ALASKA RAILROAD CORPORATION

REVISED PROCUREMENT RULES

[Adopted November 12, 2013]

TABLE OF CONTENTS

		Page
1100.0	**ORGANIZATION OF ARRC PROCUREMENT**	**1**
1100.1	Purpose of Rules	1
1100.2	Authority	1
1100.3	Delegation	1
1100.4	Supersede Prior Rules	1
1200.0	**COMPETITIVE SEALED BIDDING**	**1**
1200.1	General Policy	1
1200.2	Invitation to Bid	1
1200.3	Subcontractors for Construction Contracts	2
1200.4	Bid Security	4
1200.5	Public Notice of Invitation To Bid	4
1200.6	Bid Opening	4
1200.7	Bid Acceptance and Bid Evaluation	5
1200.8	Late Bids; Correction or Withdrawal of Bids; Cancellation of Award	5
1200.9	Contract Award After Bids	6
1200.10	Multi-Step Sealed Bidding	7
1300.0	**COMPETITIVE SEALED PROPOSALS**	**7**
1300.1	Conditions for Use	7
1300.2	Request For Proposals	8
1300.3	Treatment of Proposals	8
1300.4	Evaluation of Proposals	9
1300.4-A	Evaluation Factors for Heavy Trucks, Rolling Stock and Heavy Equipment	10
1300.5	Discussion with Responsible Offerors and Revisions to Proposals	10
1300.6	Award of Contract	11
1300.7	Contract Execution	11
1300.8	Multi-Step Sealed Proposals	12
1350.0	**ARCHITECTURAL, ENGINEERING AND LAND SURVEYING CONTRACTS**	**12**
1350.1	Architect, Engineer, or Land Surveying Services	12
1350.2	Other Architect, Engineer, and Land Surveying Procurement Methods	12
1350.3	Public Notice	13

TABLE OF CONTENTS

		Page
1350.4	Architect, Engineer, or Land Surveyor Selection Committee	13
1350.5	Evaluation and Selection of Architects, Engineers or Land Surveyors	13
1350.6	Discussions	14
1350.7	Selection of the Most Qualified and Suitable Offerors	14
1350.8	Negotiation and Award of a Contract	14
1375.0	**DESIGN-BUILD CONTRACTS**	**15**
1375.1	General Design-Build Requirements	15
1375.2	Design-Builders	15
1375.3	Development of Performance Criteria	17
1375.4	Solicitation of Proposals	17
1375.5	Preparation and Submission of Proposals	19
1375.6	Evaluation and Award of Design-Build Contracts	19
1400.0	**OTHER PROCUREMENT METHODS**	**21**
1400.1	Single Source Procurements	21
1400.2	Limited Competition Procurements	22
1400.3	Emergency Procurements	23
1400.4	Small Procurements	23
1400.5	Innovative Procurements	24
1400.6	Employment and Youth Job Training Program Procurements	24
1400.7	Correctional Industries Procurements	24
1400.8	Unsolicited Offers	25
1450.0	**LEASES**	**25**
1450.1	Lease Extensions Authorized	25
1450.2	Lease-Purchase Agreements	25
1450.3	Lease-Purchase of Personal Property	26
1500.0	**PREFERENCES**	**26**
1500.1	Alaska Bidder and Related Preferences	26
1500.2	Use of Local Forest Products	28
1500.3	Use of Alaska Products	28
1500.4	Contract Specifications	28
1500.5	Grant of Preference	29
1500.6	Penalty for Failing to Use Designated Products	29
1500.7	Preference Amounts	29
1500.8	Identification of Alaska Products	29

TABLE OF CONTENTS

		Page
1500.9	Preference for Recycled Products	29
1500.10	Application of Preferences	30
1500.11	Procurement of Paper	30
1500.12	Definitions	30
1600.0	**CONTRACT FORMATION AND MODIFICATION**	**30**
1600.1	Review and Approval by General Counsel	30
1600.2	Solicitation Cancellation, Amendment, or Rejection	30
1600.3	Determination of Responsibility	32
1600.4	Novation or Change of Name	33
1600.5	Notice of Intent to Award a Contract	33
1600.6	Permissible Types of Contracts	33
1600.7	Multi-Term Contracts	33
1600.8	Cost or Pricing Data	34
1600.9	Right to Inspect Plant	34
1600.10	Right to Audit Records	35
1600.11	Conditioning Bids or Proposals	35
1600.12	Qualified Bidders or Offerors	35
1600.13	Low Tie Bids or Proposals	36
1700.0	**PROCUREMENT RECORDS AND REPORTS**	**36**
1700.1	Retention of Procurement Records	36
1700.2	Records of Contracts Awarded Under Competitive Sealed Proposals	36
1700.3	Records of Single Source and Emergency Procurements	36
1700.4	Records of Innovative Procurements	37
1800.0	**LEGAL AND CONTRACTUAL REMEDIES**	**37**
1800.1	Filing of a Protest	37
1800.2	Time for Filing a Protest	37
1800.3	Notice of Protest	38
1800.4	Stay of Award	38
1800.5	Decision by the Procurement Officer	38
1800.6	Protest Remedies	38
1800.7	Appeal of a Protest	38
1800.8	Notice of a Protest Appeal	39
1800.9	Stay of Award During Protest Appeal	39
1800.10	Decision Without Hearing	39

TABLE OF CONTENTS

		Page
1800.11	Hearing on Protest Appeal	39
1800.12	Contract Claims	39
1800.13	Appeal on a Contract Claim	41
1800.14	Hearing on a Contract Claim	41
1800.15	Hearing Procedures	41
1800.16	Recommendation by the Hearing Officer	42
1800.17	Final Decision	42
1800.18	Judicial Appeal	42
1800.19	Misrepresentations and Fraudulent Claims	43
1800.20	Exclusive Remedy	43
1800.21	Suspension of Vendors from Consideration for Contracts	43
1800.22	Definition	44
1800.23	Delegation	44
1800.24	Other Rules of Procedure	44
1850.0	**CONSTRUCTION CONTRACT CLAIMS**	**45**
1850.1	Applicability	45
1850.2	Construction Contract Claim Appeals	45
1850.3	Arbitration Request	45
1850.4	Answering Statement	46
1850.5	Referral to Arbitrator	46
1850.6	Arbitrator List	46
1850.7	Arbitrator Referral	47
1850.8	Recusal, Disclosure, and Challenge	48
1850.9	Vacancies	48
1850.10	Communication with Arbitrator and Service of Documents	48
1850.11	Public Access	49
1850.12	Preliminary Conference	49
1850.13	Discovery and Exchange of Information	49
1850.14	Attendance	49
1850.15	Conduct of Arbitration	50
1850.16	Authority of Arbitrator	50
1850.17	Evidence	51
1850.18	Burden of Proof	51
1850.19	Record and Transcript	51
1850.20	Form of Decision	51

TABLE OF CONTENTS

		Page
1850.21	Attorneys Fees, Costs and Offers of Judgment	52
1850.22	Rules of Procedure	52
1900.0	**INTERGOVERNMENTAL RELATIONS**	**52**
1900.1	Cooperative Purchasing Authorized	52
1900.2	Interagency Sale, Acquisition or Use of Supplies and Services	53
1900.3	Joint Use of Facilities and Equipment	53
1900.4	Supply of Personnel, Information, and Technical Services	53
1900.5	Definitions	53
2000.0	**GENERAL PROVISIONS**	**54**
2000.1	Application of Rules	54
2000.2	Federal Assistance	55
2000.3	Reporting of Anti-Competitive Practices	55
2000.4	Product Endorsement	55
2000.5	Use of ARRC Name	55
2000.6	Standardization	55
2000.7	Purchases by Employees	55
2000.8	Commitment Authority	55
2000.9	Interpretation of Rules	55
2000.10	Definitions	55

ALASKA RAILROAD CORPORATION

REVISED PROCUREMENT RULES
(Adopted November 12, 2013)

1100.0 ORGANIZATION OF ARRC PROCUREMENT

1100.1 **Purpose of Rules.** The purpose of these Rules is to establish procedures to govern the procurement of supplies, services, professional services, and construction by the Alaska Railroad Corporation ("ARRC") that are substantially equivalent to the procurement procedures adopted by State agencies and other State owned corporations. ARRC procurement shall be based upon competitive principles consistent with AS 36.30 and industry standards as adapted to meet the special needs of ARRC as determined by the Board of Directors ("Board").

1100.2 **Authority.** These Rules are adopted under the authority of AS 42.40, P. L. 97-468 (The Alaska Railroad Transfer Act), 45 U.S.C. Sections 1201-1214 ("ARTA"), and AS 36.30.015(e).

1100.3 **Delegation.** Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies, services, professional services, and construction and the disposal of supplies for the ARRC are vested in the Board. To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with these Rules. The Board hereby delegates the authority and responsibilities necessary for the implementation of these Rules to the Chief Executive Officer ("CEO") and his designee.

1100.4 **Supersede Prior Rules.** These Rules supersede the procurement rules issued on October 2, 2009, which shall have no further force or effect. These Rules shall govern in the event of a conflict between these Rules and any other rules of ARRC existing as of the date of adoption of these Rules. These Rules shall also supersede any conflicting provisions contained in ARRC's Approval Authority Guide.

1200.0 COMPETITIVE SEALED BIDDING

1200.1 **General Policy.** Except as otherwise provided in these Rules, or unless specifically exempted by law, an ARRC contract shall be awarded by competitive sealed bidding.

1200.2 **Invitation to Bid.**

(a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. An invitation to bid must include the following:

(1) Instructions and information to bidders concerning the bid submission requirements, the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by ARRC, and any other special information;

(2) A purchase or project description, evaluation factors (if applicable), delivery or performance schedule, and the inspection and acceptance requirements that are not included in the purchase or project description;

(3) A description of all applicable contract terms and conditions, including warranty and bonding or other security requirements;

(4) A requirement for certification by the bidder that, by submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion; and

(5) A requirement for certification by the bidder that it complies with the applicable provisions of 42 U.S.C. 1981 and 42 U.S.C. 2000e-2000e-17 (Civil Rights Act), 42 U.S.C. 12001-12213 (Americans with Disabilities Act of 1990), AS 18.80, and regulations adopted under those statutes.

(b) A bidder who seeks an Alaska bidder preference shall submit a copy of its valid Alaska business license with its bid. A bidder for a construction contract shall also submit proof of the bidder's registration under AS 08.18 before the contract may be awarded.

(c) An invitation to bid may incorporate documents by reference and may require the receipt of all amendments issued to be acknowledged by the bidders.

