

IGU Procurement Manual

Developed in Accordance with IGU Procurement Policy # 6

Last Revised 03/05/18
Last Board Review 02/22/2018

Table of Contents

1. Purpose 4

2. Policy 4

3. References..... 4

 3.1 Fairbanks North Star Borough Ordinances..... 4

 3.2 Alaska Statutes 4

 3.3 Other References..... 5

4. Definitions 5

5. Responsibilities (simply reference policy) 10

 5.1 As stated in IGU Procurement Policy the IGU Board will: 10

 5.2 As stated in IGU Procurement Policy the General Manager for IGU will: 10

 5.3 The Procurement Officer: 10

6. Procedures..... 12

 6.1 Funding Authorization and Application of IGU Procurement Procedures 12

 6.2 Delegations of Authority 12

 6.2.1 General..... 12

 6.2.2 Use of Contractors as Agents of IGU. 13

 6.3. Source Selection General Requirements 13

 6.3.1 Specifications and Requirements 13

 6.3.2 Contract Terms and Conditions..... 14

 6.3.4 Source Selection..... 14

 6.3.5 Exclusion of Prospective Contractor from Competition..... 14

 6.3.6 Construction Project Delivery Methods. 15

 6.3.7 Subcontractors on Construction or Professional Services Contracts 15

 6.3.8 Multiple Awards 15

 6.3.9 Bid, Payment, and Performance Bonds 16

 6.3.10 Notice of Request for Bids and Requests for Proposals 16

 6.3.11 Multi-step Solicitations 17

 6.3.12 Amendments or Extensions of a Solicitation 17

 6.3.13 Cancellation of the Solicitation or Rejection of all Bids or Proposals. 17

 6.4 Requests for Bids 18

 6.4.1 Conditions for Use 18

 6.4.2 Requests for Bids Format and Content 18

 6.4.3 Pre-opening Correction or Withdrawal of Bids..... 18

 6.4.4 Submission and Receipt of Bids..... 19

 6.4.5 Bid openings 19

 6.4.6 Correction and Withdrawal of Bids After Bid Opening 19

 6.4.7 Bid Evaluation..... 20

 6.4.8 Determination of Responsibility 21

 6.4.9 Rejection of Individual bids 21

 6.4.10 Contract Award Under Request for Bids & Tie Bids 21

 6.4.11 Notice of Intent to Award..... 22

 6.4.12 Request for Bid Records..... 22

 6.5. Request for Proposals 22

 6.5.1 Conditions for Use 22

 6.5.2 Request for Proposals Format and Content 23

 6.5.3 Submission, Receipt, and Treatment of Proposals..... 23

 6.5.5 Disclosure of Proposal Contents and Confidential Information 24

 6.5.5 Evaluation of Proposals 24

 6.5.6 Rejection of Individual Proposals 25

 6.5.7 Clarification of Offers During the Evaluation of Proposals 25

6.5.8	Proposal Discussions with Offerors During Evaluation of Proposals	26
6.5.9.	Best and Final Offers	26
6.5.10	Offeror Selection and Negotiations	26
6.5.11	Contract Award	27
6.5.12	Notice of Intent to Award.....	27
6.5.13	Records of Requests for Proposals	27
6.6	Small Procurements	27
6.6.1	Purchases No More than \$5000.....	28
6.6.2	Purchases No More Than \$25,000 but Greater than \$5,000	28
6.6.3	Purchases No More than \$50,000 but Greater than \$25,000	29
6.7	Limited Competition Procurements	29
6.8.	Emergency Procurements.....	30
6.9	Procurements Off Other Public Contracts	31
6.10	Single Source Procurements	31
6.11	Innovative Procurements.....	32
6.12	Contract Formation and Modification	32
6.12.1	Types of Contracts.....	32
6.12.3	Contract Contents.....	33
6.12.4	Standard Contract Clauses	33
6.12.5	Contract Term and Cancellation.....	34
6.12.6	Contract Approvals	34
6.12.7	Contract Amendments or Change Orders	34
6.12.8	Contract Administration & Records	35
6.13.	Legal and Contractual Remedies.....	36
6.13.1	Protest of Small Procurements.....	36
6.13.2	Protests of Requests for Bids and Request for Proposals	36
6.13.3	Administrative Appeal of Protest Decision and Hearings.....	37
6.13.4	Remedies on Protests or Appeals.....	38
6.13.5	Disputes and Dispute resolution.....	39
6.13.6	Contractor Notification and Requirements on a Contract Claim.....	39
6.13.7	Procurement Officer’s Decision:.....	40
6.13.8	Appeals on a Contract Claim	40
6.13.9	Hearings on Appeal of the General Manager’s Decision	41
6.14	Ethics in Procurement	41
6.15	Violations of Procurement Policies or Procedures	42
6.16.	Supply Management.....	43
6.16.1	Supply inventory Records	43
6.16.2	Surplus and Disposal of Supplies.....	43
6.17.	General Requirements.....	43
6.17.1	Requirement of Good Faith.....	43
6.17.2	Trade secrets and confidential technical data	44
6.17.3	Retention Schedule for Procurement Files.....	44
7.	Annual Review	44

- Appendix A – IGU Procurement Policy 06
- Appendix B -- Board Resolution Delegation of Authority to General Manager
- Appendix C – Board Memo Requesting Contract Approval – Example TBD
- Appendix D - Board Memo Requesting Approval of a Contract Amendment – Example TBD
- Appendix E - Delegation of Authority by General Manager – Examples TBD
- Appendix F + – Standard Forms and Process Check Lists – Examples TBD

1. Purpose

To define the processes for the Procurement of Supplies, Services, Construction, and Professional Services consistent with IGU Procurement Policy 06 and public Procurement practices.

2. Policy

It is the policy of IGU that all IGU Employees and authorized Agents recognize that IGU is an instrumentality of the Fairbanks North Star Borough (FNSB) and Procurement will be conducted in accordance with public Procurement procedures contained in the IGU Procurement Manual.

Reference IGU Policy No. 6. Procurement

3. References

The following is a list of references to existing ordinances and Alaska Statutes relevant to the Procurement procedures of IGU as a public corporation and an instrumentality of the Fairbanks North Star Borough.

3.1 Fairbanks North Star Borough Ordinances

- 1) Chapter 11 Natural Gas Utility
11.04.010 Establishment.
Establishes the Interior Alaska Natural Gas Utility as a public corporation and an instrumentality of the Fairbanks North Star Borough.

11.04.030 Application of Laws
States that IGU will comply with the Open Meetings Act and other applicable state laws. Borough ordinances not of general public application will apply only as specified herein or as specifically made applicable in any adopted ordinance. Ordinances not of general public application include the Procurement code, the personnel ordinance and the ordinance requiring a vote for revenue bonds.

3.2 Alaska Statutes

- 1) AS - Public Records Act. AS 40.25.100 – 40.25.220 IGU as a public corporation and an instrumentality of the Fairbanks North Star Borough is subject to the Public Records Act, A.S 40.25.100-295 and as such, unless specifically provided otherwise, the Procurement records of IGU are open to inspection by the public.
- 2) Title 36 Public Contracting
 - a) Chapter 36.05 Wages and Hour of Labor. Requires IGU to include requirements for minimum wage rates for Construction Contracts over \$25,000. If in doubt regarding the applicability of Davis Bacon on a project the Procurement officer should contact the Alaska Department of Labor for a determination prior to proceeding with the solicitation.
 - b) Chapter 36.25 Contractor's Bonds. Requires IGU to require payment and performance bonds on public works projects greater than \$100,000.
 - c) lii) Chapter 36.90.100. Professional Registration, requires that Contracts for architectural, engineering, land surveying, or landscape architectural services be performed by licensed and registered professionals in the State of Alaska.

- d) Chapter 36.90.200. Payment deadline and interest on Construction Contracts, requires IGU public works Contracts to include provisions for retainage and payment of interest.
 - e) Chapter 36.90.300. Indemnification, defense, and hold harmless provision in certain Construction-related Contracts. Requires specific indemnification language in Professional Services Contracts for engineering and architectural services.
- 3) The Uniform Commercial Code under Title 45, unless otherwise agreed to the purchase of Supplies will be subject to provisions of the Uniform Commercial Code.

3.3 Other References

- 1) The Procurement Officer needs to be aware that state, federal, or other funding entities may require IGU to take or refrain from taking specific actions with respect to Procurement as a condition of receiving and expending those funds. If there is a requirement in any funding agreement that conflicts with IGU policies or procedures, subject to approval by the Board in authorizing use of those funds, those requirements will prevail in accordance with the terms of the appropriation, grant, loan, or bond.

4. Definitions

AS – Alaska Statutes

Alternate Dispute Resolution - means a process that is voluntarily used to resolve issues in controversy; and may include negotiation, mediation, and arbitration

Bid Shopping – Is a practice where, after bid opening, the prime Contractor issued the notice of intent to award requests quotes from other subcontractors for the primary purpose of lowering his project cost to the detriment of subcontractors who may have participated with the prime Contractor in the bidding process.

Board – The IGU Board of Directors

Brand Name or Equal Specifications - means specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet IGU requirements, and which provides for the submission of equivalent products.

Brand Name Specification - means a specification limited to one or more items by manufacturers' names or catalogue numbers.

Business - means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Change Order - means a written order signed and unilaterally issued by the Procurement Officer, directing the Contractor to make changes which the "changes" clause of the Contract authorizes the Procurement Officer to order without the consent of the Contractor. Usually a standard provision in Contracts for Construction.

Confidential Information - means any information which is available to a Director, an Employee, or Agent of IGU only because of the individuals status as a Director, Employee, or Agent of IGU and is not a matter of public knowledge or available to the public on request.

Construction - means the process of building, altering, repairing, improving or demolishing any IGU infrastructure facility, including any IGU structure or building or other improvements of any kind to any real property owned by IGU or otherwise considered public property.

Construction Documents - means the drawings, specifications, contract, general provisions, bonds, amendments, and all other documents that identify the terms, conditions, and scope of a construction project.

Construction Management-at-Risk - means any Contract or process that permits the Procurement of a Construction manager, prior to the completion of design, to perform, manage or assist in the design and/or Construction functions.

Contract - means all types of agreements, regardless of what they may be called, for the Procurement or disposal of Supplies, Services, Professional Services, or Construction;

Contract Amendment/Amendment - means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a Contract agreed to by both parties in accordance with the "changes" or "amendments" clauses of the contract.

Contractor - means any Person having a Contract with IGU.

Cost Analysis - means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost and Pricing Data -- means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the Contractor in performing the Contract;

Cost-Reimbursement Contract - means a Contract under which a Contractor is reimbursed for costs which are allowable and allocable in accordance with the Contract terms and a fee or profit, if any.

Cooperative Purchasing - Procurement conducted by, or on behalf of, one or more public Procurement units (Federal agency, State of Alaska, or another local government).

Design-Build Construction Contract - means a Construction Contract between IGU and a design-builder to furnish architecture, engineering, and related design services, and to furnish Construction Services, including labor and materials;

Directors – Those individuals serving on the IGU Board of Directors.

Delegation of Authority – written authority by the Board or General Manager delegating responsibility to an Employee or Agent of the authority to take specific Procurement actions on behalf of IGU.

