHC's Compact with the Indian Health Service. In administering State grants or programs, or other procurements not governed by the ISDEA, application of Alaska Native/American Indian Preference is discretionary.

3.2 List of Alaska Native/American Indian Entities. To promote maximum participation by qualified Alaska Native/American Indian entities, ANTHC 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 Procurement Manager 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 ANTHC does not limit the request for proposals (RFP) to Alaska Native/American Indian entities, the evaluation method will include an evaluation point preference for such firms in an amount to be determined in advance of the solicitation. When ANTHC does not limit invitation for bids (IFB) solely to Alaska Native/American Indian entities, the IFB shall contain a 5% bidder's preference for Alaska Native/American Indian entities in which the aggregate amount of the contract is anticipated to be between \$200,000.00 and \$500,000.00, including all option years. When the anticipated aggregate amount is less than \$200,000.00, including all option years, a 10% bidder's preference shall be included in the solicitation.

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

3.6 Innovative Preference Methods. Nothing in this section (Alaska Native/American Indian Preference) will be construed to limit the discretion of the Procurement Manager or designee to use other innovative preference methods within the limits of applicable law, including (a) use of preference points for a contractor's commitment to hire Alaska Native/American Indian trainees or subcontractors, (b) requiring project-specific hiring goals as a condition of qualification, (c) establishing core crew requirements, (d) using resources such as TERO officers to identify qualified candidates. Innovative preference methods used in a procurement must be stated in the advertisement for the contract and comply with applicable state and federal law.

4. SMALL PURCHASE PROCEDURES

4.1 General Procedure. For procurement of services, supplies, or property ANTHC may use small purchase procedures. Under such procedures, competitive price or rate quotations will be obtained from two or more qualified sources to determine fairness and reasonableness of price.

4.2 Exceptions. Simplified purchase procedures maybe used for non-competitive purchases under \$5,000, provided that a determination of fairness and reasonableness of price is made. The following types of transactions need not be individually competed.

(a) Delivery Orders placed against an IHS or other federal supply service center;

(b) GSA or VA contract, or Delivery Orders placed against an ANTHC, GSA, VA or other federal contract;

(c) Purchases based on regulated utility rates, published transportation fares, or published freight/carrier tariffs.

4.3 Blanket Purchase Agreements. Blanket Purchase Agreements (BPA) may be used to the extent approved by the Procurement Manager. Each Agreement must state the total dollar limit of the agreement and the maximum dollar limit per call as directed by the Procurement Manager. Repetitive calls on the same date shall not be used for purposes of avoiding agreement dollar limitations.

5. Competitive Proposals (Requests for Proposals) or Negotiated Procedures

5.1 Standard for Use. Competitive proposals are used where the procurement decision will be based on other factors in addition to price.

5.2 Procedure. Competitive proposals must be solicited as follows:

(a) Advertisement. The written request for proposal 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 ANTHC, with qualifications, price, and other factors considered.

(d) Negotiation. ANTHC may negotiate with one or more top-ranked offerors whose proposal indicates that the offeror is potentially qualified. If ANTHC 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.

(e) [DELETED FOR FURTHER REVIEW]

6. SEALED BIDS (Invitation for Bids)

6.1 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 Procurement Manager may negotiate the procurement under procedures established pursuant to this policy.

6.2 Procedure. Sealed bids shall be solicited as follows:

6.2.1 Advertisement. The Invitation For Bid (IFB) will define the items or services sought and provide notice sufficient to insure timely responses by qualified bidders. 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.

6.2.2 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.

6.2.3 Modifications and Withdrawals: The offeror may modify or withdraw a bid only by delivering a written notice of the modification or withdrawal to the Procurement Manager or designee 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 Procurement Manager or designee. In using facsimile communications for this purpose, the proposed contractor assumes all risks associated with faxing documents to ANTHC, including (1) loss or misrouting (2) failure in transmission (3) staff error (4) unreadability (5) delayed delivery to the Procurement Manager or designee.

6.2.4 Use of facsimile: Unless specifically authorized by the solicitation, faxed bids are ineffective and unacceptable.

6.2.5 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 Procurement Manager 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 ANTHC and was lost, delayed or mishandled by ANTHC staff or the U.S. Postal Service.

6.2.6 Waiver of Formalities. In determining the successful bidder, the Procurement Manager or designee may waive formalities, and allow correction of obvious typographical or clerical errors. Correction of bidder or offeror errors in judgment shall not be permitted.