(d) An invitation to bid may require the submission of product samples, descriptive literature, technical data, or other material. An invitation to bid may provide for any of the following before award:

(1) Inspection or testing of a product for such characteristics as quality or workmanship;

(2) Examination of such elements as appearance, finish, taste, or feel; or

(3) Other examinations that determine whether a product conforms with other purchase requirements.

1200.3 <u>Subcontractors for Construction Contracts</u>.

(a) Within five working days after the identification of the apparent lowest responsive and responsible bidder for a construction contract, such bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor. An apparent low bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18 and valid Alaska business license. If a subcontractor on the list did not have a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the bid was opened, the bidder may not use the subcontractor in the performance of the contract, and shall replace the subcontractor with a subcontractor who had a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the bid was opened.

(b) The apparent low bidder for a construction contract may replace a listed subcontractor if the subcontractor

(1) fails to comply with AS 08.18;

(2) files for bankruptcy or becomes insolvent;

(3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

(4) fails to obtain bonding;

(5) fails to obtain insurance acceptable to ARRC;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the contractor to satisfy required state and federal affirmative action requirements;

(8) refuses to agree or abide with the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor.

(c) If a bidder for a construction contract fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.

(d) A bidder for a construction contract who attempts to circumvent the requirements of this section by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

(e) If a construction contract is awarded to a bidder who violates this section, the procurement officer may

(1) cancel the contract; or

(2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10% of the value of the subcontract at issue.

(f) In addition to the circumstances described in (b) of this section, a construction contractor may request permission from the procurement officer to add or replace a listed subcontractor. The request must be in writing, specifically detailing the basis for the request, and include appropriate supporting documentation. The procurement officer shall approve the request if the procurement officer determines in writing that the requested addition or replacement is in the best interest of ARRC.

(g) The requirements of this section do not apply to a design-build construction contract.

1200.4 Bid Security.

(a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed $200,000. Bid security on construction contracts under this amount may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services when needed for the protection of the ARRC.

(b) Bid security must be a bond provided by a surety company authorized to do business in the state, a cashier's check or otherwise supplied in a form satisfactory to the procurement officer. Bid security must be in an amount equal to at least 5% of the amount of the bid.

(c) When the invitation to bid requires security, the procurement officer shall reject a bid that does not comply with the bid security requirement unless the officer determines that the bid fails to comply in a nonsubstantial manner with the security requirements.

1200.5 Public Notice of Invitation To Bid.

(a) Except for small purchases made under Rule 1400.4, the procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If the procurement officer determines in writing that a shorter notice period is advantageous for a particular bid and adequate competition is anticipated, the 21-day period may be shortened. The determination shall be made by the procurement officer. Notice shall be posted on the Alaska Online Public Notice System. When practicable, notice may include one or more of the following:

(1) advertisement in a newspaper calculated to reach prospective bidders;

(2) notices posted in public places within the area where the work is to be performed or the material furnished;

(3) notices posted on ARRC's website; or

(4) in other appropriate media, including electronic media, and in a way calculated to reach prospective contractors located in the state.

(b) The public notice of invitation to bid shall include the bid number, the title of the bid, a brief description of the scope of work solicited, the name and telephone number of the contact person for questions or information regarding the bid, location(s) where copies of the bid may be picked up, the closing date and time for response to the invitation and the time, date and place for opening of the bids. The procurement officer may require payment of duplication costs or a deposit for supplying the solicitation or supporting documents.

(c) Failure to substantially comply with the notice requirements of this section does not invalidate a bid or the award of a contract.

1200.6 Bid Opening.

(a) A bid must be submitted in a sealed envelope with the invitation to bid number identified on the outside of the envelope. The procurement officer shall open bids at the time and place

designated in the invitation to bid. The name of each bidder, the bid price and other information deemed appropriate by the procurement officer shall be recorded.

(b) The information recorded under (a) of this section is open to inspection by the public as soon as is practicable before the notice of intent to award a contract is given. The bids are not open for inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential.

1200.7 Bid Acceptance and Bid Evaluation.

(a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in Rule 1200.8. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. 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 invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) If only one responsive bid is received in response to an invitation to bid, including multi-step bidding, an award may be made to the single bidder if the bidder is responsible and if the procurement officer finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

(1) New bids or offers may be solicited;

(2) The proposed procurement may be canceled; or

(3) If the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable, and there is no time for resolicitation or it is unlikely that resolicitation would increase the number of bids, the procurement may be conducted under Rule 1400.1 (single source), Rule 1400.2 (limited competition procurement) or Rule 1400.3 (emergency procurement), as appropriate.

1200.8 Late Bids; Correction or Withdrawal of Bids; Cancellation of Award.

(a) Late Bids. A bid received after the bid due date and time indicated on the invitation to bid or any extension thereof is a late bid and will be rejected unless the delay was due to an error of ARRC. Late bids will be labeled on the envelope with the notation "late bid-rejected" and with the time and date of receipt and will not be opened.

(b) Mistakes in Bids. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with the procedures stated in this section. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of ARRC or fair competition may not be permitted. A decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on a bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before final award, an action may not be maintained against the bidder or the bid security.

(c) Mistakes Discovered Before Bid Opening. A bidder may withdraw a bid or correct mistakes discovered before the time and date set for bid opening if a written copy of the correction, modification, or notice of withdrawal is received in hand at the procurement office by the time and date set for receipt of bids. The procurement officer shall verify the identity of a bidder prior to allowing a bid withdrawal or correction and shall obtain a signed receipt for the file.

(d) Unit Price Extension. Unit price shall be the governing factor if an error is made in extending the unit price.

(e) Confirmation of Bid. When the procurement officer knows or has reason to conclude that a mistake has been made, the officer shall ask the bidder to confirm the bid. Situations in which confirmations shall be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth below are met.

(f) Mistakes Discovered After Opening But Before Award. This section sets forth procedures to be applied in three situations described below in which inadvertent, nonjudgmental mistakes in bids are discovered after the time and date set for bid opening but before award.

(1) Minor Informalities. The procurement officer may waive or allow the bidder to correct minor informalities in a bid if it is in the best interest of ARRC to do so.

(2) Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(3) Mistakes Where Intended Correct Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(g) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the procurement officer makes a written determination that it would be grossly and unjustifiably unfair not to allow the mistake to be corrected.

1200.9 Contract Award After Bids.

After applying any preferences that apply under Rules 1500.1-1500.10, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

1200.10 **Multi-Step Sealed Bidding.** When it is considered impractical to initially prepare a definitive purchase description to support an award based on price, the procurement officer may issue an invitation to bid requesting the submission of unpriced technical offers to be followed by an invitation to bid limited to the bidders whose offers are determined to be technically qualified under the criteria set out in the first solicitation.

1300.0 COMPETITIVE SEALED PROPOSALS

1300.1 **Conditions for Use.**

(a) When the procurement officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to ARRC, a contract may be entered into by competitive sealed proposals. The following general criteria will be applied by the procurement officer in deciding whether to issue a request for proposals:

(1) Whether the type of need to be satisfied involves weighing factors in addition to price;

(2) Whether evaluation factors involve either the relative abilities of offerors to perform, or the degrees of technical or professional experience or expertise required;

(3) Whether selection of the most advantageous items or services may require comparison and judgmental evaluation; or

(4) Whether nonstandard, high technology, or complex goods or services are required.

(b) When the procurement officer determines that it is advantageous to ARRC, he may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design/build.

(c) The following are examples of types of supplies and services, for which the use of competitive sealed bidding is either not practicable or not advantageous to ARRC and may be procured by competitive sealed proposals:

(1) professional services;

(2) supplies and services for clean up of oil and hazardous substances;

(3) concession contracts;

(4) telephone, computer and software systems and maintenance related thereto;

(5) lease of office and other space;

(6) design-build contracts;

(7) specialized aircraft charter or vessel charter contracts.

1300.2 Request For Proposals.

(a) A request for competitive sealed proposals must contain the date, time and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided.

(b) An offeror for a construction contract shall submit proof of the offeror's registration under AS 08.18 before the contract may be awarded. A request for sealed proposals for a construction contract, except a design-build construction contract, must require the offeror, no later than five working days after the proposal that is the most advantageous to ARRC is identified, to list subcontractors the offeror proposes to use in the performance of the construction contract. The list must include the information required under Rule 1200.3(a). The provisions of Rule 1200.3 (b) - (f) apply to competitive sealed proposals for construction contracts, except design-build construction contracts.

(c) A request for proposals must contain sufficient information for an offeror to submit a responsive proposal or contain references to any information that cannot reasonably be included with the request. The request must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of price and other evaluation factors.

(d) Notice of a request for proposals shall be given in accordance with procedures under Rule 1200.5. The procurement officer may use additional means considered appropriate to notify prospective offerors of the intent to enter into a contract through competitive sealed proposals.

(e) If the offeror maintains an office or place of business in Alaska, the offeror must have a valid Alaska business license at the time designated in the request for proposals, for opening of the proposals.

(f) If, after receipt of the proposals, there is a need for any substantial clarification of or material change in the request for proposals, the request shall be amended to incorporate the clarification or change, and a date and time established by the procurement officer for receipt of new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

1300.3 Treatment of Proposals.

(a) The procurement officer shall open proposals so as to avoid disclosure of contents to competing offerors before notice of intent to award a contract is issued. A register of proposals containing the name and address of each offeror shall be prepared. The register and the proposals are open for public inspection after the notice of intent to award is issued under Rule 1600.5. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

(b) If a solicitation is canceled under Rule 1600.2 after proposals are received but before a notice of intent to award a contract has been issued under Rule 1600.5, a protest of the solicitation or of the cancellation of the solicitation has not been filed by an interested party under Rule 1800.1, and the time specified in Rule 1800.2 for filing a protest has expired, the

procurement officer may return the proposal to the offeror that made the proposal. The procurement officer shall keep a list of returned proposals in the file for the solicitation.

(c) A proposal may be corrected, modified, or withdrawn in the manner described in Rule 1200.8. Unless otherwise provided in the request for proposals, a proposal or a correction, modification or withdrawal of a proposal received after the date set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of ARRC.

1300.4 Evaluation of Proposals.

(a) The procurement officer or an evaluation committee shall evaluate proposals. The evaluation must be based only on the evaluation factors set out in the request for proposals. Numerical rating systems may be used, but are not required. If numerical rating systems are not used, the procurement officer, or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing. Evaluation factors not specified in the request for proposals may not be considered. The weighting value or numerical system to be applied to each evaluation factor must be set out in the request for proposals.

(b) Price must be an evaluation factor unless the services or supplies sought are selected in accordance with Rules 1350.1-1350.8. If a numerical rating system is used, the request for proposals must state the value to be applied to price.