Digital Media – includes the use of the internet, e-mail, or other system for making information available in digital format as well as the documents in digital formats such as PDF, MS Word or other formats compatible with IGU digital systems.

Emergency Procurement - is a Procurement of Construction, Supplies, Services, or Professional Services when there exists an immediate threat to public health, welfare or safety, or an immediate threat to the assets of IGU including restoration of services as necessary to meet the requirements of service.

Employee/Agent of IGU - means any individual working for IGU under a labor agreement or any individual who may be working for a Contractor under Contract with IGU with delegated authority to act as an Agent for IGU.

Exempt Transactions – are agreements authorized by the Board through the budget process, direct delegations of authority, or other policies as identified in the Procurement Manual under section 6.1. 2) that are not subject to IGU Procurement Policies or the Procurement Manual .

Financial Interest - means an interest held by a Director, Employee, Agent of IGU, or an Immediate Family member of any of the proceeding individuals, which includes an involvement or ownership of an interest in a Business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a Person has received or expects to receive anything of value.

This definition, however, will be interpreted and applied in a manner that distinguishes between minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material.

FNSB – Fairbanks North Star Borough

General Manager – The General Manager of IGU

Hearing Officer - An individual who is selected by a process under section 6.13 to review claims by either party against the other, take testimony, conduct hearings, and provide recommendations.

IGU – Interior Gas Utility (formally known as Interior Alaska Natural Gas Utility)

Immediate Family - means spouse, child (step, biological or adoptive), parent (step, biological or adoptive), sibling, grandparent, father-in-law, mother-in-law, or a regular member of the individual's household.

Informal Request for Proposals - A process used to procure Supplies or Services that requires vendors or Contractors to submit a brief proposal as a response to an IGU need for Supplies or Services when it is in best interest of IGU to use factors other than cost to evaluate the response. Generally issued in a brief letter format and used for smaller dollar Procurements or emergencies.

Interested Party-- means an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a Contract Solicitation, the award of a Contract, or the failure to award a Contract;

Legal Services - means all services which constitute the practice of law.

Local Bidder - means a Person who (1) has a fixed physical place of business located in the Fairbanks North Star Borough; (2) which is staffed by the owner, an employee, or employees as their permanent employment year-round at that location in the normal course of business.

Minor Informality - means a matter of form rather than substance that is evident from the bid document, or is an insignificant matter that has a negligible effect on price, quantity, quality, delivery, or contractual conditions; and can be waived or corrected by IGU without prejudice to other bidders; it includes typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors that are evident from the bid document.

Nonresponsive - means a bid or proposal that does not conform in all material respects to the Solicitation;

Person - means any Business, individual, union, committee, club, other organization, or group of individuals.

Procurement - means buying, purchasing, renting, leasing, or otherwise acquiring Supplies, equipment, Services, or Construction for IGU and the functions that pertain to the obtaining of Supplies, equipment, service, or Construction, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration.

Procurement Manual - The manual developed by the General Manager, in consultation with legal counsel, that documents the Procurement procedures IGU uses when procuring Supplies, Services, Professional Services, and Construction.

Procurement Officer - means an individual acting within the limits of the delegated authority authorized to solicit, enter into, or administer Contracts for IGU and make written determinations with respect to them.

Professional Services - means professional, technical, or consultant's services that are predominantly intellectual in character.

Protest - A written objection by an Interested Party to a Solicitation or an award of a Contract with the intent of receiving a remedial result.

Protester - means an actual or prospective bidder, offeror, or Contractor who believes they are aggrieved in connection with the Solicitation or award of a Contract and who files a Protest;

Price Analysis - means the evaluation of price data, without analysis of the separate cost components and profit as in Cost Analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Public Notice – Means the process of informing the public through posting on IGU web site or other means regarding the Procurement actions of IGU as identified in Procurement Manual.

Price Data - means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontractor's prices.

Qualified Products List - means an approved list of Supplies, Services or Construction items, which, prior to competitive Solicitation, IGU has determined will meet the applicable specification requirements.

Reasonable and Adequate Procedures - means procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the Procurement, considering price, mission requirements, and available competition and includes contacting only one potential offeror in appropriate circumstances as set for in policy and procedures.

Request for Bids –is the process in 6.4 and means all documents, whether attached or incorporated by reference, utilized for soliciting sealed competitive bids.

Request for Proposals – is the process in 6.5 and means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Requests for Quotes – Is the process of requesting price quotes from vendors or Contractors for Supplies or Services where price is the primary bases of award. May be done verbally or in writing depending on the dollar value of the Procurement, and is generally done for smaller dollar Procurements or emergency purchase.

Responsible Bidder or Offeror - means a Person who has the capability in all respects to perform fully the Contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will ensure good faith performance.

Responsive Bidder or Offeror- means a Person who has submitted a bid or proposal which conforms in all material respects to the Request for Bids or Request for Proposals.

Services - means the furnishing of labor, time, or effort by a Contractor, resulting in the completion of tasks not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. “Services” includes, but is not limited to facility maintenance and operations, consulting, personal, professional, and technical services.

Solicitation - means an Request for Bids, a Request for Proposals, a Request for Quotations, or any other method of soliciting bids, proposals, or quotes to perform a Contract with IGU.

Specification - means any description of the physical or functional characteristics, or of the nature of a supply, service scope, or Construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or Construction item for delivery.

Supplies - means all property, including equipment and materials, solicited or owned by IGU. It also includes privately owned real property leased for IGUs use, such as office space, but does not include the acquisition or disposition of other interests in land.

5. Responsibilities (simply reference policy)

5.1 As stated in IGU Procurement Policy the IGU Board will:

- 1) Authorize the award of Contracts that exceed the limits of the General Manager's Delegation of Authority prior to the General Manager executing the Contract.
- 2) Receive and consider formal written appeals of Protest decisions or appeals of Contractor claim decisions of the General Manager when the General Manager is acting as the Procurement Officer.

5.2 As stated in IGU Procurement Policy the General Manager for IGU will:

- 1) Develop and maintain IGU Procurement Manual.
- 2) Annually conduct a comprehensive review of the Procurement Manual, review the Procurement Manual with the Board, present to the Board proposed changes to the Procurement Manual, and solicit Board input on the Procurement Manual and proposed changes.
- 3) Conduct IGU Procurement in accordance with IGU Procurement Manual.
- 4) Delegate, as necessary, Procurement authority in writing to qualified Employees or Agents of IGU.
- 5) Maintain Procurement records.
- 6) Ensure Contractors perform in accordance with the terms and conditions of their Contract with IGU.

5.3 The Procurement Officer:

- 1) Acting under a written delegated authority the IGU General Manager, an Employee, or Contractor acting as an Agent of IGU may act as the Procurement Officer and take Procurement actions on behalf of IGU.
- 2) Is responsible for performing duties that relate to the Procurement of Supplies, Services, Construction, and Professional Services for IGU in accordance with IGU Procurement Manual, policies and procedures. Unless otherwise excluded these duties include:
 - a) Developing or obtaining construction documents, Specifications and Solicitation documents.
 - b) Determining appropriate source selection methodology and conducting informal and formal Solicitations,
 - c) Making determinations and recommendations regarding the use of single source or other alternate Procurement methods where such a determination is required.

- d) Receiving and evaluating bids and proposals and making determinations with respect to them.
- e) Receiving and making determinations with respect to Protests of a Solicitation.
- f) Negotiating, compiling, and preparing contract documents.
- g) Awarding Contracts within limits of delegated authority.
- h) Preparing Contracts for review and award.
- i) Administering Contracts for compliance with requirements, terms, and conditions of Contracts and preparing Amendments and Change Orders with supporting documentation to those Contracts as required.
- j) Resolving disputes and making determinations on formal Contract claims.
- k) Closing out Contracts and maintaining Contract records.

6. Procedures

6.1 Funding Authorization and Application of IGU Procurement Procedures

- 1) All Procurement actions are subject to availability of funds authorized by the Board or General Manager through an established budget, purchase authorization, policy, or specific actions by the Board authorizing the expenditure.
- 2) The Procurement policy and procedures in the Procurement Manual apply to all Procurement transactions made by IGU for Supplies, Services, Construction, and Professional Services except the following transactions which are exempt:
 - a) Contracts for Legal Services, including expert witnesses.
 - b) Banking and investments services.
 - c) Grants, loans, loan guarantees, bonds, bond guarantees, or other indebtedness or similar obligations of IGU.
 - d) Cooperative agreements, memorandums of understandings, or Contracts between IGU and the FNSB, the state, its political subdivisions, and other governments or political subdivisions including the Alaska Railroad.
 - e) Subject to applicable state law, Contracts to acquire or supply natural gas and/or liquid natural gas.
 - f) Partnership or Joint Venture agreements for utility services not tied to specific performance Contracts.
 - g) Acquisition or disposal of real property or interests in real property.
 - g) Employment agreements, collective bargaining agreements, or labor relation services.
 - h) Procurement of all forms of insurance, and insurance-related Contracts, including Employee benefits, services and products for IGU or its Employees.
- 3) These transactions may be approved by the IGU Board through the budget process, other IGU policies and procedures, or through delegations of authority by the Board.

6.2 Delegations of Authority

6.2.1 General

- 1) All individuals with the authority to conduct Procurements on behalf of IGU will receive a written Delegation of Authority that will be kept on file in IGU offices. (Ref: Example Appendix A) An individual with delegated authority may exercise that authority only in accordance with the delegation and IGU Procurement policies and Procurement Manual. The delegation may be revoked at any time, with or without cause, by the Board, or in the case of a delegation from the General Manager, by the General Manager
- 2) The General Manger may not delegate the approval required under section 6.7 Limited Competition Procurements, 6.10 Single Source Procurements, or 6.11 Innovative

Procurements as identified in the Procurement Manual except to an individual who may be the acting General Manager in his absence.

6.2.2 Use of Contractors as Agents of IGU.

- 1) Except as noted under 6.1.1 2) the General Manager may delegate purchasing authority to a Contractor's Employee to act as Procurement Officer of IGU in conducting Procurement transactions on behalf of IGU. When acting under this delegation the Contractor's Employee is required to follow IGU Procurement policies and procedures.
- 2) The delegated authority should be specific and may include all or only certain aspects of the Procurement such as; developing Contract requirements, determining source selection methods, providing Public Notice, soliciting quotes, bids, or proposals, evaluating quotes, bids or proposals, making determinations with respect to awards, receiving and accept Supplies or Services, awarding Contracts for small Procurements, and administering Contracts on behalf of IGU,

6.3. Source Selection General Requirements

6.3.1 Specifications and Requirements

- 1) The purpose of a specification or Contract requirement is to serve as a basis for obtaining, in a cost-effective manner, a supply, service, or Construction item suitable for IGU's needs.
- 2) Specifications or requirements should promote overall economy for the purposes intended, encourage competition in satisfying IGU's needs, and to the extent practicable, emphasize functional or performance criteria necessary to meet the needs of IGU.
- 3) IGU will procure standard commercial products if practicable. Under the direction of the General Manager, IGU may develop and maintain a Qualified Products List.
- 4) The General Manager will monitor the content and use of specifications for Supplies, Services, Professional Services, and Construction required by IGU.
- 5) The Procurement Officer may obtain expert advice and assistance in the development of specifications.
- 6) The Procurement Officer may use Brand Name or Equal Specifications for the purpose of identifying the performance and functional requirements of a commodity.
- 7) Except for small Procurements where the total costs are less than \$5000 a specification that limits the Procurement of items to a single manufacturer's name or catalog number may be used only if the Procurement Officer determines in writing and the General Manager concurs that only the identified brand name item or items will satisfy IGU's needs.
- 8) The Procurement Officer may establish a blanket determination for a single manufacturer's name or catalog number where the General Manager has established a standard for that commodity.