6.2.7 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 Procurement Manager or designee determines prior to solicitation that the discount can and will be taken at time of payment by ANTHC. If equal or low bids are received, the Procurement Manager or designee may select the contractor by documented and witnessed drawing of lots.

6.2.8 Single bid. If only one bid is received, or only one responsible bidder has submitted a bid, the Procurement Manager or designee 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 Procurement Manager or designee to be fair and reasonable.

7. EXCEPTIONS TO COMPETITIVE PROCUREMENT METHODS

7.1 Procurement Manager Determination. ANTHC may use noncompetitive or limited competition methods of procurement upon the Procurement Manager's written determination that full competition is not feasible, or is against ANTHC's interests. Written approval of the CEO will be required for noncompetitive procurements which exceed \$25,000. 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) Exigent or 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 ANTHC's best interests.

(b) Sole Source of supply. The Procurement Manager, or for procurements which exceed \$25,000 the CEO, 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 ANTHC; (2) negotiating a noncompetitive contract is in the best interest of ANTHC; (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 CEO must be obtained prior to acceptance of an unsolicited proposal.

7.2 Economic Review. Cost or price analysis will be performed in connection with all noncompetitive procurements in order to determine the fairness and reasonableness of price and/or allowability of contract costs. Profit may be analyzed independently of other costs.

7.3 General Exceptions. The following list of exemptions need not be competitively solicited, provided that a cost or price analysis is completed under 7.2 Economic Review.

- (1) Professional Services Agreements with medical doctors, nurses, and dentists;
- (2) Professional Service Agreements for attorneys with approval from the ANTHC legal department;
- (3) guest speakers or performers for an educational or cultural activity;

- (4) Service Agreements with professional employment search firms.
- (5) purchases of curatorial and conservation services to maintain, preserve, and interpret objects of art; and items having cultural, historical, or archaeological significance to the ANTHC;
- (6) purchase of educational and training classes.
- (7) the purchase of books, book binding services, newspapers, periodicals, audio-visual materials, network information services access, professional memberships, archival materials, objects of art, and items for museum or archival acquisition having cultural, historical, or archaeological significance;
 - (A) "archival materials" means the noncurrent records of an agency that are preserved after appraisal because of their value;
 - (B) "audio-visual materials" means non-book prerecorded materials, including tapes, slides, films, videos, compact discs and other media that require the use of equipment to render them usable;
 - (C) "network information services" means a group of resources which must be obtained through the internet
- (8) expenditures when rates are set by law or ordinance;
- (9) procurements of contracts with the media, such as newspapers, television and radio for advertising purposes (contracts with advertising firms are not exempt);
- (10) contracts for travel services, including airplane travel, hotel accommodations, and travel agency services, but excluding motor vehicle rentals;
- (11) contracts with university and colleges.
- (12) Purchase of native/Indian artwork for display or cultural events.
- (13) Purchase of mineral materials (such as rock, top soil, sand or gravel) under the following conditions:
 - (A) The agreement is between ANTHC and the community or Regional Corporation in a community where ANTHC is building a facility and
 - (B) The mineral material is owned by the community or the Regional Corporation for the community.

8. INTERGOVERNMENTAL SOURCES

8.1 General Preference. To foster greater economy and efficiency, ANTHC will enter into federal, state, local, or tribal intergovernmental agreements for procurement or use of common property and services (including construction) to the maximum extent feasible. ANTHC may require its contractors, subcontractors and service providers to use such supplies and property.

8.2 Federal Excess and Surplus Property. ANTHC requires the use of Federal excess and surplus property in lieu of purchasing new property to the maximum extent feasible, consistent with the goal of reducing costs to ANTHC. It is the responsibility of the Procurement Manager, with the cooperation of the Property Management office, to investigate the availability of excess federal property, supplies and equipment.

8.3 Sources of Supply. ANTHC procurement staff are encouraged to satisfy requirements for property, supplies or services through the sources listed below:

- (a) Excess from Federal Agencies.
- (b) Mandatory Federal Supply Schedules.
- (c) Optional use Federal Supply Schedules.
- (d) Alaska Native/American Indian sources.
- (e) Federal Agency Inventories/Services from IHS, GSA, VA, DOD, or other federal agencies.
- (f) Alaska Federal Health Care Partnership

9. 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)

10. CONTRACT TERMINATION

10.1 Termination. Unless specifically waived by the Procurement Manager, all contracts shall contain a termination for convenience clause, in addition to termination for default provisions. Written approval by the Procurement Manager will be obtained

prior to issuance of any termination notice, and the Procurement Manager shall effectuate terminations when termination is found to be in ANTHC's best interest.