(c) For the purposes of evaluating price, the proposed price of an offeror who qualifies as an Alaska bidder under Rule 1500.1 shall be reduced by 5%. All other applicable preferences must be applied. The proposal with the lowest price must receive the highest available rating allocated to price. Each proposal that has a higher price than the lowest must receive a lower rating for price. If a numerical rating system is used to evaluate price, the points allocated to the higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

(d) The following are some additional evaluation factors that may be considered:

(1) the offeror's experience in Alaska performing work similar to that sought in the request for proposals;

(2) the percentage of work that will be performed in Alaska;

(3) the location of the office of the offeror where the work will be performed; or

(4) the offeror's past performance, including conformance to specifications and standards of good workmanship, forecasting and containment of costs or prices, history of reasonable and cooperative behavior and overall concern for the interests of the customer, and adherence to contract schedules.

(e) Meetings may be held by an evaluation committee to discuss the request for proposals, the evaluation process, the weighting of evaluation factors and proposals received. If the evaluation is performed by an evaluation committee, each member shall exercise independent judgment and no member's vote may be weighted more than any other. Evaluations may not be based on discrimination due to race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

(f) If only one responsive and responsible proposal is received in response to a request for proposals, the procurement officer may either make an award in accordance with Rule 1300.6, reject the proposal, or reject the proposal and resolicit new proposals.

(g) Offerors shall act in good faith and shall fully comply with all terms of the request for proposals and with these Rules. Offers that are submitted in bad faith or which attempt to manipulate the procurement process shall be rejected. Multiple or alternate proposals are nonresponsive and will be rejected unless the solicitation states that such proposals will be accepted. A proposal from a debarred or suspended offeror shall be rejected.

(h) Proposals shall comply with the terms of the request for proposals. Proposals that do not comply in all material respects are nonresponsive and shall be rejected. In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. These communications are not opportunities for ARRC to negotiate terms or conditions, nor for the offeror to make material changes to the offer presented in its proposal. The evaluation by the procurement officer or the evaluation committee may be adjusted as a result of a clarification under this section. A contract may be awarded based on the proposals submitted and clarifications received, if any, without conducting discussions described in Rule 1300.5

1300.4-A **Evaluation Factors for Heavy Trucks, Rolling Stock and Heavy Equipment.** If a procurement officer uses competitive sealed proposals to procure heavy trucks, rolling stock or heavy equipment, the following additional evaluation factors may be used:

(1) the price;

(2) the quality of the article offered;

(3) the performance capabilities of the offerors and the manufacturers;

(4) the suitability of the article offered;

(5) the service requirements, including warranty, parts availability, and parts locations;

(6) durability as measured by projected operating and maintenance costs;

(7) the resale value;

(8) the transportation charges;

(9) the date of delivery and performance; and

(10) other factors determined to be pertinent or peculiar to the procurement.

1300.5 **Discussion with Responsible Offerors and Revisions to Proposals.**

(a) Offerors who submit proposals determined to be reasonably susceptible of being selected for award may be provided the opportunity to discuss their proposals with the procurement officer or evaluation committee at the discretion of the procurement officer or

committee. The procurement officer may limit discussions to specific sections of the proposals received or specific sections of the request for proposals. In the event the procurement officer determines that such discussions are in ARRC's best interest, offerors reasonably susceptible of being selected for award will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors. AS 44.62.310 does not apply to meetings with offerors under this section.

(b) The evaluation of a proposal may be adjusted as a result of a discussion under subsection (a) above. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions. If during discussions the procurement officer determines that there is a need for any substantial clarification of or change in the request for proposals, the request must be amended to incorporate the clarification or change, and a date and time established for withdrawal or receipt of amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals. Auction techniques that reveal one offeror's price to another, and disclosure of any material information derived from competing proposals, are prohibited. Any oral modification of a proposal shall be reduced to writing by the offeror.

(c) Following discussions, the procurement officer may set a date and time for the submission of best and final proposals. Best and final proposals should be requested and submitted only once. However, the procurement officer may make a determination that it is in ARRC's best interest to conduct additional discussions or change the solicitation requirements and require another submission of best and final proposals. Otherwise, discussion of or changes in the best and final proposals may not be allowed before award. If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediately previous proposal is considered the offeror's best and final proposal. After best and final proposals are received, final evaluations will be conducted.

(d) After final evaluation of the proposals, the procurement officer will, in the procurement officer's discretion, negotiate with the offeror of the highest ranked proposal for the purpose of obtaining contract terms consistent with the solicitation and with terms favorable to ARRC. If changes are made to the proposal, the changes must be reasonable; however, the changes may not have the effect of changing the ranking of the highest ranked proposal. If the procurement officer determines that the offeror of the highest ranked proposal fails to negotiate in good faith or fails to negotiate within the time period set by the procurement officer, the procurement officer may terminate negotiations and begin negotiations with the next highest ranked proposal in the manner described in this subsection.

1300.6 **Award of Contract.** The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to ARRC taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. The contract file must contain the basis on which the award is made.

1300.7 **Contract Execution.** A contract awarded under competitive sealed proposals must contain:

(1) a statement of the amount of the contract;

(2) the date for the supplies to be delivered or the dates for construction, services, or professional services to begin and be completed; and

(3) a description of the supplies, construction, services, or professional services to be provided.

1300.8 **Multi-Step Sealed Proposals.** When it is considered impractical to initially prepare a definitive purchase description to support an award based on listed selection criteria, the procurement officer may issue an expression of interest requesting the submission of unpriced technical offers, and then later issue a request for proposals limited to the offerors whose offers are determined to be technically qualified under the criteria set out in the expression of interest.

1350.0 ARCHITECTURAL, ENGINEERING AND LAND SURVEYING CONTRACTS

1350.1 Architect, Engineer, or Land Surveying Services.

(a) Except as provided otherwise in section 1350, architect, engineer, or land surveyor services shall be procured under Rules 1300.1-1300.8, Rule 1400.2 or Rule 1400.4. In the case of inconsistency, the provisions of Rules 1350.1-1350.8 shall control.

(b) Procurement of minor or incidental architect, engineer, or land surveying work in support of, and performed during construction is not subject to Rules 1350.1-1350.8, and qualifies as a single source procurement under Rule 1400.1.

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

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

1350.2 Other Architect, Engineer, and Land Surveying Procurement Methods.

(a) Notwithstanding other provisions of these Rules, the selection procedures in Rules 1350.1-1350.8 may be used to select one or more qualified consultants in architectural, electrical, mechanical, civil/structural engineering, land surveying and other disciplines to award multi-term and indefinite quantity contracts for the purpose of acquiring design and consulting services for multiple projects. The procurement officer may establish limits on duration of resulting contracts or the size of the projects conducted under such contracts.

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

1350.3 Public Notice.

(a) Notice of the need for architect, engineer, or land surveying services shall be given as described in Rule 1200.5.

(b) A solicitation must be prepared which describes ARRC's requirements, sets out the evaluation criteria, and includes notice of any conference to be held.

(c) The procurement officer may require payment of a fee or deposit to supply a solicitation or supporting documents.

1350.4 Architect, Engineer, or Land Surveyor Selection Committee.

(a) If a contract for architect, engineer, or land surveying services is expected to exceed the small procurement limit for construction established under Rule 1400.4, the procurement officer shall designate a minimum of three persons to serve as members of a selection committee for that contract, including:

(1) two registered persons, if registration is required under AS 36.30.270(d) because price is a factor in the selection, or, if price is not a selection factor, two ARRC employees who are qualified in architecture, engineering or land surveying, as appropriate; and

(2) others as considered appropriate by the procurement officer.

(b) A majority of the committee must be registered persons if price is a factor in the selection.

(c) The procurement officer, or his designee, shall chair the committee and negotiate a contract with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services.

1350.5 Evaluation and Selection of Architects, Engineers or Land Surveyors.

(a) The selection committee shall consider and evaluate:

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

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

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

(c) Criteria considered in evaluating the statement of qualifications and performance data shall include, but not be limited to:

(1) experience in providing the required services;

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

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

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

(5) proximity to the project site of the office or firm or person, unless federal law prohibits such consideration in the award of the contract; and

(6) employment practices of the firm or persons with regard to women and minorities.

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

1350.6 **Discussions.** The selection committee may hold discussions regarding the proposed contract with the firms or persons selected. The purpose of such discussions is to explore the scope and nature of the required services and the relative utility of alternative methods of approach. The conditions, terms, or price of the proposed contract may be altered or otherwise changed during the course of the discussions.

1350.7 **Selection of the Most Qualified and Suitable Offerors.** After discussions, if held under Rule 1350.6, the selection committee shall reevaluate and rank, in order of preference, the three firms or persons that the committee considers to be the most qualified to provide the required services. Numerical rating systems may be used. If numerical rating systems are not used, the selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the resulting rankings of the most qualified and suitable firms or persons. The procurement officer must approve the recommendation, and may proceed to negotiate. The memorandum shall be included in the procurement file.

1350.8 **Negotiation and Award of a Contract.**

(a) The procurement officer, or his designee, shall negotiate with the top ranked offeror. Contract negotiations shall be directed toward:

(1) making certain that the offeror has a clear understanding of the scope of the work and the requirements involved in providing the required services;

(2) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(3) agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

(b) The offeror selected for award shall submit and certify cost and pricing data.

(c) Upon failure to negotiate a contract with the top ranked offeror, the procurement officer shall enter into negotiations with the next most highly ranked offeror.

(d) If the procurement officer is unable to negotiate a contract with any of the initially selected offerors, additional offerors may be selected in preferential order based on their respective qualifications or ranking.

(e) Written notice of intent to award a contract must comply with Rule 1600.5 and must be sent to each offeror.

(f) After award of the contract, a memorandum setting out the principal elements of the negotiation shall be prepared by the procurement officer. The memorandum shall be included in the procurement file and be available to the public upon request.

1375.0 DESIGN-BUILD CONTRACTS

1375.1 General Design-Build Requirements.

(a) The procurement officer may conduct a design-build procurement process when it is advantageous to ARRC.

(b) When a design-build procurement process is used, the request for proposals must solicit a single price for both design and construction services. Nothing in this subsection prohibits a multi-step award process.

(c) The provisions of Rules 1375.1-1375.6 apply to, and are incorporated in, all design-build construction contracts entered into by ARRC.

(d) Design-build construction contracts must be procured in accordance with Rules 1300.1-1300.8. In the case of inconsistency with Rules 1300.1-1300.8, the provisions of Rules 1375.1-1375.6 control.