6.3.2 Contract Terms and Conditions

- 1) The Procurement Officer may determine the contractual provisions, terms, and conditions of Solicitations and Contracts, if the provisions, terms, and conditions are not in conflict with the Procurement Manual, or any statutory or regulatory requirements governing the Procurement.
- 2) The Procurement Officer, in consultation with legal counsel, will adopt and maintain standard Contract terms and conditions for use in Construction, Services, and Supply Contracts.

6.3.4 Source Selection

- 1) The Procurement Officer will use Reasonable and Adequate Procedures to determine the potential sources of Supplies, Services, Construction, and Professional Services. The procedures used to determine potential qualified sources may include, but not be limited to: requesting information from potential suppliers or Contractors, soliciting formal letters of interest, or providing Public Notice of IGU's intent to contract prior to developing formal Solicitation documents.
- 2) For the purpose of providing notice for competitive bids and proposals, the Procurement Officer may establish and maintain contact information for Contractors who have expressed an interest in doing business with IGU.
- 3) IGU will encourage the use of Responsive and Responsible local suppliers and Contractors whose prices are competitive and Supplies or Services meet the requirements of IGU. This will be done through contacts with local suppliers, Public Notice of IGU requirements above a certain dollar threshold, and when in the best interest of IGU, preparing Solicitations in a manner that encourages local participation.
- 4) Conflict of Interests - Employees of IGU, Contractor Employees acting as Agents of IGU, or IGU Directors, including Immediate Family members of any of those individuals, are excluded from participating in any Procurement or Contract with IGU that would provide a personal financial benefit if any of those individuals are involved in the development of solicitation requirements, evaluation, or award of the contract. Ref 6.14.
- 5) Source selection and Contract awards may not be based on discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.

6.3.5 Exclusion of Prospective Contractor from Competition

- 1) A Procurement Officer may issue a competitive Solicitation that prohibits an individual or Contractor from submitting a bid or proposal if:
 - a) the Procurement Officer makes a determination that the Contractor or individual assisted in drafting the Request for Bids or request for proposal and gained substantial information regarding the Request for Bids or request for proposal that is not available to other bidders or offerors;
 - b) the Contractor or individual is listed on any municipal, state, or federal list of debarred Contractors;

- c) the Contractor or individual would only act as a broker in supplying the Supplies or Services and not add value to the transaction; or
 - d) award to a specific Contractor or individual could create a conflict of interest that would compromise the objectivity or purposes of the Contract.
- 2) If an excluded Contractor or individual submits a bid or proposal, the Procurement Officer will reject the bid or proposal as Nonresponsive.

6.3.6 Construction Project Delivery Methods.

- 1) One or more of the following project delivery methods may be used for Procurements related to design, Construction, routine repair, maintenance, management, or operations for projects or facilities of IGU:
 - a) design-bid-build;
 - b) Construction Management;
 - c) Construction Management At Risk;
 - d) design-build;
 - e) design-build-operate-maintain;
 - f) design-build-finance-operate or;
 - g) any variation of the methods described above.
- 2) Participation in a report or study that is subsequently used in the preparation of design requirements for a Construction project does not automatically disqualify a firm from participating as a member of a proposing team offering proposals under any of the project delivery methods described above, unless the Procurement Officer determines that participation by the firm in the report or study provided that firm with a substantial competitive advantage.
- 3) Subject to the review and approval of the General Manager, a Construction Procurement may be solicited by a Request for Quotes, Request for Bids, Request for Proposals, multi-step bids, or another Procurement method.

6.3.7 Subcontractors on Construction or Professional Services Contracts

- 1) For certain Construction or Professional Services Contracts the Procurement Officer may include requirements in a Solicitation to prohibit Bid Shopping by a prime Contractor and assure that key participants in the Contractor's proposal or bid are not arbitrarily excluded from participation in the Contract.
- 2) This may include requiring bidders or offerors to list their proposed subcontractors with their submission or within a specified time during the evaluation of bids or proposals.
- 3) The Procurement Officer may also require prime Contractors to receive IGU approval prior to replacing subcontractors identified in their submissions or prior to adding new subcontractors.

6.3.8 Multiple Awards

- 1) IGU may issue a Solicitation with the intent to make multiple awards if award to two or more bidders or offerors of similar products or Services is necessary for adequate delivery, service, or product compatibility.

- 2) If the intent of the Solicitation is to establish multiple indefinite-delivery or indefinite-quantity term Contracts; the Contract period, including optional renewals and the process for selection and award of work orders or purchase orders, will be included in the original Solicitation and subsequent Contract award.

6.3.9 Bid, Payment, and Performance Bonds

- 1) Bid bonds or bid security in the amount of a least five percent of the bid price
 - a) must be submitted with all invitations to bid for Construction projects estimated to cost over \$100,000; and
 - b) if needed for the protection of IGU as determined by the Procurement Officer, bid guarantees may be required in invitations to bid for Contracts for Supplies, Services, or Professional Services.
- 2) Payment and performance bonds, or other acceptable security approved by the General Manager,
 - a) will be required for all Construction Contracts over \$100,000; and
 - b) if needed for the protection of IGU as determined by the Procurement Officer, may be required for other Contracts.
- 3) Any bid, payment, or performance bonding requirements must
 - a) be set out in the Solicitation; and
 - b) identify the acceptability of alternative forms of security that may be substituted for the required bond, subject to approval of the General Manager.
- 4) If the Solicitation requires security, the Procurement Officer will reject a bid or proposal that does not comply with the security requirements unless the officer determines that the bid or proposal fails to comply in a non-substantial manner with the security requirements.

6.3.10 Notice of Request for Bids and Requests for Proposals

- 1) The Procurement Officer will provide Public Notice of a Request for Bids or a Request for Proposals at least 15 calendar days before the date for the opening of bids or date specified for receipt of proposals unless the Procurement Officer determines that a shorter notice period is advantageous or required for a particular project and adequate competition is anticipated. When it is in the best interest of IGU the time for submission of bids or proposals may also be extended per 6.3.12.
- 2) Public Notice will be posted on IGU's website and may be posted at other locations and in other fashions deemed by the Procurement Officer to be in the best interest of IGU. Notice may include but not be limited to;
 - a) publication in a newspaper calculated to reach prospective bidders;
 - b) posting in public places within the area where the work is to be performed or the material furnished;
 - c) communicating in other appropriate media;
 - d) notifying bidders or offerors who have expressed an interest in previous Solicitations of IGU.

- 3) The Procurement Officer will provide a Request for Bids or Request for Proposals to a prospective Contractor upon request, regardless of the location of the prospective Contractor.
- 4) The Procurement Officer may require payment of duplication costs for supplying a Request for Bids or Request for Proposals for a Construction project or other project where there may be substantial documentation to review in order to submit a bid or proposal.

6.3.11 Multi-step Solicitations

- 1) When it is considered impractical to initially prepare a definitive purchase description to support an award based on price or other definitive criteria, the Procurement Officer may issue a request for qualifications or information, Request for Bids, or a Request for Proposals seeking the submission of bidder qualifications, technical information, or data to be followed by an Request for Bids or Request for Proposals limited to:
 - a) the bidders or offerors whose offers are determined to be technically qualified; or
 - b) a short list of bidders or offerors who are determined to be best qualified under the criteria set out in the first step of the Solicitation.

6.3.12 Amendments or Extensions of a Solicitation

- 1) Before the opening of bids or proposals, a Solicitation may be amended, or time for opening of bids or receipt of proposals may be extended, if the Procurement Officer determines that the extension or Amendment is in IGU's best interest. Notice will be provided so that potential bidders or offerors have access to the Amendment.
- 2) If, after the deadline for receipt of proposals, there is a need for any substantial clarification or material change in the Request for Proposals, the request may be amended to incorporate the clarification or change. The Procurement Officer will provide notice of the date and time established for receipt of new or amended proposals.
- 3) When issuing an amendment or extension the Procurement Officer should take into consideration the effort and time that may be required for bidders or offerors to respond to the amendment and potential impacts any extension may have on the proposed project schedule.

6.3.13 Cancellation of the Solicitation or Rejection of all Bids or Proposals.

- 1) Before the deadline for receipt of bids or proposals, after the opening of bids or proposals, or after notice of intent to award but before award, the Procurement Officer may cancel the Solicitation or reject all bids or proposals. Reasons for cancellation or rejection will include one or more of the following:
 - a) the Supplies, Services, or Construction being procured are no longer required;
 - b) ambiguous or otherwise inadequate specifications or requirements were part of the Solicitation;
 - c) the Solicitation did not provide for consideration of all factors of significance to IGU;
 - d) prices exceed available money, and to adjust quantities or reduce services to accommodate available money would not be appropriate;

- e) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;
 - f) only one proposal or bid was received;
 - g) proceeding with the Solicitation or award is not in the best interests of IGU.
- 2) Notice of cancellation or rejection of all bids or proposals will be posted on the IGU web site and provided to all interested parties. The notice will identify the Solicitation, explain the reasons for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-Solicitation or any future Procurement of similar items.
 - 3) Reasons for a rejection of bids or proposals will be provided to the bidders or offerors whose bid or proposal was rejected.
 - 4) If at any time during the Solicitation process a Request for Proposals or Request for Bids is canceled, the Procurement Officer will return all bid or proposal documents received to the offeror or bidder. The Procurement Officer will keep a list of returned bids or proposals in the Procurement file.

6.4 Requests for Bids

6.4.1 Conditions for Use

- 1) The Procurement Officer will use requests for bids when award is anticipated to exceed \$50,000, IGU requirements are definite and can be sufficiently described by industry standards or practices, multiple suppliers or Contractors could potentially meet the requirements, and price is the primary factor for award provided bidder demonstrates they meet the requirements of the Solicitation.

6.4.2 Requests for Bids Format and Content

- 1) A Request for Bids must include a time, place, and date by which the bid must be received and other submittal instructions, a description of Supplies or Services, a description of contractual terms and conditions applicable to the Procurement, the bid evaluation criteria, and the basis for award.
- 2) If the release of the estimated cost of Supplies or Services would adversely affect IGU's ability to obtain the best competitive bid, the estimated cost of the Supplies or Services is confidential during the Solicitation process and may not be released to the public before bid opening.

6.4.3 Pre-opening Correction or Withdrawal of Bids

- 1) A bid may be corrected or withdrawn by written request received in the office designated in the Request for Bids before the time and date set for opening. The request must provide authorization for the Person making the correction or withdrawal to do so.
- 2) If a bid is withdrawn, the bid security, if any, will be returned to the bidder along with the copies of the unopened bid documents not later than 15 days after bid opening. A copy of the correspondence requesting the withdrawal will be included in the Procurement file.
- 3) All documents relating to the correction of a bid will be included in the Procurement file.