10.2 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.

11. STANDARDS OF CONDUCT

11.1 Anti-competitive Contractor Conduct. If any contractor or prospective contractors of ANTHC, including their officers, employees, representatives, agents, or consultants, take the following actions with respect to any ANTHC employee, officer, Manager, or agent who may have influence over or be involved in administering an ANTHC procurement, such action may be cause for suspension or debarment from further participation in ANTHC procurement contracts for a period of time determined by the Procurement Manager to be justified in view of the seriousness of the conduct:

(a) Make, directly or indirectly, any offer or promise of future employment, or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunities with the purpose of influencing procurement decisions;

(b) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other item of value;

(c) Solicit or obtain, directly or indirectly, any proprietary or nonpublic source selection information relating to an existing or potential procurement.

11.2 Employee Conflicts of Interest and Standards of Conduct.

11.2.1 Association with supplier representatives at luncheons, dinners, or business organization meetings are helpful in establishing better business understanding, and is neither questionable nor unethical, provided the Buyer keeps him/herself free of obligations. To ensure this, our Purchasing personnel are expected to act as hosts on occasion, and such efforts are to be a part of their operating expenses.

11.2.2 Conflicts prohibited. No employee, officer, or agent, of ANTHC will participate in the selection or award of a contract or purchase if such participation constitutes a conflict of interest. In addition, all employees, officers, and agents will diligently guard against the appearance of impropriety or conflict of interest, and will disclose in advance any potential conflicts of interest to their supervisor for review.

11.2.3 Conflict defined. A conflict arises when any of the following has a substantial financial or other interest in the firm selected by ANTHC for procurement or contract award:

- (a) The employee, officer or agent;
- (b) Any member of his or her immediate family, or similarly situated member of his household;
- (c) His or her partner; or
- (d) An organization which employs or is about to employ any of the above.

A "substantial financial or other interest" includes any ownership in a private business entity, partnership or corporation; ownership of 5% or more of a publicly-held or traded entity; serving as an employee, officer or other agent for the firm selected for award; or having a concrete and substantial expectation of future employment or financial affiliation with the firm selected for award. An interest valued at \$300 or less is not considered substantial.

11.2.4 General Disclosure and Waiver of conflicts. A potential conflict of interest may be waived by the CEO, but only after full disclosure and review, and a determination (1) that the potential conflict will not affect or prejudice the procurement in any manner and (2) that waiver is in the best interests of the corporation. If the potential conflict involves an interest of the CEO, only the Board of Directors is authorized to waive the conflict, and the basis for any waiver, must be documented in writing, or in the minutes of the Board.

11.2.5 ANCSA Corporation interests. A shareholder of an ANCSA corporation is not considered to have a substantial financial or other interest in that corporation, unless the shareholder is also an employee of the ANCSA corporation or receives in excess of \$2,000 per year in compensation as director, consultant, or agent of the corporation. In such cases, the affected ANTHC employee, officer, or agent must disclose the ANCSA interest to the Procurement Manager or to the CEO, who is authorized to waive the conflict on terms and conditions deemed appropriate. If the ANCSA interest is held by the CEO, it is deemed waived so long as (a) the interest is generally known to the Board of Directors or (b) the CEO disclosed such interest to the Board of Directors at the time of appointment.

11.3 Enforcement. In the event of violation of this Policy, or to avoid the appearance of impropriety, the Procurement Manager may:

(a) Require employees, officers or agents of ANTHC to excuse themselves from the affected procurement.

(b) Cancel, rescind, terminate or void any affected contract, solicitation, purchase order, or other procurement opportunity, for cause or convenience, as determined by the Procurement Manager.

(c) Recover the amounts expended and property transferred by ANTHC to the contractor;

(d) If the violation was innocent or did not actually prejudice the integrity of the procurement process, elect to continue the process after recusal by the conflicted ANTHC employee, official, or agent, or terminate the affected contract for convenience;

(e) Advise the appropriate Department head if an employee, officer, or agent of ANTHC violated this Policy and is subject to discipline, up to and including immediate dismissal for cause.

11.4 Limitations on use of federal or state funds for lobbying. ANTHC will not use state or federal grant funds to pay for lobbying activities designed to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress. Before entering into any service contract which may involve lobbying or similar activities, a legal opinion must be obtained to ensure that such contract is not unlawful and will not affect ANTHC's status as a Self-Determination contractor or compactor or its status as a non-profit 501(c)(3) corporation.