1375.2 Design-Builders.

(a) A design-builder must have a valid business license issued under AS 43.70 and 12 AAC 12, and must be

(1) registered as a general contractor in accordance with AS 08.18 and 12 AAC 21; or

(2) licensed as an architect or engineer in accordance with AS 08.48 and 12 AAC 36.

(b) A design-builder may provide professional or construction services that the design-builder is not itself licensed or registered to provide, if those services are assigned or subcontracted to a person that

(1) is a member of the design-build team;

(2) has a valid business license issued under AS 43.70 and 12 AAC 12; and

(3) is registered or licensed to provide the services in accordance with AS 08.18 and 12 AAC 21, or with AS 08.48 and 12 AAC 36, as applicable.

(c) ARRC shall evaluate a design-builder for at least the following qualification factors:

(1) bonding capacity;

(2) financial strength and capabilities;

(3) experience and technical expertise with projects of similar size and scope;

(4) past performance;

(5) qualifications and experience of key management and professional staff who will be assigned to the project;

(6) the capacity to accomplish work in the required time; as part of the evaluation, the ARRC shall consider, and the design-builder must disclose, the design-builder's present workload;

(7) quality control and quality assurance policies and programs;

(8) the design-builder's safety record, to include safety and drug-testing policies and programs;

(9) equipment, including technical resources and information technology;

(10) a subcontracting plan, including the qualifications and capabilities of any subcontractor required to be identified by the request for proposals.

(d) When evaluating a design-builder, ARRC shall act in accordance with Rule 1300.4(c).

(e) ARRC shall preclude or disqualify a design-builder or member of the design-build team from participation in a design-build construction contract if the procurement officer determines that the design-builder or design-build team member has an unfair competitive advantage or a conflict of interest.

(f) A consultant or subconsultant to ARRC may not be allowed to participate in a project in other than a consultant or subconsultant capacity unless the procurement officer determines that

(1) the role of the consultant or subconsultant

(A) was limited to provision of preliminary design, reports, or similar low-level documents that will be incorporated in to the request for proposals; and

(B) did not include assistance in the development of instructions to offerors, qualification factors, performance criteria, or other evaluation criteria; or

(2) each document or report that the consultant or subconsultant delivered to ARRC made available to all offerors.

(g) With or without a request from ARRC, a design-builder, or a member of the design-build team, must promptly disclose to ARRC, in writing, any factor that may provide an unfair competitive advantage or potential or actual conflict of interest for the design-builder or design-build team member.

(h) Nothing in Rules 1375.1-1375.6 limits or eliminates any responsibility or liability that a professional on a design-build construction contract owes to ARRC or to a third party.

1375.3 **Development of Performance Criteria.** The procurement officer shall establish the scope and level of detail required for performance criteria contained in a request for proposals. The performance criteria must be detailed enough to permit offerors to submit proposals in accordance with the request for proposals.

1375.4 **Solicitation of Proposals.**

(a) The procurement officer shall prepare a request for proposals for each design-build construction contract. The request for proposals must contain, at a minimum, the following elements:

(1) the name and purpose of the project;

(2) a description of the method selected under Rule 1375.6(a) as the basis for awarding the design-build construction contract;

(3) the procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, the procedures for making awards, and a statement that the requirements of Rules 1375.1-1375.6 are incorporated.

(4) the date on or before which ARRC must receive proposals; that date may not be less than 21 days after issuance of the request for proposals;

(5) provisions for the payment of a stipend, if any;

(6) provisions specifying ownership of design plans or concepts or of technical plans or concepts;

(7) the proposed contract form, terms, and conditions;

(8) performance criteria developed under Rule 1375.3, including, as appropriate, capacity, durability, and production standards, ingress and egress requirements, and other criteria for the intended use of the project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal;

(9) a description of the drawings, specifications, or other required submittals, with guidance as to the form and level of completeness that will be acceptable; that description must include a description of the submittal review process;

(10) a schedule for planned commencement and completion of the design-build construction contract, unless contract time is to be proposed by the design-builder and is one of the weighted proposal evaluation criteria;

(11) budget limits, if any, for the design-build construction contract;

(12) affirmative action, disadvantaged business, or set-aside goals, if any, for the design-build construction contract;

(13) the qualifications the design-builder will be required to have;

(14) detailed material quality standards;

(15) the method for handling pre-proposal inquiries;

(16) long-term maintenance provisions, if any;

(17) a reference to the provisions of Rule 1375.2(e) and (f);

(18) a requirement that an offeror provide, in the offeror's proposal, information regarding actual or potential conflicts of interest;

(19) requirements related to changes in design-build team members or changes in personnel within design-build teams;

(20) each evaluation factor, including cost or price, and including each significant subfactor, if any, that will affect the award of the design-build construction contract;

(21) the relative importance of each evaluation factor and each subfactor, if any, in determining the award of the design-build construction contract;

(22) a requirement that the design-builder review the request for proposals to ascertain the project requirements, and a requirement that the design-builder notify the agency in the event of any ambiguity or uncertainty;

(23) terms or conditions detailing incentives, disincentives, or liquidated damages, if any;

(24) warranty provisions; the request for proposals must include notice that in addition to warranting materials, workmanship, and construction, and providing any additional warranties that the agency requires, a design-builder must warrant the design of the project;

(25) notice that the design-builder must provide, in a form and amount acceptable to ARRC, insurance coverage for a defined period after the final payment for the cost of

(A) correcting defects or deficiencies arising from or associated with design or construction negligence;

(B) errors or omissions; and

(C) legal defense and payment of indemnity;

(26) identification of the disciplines to be evaluated.

(b) In a request for proposals, ARRC may require a cash deposit, letter of credit, or bond not to exceed five percent (5%) of the maximum cost of the design-build construction contract, as established by the proposal.

1375.5 Preparation and Submission of Proposals.

(a) An offeror must submit its proposal to ARRC at the specific place and at or before the specific time identified in the request for proposals.

(b) An offeror must complete any form required in the request for proposals and provided by ARRC. The offeror must include with its proposal each completed form and any necessary attachment or additional information.

(c) Proposals shall be sealed and may not be opened until expiration of the time set in the request for proposals for submitting proposals.

(d) If the request for proposals requires a cash deposit or bond as described in Rule 1375.4(b), the deposit or bond is subject to forfeiture if the proposal is accepted but the offeror fails to execute the design-build construction contract.

(e) For each discipline that ARRC identifies in the request for proposals, proposals must identify each person within that discipline to whom the offeror proposes to subcontract obligations under the design-build construction contract. A person that the offeror identifies may not be replaced without the approval of ARRC.

1375.6 Evaluation and Award of Design-Build Contracts.

(a) The procurement officer shall use one or a combination of the following methods as a basis for award unless the procurement supervisor approves another method;

(1) the best value method, in which ARRC gives numerical scores to technical proposals, and then uses those numerical scores and the bid price to establish a best value in accordance with a formula published in the request for proposals;

(2) the two-step method, in which ARRC

(A) first, uses a request for qualifications and the qualification factors under Rule 1375.2 to short-list offerors; the request for qualifications must contain, at a minimum, the following elements;

(i) the date on or before which ARRC must receive qualifications submissions; that date may not be less than 21 days after issuance of the request for qualifications;

(ii) the qualifications the offerors will be required to have;

(iii) a description of the project in enough detail to let offerors determine if they wish to compete and to form the basis for their qualification submissions;

(iv) qualification factors and their relative weights;

(v) identification of the maximum number of offerors that will be permitted, at the second step described in (B) of this paragraph, to submit price and technical proposals; the maximum number may not exceed five offerors, unless the procurement officer determines that a maximum number greater than five is in the best interest of ARRC; and

(B) second, uses a request for proposals to evaluate price and technical proposals from the offerors that are short-listed;

(3) the low-bid method, in which

(A) an offeror must submit a technically qualified proposal in order for ARRC to consider the bid; and

(B) ARRC awards the design-build construction contract to the offeror that submits a proposal that is technically qualified and lowest price.

(b) If ARRC uses a request for qualifications to short-list offerors, ARRC shall issue notice of the request for qualifications in accordance with Rule 1200.5.

(c) To evaluate either submissions made in response to a request for qualifications or submissions made in response to a request for proposals, ARRC may form evaluation committees. To assist in the evaluation process, an evaluation committee may retain the services of non-voting members, including consultants or subconsultants.

(d) ARRC is not required to award a design-build construction contract as a result of a request for proposals. In accordance with Rule 1300.4(f) and Rule 1600.2, ARRC may reject a proposal.

(e) Notice of intent to award a design-build construction contract shall be issued in accordance with Rule 1600.5.

(f) The award of a design-build construction contract, if any, shall be made in accordance with Rule 1300.6.

(g) At the time of award of a design-build construction contract, ARRC may negotiate minor changes with the selected offeror for the purpose of clarifying the design criteria and work to be done, if the negotiated changes do not affect the ranking of the proposals based on their adjusted scores.

(h) In this section,

(1) "short-list" means to narrow the field of offerors through the selection of the most qualified offerors who have responded to a request for qualifications;

(2) "technical proposal" means the portion of a proposal that contains design solutions and other qualitative factors that are provided in response to the request for proposals.

1400.0 OTHER PROCUREMENT METHODS

1400.1 Single Source Procurements.

(a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with the procedures in this section. A contract may be awarded under this section only when the procurement officer determines in writing that:

(1) it is not practicable to award a contract by competitive sealed bidding under Rule 1200, competitive sealed proposals under Rule 1300, or limited competition under Rule 1400.2; and

(2) award of the contract under this section is in ARRC's best interest.

The using department shall submit written evidence to support a request for a single source procurement. The procurement officer may also require the submission of cost or pricing data in connection with an award under this section.

(b) The procurement officer shall negotiate with the single supplier, to the extent practicable, to obtain contract terms advantageous to ARRC.

(c) Procurement requirements may not be aggregated or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by Rules 1200.1-1300.8.

(d) The following are examples of circumstances in which single source procurement might be appropriate:

(1) If the compatibility of equipment, accessories, software, or replacement parts is a major consideration;

(2) If a specific item is needed for trial use or testing, including testing of a prototype;

(3) If an item is to be procured for resale;

(4) If public utility services are to be procured;

(5) If there exists a single source of expertise required to perform a specific professional service;

(6) If the procurement is for operation of a concession contract on ARRC property by a non-profit organization whose sole purpose is to operate the concession and provide other public services on the property;

(7) If the procurement is for the services of legal counsel for the purpose of advising or representing ARRC in specific civil or criminal proceedings or on specific matters before federal or state regulatory agencies, boards or commissions;

(8) If the procurement is for lobbying, labor negotiation, consulting by a foreign national, or employment of a foreign national;

(9) If the procurement is necessary to take advantage of a unique market opportunity that will result in substantial savings to ARRC;

(10) If the procurement is for the purchase of food products or other perishable items to be consumed by ARRC employees;

(11) If the procurement is with a government agency;

(12) If patents, copyrights or trade secrets exist which restrict availability of the product or service to only one source;

(13) If the procurement is for maintenance or repair service only available from a manufacturer or manufacturer's authorized service center; or

(14) If the procurement is for flights that involve specialized flying and piloting skills and are not point-to-point.