6.4.4 Submission and Receipt of Bids

- 1) A bid submitted on paper must be submitted in a sealed envelope with the request for bid number identified on the outside of the envelope. Upon receipt, the bid and any bid corrections will be stored in a secure place until the time and date set for bid opening.
- 2) The Procurement Officer may issue and receive bids through an electronic bidding system if the system is able to receive electronic bid documents and corrections to bid documents, document the date and time of receipt of bid documents, secure the electronic bid submissions from being reviewed until after the date and time of bid opening, and provide an accessible public record that documents the Solicitation.
- 3) Bids will be unconditionally accepted without alteration or correction, except as authorized in 6.4.3 and 6.5.6.
- 4) A bid, bid correction, or withdrawal of a bid, received by IGU after the time and date set for receipt of bids is late. A late bid, correction, or withdrawal may not be accepted unless the delay is due to an error of IGU.
- 5) A late bid or correction may not be opened or considered. The Procurement Officer will document the date and time the late bid or correction was received and return the unopened late bid or correction to the bidder after the Protest period has passed.

6.4.5 Bid openings

- 1) The Procurement Officer will open all bids and corrections received at the date and time designated in the Request for Bids.
- 2) All bid openings are open to the public at the place, date, and time designated in the Request for Bids. A record of those attending the bid opening will be made and kept in the Contract file.
- 3) The name of each bidder, the bid price, and other information determined appropriate by the Procurement Officer will be tabulated at the bid opening. The engineers estimate on a Construction bid and the bid tabulation is open to public inspection as soon as practicable after the bid opening.
- 4) The bids are not open for public inspection until after the notice of intent to award a Contract is given.
- 5) If the bidder designates trade secrets or other proprietary data contained in a bid document is confidential IGU may treat that portion of the bid as Confidential Information, subject to the bidder following instructions in the request for bid properly identifying the information and the Procurement Officer concurs that the information should be treated confidentially.

6.4.6 Correction and Withdrawal of Bids After Bid Opening

- 1) After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of IGU or fair competition are not permitted except as provided below.
- 2) If, before award, a Procurement Officer knows of an error in a bid, the officer will notify the bidder of the error.

- 3) Inadvertent errors discovered after opening but before award, other than Minor Informalities, may not be corrected. If a bidder submits proof that clearly and convincingly demonstrates that an inadvertent error other than a Minor Informality was made, the bidder may withdraw the bid.
- 4) The Procurement Officer may correct a bid that contains a Minor Informality. A correction of a Minor Informality may include correcting the bid submission to the intended correct bid price if the correct price is evident from the bid document. The Procurement Officer will initial any correction made to the bid documents.
- 5) A decision to permit the correction or withdrawal of a bid, or to cancel an award or Contract based on bid mistake, will be supported by a written determination made by the Procurement Officer.
- 6) If a bidder is permitted to withdraw a bid before award because of an error in their bid, IGU will not take any action against the bidder or the bid security.

6.4.7 Bid Evaluation

- 1) The Procurement Officer will evaluate bids based on the requirements set out in the Request for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. An evaluation of product acceptability may be conducted to determine whether a bidder's offering is acceptable as set out in the Request for Bids. A bid that does not meet the acceptability requirements will be rejected as Nonresponsive.
- 2) The Procurement Officer will evaluate bids to determine which bid offers the lowest price to IGU in accordance with the evaluation criteria set out in the Request for Bids. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The evaluation factors must:
 - a) be reasonable estimates based upon information IGU has available concerning future use; and
 - b) treat all bids equitably.
- 3) Criteria may not be used in bid evaluation if they are not set out in the request for bid.
- 4) A Contract may not be awarded to a bidder submitting a higher quality item than that designated in the Request for Bids unless the bidder is also the lowest bidder.
- 5) An alternate or conditioned bid submitted by a bidder that requires a change to a material term of the Solicitation is Nonresponsive.
- 6) Negotiations are not permitted prior to award except that after opening bids a Procurement Officer may request bidders extend the time during which IGU may accept a bid.
- 7) If the lowest price bid received is determined to be Responsive and the bidder is a Responsible Bidder the Procurement Officer is not required to conduct a complete evaluation of all other higher price bids received.

6.4.8 Determination of Responsibility

- 1) Before Contract award the Procurement Officer will consider whether the apparent low bidder is a Responsible Bidder. Factors that may be considered in determining whether the apparent low bidder is a Responsible Bidder include whether the bidder;
 - a) has a satisfactory record of performance;
 - b) is qualified legally to contract in the State; and
 - c) has supplied all necessary information in connection with the inquiry concerning responsibility.
- 2) The Procurement Officer may require the apparent low bidder to demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel, by submitting;
 - a) evidence that the Contractor possesses the necessary items;
 - b) acceptable plans to subcontract for the necessary items;
 - c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items; or
 - d) other information required by the Procurement Officer.
- 3) Any detailed financial information and details in any agreements with suppliers or subcontractors provided by the bidder in response to a request by the Procurement Officer may be treated as Confidential Information and will not be disclosed unless required by law.
- 4) The Procurement Officer's determination of responsibility does not relieve the Contractor from the requirements for performance under the Contract.
- 5) If the apparent low bidder is determined not to be Responsible, the Procurement Officer may reject the bid and award the Contract to the next lowest Responsive and Responsible bidder.

6.4.9 Rejection of Individual bids

- 1) The Procurement Officer may reject an individual bid for one or more of the following reasons:
 - a) the bid is Nonresponsive;
 - b) the bidder that submitted the bid is not Responsible as determined under standards set out in 6.5.8;
 - c) the bidder is excluded from bidding under 6.3.5;
 - d) the supply, service, or Construction item fails to meet the specifications or other acceptability criteria set out in the Solicitation;
 - e) only one bid was received and the Procurement Officer determines that award is not in the best interest of IGU.

6.4.10 Contract Award Under Request for Bids & Tie Bids

- 1) Subject to available funds and authorization from the Board, the General Manager will award a Contract based on the Request for Bids with reasonable promptness to the lowest Responsible and Responsive Bidder whose bid conforms in all material respects to the requirements and criteria set out in the Request for Bids.

- 2) Tie bids are low Responsive bids from Responsible bidders which are identical in price. If low tie bids exist, award will be made through a random drawing or flip of the coin. Unless otherwise stated in the Solicitation, award will not be made by dividing the Procurement among bidders offering identical low price bids.

6.4.11 Notice of Intent to Award

- 1) Notice of intent to award does not constitute a formal award of a Contract and will be made prior to formal award of the Contract. The notice of intent to award will include:
 - a) the name of the successful bidder,
 - b) a statement that Contract award is subject to authorization by the Board; and
 - c) a statement of a bidder's right to Protest the award in accordance with IGU procedures for Protests, including the time within which the Protest must be received which is generally five days from when the bidder receives the notice unless otherwise stated in the notice.
- 2) Unless only one Responsive bid is received, the notice of intent to award will be issued at least five days before formal award of the Contract. If only one Responsive bid is received, the Contract award may proceed as soon as practical after the notice of intent to award is issued.

6.4.12 Request for Bid Records

- 1) The Procurement Officer will keep records, hard copy or electronic, documenting the Solicitation process and the basis for award. The Procurement file will contain:
 - a) A copy of the Public Notice,
 - b) Any correspondence with Contractors prior to bid opening.
 - c) A copy of the Request for Bids and any addenda
 - d) A list of attendees at the public bid opening
 - e) A bid abstract
 - f) Copies of each bid submitted
 - g) Any communications with bidders after bid opening
 - h) A copy of the notice of intent to award
 - i) A copy of the final Contract
 - j) A copy of the Engineer's Estimate when procuring Construction Services

6.5. Request for Proposals

6.5.1 Conditions for Use

- 1) The Procurement Officer may procure Supplies or Services by Request for Proposals whenever detailed specifications are unavailable or IGU is looking to evaluate options regarding a specific need or scope of work, it appears there may be multiple suppliers or Contractors who could meet the minimum requirements of the Solicitation, award is based on qualifications or other criteria, and the price of the Contract is anticipated to exceed \$50,000.
- 2) Requests for proposals may be used for:
 - a) Professional Services Contracts;
 - b) architectural, engineering, and land surveying Contracts;
 - c) lease space;

- d) Supplies and Services for clean-up of oil or hazardous substances;
 - e) Design-Build Construction Contracts;
 - f) Design-Build-Operate Contracts; or
 - g) Any other supply, Construction, or service where the Procurement Officer makes a determination that it is in the best interest of IGU to use the request for proposal process.
- 3) Award under Request for Proposals will be made to the Responsive and Responsible offeror who provides the highest ranked proposal based on the criteria and evaluation processes identified in the request for Request for Proposals provided IGU and the offeror are able to negotiate a Contract for the benefit of IGU consistent with the Solicitation and the offeror's proposal.

6.5.2 Request for Proposals Format and Content

- 1) A Request for Proposals must contain
- a) the date, time, and place for delivering proposals;
 - b) a description of the Supplies, Construction, Services, or Professional Services to be provided under the Contract;
 - c) any specific IGU requirements or conditions including any minimum requirements that will be used in evaluating if a proposal is Responsive;
 - d) the standard Contract terms under which the Supplies, Construction, Services, or Professional Services are to be provided, or a reference to those terms;
 - e) the requirement that the offeror document having the required professional and Contractor's licenses necessary to legally provide the Supplies, Services, or Professional Services requested;
 - f) the information necessary for an offeror to submit a proposal including any specific submittal requirements or instructions or references to information that cannot reasonably be included with the request;
 - g) a description of the criteria and process the Procurement Officer will use to evaluate the proposals received.

6.5.3 Submission, Receipt, and Treatment of Proposals

- 1) A proposal submitted on paper must be submitted in a sealed envelope with the request for proposal number identified on the outside of the envelope. Upon receipt, the proposal and any proposal corrections will be stored in a secure place.
- 2) The Procurement Officer may issue requests for proposals and receive proposals through a digital Solicitation system, if the system is able to receive digital proposal documents and corrections to proposal documents, document the date and time of receipt of proposal documents, secure the digital submissions from being reviewed until after the date and time for receipt of proposals, and provide an accessible public record that documents the Solicitation process.
- 3) A proposal or proposal correction received at the place designated for receipt of proposals after the time and date set for receipt of proposals is late. A late proposal or correction may not be opened or considered unless the delay was due to an error of IGU. The Procurement Officer will document the date and time the late proposal or correction was received and return the unopened late proposal or correction to the offeror after the time for filing a Protest has passed.
- 4) After the date set for receipt of proposals the Procurement Officer will prepare a register of proposals received that includes the name of each offeror. The register of proposals

and all the contents of all proposals are confidential until the Procurement Officer issues a notice of intent to award.

- 5) If a Solicitation is canceled after proposals are received but before a notice of intent to award a Contract has been issued, and if a Protest of the Solicitation has not been filed by an Interested Party, the Procurement Officer will return all proposals to the offerors that submitted proposals once the time specified for filing a Protest has expired. The Procurement Officer will keep a list of returned proposals in the file for the Solicitation.