12. PROTEST PROCEDURES

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

12.1 Written Protest Required; Time for Filing. A bid protestor must file a written statement, describing the protest, with the Procurement Manager. The Procurement Manager 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.

12.2 Procurement Manager's Final Decision. The Procurement Manager 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 Procurement Manager will be final unless appealed in accordance with this policy.

12.3 Appeal of Procurement Manager's Decision. If the protestor is dissatisfied with the decision of the Procurement Manager, the protestor may, within fifteen (15) calendar days, submit an appeal to the CEO. On appeal, the CEO may revise, reverse, or ratify the decision of the Procurement Manager. If the CEO elects to conduct further investigation, he/she will notify the protestor within fifteen (15) calendar days after receipt of the appeal notice.

12.4 Procurement Action Pending Protest Decision. If in the best interest of ANTHC, the Procurement Manager may proceed with contract award prior to decision in a pending protest. In deciding whether to proceed with the contract award, the Procurement Manager should consider all potential adverse consequences, including liability concerns as a result of the chosen course of action.

12.5 Effect of Protest Procedure. Nothing in this protest procedure or in this Policy may be construed to impose a duty on ANTHC or to waive or diminish any protection ANTHC may have under the doctrine of sovereign immunity or Public Law 101-512 (set out in a note following 25 U.S.C. § 450f), nor shall this protest procedure or any part of this Policy be construed to imply any liability on the part of ANTHC for any failure to consider all bids, proposals or protests fairly, accurately, or honestly.

13. CONTRACT DISPUTES

13.1 Timing. ANTHC contracts shall provide that all contractor claims from disputes arising under a contract or its performance shall be submitted to the Procurement Manager or designee 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.

13.2 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.

13.3 Response. The Procurement Manager will issue a decision within thirty (30) calendar days after date of receipt of a request for final decision unless additional time is required for administrative reasons. The decision of the Procurement Manager shall be final unless appealed in accordance with this policy.

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

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

13.5 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 Procurement

Manager may propose alternative dispute resolution procedures including mediation or arbitration to resolve any contract dispute.

13.6 Effect of Dispute Procedure. Nothing in this dispute procedure or in this Policy may be construed to impose a duty on ANTHC or to waive or diminish any protection ANTHC may have under the doctrine of sovereign immunity or Public Law 101-512 (set out in a note following 25 U.S.C. § 450f), nor shall this dispute procedure or any part of this Policy be construed to imply any liability on the part of ANTHC for any failure to consider all contract disputes fairly, accurately, or honestly.

14. DEFINITIONS

14.1 Alaska Native/American Indian. Any of the following natural persons:

- (1) Any citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof, including any Native as so defined either or both of whose adoptive parents are not Natives, and including, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group; or
- (2) Any person of Indian descent who is a member of any Federally recognized Indian Tribe, or any descendant of a person of Indian descent who is or was (if deceased) a member of any Federally recognized Indian Tribe. For purposes of this subsection, Eskimos, Aleuts and other aboriginal peoples of Alaska shall be considered Indians.

14.2 Alaska Native/American Indian Entity. Any of the following entities, as defined in this Section:

- (1) An Indian Organization; or
- (2) An Indian Organization Subsidiary; or
- (3) An Indian-Owned Economic Enterprise; or
- (4) A Native Corporation; or
- (5) A Native Corporation Subsidiary.

14.3 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.

14.4 Contracting Officer. An individual who is designated in writing by the Procurement Manager or the CEO to exercise delegated procurement authority and to execute ANTHC procurement transactions and contracts.

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

14.6 General Services Administration (GSA). The federal agency which acquires numerous commonly used property items and services and stocks the supplies at depots and stores throughout the United States for use by federal agencies, or other eligible entities such as Tribal Contractors.

14.7 Indian Organization. Any of the following entities, as defined in this Section:

- (1) An Indian Tribe, or
- (2) A Tribal Organization, or
- (3) An Inter-Tribal Consortium.