1400.2 Limited Competition Procurements.

(a) A contract for supplies, services, professional services or construction may be awarded without competitive sealed bidding or competitive sealed proposals, in accordance with the procedures in this section. Any request to limit a procurement to two or more potential contractors must be accompanied by a written explanation as to why the solicitation should be limited, and why the competitive sealed bidding, competitive sealed proposals, or small procurement procedures are impracticable or contrary to ARRC's interest. The procurement officer may advertise an intent to make a limited competition procurement, to determine if other sources are available for the procurement. A contract may be awarded under this section only when the procurement supervisor determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to ARRC's interest. Procurements under this section shall be made with competition that is practicable under the circumstances. The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms, equally with each potential contractor for a limited competition procurement and shall award the contract to the contractor who offers the most favorable terms for ARRC.

(b) Procurement requirements may not be artificially divided, fragmented, aggregated, or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by Rules 1200.1-1300.8.

(c) Single source procurements may not be made under this section.

(d) Architectural, engineering, and land survey contracts under Rules 1350.1-1350.8 may not be made under this section.

(e) A procurement for construction under this section must be for less than $100,000.

1400.3 Emergency Procurements.

(a) Procurements may be made under emergency conditions as defined in this section when there exists a threat to public health, welfare, or safety, or when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to ARRC's interest. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances. A written determination by the procurement officer of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The written determination must detail the factual basis for a finding of emergency.

(b) For the purposes of this section, emergency conditions include:

(1) fire, flood, avalanche, epidemic, riot, environmental accident, or similarly compelling reasons;

(2) equipment failure, if the need for timely repair is essential;

(3) a situation in which procurement through competitive sealed bidding or competitive sealed proposals is impracticable or contrary to ARRC's interest such as delays inherent in the normal procurement process that could cause ARRC to lose a market opportunity or for other compelling reasons; or

(4) a need to protect ARRC property or other property.

1400.4 Small Procurements.

(a) A procurement for supplies, services, or professional services that does not exceed an aggregate dollar amount of $100,000, construction that does not exceed an aggregate dollar amount of $200,000, or a lease of space that does not exceed 7,000 square feet may be made by the procurement officer in accordance with the procedures in this section.

(b) Small procurements need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances.

(c) Procurement requirements may not be artificially divided or fragmented so as to constitute a purchase under this section or to circumvent the source selection procedures required by Rules 1200.1-1350.8.

(d) A procurement that costs no more than $20,000 may be made after receiving only one quotation or informal proposal from a qualified firm or person.

(e) Except for procurements under (d) of this section, the following procedures shall be followed for procurements under this section:

(1) The procurement officer shall contact at least three firms or persons for quotations, either written or oral. If quotations are solicited orally, the procurement officer shall record who made the solicitation, the specifications or items solicited, the date(s) the solicitation took place, the names of firms or persons contacted (if a firm, the name of the person in the firm contacted), and the response of each firm or person. This record shall be made part of the procurement file. For written quotations, the procurement officer shall include a list of persons contacted, a summary of the responses, and copies of all quotations received as part of the procurement file.

(2) The award shall be made to the lowest responsive and responsible bidder or to the most qualified responsive and responsible offeror and shall be made in accordance with the specifications and award criteria in the solicitation.

(f) The procurement officer may make postings in electronic media to satisfy the competitive solicitation requirements for procurements under this section. Quotes and informal proposals may be submitted in electronic media if permitted by the procurement officer.

(g) The procurement supervisor may establish additional procedures for small procurements as he or she determines appropriate.

1400.5 Innovative Procurements.

(a) A contract may be awarded for supplies, professional services, or construction using an innovative procurement process, with or without competitive sealed bidding or competitive sealed proposals, in accordance with procedures adopted by the procurement supervisor. A contract may be awarded under this section only when the procurement officer determines in writing that it is advantageous to ARRC to use an innovative competitive procurement process in the procurement of new or unique requirements of ARRC, new technologies, or to achieve the best value.

(b) The procurement officer shall submit a procurement plan to the general counsel or designee for review and approval as to form before issuing the notice required by (c) of this section.

(c) A procurement under this section is subject to the notice requirements of Rule 1200.5.

(d) Nothing in this section precludes the adoption of procedures providing for the use of bonuses instead of preferences in a procurement of construction.

1400.6 Employment and Youth Job Training Program Procurements. A procurement of products manufactured or services provided by an employment program of the state or an accredited youth education and employment program may be made without competitive sealed bidding or competitive sealed proposals if the procurement officer determines that it is advantageous to ARRC.

1400.7 Correctional Industries Procurements. A procurement of products or services provided by the correctional industries program established under AS 33.30.191 may be made without competitive sealed bidding or competitive sealed proposals if the procurement officer determines that it is advantageous to ARRC.

1400.8 **Unsolicited Offers.** The procurement supervisor may consider an offer presented to ARRC other than as the result of a solicitation. To be eligible for acceptance, the offer must be unique, qualify as a single source procurement, and be in the best interest of ARRC. The procurement supervisor may, without disclosing details of the unsolicited offer, issue a letter of interest to verify that no other source is available for the goods or services.

1450.0 LEASES

(a) ARRC shall lease space for the use of itself wherever it is necessary and feasible, subject to compliance with the requirements of these Rules. A lease may not provide for a period of occupancy greater than 40 years.

(b) When ARRC is considering leasing space, management should consider whether leasing is likely to be the least costly means to provide the space.

(c) When ARRC is acquiring leased space of 7,000 square feet or less, it may procure the leased space using the procedure for small procurements under Rule 1400.4, provided public notice is given to prospective offerors in the market area.

1450.1 **Lease Extensions Authorized.** Not withstanding any other provision of these Rules, ARRC may extend a real property lease for up to 10 years if a minimum cost savings of 10% below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of rental value or by an appraisal of the rental value.

1450.2 **Lease-Purchase Agreements.**

(a) To perform its duties and statutory functions, ARRC may enter into lease-purchase agreements. ARRC may enter into a lease-purchase agreement only if ARRC is the lessee under the agreement.

(b) When evaluating proposals to acquire or improve real property under a lease-purchase agreement, ARRC shall consider

(1) in addition to lease costs, the life cycle costs, functions, indoor environment, public convenience, planning, design, appearance, and location of the real property proposed for acquisition or improvement; and

(2) whether acquisition or improvement of the real property by the lease-purchase agreement is likely to be the least costly means to provide the space.

(c) A lease-purchase agreement may not provide for a period of occupancy under the full term of the lease-purchase agreement that is greater than 40 years;

(d) In this section,

(1) "full-term of the lease-purchase agreement" includes all renewal options that are defined within the lease-purchase agreement;

(2) "lease-purchase agreement" includes a lease-financing agreement.

1450.3 **Lease-Purchase of Personal Property.** To perform its duties and statutory functions, ARRC may enter into lease-purchase agreements for the acquisition of equipment or other personal property. ARRC may enter into a lease-purchase agreement only if ARRC is the lessee under the agreement.

1500.0 PREFERENCES

1500.1 Alaska Bidder and Related Preferences

(a) If the bidder or offeror is an Alaska bidder as defined in Rule 2000.10, a five percent (5%) preference shall be applied to the price in the bid or proposal.

(b) Except as otherwise provided in (d), (e), or (g) of this section, if a bidder or offeror qualifies as an Alaska bidder and is offering services through an employment program, a 15 percent (15%) preference shall be applied to the price in the bid or proposal.

(c) If a bidder or offeror qualifies as an Alaska bidder and is an Alaska domestic insurer, and if the procurement is for an insurance-related contract, a five percent (5%) preference shall be applied to the price in the bid or proposal.

(d) A 10 percent (10%) preference shall be applied to a price in a bid or proposal if the bidder or offeror qualifies as an Alaska bidder and is a

(1) sole proprietorship owned by a person with a disability;

(2) partnership under AS 32.06 or AS 32.11 if each of the partners is a person with a disability;

(3) limited liability company organized under AS 10.50 if each of the members is a person with a disability;

(4) corporation that is wholly owned by individuals, and each of the individuals is a person with a disability; or

(5) joint venture that is composed of ventures that qualify under (1)--(4) of this subsection.

(e) The division of vocational rehabilitation in the Department of Labor and Workforce Development shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (d) of this section. To qualify for a preference under (d) of this section, a person must be on the list at the time the bid or proposal is opened.

(f) If a bidder or offeror qualifies as an Alaska bidder and is a qualifying entity, a five percent (5%) preference shall be applied to the price in the bid or proposal. The preference may not exceed $5,000. In this subsection,

(1) "Alaska veteran" means an individual who is both a resident of the state and a veteran;

(2) "qualifying entity" means a

(A) sole proprietorship owned by an Alaska veteran;

(B) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;

(C) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or

(D) corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans;

(3) "veteran" means an individual who

(A) served in the

(i) armed forces of the United States, including a reserve unit of the United States armed forces; or

(ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

(B) was separated from service under a condition that was not dishonorable.

(g) A bidder or offeror may not receive a preference under both (b) and (d) of this section for the same contract.

(h) Except as provided by (j) of this section, this section applies to all insurance contracts involving state money. In this subsection, "state money" has the meaning given in AS 36,30.990, but also includes state grants and reimbursements to municipalities, school districts, and other entities.

(i) To qualify for a preference under (b), (d), or (f) of this section, a bidder or offeror must add value by actually performing, controlling, managing, and supervising the services provided, or the bidder or offeror must have sold supplies of the general nature solicited to other state agencies, other governments, or the general public.

(j) This section does not apply to solicitations or contracts for lease space, and to procurements under Rules 1400.2-1400.5.