6.5.5 Disclosure of Proposal Contents and Confidential Information

- 1) Unless otherwise stated in the Request for Proposals all materials submitted in response to a Request for Proposals will become the property of IGU. The Procurement Officer will receive, open, and evaluate proposals so as to avoid disclosure of contents to competing offerors before notice of intent to award a Contract is issued.
- 2) The list of respondents to the request for proposal and the content of proposals will be kept confidential until the Procurement Officer issues a Notice of Intent to Award. At that time, the selected proposal is open for review (except for information identified as being proprietary).
- 3) After the award of the Contract, responses and proposals will become public information except for properly identified proprietary information that has been requested to be kept confidential and the Procurement Officer concurs. Such Confidential Information will be kept in the file in a sealed envelope marked confidential with the rest of the submittal.
- 4) If an offeror wishes individual pages, which they believe contain actual business, proprietary information be held confidential, each page containing the presumed Confidential Information must be marked and an explanation furnished of its proprietary nature. In addition to marking individual pages, the proposal's cover will also be annotated with the words "THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION".
- 5) "Confidential and Proprietary" information is not meant to include any information which, at the time of disclosure, is generally known by the public and/or competitors or summary cost information used for the purpose of documenting the basis of award.
- 6) The Procurement Officer will be the sole determining authority for application of confidential and proprietary information. Should the Procurement Officer determine that the requested information is not confidential and/or proprietary; the offeror will be provided the opportunity to remove such designation or request the confidential or proprietary pages of the proposal be returned to the offeror and the proposal be reviewed without consideration of that information. If the offeror requests pages of the proposal be returned all digital forms of the proposal submission will be returned to the offeror.
- 7) Should the offeror refuse to remove such designation, or request the designated pages be returned, the Procurement Officer will reject the submittal as Nonresponsive without further recourse by the offeror and return the entire submission to the offeror.

6.5.5 Evaluation of Proposals

- 1) The Procurement Officer will evaluate proposals based on the evaluation process and criteria identified in the Request for Proposals. The Procurement Officer will not use other factors, criteria, or processes.

- 2) The Procurement Officer, or an evaluation committee, will evaluate proposals. Experts may be added as appropriate provided there is no conflict of interest and the Procurement evaluation committee is made up of at least one Employee, Director, or Agent of IGU.
- 3) If an evaluation committee evaluates the proposals, each member will exercise independent judgment, and the vote of one member may not be weighted more than the vote of any other member.
- 4) The Procurement evaluation committee may hold meetings to discuss the proposals received. Evaluators may independently adjust their own scores or rankings as a result of discussions with other evaluators as well as discussions with offerors as noted in 6.5.7 and 6.5.8 below.
- 5) Numerical rating systems may be used, but are not required. If a numerical rating system is used, evaluators are not required to provide additional documentation for scoring, if the relative weight of the criteria and system is defined in the Solicitation.
- 6) If a numerical rating system is not used, each evaluator will provide a brief written narrative consistent with the evaluation criteria documenting the basis for the evaluator's ranking.
- 7) The Procurement Officer will document the evaluation process and provide a summary of the final ranking of proposals for the Procurement file.

6.5.6 Rejection of Individual Proposals

- 1) Reasons for rejecting an individual proposal include one or more of the following:
 - a) the proposal is Nonresponsive to the minimum requirements in the Solicitation;
 - b) the offeror submitting the proposal is excluded from submitting a proposal under 6.3.5;
 - c) the offeror submitting the highest ranked proposal exceeds available funding and after discussions the offeror is unwilling or unable to meet IGU Contract requirements at a lower cost;
 - d) after evaluation and discussion only one proposal is available for award, and the Procurement Officer determines that proceeding with the award is not in the best interest of IGU.

6.5.7 Clarification of Offers During the Evaluation of Proposals

- 1) In order to determine if a proposal is reasonably suitable for award, the Procurement Officer or the Procurement evaluation committee may communicate with an individual offeror to clarify the contents of an offeror's proposal.
- 2) Clarification is limited to clarification of ambiguities or conflicts in the proposal and may not be a negotiation or allow for material changes to the proposal being evaluated.
- 3) The Procurement Officer may limit communications to only those offerors who submitted proposals requiring clarification in order to complete the evaluation of those proposals.
- 4) The evaluation by the Procurement Officer or the Procurement evaluation committee may be adjusted as a result of a clarification provided by the offeror.

6.5.8 Proposal Discussions with Offerors During Evaluation of Proposals

- 1) At the discretion of the Procurement Officer, an offeror whose proposal is reasonably suitable for award as determined in the initial evaluation conducted under 6.5.5 may be offered the opportunity to confidentially discuss the proposal with the Procurement Officer or Procurement evaluation committee.
- 2) The opportunity for confidential discussions, if held, will be extended to all offerors submitting proposals determined reasonably susceptible for award.
- 3) Meetings with offerors under this section are not subject to AS 44.62.310 - 44.62.319 (Open Meetings Act).
- 4) Auction techniques that reveal one offeror's price to another, and disclosure of any information derived from competing proposals, are prohibited.
- 5) The Procurement Officer may limit discussions to specific sections of the proposals received or specific sections of the Request for Proposals.
- 6) The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions, if the changes are within the scope of the Request for Proposals. Any modifications to a proposal as a result of discussions will be reduced to writing by the offeror within the time frame designated by the Procurement Officer.
- 7) Final evaluations may be conducted as described in 6.5.5 considering the information provided by the offerors in the discussions or the Procurement Officer may request offerors provide a best and final offer per 6.5.9.

6.5.9. Best and Final Offers

- 1) Following discussions, the Procurement Officer may set a date and time for the submission of best and final offers and limit the scope of the offerors submission to specific sections of the offeror's original proposal.
- 2) Best and final offers may be submitted more than once if the General Manager determines that it is in IGU's best interest to conduct additional discussions, change IGU's requirements, or request submission of another round of best and final offers.
- 3) If an offeror does not submit a best and final offer or a notice of withdrawal, the offeror's previous proposal is considered the offeror's best and final offer for the purpose of evaluation and award.
- 4) After best and final offers are received, final evaluations will be conducted as described in 6.5.5.

6.5.10 Offeror Selection and Negotiations

- 1) After evaluation of proposals under 6.5.5, including any adjustment of an evaluation of a proposal as authorized under 6.5.8 or 6.5.9, the Procurement Officer may negotiate with the offeror with the highest ranked proposal for the purpose of developing a Contract consistent with the Solicitation and most favorable to IGU.
- 2) IGU may request or the offeror may propose changes to the offeror's proposal during contract negotiations. The changes must be reasonable and may not have the effect of substantially changing the scope of work or price if the change would alter the ranking of

the highest ranked proposal. All changes will be documented in writing and incorporated into the Contract documents.

- 3) If the offeror with the highest ranked proposal fails to negotiate in good faith, fails to negotiate within the time period set by the Procurement Officer, cannot accept IGU Contract terms, or is unable to adjust the price as may be required by IGU without materially affecting the scope of work, the Procurement Officer may terminate negotiations and begin contract negotiations with the offeror of the next highest ranked proposal.

6.5.11 Contract Award

- 1) The Procurement Officer will award a Contract under Request for Proposals to the Responsible and Responsive Offeror whose proposal is determined in writing to be the most advantageous to IGU, taking into consideration the evaluation factors set out in the Request for Proposals and any contract negotiations conducted under 6.5.10.

6.5.12 Notice of Intent to Award

- 1) After completing the evaluation of proposals and negotiations as may be required, the Procurement Officer will issue a Notice of Intent to Award in accordance with 6.5.11.

6.5.13 Records of Requests for Proposals

- 1) For Contracts awarded by Request for Proposals the Procurement Officer will keep a Contract file that includes:
 - a) A copy of the Public Notice,
 - b) Any correspondence with interested offerors prior to the deadline for responses.
 - c) A copy of the request for proposal and any addenda
 - d) A register of proposals received
 - e) Any correspondence with offerors during the evaluation process
 - f) Final evaluation score sheets.
 - g) A copy of each proposal submitted, including any clarifications or best and final offerors.
 - h) A copy of the final Contract that incorporates any changes as a result of negotiations
 - i) A copy of the notice of intent to award
 - j) A summary of the evaluation process and basis for selection prepared by the Procurement Officer

6.6 Small Procurements

- 1) Small Procurement methods may be used for the Procurement of Supplies, Services, Construction, or Professional Services, costing less than \$50,000. Small Procurement will follow Reasonable and Adequate Procedures which will include soliciting quotes or proposals for larger dollar transactions and may include contacting only one vendor or supplier when the value of the Procurement is anticipated to be less than \$5000 and the price is fair and reasonable.
- 2) The Procurement Officer may provide Public Notice using the competitive Solicitation requirements under 6.5.2 and 6.5.3 provided the notice is posted for at least 5 days prior to the deadline for receipt of quotes or proposals.
- 3) Requests for quotes and informal Request for Proposals may be issued and vendor responses received using digital media.

- 4) Procurement requirements should not be artificially divided or fragmented so as to constitute a small Procurement or to circumvent the source selection procedures required under 6.3 or 6.4.
- 5) Purchasing from local vendors is encouraged when the prices are competitive and the vendor or Contractor can meet the needs of IGU.

6.6.1 Purchases No More than \$5000

- 1) Solicitation Requirements - The Procurement Officer will use Reasonable and Adequate Procedures, and make records that facilitate auditing of the Procurement, when procuring Supplies, Services, Professional Services, or Construction estimated to cost not more than \$5,000. Reasonable and Adequate Procedures may include contacting only one vendor or Contractor if the prices appear to be fair and reasonable and the Contractor or vendor is known to be qualified and available.
- 2) Forms - Purchases may be made by credit card, purchase orders, field purchase orders, or other form that shows the vendor or Contractor name, Supplies or Services received, price of Supplies or Services, time of receipt of Supplies or Services, and who made the purchase on behalf of IGU,
- 3) Written purchase orders are encouraged when Supplies or Services are expected to be over \$500, the items purchased are subject to inventory control, the delivery date is in the future, or specific terms and conditions are applicable to the Procurement to protect the interests of IGU.
- 4) Records - Records of purchases under \$5000 should include a copy of the invoice that shows the Supplies or Services received and the individual receiving those Supplies and if used a copy of the purchase order, credit card receipt, or Contract used to make the purchase.

6.6.2 Purchases No More Than \$25,000 but Greater than \$5,000

- 1) The Procurement Officer will use the following procedures in the Procurement of Supplies, Services, Professional Services, or Construction estimated to cost more than \$5,000, but not more than \$25,000.
- 2) Solicitation Requirements - At least three firms or persons will be contacted by a Request for Quotes or through an Informal Request for Proposals. The Solicitation may be made verbally or in writing. In the Solicitation, the Procurement Officer will include the specifications, the award criteria, and the date and time responses are due.
- 3) Award - The Procurement Officer will make the award in accordance with the specifications and award criteria in the Solicitation to the Responsive and Responsible firm or Person that submitted the lowest quotation or that submitted the informal proposal that is the most advantageous to IGU and provide notice of the award, including the name of the successful offeror, to each firm or Person providing a quotation or informal proposal.
- 4) Forms - Award will be in writing by purchase order or other Contract form.
- 5) The Procurement records will include:
 - a) The name of the individual who made the Solicitation and the date of the Solicitation;
 - b) Solicitation documents or information provided by the Procurement Officer to the vendor or Contractor;

- c) The names of the firms or persons contacted,
- d) A summary of any verbal responses, and copies of all quotations or informal proposals received;
- e) Justification for the award; and
- f) A copy of the written Contract or purchase document.