14.8 Indian Organization Subsidiary. Any corporation, non-profit, JV, subsidiary, partnership, LLP, LLC or other business association that is greater than 50% actively managed by an Indian Organization, that is greater than 50% owned by an Indian Organization, that expends at least 51% of the service costs of performing the contract on AN/AIs or AN/AI Entities, and is greater than 50% of whose profits (if any) inure to the benefit of an Indian Organization. These respective requirements shall be met if:

- (1) Greater than 50% of the total voting power of the governing board or its equivalent is Indian Organization-controlled; and
- (2) Greater than 50% of the total equity of the subsidiary is Indian Organization-contributed, with "equity" for purposes of this subsection to include
 - (a) the market value of the subsidiary's stock and all other capital, and
 - (b) the market value of the subsidiary's real and personal property; and
- (3) At least 51% of the subsidiary's service costs under the contract is expended on AN/AIs or AN/AI Entities, to include the cost of employee salaries and benefits and the cost of service subcontractors during the term of a contract; and
- (4) Greater than 50% of the profits (if any) inure to the benefit of an Indian Organization.

14.9 Indian-Owned Economic Enterprise. Any Indian-owned corporation, non-profit, JV, subsidiary, partnership, LLP, LLC or other business association that is greater than 50% actively AN/AI managed, that is greater than 50% AN/AI owned, that expends at least 51% of the service costs of performing the contract on AN/AIs or AN/AI Entities, and greater than 50% of whose profits (if any) inure to AN/AI benefit. These respective requirements shall be met if:

- (1) Greater than 50% of the total voting power of the governing board or its equivalent is AN/AI-controlled; and
- (2) Greater than 50% of the total equity of the enterprise is AN/AI-contributed, with "equity" for purposes of this subsection to include
 - (a) the market value of the enterprise's stock and all other capital, and
 - (b) the market value of the enterprise's real and personal property; and
- (3) At least 51% of the enterprise's service costs under the contract is expended on AN/AIs or AN/AI Entities, to include the cost of employee salaries and benefits and the cost of service subcontractors during the term of a contract; and

(4) Greater than 50% of the profits (if any) inure to AN/AI benefit.

14.10 Indian 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, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

14.11 Intergovernmental Acquisition. A procedure by which a federal, state, local or tribal agency that needs property or services (including construction) obtains them from another federal, state, local, or tribal agency (servicing agency).

14.12 Inter-Tribal Consortium. A coalition of two or more separate Indian Tribes that join together for the purpose of participating in self-governance under the Indian Self-Determination Act, including Tribal Organizations.

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

14.14 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.

14.15 Native Corporation. Any Alaska Native Claims Settlement Act Regional Corporation, Village Corporation, Urban Corporation or Group Corporation who's Settlement Common Stock and other stock held by holders of Settlement Common Stock and by Natives and descendants of Natives represents greater than 50% of both:

- (1) The total equity of the corporation, and
- (2) The total voting power of the corporation for the purposes of electing directors.

14.16 Native Corporation Subsidiary. Any corporation, non-profit, JV, subsidiary, partnership, LLP, LLC or other business association that is greater than 50% actively managed by a Native Corporation, that is greater than 50% owned by a Native Corporation, that expends at least 51% of the service costs of performing the contract on AN/AIs or AN/AI Entities, and is greater than 50% of whose profits inure to the benefit of a Native Corporation. These respective requirements shall be met if:

- (1) Greater than 50% of the total voting power of the governing board or its equivalent is Native Corporation-controlled; and
- (2) Greater than 50% of the total equity of the subsidiary is Native Corporation contributed, with "equity" for purposes of this subsection to include
 - (a) the market value of the subsidiary's stock and all other capital, and
 - (b) the market value of the subsidiary's real and personal property; and
- (3) At least 51% of the subsidiary's service costs under the contract is expended on AN/AIs or AN/AI Entities, to include the cost of employee salaries and

- benefits and the cost of service subcontractors during the term of a contract;
and
(4) Greater than 50% of the profits (if any) inure to the benefit of a Native Corporation.

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

14.18 Procurement Manager. The position at ANTHC which is assigned general responsibility for administering corporate-wide procurements.

14.19 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.

14.20 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.

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

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

14.23 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. A service may be either personal or non-personal; it can include services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. It includes, but is not limited to, the following: maintenance/replacement of equipment, maintenance/repair of real property, construction, housekeeping, advisory and assistance, operating government-owned equipment, facilities, and systems, telecommunications, architect-engineering, transportation, and research and development.

14.24 Small Purchase. A procurement of services, supplies, or property that does not exceed \$100,000.

14.25 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.

14.26 Supply Service Center. A supply warehouse established and operated by ANTHC from which ANTHC carries in stock and draws medical, administrative, housekeeping, or food supplies.

14.27 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.

14.28 Tribe. Any Indian Tribe, as defined in this Section.