(k) In this section, "person with a disability" means an individual who

(1) has been determined to be permanently disabled by the

(A) United States Social Security Administration under 42 U.S.C. 423 or 1381--1383f (Social Security Act);

(B) teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the public employees' retirement system under AS 39.35, or the elected public officers' retirement system under former AS 39.37;

(C) Federal Civil Service Retirement System under 5 U.S.C. 2107, 3323, and 8331--8351;

(D) federal employees' retirement system under 5 U.S.C. 8401--8480; or

(E) division of vocational rehabilitation in the Department of Labor and Workforce Development using disability standards under 42 U.S.C. 1381--1383f (Social Security Act) for eligibility for certain state disability programs;

(2) is receiving permanent total disability under AS 23.30 (Alaska Workers' Compensation Act);

(3) has been discharged from military service under honorable conditions and is certified by the United States Department of Veterans Affairs as having incurred a 50 percent (50%) or greater disability during military service; or

(4) has served in the Alaska Territorial Guard and incurred a 50 percent (50%) or greater disability while serving in the Alaska Territorial Guard.

1500.2 Use of Local Forest Products.

(a) Only timber, lumber, and manufactured lumber products originating in this state from Alaska forests may be procured by ARRC or used in construction projects of ARRC unless:

(1) the manufacturers and suppliers who have notified the Commissioner of Commerce, Community, and Economic Development of their willingness to manufacture or supply Alaska forest products have been given reasonable notice of the forest product needs of the procurement or project; and

(2) a manufacturer or supplier who has notified the Commissioner of Commerce, Community, and Economic Development of its willingness to manufacture or supply Alaska forest products is not the low bidder after all applicable preferences have been applied to the price of the qualifying forest product under Rule 1500.10.

(b) The provisions of Rules 1500.4-1500.6 do not apply to procurements of timber, lumber, and manufactured lumber products or the use of those items in construction projects of ARRC.

(c) During the period of performance of a ARRC contract, the contractor shall maintain records showing efforts made in using Alaska forest products or evidence of Alaska forest products not being available or reasonably competitive. The contractor shall provide the records to the procurement officer on a periodic basis, as required by regulations adopted by the Commissioner of Commerce, Community, and Economic Development.

1500.3 Use of Alaska Products. Alaska products shall be used whenever practicable in procurements for ARRC. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

1500.4 Contract Specifications. Contract specifications for a procurement for ARRC must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under Rule

1500.5 in the evaluation of the bid or proposal if the designated Alaska products meet the contract specifications.

1500.5 **Grant of Preference.** In the evaluation of a bid or proposal for a procurement for ARRC, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products by the Commissioner of Commerce, Community and Economic Development is decreased by the percentage of the value of the designated Alaska products under Rule 1500.7.

1500.6 **Penalty for Failing to Use Designated Products.**

(a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for ARRC fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:

(1) for a Class I designated Alaska product: 4%;

(2) for a Class II designated Alaska product: 6%;

(3) for a Class III designated Alaska product: 8%.

(b) A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal for a procurement for a state agency or ARRC and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.

(c) A list of contractors determined not to be responsible bidders under (b) of this section shall be obtained from the Commissioner of Commerce, Community and Economic Development by the procurement officer.

1500.7 **Preference Amounts.**

(a) In a bid or proposal evaluation a

(1) Class I product is given a 3% preference;

(2) Class II product is given a 5% preference;

(3) Class III product is given a 7% preference.

1500.8 **Identification of Alaska Products.** ARRC may identify specific Alaska products for use in making a procurement.

1500.9 **Preference for Recycled Products.** In the evaluation of a bid or proposal for the procurement of products, the procurement officer shall decrease the bid or proposal price by 5% if the bid or proposal indicates that the products being purchased will be recycled products. A decrease made under this section is in addition to other preferences allowed for the procurement. In this section, a "recycled product" means a product of which not less than 50% of the value of the product consists of a product that was previously used in another product.

1500.10 Application of Preferences.

(a) Except as provided in Rule 1500.1(g), the preferences provided in Rules 1500.1-1500.10 are cumulative. A bidder who would otherwise qualify for preferences under Rule 1500.1 may not be given a preference over another bidder who qualifies for the same preferences.

(b) Notwithstanding the other provisions of these Rules, Rules 1500.1-1500.10 apply to all procurements subject to these Rules, except as provided in Rule 1500.2(b).

1500.11 Procurement of Paper. Except as otherwise required under Rules 1500.1-1500.7, when ARRC purchases paper, at least 25% of the quantity purchased must be recycled paper unless recycled paper is not available for the purchase or unless, after application of the procurement preference under Rule 1500.8, the recycled paper is more expensive than the nonrecycled paper.

1500.12 Definitions.

In Rules 1500.2-1500.10,

(1) "Alaska product" means a product of which not less than 25 percent (25%) of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the state;

(2) "produced or manufactured" means processing, developing, or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill, or other services;

(3) "product" means materials or supplies but does not include gravel and asphalt;

(4) "recycled Alaska product" means an Alaska product of which not less than 50 percent (50%) of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the state.

1600.0 CONTRACT FORMATION AND MODIFICATION

1600.1 Review and Approval by General Counsel. If a contract contains a term that is in conflict with an ARRC standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be reviewed by the general counsel or designee and approved as to form.

1600.2 Solicitation Cancellation, Amendment, or Rejection. An invitation to bid, a request for proposals, or other solicitation may be amended, canceled or any or all bids or proposals may be rejected in whole or in part or the date for opening bids or proposals may be delayed when it is in the best interests of ARRC in accordance with the procedures in this section. The reasons for amendment, cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

(a) Cancellation, Amendment or Extension of Solicitation. Before the opening of bids or proposals, a solicitation may be amended, or time for opening may be extended, if the procurement officer determines that the extension or amendment is in ARRC's best interest. All potential bidders or offerors known to have copies of this solicitation shall be advised of the

extension or amendment. Additionally, a solicitation may be canceled in whole or in part if the procurement officer determines that the cancellation is in ARRC's best interest. Reasons for cancellation include, but are not limited to, the following:

(1) ARRC no longer requires the supplies, services or construction;

(2) ARRC no longer can reasonably expect to pay for the procurement;

(3) Proposed amendments to the solicitation would be in such magnitude that a new solicitation is desirable; or

(4) A procurement officer, after consultation with the general counsel's office, determines that a solicitation is in violation of the law.

(b) Rejection of All Bids or Proposals. After the opening of bids or proposals or after notice of intent to award but before award, all bids or proposals may be rejected in whole or in part by the procurement officer. Reasons for rejection include, but are not limited to, the following:

(1) The supplies, services or construction being procured are no longer required or there has been a change in ARRC's requirements;

(2) Ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) The solicitation did not provide for consideration of all factors of significance to ARRC;

(4) Prices exceed available money and it would not be appropriate to adjust quantities to accommodate available money;

(5) All otherwise acceptable bids or proposals received are at unacceptable or unreasonable prices;

(6) 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; or

(7) The award is not in the best interest of ARRC.

(c) Rejection of Individual Bids or Proposals. Reasons for rejecting an individual bid or proposal include, but are not limited to, the following:

(1) The person or business that submitted the bid or proposal is not responsible as determined under Rule 1600.3;

(2) The bid or proposal is nonresponsive;

(3) The bidder or offeror did not meet the qualification requirements of Rule 1600.12;

(4) The supply, service, or construction item fails to meet the specifications or other acceptability criteria set out in the solicitation;

(5) The prices or terms submitted are unreasonable, the bid or proposal was submitted in bad faith or the bid or proposal attempts to manipulate the procurement process; or

(d) Exclusion of Prospective Contractor from Competition. A procurement officer may exclude a prospective contractor from submitting a bid or proposal, or may reject a prospective contractor's bid or proposal, after making a written determination that the prospective contractor assisted in the drafting of the invitation to bid or request for proposal, or gained substantial information regarding the invitation to bid or request for proposal that was not available to the public.

1600.3 Determination of Responsibility.

(a) A responsible prospective contractor is one who possesses the capacity, judgment, skill, ability, integrity and financial capability requisite and necessary to perform a contract in accordance with the terms of the solicitation and proposed contract. A written determination of nonresponsibility of a bidder or offeror shall be made by the procurement officer if he determines that a bidder or offeror does not have the capability in all respects to fully perform the contract requirements or the integrity and reliability which will assure good faith performance. The procurement officer may require the prospective contractor to demonstrate the availability of necessary financing, equipment, facilities, expertise and personnel by submitting:

(1) evidence the contractor possesses the necessary items;

(2) acceptable plans to subcontract for necessary items;

(3) a documented commitment from or explicit arrangement with a satisfactory source to provide the necessary items; or

(4) any other information required by the procurement officer.

The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of nonresponsibility with respect to the bidder or offeror.

(b) If a bidder or offeror has submitted a written request for confidentiality and the procurement officer has so agreed, information furnished by a bidder or offeror under (a) of this section is confidential and may not be disclosed without prior written consent by the bidder or offeror.

(c) Factors that may be considered in determining whether a prospective contractor is responsible include, but are not limited to whether the prospective contractor

(1) has a satisfactory record of performance;

(2) is qualified to legally contract with ARRC; and

(3) has supplied all necessary information in connection with the inquiry concerning responsibility.

1600.4 Novation or Change of Name.

(a) An ARRC contract or subcontract may not be transferred or otherwise assigned without the prior written consent of the procurement officer. If the procurement officer determines that it is in the best interest of ARRC, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

(1) The transferee assumes all of the transferor's obligations under the contract;

(2) The transferor waives any and all rights it has under the agreement as against ARRC; and

(3) The transferee furnishes satisfactory performance and payment bonds, if required by the procurement officer.

(b) If a contractor requests to change the name in which it holds a contract with ARRC, the procurement officer responsible for the contract may, when it is in the best interest of ARRC, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are changed.

1600.5 Notice of Intent to Award a Contract. At least ten days before the formal award of a contract that is not for construction and at least five days before the award of a construction contract under these Rules, except for a contract awarded under Rules 1400.1-1400.5, the procurement officer shall provide to each bidder or offeror notice of intent to award a contract. The notice of intent to award does not constitute a formal award of a contract. The notice of intent to award must include a statement of a bidder's or offeror's right under Rule 1800.1 to protest the award, including the time within which the protest must be received and the name of the successful bidder or offeror. Alternatively, when circumstances require the contractor to commence work immediately, the procurement officer may issue a notice of award in lieu of a notice of intent to award. The notice of award shall contain the same information required in a notice of intent to award.

1600.6 Permissible Types of Contracts. Subject to limitations of this section, any type of contract that will promote the best interests of ARRC may be used. A cost-reimbursement contract may be used only when a determination is made in writing by the procurement officer that a cost-reimbursement contract is likely to be less costly to ARRC than any other type or that it is impracticable to obtain the supplies, services, professional services, or construction required except under a cost-reimbursement contract. Notwithstanding the foregoing, the use of a cost-plus-a-percentage-of-cost contract is prohibited.