6.6.3 Purchases No More than \$50,000 but Greater than \$25,000

- 1) The Procurement Officer will use the following procedures in the Procurement of Supplies, Services, Professional Services, or Construction estimated to cost more than \$25,000, but not more than \$50,000.
- 2) Solicitation Requirements - At least three firms or persons will be contacted by a Request for Quotes or through an Informal Request for Proposals. The Solicitation will be made in writing, include IGU specifications or requirements, the award criteria, the requirement that the response be made in writing, and the date and time responses are due.
- 3) Award - The Procurement Officer will make the award in accordance with the specifications and award criteria in the Solicitation to the Responsive and Responsible firm or Person that submitted the lowest quotation or the informal proposal that is the most advantageous to IGU and provide notice of the award, including the name of the successful offeror, to each firm or Person providing a quotation or informal proposal.
- 4) Forms - Award will be in writing by purchase order or other standard IGU Contract form.
- 5) The Procurement records will include:
 - a) A copy of the Solicitation document,
 - b) The names of the firms or persons contacted,
 - c) Copies of all quotations or informal proposals received;
 - d) Basis for the award;
 - e) A copy of the notice of award;
 - f) A copy of the written Contract or purchase document

6.7 Limited Competition Procurements

- 1) Limited competition methods may be used when the estimated cost of the Procurement is greater than \$50,000, the Procurement Officer has identified two or more vendors or Contractors who could meet IGU requirements, and the General Manager determines in writing that a situation exists that makes Request for Bids or Request for Proposals impractical or contrary to the interests of IGU.
- 2) Situations that may justify conducting a limited competition Procurement include:
 - a) Procurements that cannot be publicly advertised without compromising the business interests of IGU or its customers;
 - b) Procurements that may have been previously solicited by Request for Proposals or requests for bids but IGU was unable to award because no Responsive or Responsible bids or proposals were received and IGU still has an immediate need for the Supplies or Services.
 - c) Procurements made after the Procurement Officer issues a formal notice requesting information and interest from suppliers or Contractors and the Procurement Officer

determines that a limited number of suppliers or Contractors are qualified and available to provide the Supplies or Services.

- 3) To determine if two or more sources are interested the Procurement Officer may provide notice under 6.3.10 requesting letters of interest outlining the minimum requirements prospective offerors must demonstrate in order to participate in the proposed limited competition Solicitation.
- 4) The Procurement Officer may solicit formal or informal bids or proposals and conduct negotiations, as appropriate, as to price, delivery, and terms, with each potential Contractor and proceed with award to the Contractor who's bid or proposal is in the best interest of IGU.
- 5) The Procurement Officer will provide a summary of the Solicitation process and basis of award to the General manager for review prior to issuing a notice of intent to award.
- 6) The Procurement records will include:
 - a) A copy of the General Manger's decision to use a limited competition Procurement method,
 - b) The names of the firms or persons contacted,
 - c) A copy any letter of interest or other Solicitation document,
 - d) Any correspondence with Contractors;
 - e) Copies of all quotations or proposals received;
 - f) Justification for the award;
 - g) A copy of the written Contract or purchase document

6.8. Emergency Procurements

- 1) An Emergency Procurement will be made with competition that is practicable under the circumstances, and is limited to the Supplies, Services, Professional Services, or Construction necessary to meet the emergency.
- 2) A Procurement may be made under emergency conditions if;
 - a) a threat to public health, welfare, or safety exists, including fire, flood, riot, environmental accident, or a similarly compelling reason;
 - b) an equipment failure occurs, and the need for timely repair is essential; or
 - c) immediate action is needed to protect public or private property or other interests of IGU.
- 3) An individual who becomes aware of an emergency situation will immediately notify the General Manager of the situation by phone, or text message and take actions within their authority or as directed immediately by the General Manager to mitigate any damage or impact to the public.
- 4) Not later than 24 hours after discovering the emergency situation, the individual knowledgeable about the emergency will follow-up with the General Manager or the General Manager's designee and provide;
 - a) a summary of the facts documenting the basis for the emergency;
 - b) information about the scope of work necessary to meet the emergency need;
 - c) the basis for Contractor or vendor selection; and

- d) a description of any immediate steps the individual may have taken to mitigate the immediate threat.
- 5) The General Manager will make a written determination regarding the emergency and will direct the Procurement Officer to contract using any reasonable means within funding limits authorized by the General Manager to mitigate the emergency.
- 6) The Procurement file will include;
 - a) a copy of the General Manager's emergency determination;
 - b) a copy of the Contract that identifies the Supplies, Services, Construction, or Professional Services procured under the Contract; and
 - c) any correspondence with the Contractor.
- 7) To the extent practical the Procurement Officer will immediately follow-up any verbal request for Supplies or Services with written Contracts or work orders using standard IGU Contract or order forms.

6.9 Procurements Off Other Public Contracts

- 1) To the extent it is provided for in the terms of the Contract, the Procurement Officer may participate in Contracts for the Procurement of Supplies, Services, Construction, or Professional Services made by the Fairbanks North Star Borough, State of Alaska, or other Governmental agency or cooperative purchasing group.
- 2) The Procurement Officer should be aware of the terms and conditions of any other agency Contract prior to making an award off that Contract. A supplier or Contractor offering to provide Supplies or Services at the same price as another agency Contract does not constitute purchasing off another agency public Contract unless the Contract specifically mentions other governmental entities are authorized to use the Contract.
- 3) Purchases made from other agency Contracts will be made in accordance with the terms of those Contracts and reference the other agency Contract number on IGU purchase orders and/or billings.

6.10 Single Source Procurements

- 1) The Procurement Officer may make a single source Procurement if he makes a written determination that it is impractical to solicit bids, proposals, or quotes for the Supplies or Services and it is the "best interest of IGU" to award a Contract to a single supplier or Contractor.
- 2) The determination must be approved by the General Manager prior to award, this approval cannot be delegated, and must include:
 - a) A description of the Supplies or Services needed;
 - b) The name of the proposed Contractor;
 - c) The estimated value of the Contract and available cost or pricing data;
 - d) The material facts of the Procurement;
 - e) Why it is in IGU's best interest to make a non-competitive award;
 - f) Evidence of any unique attributes of the proposed Contractor.
- 3) The Procurement Officer may provide a Public Notice of its intent to make a single source award to determine if a single source award is appropriate.
- 4) Circumstances that may warrant a single source justification include:

- a) for a Contract that was previously competitively bid, but where only one Nonresponsive bid was received and the Procurement Officer determines that negotiation with that bidder is in the best interest of IGU because:
 - i) an immediate need exists for the Supplies or Services; or
 - ii) re-Solicitation is unlikely to increase the number of bids or proposals;
 - b) for a Contract where time is of the essence and the Procurement Officer makes a determination that:
 - i) the time required to solicit competitive bids or proposals for the Supplies or Services would adversely impact IGU's program or mission;
 - ii) the price for Supplies or Services is reasonable compared to the impacts of a delay;
 - iii) the proposed Contractor is in a unique position to be able to meet IGU's needs; and
 - iv) the duration of the Contract is limited;
 - c) or for a Contract where the Procurement Officer makes a good faith review of available sources and determines that award of a Contract by requests for bids, Request for Proposals, or small Procurement procedures is not practicable, and that award to a sole source is in IGU's best interests as no other reasonable source of the Supplies or Services is available that could meet IGU's requirements and schedule.
- 5) Prior to award the Procurement Officer will require the Contractor to provide Cost and Pricing Data for evaluation. The Procurement Officer will negotiate and award a Contract that is in the best interest of IGU.
 - 6) The Procurement file will include;
 - a) a copy of the single source justification approved by the General Manager;
 - b) a copy of the Contract; and
 - c) any correspondence with the Contractor.

6.11 Innovative Procurements

- 1) The Procurement Officer may propose the use of an innovative Procurement process not otherwise identified in these procedures. Prior to conducting an innovative Procurement, the Procurement Officer will develop a Procurement plan with the assistance of legal counsel and present that plan to the General Manager for approval.
- 2) The Procurement file will include;
 - a) a copy of the Procurement plan approved by the General Manager;
 - b) A copy of the Solicitation documents
 - c) A copy of any response from vendors or Contractors; and
 - d) a copy of the Contract.

6.12 Contract Formation and Modification

6.12.1 Types of Contracts

- 1) Any type of Contract that promotes the best interests of IGU may be used. Use of a cost-plus-a-percentage-of-cost Contract will only be used if no other type of Contract would be acceptable and the Contract is approved by the General Manager.

- 2) The General Manager will develop and maintain standard Contract forms to be used by the Procurement Officer when soliciting and awarding Contracts as a result of Request for Bids and Requests for Proposals.

6.12.3 Contract Contents

- 1) All Contracts over \$500, except those used to procure Supplies up to \$5000, will be in writing and contain;
 - a) a statement of the amount of the Contract;
 - b) the date for the Supplies to be delivered or the expected period of performance of the Construction, Services, or Professional Services;
 - c) a description of the Supplies, or statement of work regarding the Construction, Services, or Professional Services to be provided; and
 - d) other terms or requirements included in the Solicitation or negotiated between the Procurement Officer and the Contractor such as payment terms, price adjustments, renewals, or changes.
- 2) The General Manager will develop and maintain standard Contract terms to be used by the Procurement Officer when soliciting and awarding Contracts as a result of Request for Bids and Requests for Proposals.

6.12.4 Standard Contract Clauses

- 1) The General Manager, in consultation with the legal counsel, may establish standard Contract clauses that provide for appropriate remedies and cover the following subjects:
 - a) Indemnification and insurance;
 - b) liquidated damages;
 - c) order of precedence of Contract documents;
 - d) venue in the 4th Judicial District of Fairbanks, Alaska,
 - e) specified excuses for delay or nonperformance;
 - f) termination of the Contract for default;
 - g) termination of the Contract in whole or in part for the convenience of IGU;
 - h) termination based on non-appropriation of funding;
 - i) adjustments in time including renewals or extensions;
 - j) dispute resolution;
 - k) adjustments in price;
 - l) changes in work;
 - m) additional work;
 - n) Amendments.
- 2) The standard clauses to be used in a particular Contract will be identified in a separate appendix to the Contract and referenced in the Solicitation.
- 3) With the approval of the General Manager, a Procurement Officer may vary the standard clauses for inclusion in a particular Contract if the variations and the circumstances justifying them are in the best interest of IGU.
- 4) A bidder or offeror's failure to accept the standard Contract clauses included in the Solicitation may be grounds for determining the bidder or Contractor to be Nonresponsive.

6.12.5 Contract Term and Cancellation

- 1) Unless otherwise provided by law, a Contract for Supplies, Services, or Professional Services may be entered into for any period of time considered to be in the best interests of IGU provided;
 - a) the term of the Contract and conditions of renewal or extension are included in the Solicitation; and
 - b) funds are available for the initial Contract period at the time of contracting.
- 2) Payment and performance obligations for succeeding periods will be subject to the availability and designation of funds for purposes of the Contract.
- 3) When using a multi-term Contract, the Procurement Officer will determine that
 - a) the estimated requirements cover the period of the Contract and are reasonably firm and continuing; and
 - b) the Contract will serve the best interests of IGU by encouraging effective competition and efficient Contract administration.
- 4) When funds are not otherwise made available to support continuation of performance in a subsequent period, the Contract will be canceled.
- 5) All Contracts will contain language that identifies any obligations IGU may have in the event of early termination.

6.12.6 Contract Approvals

- 1) The General Manager or his designee with written delegated authority will sign all purchase orders, Contracts, Contract Amendments, Change Orders, leases, or other agreements on behalf of IGU.
- 2) Certain Contracts, Contract Amendments, or Contract renewals above a certain dollar limit may require authorization by the Board prior to award by the General Manager or his designee. For Contracts requiring authorization by the Board the General Manager will prepare a Board memo (Ref Appendix B) for the Board that includes:
 - a) a summary of the Supplies or Services;
 - b) a summary of Solicitation method used;
 - c) the name of Contractor;
 - d) the estimated Contract amount, and
 - e) any other relevant information, such as Protests information or a request for additional authority to proceed with anticipated Contract Amendments.
- 3) The Board may authorize the General Manager to proceed with the award, request the General Manager provide additional information, or request the General Manager cancel the Solicitation if it is determined that requirements for the Supplies or Services as set forth in the Solicitation are no longer applicable.

6.12.7 Contract Amendments or Change Orders

- 1) Subject to his Delegation of Authority and authorization as may be required by the Board the Procurement Officer or General Manager may amend a Contract or purchase order if the Contract includes clauses or terms that allow for Amendments or Change Orders.

- 2) Subject to his Delegation of Authority and budget authorization the Procurement Officer or General Manager may amend a Contract when there is an unanticipated change in work or Supplies required beyond the estimated or actual Contract price, term, or scope, if
 - a) the Solicitation was conducted following the small Procurement procedures under 6.6 the Amendment or Change Order, or cumulative Contract Amendments or Change Orders, will not cause the total Contract amount, as amended, to exceed by 50 percent or more the original Contract price, and the new total price of the Contract, including all Change Orders and Amendments, does not exceed \$50,000;
 - b) the original Contract is greater than \$50,000, and the amount of the unanticipated Amendment or Change Order, or cumulative unanticipated Contract Amendments or Change Orders, will be less than 20 percent of the original Contract amount, including any anticipated Amendments or Contract adjustments; or
 - c) the original Contract is greater than \$50,000, and the amount of the unanticipated Amendment or Change Order, or cumulative unanticipated Contract Amendments or Change Orders, will be greater than 20 percent of the original Contract amount, including any anticipated Amendments or Contract adjustments and the General Manager makes a single source determination as required under 6.9.
- 3) Prior to issuing an Amendment the Procurement Officer will obtain Cost and Pricing Data from the Contractor and confirm that the price adjustment is fair and reasonable.
- 4) Prior to issuing an Amendment that requires authorization by the Board the General Manager will prepare a Board memo (Ref Appendix C) for the Board to review that includes
 - a) the name of Contractor;
 - b) the original Contract amount and proposed amended amount;
 - c) a summary of the Supplies or Services in the original Contract;
 - d) reason for the Contract Amendment;
 - e) any other relevant information, such as a single source justification, or a request for additional authority to proceed with anticipated Contract Amendments.

6.12.8 Contract Administration & Records

- 1) The Procurement Officer or individual with delegated authority from the Procurement Officer is responsible for managing Contracts in accordance with the Contract terms. This includes but is not limited to acting as the primary point of contact with the Contractor, review and acceptance of deliverables and schedules, review of invoices for compliance with terms, preparing Amendments or Change Orders as may be appropriate, receiving and resolving Contract disputes, and closing out the Contract in accordance with IGU Procurement procedures.
- 2) The Procurement Officer is responsible for maintaining all Procurement records in accordance with IGU Procurement procedures and record retention schedules with the understanding that those records are subject to the Public Records Act, AS 40.25.100 – 40.25.220.

6.13. Legal and Contractual Remedies

- 1) In order to protect the integrity of the Procurement system and correct possible mistakes made by IGU in the Procurement process, an Interested Party will have the right to Protest a Solicitation or award of a Contract. All Request for Bids and Request for Proposals will contain the language and processes for Protests identified in 6.13.2.
- 2) Contracts greater than \$50,000 will include dispute resolution clauses as may be appropriate depending on the complexity of the Contract and types of Supplies or Services procured. Sections 6.13.5 through 6.13.8 may be incorporated into a contract's terms and conditions as a method for handling disputes or the Procurement Officer may adopt other standard terms and conditions provided they are incorporated into the signed and approved contract.
- 3) It is the intent of IGU to resolve disputes fairly in accordance with the terms of the Contract at the Procurement Officer level. The Procurement officer will keep the General Manager informed regarding any Protests or disputes as they may arise. Any appeal of the Procurement Officer's decision will go to the General Manager.
- 4) If the General Manager is the Procurement Officer, any appeal of the Procurement Officer's protest decision 6.13.3 or any appeal of Contract claim decision 6.13.8. will be made to the Chairman of the IGU Board.
- 5) Nothing in these procedures is intended to restrict or limit the General Manager's ability to use other processes such as arbitration, or Alternate Dispute Resolution techniques, provided it is done with legal counsel and approval by the Board.

6.13.1 Protest of Small Procurements

- 1) The Procurement Officer will attempt to informally resolve any Protest brought by an Interested Party regarding any Procurement with a total award value of \$50,000 or less. If the attempt is unsuccessful, the Interested Party may file a written Protest of the Solicitation or the award with the General Manager.
- 2) To be accepted by IGU, the Protest must be filed prior to award if protesting the Solicitation and 5 days after notice of award if protesting the Contract. The Protest must be in writing and contain:
 - a) the name, address, and telephone number of the protester;
 - b) the signature of the protester or the protester's representative;
 - c) identification of the Solicitation or Contract at issue;
 - d) a detailed statement of the legal and factual grounds of the Protest, including copies of relevant documents; and
 - e) the relief requested.
- 3) The Procurement Officer will immediately give notice of the Protest to the Contractor or, if no award has been made, to all firms or persons that were solicited.
- 4) The General Manager or the General Manager's designee will review the Protest and make the final action of IGU on the Protest.

6.13.2 Protests of Requests for Bids and Request for Proposals

- 1) Any actual or prospective offeror or Contractor who is aggrieved in connection with the Solicitation or award of a Contract may Protest to the Procurement Officer. A Protest

with respect to the data, materials or requirements of request for proposal or a Request for Bids must be submitted in writing prior to the closing date.

- 2) The Protest of the award of the Contract must be submitted within five (5) calendar days after such aggrieved Person knows or should have known of the facts giving rise thereto.
- 3) The Protest must be filed in writing and include the following information:
 - a) the name, address, and telephone number of the Protestor;
 - b) the signature of the Protestor or the Protestor's representative;
 - c) identification of the Solicitation at issue;
 - d) a detailed statement of the legal and factual grounds of the Protest, including copies of relevant documents;
 - e) the form of relief requested and
 - f) a non-refundable filing fee of \$75.00.
- 4) Within five (5) calendar days of submittal of a timely Protest, the Protestor will submit a Protest security (bond or cashier's check) in an amount not to exceed five percent of the Protestor's proposal price or if proposals have not yet been opened, five percent of total estimated cost of the Contract noted in the RFP or RFB or \$20,000, whichever is less,
 - a) If, after all the administrative and judicial remedies have been exhausted, the Protest fails, the Protest security will be forfeited to IGU.
 - b) If, after all the administrative and judicial remedies have been exhausted, the Protest is upheld in whole or in part, the Protest security will be returned to the Protestor.
- 5) If the Protestor fails to submit the required security the Protest may be denied without further action.
- 6) If the Protest is not resolved by mutual agreement, the Procurement Officer, will promptly issue a decision in writing which will state the reasons for the action taken and inform the Protestor of the right to an administrative review.
- 7) If time is of the essence in award of the Contract the Procurement Officer may proceed with award of the Contract prior to finalizing the decision on the Protest if there is a likelihood that the Protest will be denied.

6.13.3 Administrative Appeal of Protest Decision and Hearings

- 1) An administrative appeal must be filed with the IGU General Manager within ten (10) calendar days of the Procurement Officer's decision. The appeal request will identify in detail all factual or legal errors in the decision that form the basis for the appeal. The administrative appeal will be reviewed and determined de novo by the General Manager or, if in the best interest of IGU as determined by the General Manager, by a Hearing Officer appointed by the IGU Board.
 - a) If a Hearing Officer is used, the Hearing Officer will be a member of the State Bar for at least five years and experienced in contract or commercial matters.
 - b) The General Manager or Hearing Officer will hold a hearing unless it is determined in writing that the appeal or the underlying Protest is untimely or if the appeal involves questions of law without genuine issues of fact.
 - c) Hearings will be recorded and conducted informally with due regard for the rights of the parties involved.

- d) The review will be based on IGU procedures and generally accepted principles of government purchasing.
- e) The General Manager or Hearing Officer's decision may order that a proposal be accepted as the most Responsive proposal and may order any of the additional remedies set forth in the RFP or RFB. The General Manager or Hearing Officer, however, may not order the selection or rejection of any additive or deductive alternate or award attorney fees.
- f) Unless necessary to correct a failure to follow the procedures identified in this RFP or IFB or IGU Procurement policies and procedures, the Hearing Officer may not substitute his judgment for the General Manager on any matter vested within the General Manager's discretion and may not order the Amendment of any specifications, any change in the criteria for selection of a proposal, or any Amendment, reordering, or reassessment of any qualitative judgment in the rating of a proposal.
- g) The General Manager or Hearing Officer's decision will be in writing and contain findings of fact and conclusions of law.
- h) The decision of the General Manager or Hearing Officer will be the final administrative decision on the matter.

6.13.4 Remedies on Protests or Appeals

- 1) If prior to the closing date for receipt of proposals, the Project Manager or General Manager determines that a Solicitation is in violation of federal, state or municipal law, then the Solicitation may be canceled or revised to comply with applicable law.
- 2) If after the closing date for receipt of proposals, the Project Manager or General Manager or Hearing Officer on appeal determines that a Solicitation or a proposed award of a Contract is in violation of federal, state or municipal law, then the Solicitation or proposed award will be canceled.
- 3) If after an award of a Contract, the General Manager or Hearing Officer on appeal determines that a Solicitation or award of a Contract was in violation of applicable law, then:
 - a) If the offeror awarded the Contract has not acted fraudulently or in bad faith:
 - i) The Contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of IGU, or
 - ii) The Contract may be terminated and the offeror awarded the Contract will be compensated for the actual expenses reasonably incurred under the Contract, plus a reasonable profit on those expenses, prior to the termination;
 - b) If the Person awarded the Contract has acted fraudulently or in bad faith, the Contract may be declared null and void or voidable, if such action is in the best interests of IGU.
- 4) In addition to the relief noted above, if a Protest is sustained, and the protesting offeror or bidder should have been awarded the Contract under the Solicitation but is not, then the protesting offeror's sole remedy shall be the bid or proposal preparation costs excluding attorney's fees.

6.13.5 Disputes and Dispute resolution.

- 1) It is the policy of IGU to attempt to resolve all Contract disputes at the Procurement Officer level through negotiations, alternative dispute resolution, arbitration or other methods consistent with the terms and procedures agreed to in the Contract. To this end IGU Contracts greater than \$50,000 will include a clause that provides for a dispute resolution. The process similar to the review and appeal processes identified in sections 6.13.6 through 6.13.9 may be incorporated into the contract otherwise the dispute resolution clauses included in the final signed contract will govern.