1600.7 Multi-Term Contracts.

(a) A contract for supplies, services, or professional services may be entered into or renewed for any period of time considered to be in the best interests of ARRC, provided the term of the contract and conditions for renewal or extension, if any, are included in the solicitation. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability of funds.

(b) Before using a multi-term contract or renewing a fixed term contract, the procurement officer shall determine in writing that

(1) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) the contract will serve the best interests of ARRC by encouraging effective competition or otherwise promoting economies in ARRC procurement.

(c) When funds are not available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies, services, or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any available funds for these purposes.

1600.8 Cost or Pricing Data.

(a) Before an award of a contract or a change order or contract modification, the contractor or prospective contractor shall submit cost and pricing data. The contractor or prospective contractor shall certify that, to the best of the contractor's or prospective contractor's knowledge and belief, the data submitted is accurate, complete, and current as of a mutually determined specified date and will continue to be accurate and complete during the performance of the contract.

(b) 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 shall submit cost and pricing data on the additional work or materials. The contractor shall 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.

(c) A contract, change order, or contract modification under which a certificate is required under (a) or (b) of this section must contain a provision that the price to ARRC, including the contractor's profit or fee, will be adjusted to exclude any significant sums by which ARRC finds that the price is increased because the cost or pricing data furnished by the contractor or prospective contractor is inaccurate, incomplete, or not current as of the date agreed upon by the parties.

(d) The requirements of (a) of this section do not apply when

(1) the contract price is based upon adequate price competition;

(2) the contract price is set by law or regulation; or

(3) it is determined by the procurement officer in writing that the requirements of (a) of this section may be waived, and the reasons for waiver are stated.

1600.9 Right to Inspect Plant. ARRC may, at reasonable times, inspect the part of the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by ARRC. If an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing. ARRC may, in its

discretion, inspect supplies and services of the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable.

1600.10 Right to Audit Records.

(a) ARRC may, at reasonable times and places, audit the books and records of a person who has submitted cost or pricing data under Rule 1600.8 to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain books and records that relate to the cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is authorized in writing by the procurement officer.

(b) ARRC may audit the books and records of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the procurement officer.

1600.11 Conditioning Bids or Proposals.

(a) A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another ARRC contract is nonresponsive unless conditioned bids are specifically authorized in the solicitation.

(b) A bid that is conditioned by the bidder and the condition requires a change to a material term of the solicitation is nonresponsive unless conditioned bids are specifically authorized in the invitation to bid.

(c) A proposal that is conditioned by the offeror and the condition requires a change to a material term of the solicitation may be rejected. The reasons for the rejection include the following:

(1) the condition does not meet the goals of the solicitation;

(2) the condition would violate these Rules or other statutes and regulations; or

(3) the condition is not in the best interest of ARRC.

(d) For the purposes of this section, "material term" includes a

(1) novation or assignment; or

(2) term that affects price, quality, quantity, payment, or delivery.

1600.12 Qualified Bidders or Offerors.

(a) Unless otherwise provided for in the solicitation, to qualify as a bidder or offeror for award of a contract issued under these Rules, a bidder or offeror must

(1) add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or

(2) be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the solicitation.

(b) If a bidder or offeror leases services or supplies or acts as a broker or agent in providing the services or supplies in order to meet the requirements of (a) of this section, the procurement officer may not accept the bidder or offeror as a qualified bidder or offeror under these Rules.

1600.13 **Low Tie Bids or Proposals.** Low tie bids or proposals are low responsive bids or proposals from responsible bidders or offerors which are identical in price after the application of any applicable preferences. If low tie bids or proposals exist, award shall be made through a random drawing. Award may not be made by dividing the procurement among identical bidders.

1700.0 PROCUREMENT RECORDS AND REPORTS

1700.1 **Retention of Procurement Records.** Procurement records shall be retained and disposed of in accordance with ARRC's records retention guidelines and schedules.

1700.2 **Records of Contracts Awarded Under Competitive Sealed Proposals.** A contract file shall be kept by ARRC for each contract awarded under competitive sealed proposals. The file kept must contain:

(1) a copy of the contract;

(2) the register of proposals prepared under Rule 1300.3 and a copy of each proposal submitted; and

(3) the written determination to award the contract prepared under Rule 1300.6.

1700.3 **Records of Single Source and Emergency Procurements.**

(a) The ARRC shall maintain for a minimum of five years a record listing all single source procurement contracts made under Rule 1400.1 and emergency procurements made under Rule 1400.3. The record must contain:

(1) each contractor's name;

(2) the amount and type of each contract;

(3) a listing of the supplies, services, professional services, or construction procured under each contract; and

(4) written determination for the single source or emergency procurement.

1700.4 Records of Innovative Procurements.

(a) ARRC shall keep a file for each contract awarded under the innovative procurement process under Rule 1400.5. The file is subject to inspection under the same standards as described in 1200.6 and 1300.3. The file must contain

(1) a copy of the contract;

(2) the written determination under Rule 1400.5;

(3) the procurement plan as approved to form by the general counsel;

(4) the record of notice under Rule 1200.5; and

(5) the record of respondents to the solicitation.

1800.0 LEGAL AND CONTRACTUAL REMEDIES

1800.1 Filing of a Protest. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by ARRC. The protest shall be filed with the procurement officer in writing and must include the following information:

(1) the name, address, and telephone number of the protester;

(2) the signature of the protester or the protester's representative;

(3) identification of the solicitation or contract at issue;

(4) a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents; and

(5) the form of relief requested.

1800.2 Time for Filing a Protest.

(a) A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal. Not withstanding the other provisions in this subsection, the protest of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal conference is held within 12 days of the due date must be filed before the due date of the bid or proposal if the protest is based on alleged improprieties or ambiguities in the solicitation. A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award a contract is issued by the procurement officer.

(b) If the protester shows good cause, the procurement officer may consider a filed protest that is not timely.

1800.3 **Notice of Protest.** The procurement officer shall immediately give notice of a protest filed under Rule 1800.2 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

1800.4 **Stay of Award.** If a protest is filed the award may be made unless the procurement officer determines in writing that a

(1) reasonable probability exists that the protest will be sustained; or

(2) stay of the award is not contrary to the best interests of ARRC.

1800.5 **Decision by the Procurement Officer.**

(a) The procurement officer shall issue a written decision containing the basis of the decision within 15 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 30 days by the procurement officer. If an extension is granted, the procurement officer shall notify the protester in writing of the date that the decision is due.

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

1800.6 **Protest Remedies.**

(a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of the prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to ARRC and other impacts on ARRC of a proposed remedy, and the urgency of the procurement to the welfare of ARRC. If it is determined that the protest is valid, the procurement officer may re-evaluate the bids or proposals, cancel the solicitation, cancel the solicitation and reissue a new solicitation or if an award has been made, may recommend that the procurement supervisor authorize the payment of the protester's reasonable bid preparation costs.

(c) Not withstanding (a) and (b) of this section, if a protest is sustained in whole or in part, the protester's damages are limited to reasonable bid or proposal preparation costs.

1800.7 **Appeal of a Protest.**

(a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the procurement supervisor. An appeal shall be filed within ten days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under Rule 1800.1. In addition, the appeal must include

(1) a copy of the decision being appealed; and

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

1800.8 Notice of a Protest Appeal.

(a) The procurement officer shall immediately give notice of an appeal filed under Rule 1800.7 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The procurement officer shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

1800.9 Stay of Award During Protest Appeal. If a protest appeal is filed before a contract is awarded and the award was stayed under Rule 1800.4, the filing of the appeal automatically continues the stay until the procurement supervisor makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of ARRC.

1800.10 Decision Without Hearing.

(a) The procurement supervisor shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under Rule 1800.7(a).

(b) The procurement supervisor may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of material fact.

(c) The procurement supervisor shall within 15 days after receipt of an appeal, notify the appellant of the acceptance or rejection of the appeal, and if rejected, the reasons for the rejection. The time for decision may be extended up to 30 days by the procurement supervisor.

1800.11 Hearing on Protest Appeal. A person desiring a hearing on a protest appeal must request in writing that a hearing be held. The written request for a hearing must be submitted at the time the protest appeal is submitted and must set out the specific genuine issues of material fact that need to be resolved. A hearing on a protest appeal shall be conducted in accordance with Rule 1800.15.

1800.12 Contract Claims.

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

(b) If a claim asserted by the contractor concerning a contract awarded under these Rules cannot be resolved by agreement, the contract manager or his designee shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the contract manager of all necessary information from the contractor. If the contractor fails to furnish necessary information requested by the contract manager, the contract manager or his designee shall proceed to decide the claim and may, in his discretion, deny all or part of the claim because of the failure to furnish necessary information. During an appeal of a claim decision, the contractor may not rely on or introduce information that the contractor failed to furnish to the contract manager in support of the claim. Before issuing the decision the contract manager shall review the facts relating to the claim and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for by the contract manager or his designee for up to 60 additional days if the claim concerns an amount in excess of $50,000. If the contract manager or his designee determines that good cause exists for a second extension, he may extend the time for issuing a decision under (b) of this section for up to 90 additional days after the first extension. The contact manager shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued. Notwithstanding the foregoing, if the contractor's claim is the subject of a federal or state civil or criminal investigation, the time for issuing a decision on the claim shall be automatically extended until 90 days after the conclusion of such investigation.

(d) The contract manager or his designee shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision shall include

(1) a description of the claim;

(2) a reference to the pertinent contract provisions;

(3) a statement of the agreed upon and disputed facts;

(4) findings of fact about the claim;

(5) a determination of any amount payable;

(6) a statement of reasons supporting the decision; and

(7) a statement substantially as follows:

> "This is the final decision of the contract manager. This decision may be appealed to the contract manager's supervisor. If you appeal, you must file a written notice of appeal with the contract manager's supervisor within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the contract manager had issued a decision adverse to the contractor.

1800.13 Appeal on a Contract Claim.

(a) An appeal from a decision of the contract manager or his designee on a contract claim may be filed by the contractor with the contract manager's supervisor. The appeal shall be filed within 14 days after the decision is received by the contractor. The appeal may not raise any new factual issues or theories of recovery that were not presented to and decided by the contract manager in the decision issued under Rule 1800.12. The contractor shall file a copy of the appeal with the contract manager.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis of the appeal.

1800.14 Hearing on a Contract Claim.

(a) Except as provided in (b) of this section, a hearing shall be conducted according to Rule 1800.15 on a contract claim appealed to the contract manager's supervisor if the contractor requests a hearing in writing and specifies the genuine issues of material fact that need to be resolved.

(b) Except as provided in Rule 1850.2(a)(1), within 15 days after receipt of an appeal on a contract claim the contract manager's supervisor may adopt the decision of the contract manager as the final decision or render his own decision without a hearing.