6.13.6 Contractor Notification and Requirements on a Contract Claim

- 1) If the Contractor becomes aware of any act or occurrence which may form the basis of a claim by the Contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the Contract, the Contractor will immediately inform the Procurement Officer or his designee.
- 2) When a Contractor becomes aware of a situation that may form the basis of a claim for compensation that exceeds the amount designated as the base amount of the Contract and before performing additional work or supplying additional materials, the Contractor will submit Cost and Pricing Data on the additional work or materials. The Contractor will certify that, to the best of the Contractor's knowledge and belief, the data submitted is accurate, complete, and current and is the actual cost to the Contractor of performing the additional work or supplying the additional materials.
- 3) If the matter cannot be resolved by agreement between the Procurement Officer or his designee and the Contractor within 7 days, the Contractor will, within the next 14 days, submit an "Intent to Claim" in writing to the Procurement Officer or his designee.
- 4) The claim, if not resolved, will be presented to the Procurement Officer, in writing, within 30 days following receipt of the "Intent to Claim". The claim must include the elements identified in 6.13.6 (5). Receipt of the claim will be acknowledged in writing or e-mail by the Procurement office or his designee.
- 5) A written claim presented by the Contractor to the Procurement Officer will specifically include the following:
 - a) The act, event or condition giving rise to the claim.
 - b) The Contract provisions which apply to the claim and under which relief is provided.
 - c) The item or items of Contract work affected and how they are affected.
 - d) The specific relief requested and the basis upon which it was calculated.
- 6) The Contractor will certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes IGU is liable.
- 7) The claim, in order to be valid, must not only show that the Contractor suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the Contract provides entitlement to relief to the Contractor for such act, event, or condition.

- 8) The Contractor agrees that unless these written notices are provided, the Contractor will have no entitlement to additional time or compensation for such act, event or condition.
- 9) The Contractor will in any case continue diligent performance of the Contract.

6.13.7 Procurement Officer's Decision:

- 1) Before issuing the decision, the Procurement Officer will review the facts relating to the claim and obtain necessary assistance from legal, fiscal, and other advisors and may request the Contractor provide additional documentation to support the claim.
- 2) If the Contractor fails to furnish necessary information requested by the Procurement Officer, the Procurement Officer will proceed to decide the claim and may, in the Procurement Officer's discretion, deny all or part of the claim because of the failure to furnish necessary information.
- 3) The Contractor will be furnished the Procurement Officer's decision within 90 days after receipt of the claim unless additional information is requested by the Procurement Officer and the General Manager approves an extension. The decision will include:
 - a) a description of the claim;
 - b) a reference to the pertinent Contract provisions;
 - c) a statement of the agreed upon and disputed facts;
 - d) findings of fact about the claim;
 - e) a determination of any amount payable;
 - f) a statement of reasons supporting the decision;
- 4) The Procurement Officer decision is final and conclusive unless fraudulent as to the claim or unless, within 14 days of receipt of the decision, the Contractor delivers a written Notice of Appeal to the General Manager.
- 5) If the Procurement Officer does not issue a written decision by the date it is due, the Contractor may proceed as if the Procurement Officer had issued a decision adverse to the Contractor.

6.13.8 Appeals on a Contract Claim

- 1) The appeal must be submitted within 14 days of receipt of the Procurement Officer's decision and contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.
- 2) The General Manager may resolve the appeal from a decision the Procurement Officer by;
 - a) Accepting the decision of the Procurement Officer as the final administrative decision of IGU.
 - b) Entering into structured non-binding negotiations with the assistance of a mediator that is appointed by agreement of the parties on a without prejudice basis or
 - c) Conducting a formal hearing with a Hearing Officer appointed by mutual agreement of the parties per 6.13.11.

- 3) During an appeal under this section the Contractor may not rely on or introduce information that the Contractor has failed to furnish to the General Manager in support of the claim.

6.13.9 Hearings on Appeal of the General Manager's Decision

- 1) If a hearing is the preferred method for resolving the appeal of the Procurement Officer's the hearing will be conducted in accordance with this Section.
 - a) The appeal will be heard by a Hearing Officer jointly selected by the General Manager and the Contractor and will be reviewed and determined de novo.
 - b) The Hearing Officer will be a member of the State Bar for at least five years and experienced in contract or commercial matters.
 - c) The Hearing Officer will hold a hearing unless it is determined in writing that the appeal of the General Managers Decision is untimely.
 - d) Hearings will be recorded and conducted informally with due regard for the rights of the parties involved.
 - e) The review will be based on the provisions of this section and generally accepted principles of government purchasing.
 - f) The Hearing Officer's decision will be in writing and contain findings of fact and conclusions of law.
 - g) The decision of the Hearing Officer will be the final administrative decision on the matter.

6.14 Ethics in Procurement

- 1) An Employee or Agent of IGU, or an Immediate Family member of any of the proceeding individuals will be excluded from participating in any way in any IGU Procurements in which the individual or their family members would have a Financial Interest in the award.
- 2) Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the duties is a breach of a public trust. In addition, it will be unethical for any Employee or Agent of IGU, to fail to meet any other applicable standards set forth in this section; or to participate directly or indirectly in a Procurement when the Employee or Agent of IGU knows that:
 - a) The Employee, Agent of IGU or any member of the their Immediate Family has a Financial Interest pertaining to the Procurement;
 - b) Any other Person, Business, or organization with whom Employee, Agent of IGU or any member of an their Immediate Family is negotiating or has an arrangement concerning prospective employment is involved in the Procurement.
- 3) An Employee, Agent of IGU, or an Immediate Family member of any of the proceeding individuals will not be disqualified from participation in matters in which the individual or family member:
 - a) Has a Financial Interest which is insubstantial;
 - b) Has a Financial Interest that is possessed generally by the public or a large class of persons to which the public official belongs;
 - c) Merely performs some duty or has some influence which would have insubstantial or conjectural effect on the matter: or
 - d) Holds a Financial Interest in a disclosed blind trust.

- 4) It will be unethical for an Employee or Agent of IGU, or an Immediate Family member of any of the proceeding individuals, to solicit, demand, accept or agree to accept from another Person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request influencing the content of any specification or Procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a Contract or subcontract, or to any Solicitation or proposal therefor.
- 5) It will be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractors under a Contract to the prime Contractor or higher tier subcontractors or any Person associated therewith as an inducement for the award of a subcontract or order.
- 6) It will be unethical for a Person to be retained or to retain a Person to solicit or secure an IGU Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide Employees or bona fide established commercial selling agencies for the purpose of securing business.
- 7) Direct or indirect participation means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

6.15 Violations of Procurement Policies or Procedures

- 1) An Employee of IGU or individual working as an Agent for IGU who Contracts for or purchases Supplies, Services, Professional Services, or Construction in a manner the Employee or individual working as an Agent for IGU knows to be contrary to the requirements of IGU policies and procedures is subject to disciplinary action, including suspension or termination of employment, or dismissal in accordance with Contract terms and applicable personnel rules.
- 2) An Employee of IGU or individual working as an Agent for IGU who intentionally makes a false statement regarding the determination to conduct a non-competitive or limited competition Procurement is subject to disciplinary action, including suspension or termination of employment, or dismissal in accordance with Contract terms and applicable personnel rules.
- 3) If IGU suffers damages as a result of the unauthorized Procurement actions of an Employee, or an Agent of IGU, the General Manager will document the facts and file a report with Board and consult with legal counsel to determine if civil or criminal action should be considered.
- 4) IGU will hold Employees personally responsible for any unauthorized Procurement made for personal benefit or outside the scope of their Delegation of Authority
- 5) If for any reason a Procurement Officer suspects there may be collusion or other anticompetitive practices among bidders or offerors, the Procurement Officer will transmit a notice of the relevant facts to the General Manager and Chairman of Finance Committee, or the Board as may be appropriate.

6.16. Supply Management

6.16.1 Supply inventory Records

- 1) The General Manager will establish and maintain inventory records for non-consumable Supplies owned and managed by IGU. The records will include;
 - a) non-consumable Supplies with a unit acquisition cost of more than \$5,000;
 - b) Supplies determined by the General Manager to be subject to inventory tracking regardless of cost; and
 - c) lease purchase or installment purchase equipment or long-term rental equipment.
- 2) All missing, lost, stolen, or destroyed Supplies will be reported to the General Manager. Theft of Supplies valued at \$500 or more will be immediately reported to the appropriate law enforcement agency.

6.16.2 Surplus and Disposal of Supplies

- 1) The General Manager may act on behalf of IGU in all matters pertaining to the disposition of surplus Supplies.
- 2) The General Manager may offer surplus Supplies through spot bids, formal bids, public auction, established markets, lease, trade or posted prices. If circumstances render these methods impractical, the General Manager may employ other disposition methods, including negotiations with a single buyer or barter.
- 3) If the General Manager offers surplus Supplies by Request for Bids, notice of sale of the surplus Supplies must be publicly available at least 10 days before the date set for opening bids.
- 4) An Employee, Contractor, or partner of IGU may not directly or indirectly purchase, or agree with another Person to purchase, surplus Supplies that are offered through a bid process if the Employee, Contractor, or partner is, or has been, directly or indirectly involved in the disposal, maintenance, or preparation for sale of the surplus Supplies.
- 5) Before conducting a public disposal process, the General Manager may approve the sale of surplus Supplies to a Contractor of IGU subject to a determination that;
 - a) the value received for the surplus Supplies through a negotiated sale would exceed the cost to otherwise dispose of the property; or
 - b) the sale to the Contractor is in the best interest of IGU.
- 6) The General Manager may offer surplus Supplies by negotiated sale, transfer, lease, or donation to local governments, public Procurement units, or tax-exempt nonprofit organizations if the General Manager determines it to be in the best interest of IGU.

6.17. General Requirements

6.17.1 Requirement of Good Faith

- 1) All parties involved in the negotiation, performance, or administration of Contracts of IGU will act in good faith

6.17.2 Trade secrets and confidential technical data

- 1) The General Manager may establish procedures that are consistent with AS 44.88.215 to protect the confidentiality of trade secret and confidential technical data and the confidentiality provisions for IGU's procedures for inspection of public records.

6.17.3 Retention Schedule for Procurement Files

- 1) All Procurement records will be maintained for a period of 5 years after the completion of the Contract or resolution of any Contract claims or disputes. The Procurement records may be maintained in either hardcopy or digital format provided the records may be available for review or audit.

7. Annual Review

- 1) The GM will be conduct an annual review of this Manual per IGU policy.

Appendix A – IGU Procurement Policy 06

Appendix B -- Board Memo Delegation of Authority to General Manager

Appendix C – Board Memo Requesting Contract Approval – Example

Appendix D - Board Memo Requesting Approval of a Contract Amendment – Example

Appendix E - Delegation of Authority by General Manager – Example

Appendix F + – Standard Forms and Process Check Lists – Examples

(Appendices will be incorporated into the manual as standard forms and processes are developed. Processes may include such things as the use of credit cards, public notices, bid openings, and contract close out. Forms may include standard boiler plate for PO's, contracts, bids, and other procurement and contract documents.)