1800.15 Hearing Procedures.

(a) The procurement supervisor shall act as a hearing officer or appoint a hearing officer for a hearing concerning a protest appeal conducted under these Rules. The contract manager's supervisor shall act as a hearing officer or appoint a hearing officer for a hearing concerning a contract claim conducted under these Rules. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be as informal as is reasonable and appropriate under the circumstances. The weight to be attached to evidence presented is within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The hearing officer may require evidence in addition to that offered by the parties. The provisions of AS 44.62 (Administrative Procedure Act) do not apply to a hearing conducted under these Rules.

(b) The hearing officer may

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

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

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

(4) rule on motions and other procedural matters;

(5) regulate the course of the hearing and conduct of the participants;

(6) establish time limits for submission of motions or memoranda;

(7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including

(A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;

(B) excluding all testimony of an unresponsive or evasive witness; and

(C) excluding a person from further participation in the hearing;

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

(9) administer oaths or affirmations;

(10) issue subpoenas, including subpoena duces tecum, to compel the attendance of witnesses and the production of documents;

(11) allow the taking of depositions for discovery or to perpetuate testimony; and

(12) refer a subpoena or subpoena duces tecum to the superior court for enforcement and the imposition of appropriate sanctions.

(c) A hearing shall be recorded. A transcribed record of the hearing shall be made available at cost to a party that requests it.

(d) A witness must testify under oath or affirmation. A witness may be cross-examined.

1800.16 Recommendation by the Hearing Officer.

(a) If the procurement supervisor or contract manager's supervisor is not acting as hearing officer, the hearing officer shall recommend a decision to the supervisor based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

(b) The procurement supervisor or contract manager's supervisor may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

1800.17 Final Decision. A decision by the procurement supervisor or contract manager's supervisor after a hearing under these Rules is final. A decision on a protest appeal shall be sent within 20 days after the hearing to all parties by personal service or certified mail. A decision on a contract claim appeal shall be issued in accordance with the time limits set for in Rule 1800.24.

1800.18 Judicial Appeal. A final decision of the procurement supervisor or contract manager's supervisor under Rules 1800.10, 1800.14(b) or 1800.17 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

1800.19 Misrepresentations and Fraudulent Claims.

(a) Pursuant to AS 36.30.687 a person who makes or uses in support of a protest or contract claim under these Rules, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract claim under these Rules:

(1) forfeits all claims relating to that procurement or contract; and

(2) is liable to ARRC for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

(b) The procurement officer, procurement supervisor, contract manager, or contract manager's supervisor shall make specific findings of misrepresentation, attempted fraud or fraud before declaring a forfeiture under (a)(1) of this section.

(c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.

(d) A person who in a matter relating to a procurement or a contract claim under these Rules makes a misrepresentation to ARRC through a trick, scheme, or device is guilty of a class C felony and will be referred for prosecution under AS 36.30.687(d).

(e) In accordance with AS 36.30.687, upon finding that the recipient of an ARRC contract made a misrepresentation or fraudulent claim at any stage of proceedings relating to a procurement or contract claim, the procurement supervisor, contract manager, or contract manager's supervisor, after consulting with the general counsel or designee, may declare the contract void.

(f) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

1800.20 Exclusive Remedy. Notwithstanding AS 44.77 or other law to the contrary, Rules 1800.1-1850.22 provide the exclusive procedure for asserting a claim against ARRC arising in relation to a procurement under these Rules.

1800.21 Suspension of Vendors from Consideration for Contracts. After reasonable notice to the vendor involved and reasonable opportunity for that person to be heard, the procurement supervisor, after consultation with the general counsel, shall have authority to suspend a person for cause from consideration for award of any ARRC contract. A suspension shall not be for a period of more than three years.

(a) Causes for suspension include the following:

(1) conviction of a criminal offense relating to a public or private contract or subcontract, or to the performance of such contract or subcontract;

(2) suspension of or debarment by the Department of Administration pursuant to AS 36.30.655;

(3) a prior record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more ARRC contracts where such failure was deliberate and without good cause; or

(4) any other cause the procurement supervisor determines to be so serious and compelling as to affect responsibility as an ARRC contractor.

(b) The procurement supervisor will issue a written decision to suspend. The decision will state the reasons for the action taken, the period of suspension and inform the suspended vendor of its right to appeal the decision in writing within ten days to the vice president of finance. The provisions of these Rules regarding appeal of bid protests apply to appeals by a suspended vendor.

1800.22 **Definition.** In Rules 1800.1-1800.20, "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances. In the case of a protest based upon alleged improprieties in an award of a contract or proposed award of a contract, a protester is an "interested party" only if it would be eligible for award if its protest were sustained.

1800.23 **Delegation**. The duties and responsibilities of the procurement supervisor and contract manager's supervisor under Rules 1800.7-1850.22, including serving as or selecting the hearing officer or final decision maker for an administrative adjudication, may be delegated to another ARRC employee at the discretion of the procurement supervisor or contract manager's supervisor.

1800.24 **Other Rules of Procedure.**

(a) Except as provided by (b) of this section, an arbitrator shall issue a final decision, and a hearing officer shall issue a recommended decision, within the following time limits after the date the record on the claim is closed:

(1) 30 calendar days for a claim of less than $100,000;

(2) 45 calendar days for a claim of $100,000 or more but less than $1,000,000; or

(3) 60 calendar days for a claim of $1,000,000 or more.

(b) The contract manager's supervisor may, for good cause shown, grant an arbitrator or a hearing officer additional time to issue a decision.

(c) If an arbitrator or hearing officer fails to issue a decision within the time allowed for a decision under (a) or (b) of this section, the arbitrator or hearing officer is disqualified from acting as an arbitrator or hearing officer in another proceeding under these Rules for one year after the decision is issued.

(d) The venue for an arbitration or hearing under these Rules is Anchorage, Alaska, unless ARRC and the contractor agree on another location.

(e) If a party fails to appear at a proceeding under these Rules, the arbitrator or hearing officer may proceed in the party's absence.

(f) Any money awarded by an arbitrator's decision shall be paid within 45 days after the date that the arbitrator's decision is final. Any money awarded by a hearing officer's recommended decision that is approved by the contract manager's supervisor shall be paid within 45 days after the date that the contract manager's supervisor decision is delivered to the contractor and ARRC, unless the contract manager's supervisor's decision is appealed under Rule 1800.18.

1850.0 CONSTRUCTION CONTRACT CLAIMS

1850.1 Applicability. Rules 1850.2-1850.22 apply to, and their provisions are incorporated by reference, in all construction contracts entered into by ARRC on or after October 14, 2003. A person entering a construction contract with ARRC and who requests or agrees to arbitration of a claim involving that contract will be considered to have agreed to arbitration of construction claims as provided in Rules 1850.2-1850.22.

1850.2 Construction Contract Claim Appeals.

(a) An appeal from a decision of the contract manager of a claim involving a construction contract shall be resolved by

(1) binding arbitration under AS 09.43.010-09.43.180 (Uniform Arbitration Act) or AS 09.43.300-09.43.595 (Revised Uniform Arbitration Act), as applicable, if the claim is

(A) less than $250,000 and the contractor requests arbitration of the claim; or

(B) $250,000 or more and both ARRC and the contractor agree to arbitration of the claim; or

(2) a hearing under Rule 1800.14 if the claim is not handled under (1) of this section.

(b) In this section, a claim includes all issues, causes of action, and controversies arising from a construction contract for which a contractor or ARRC asserts compensation is due.

1850.3 Arbitration Request.

(a) To initiate arbitration under Rule 1850(a)(1), a contractor must file a written arbitration request with the contract manager's supervisor. The arbitration request must be filed together with the appeal from the contract manager's decision required by Rule 1800.13.

(b) The arbitration request must state the amount of the claim and must describe the claim in sufficient detail to make the circumstances of the dispute clear to the arbitrator.

(c) The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount of the claim accurately states the amount for which the contractor believes ARRC is liable.

(d) The contractor shall serve a copy of the arbitration request and the appeal on the contract manager at the time the contractor files the arbitration request and the appeal with the contract manager's supervisor.

1850.4 Answering Statement.

(a) The contract manager shall file a written answering statement with the contract manager's supervisor within 30 days after service of the arbitration request and appeal. The answering statement must raise any counterclaim asserted by ARRC. The answering statement must state the amount of the counterclaim and describe the counterclaim in sufficient detail to make the counterclaim clear to the arbitrator.

(b) If the amount of the claim and the amount of the counterclaim added together is $250,000 or more, the answering statement must state whether ARRC agrees to arbitration of the claim.

(c) The contract manager shall certify that any counterclaim is made in good faith, that the supporting data are accurate and complete to the best of the contract manager's knowledge and belief, and that the amount of the counterclaim accurately states the amount for which the contract manager believes the contractor is liable.

(d) The contract manager shall serve a copy of the answering statement upon the contractor at the time the contract manager files the answering statement with the contract manager's supervisor.

1850.5 Referral to Arbitrator.

(a) If the total amount of the claim and any counterclaim is less than $250,000, or if the total amount of the claim and any counterclaim is $250,000 or more and ARRC agrees to arbitration, the contract manager's supervisor shall refer the appeal to a single neutral arbitrator.

(b) If the total amount of the claim and any counterclaim is more than $1,000,000, and ARRC agrees to arbitration, the contract manager's supervisor may refer the appeal to a panel of three neutral arbitrators. The parties may, by mutual agreement, waive a panel and have the claim and any counterclaim heard by a single arbitrator.

(c) The contract manager's supervisor shall provide the arbitrator or panel with copies of the notice of appeal, the arbitration request, the answering statement, and any supporting documents filed by the parties with the contract manager's supervisor.

1850.6 Arbitrator List.

(a) ARRC shall maintain a list of neutral arbitrators who have agreed to conduct arbitrations of construction claims under Rules 1850.2-1850.22.

(b) An arbitrator for a claim and any counterclaim that total less than $250,000 must be an

(1) attorney licensed under AS 08.08 to practice law in the state, with a minimum of ten years' experience, including experience in the areas of construction law or public procurement law; or

(2) architect or engineer licensed under AS 08.48 to practice in the state, with a minimum of ten years' experience, including experience in public construction or public contract administration.

(c) An arbitrator for a claim and any counterclaim that total $250,000 or more and that are to be heard by a single arbitrator must be an attorney licensed under AS 08.08 to practice law in the state, with a minimum of ten years' experience, including experience in the areas of construction law or public procurement law.

(d) An arbitrator on a three-member arbitration panel for a claim and any counterclaim that total $1,000,000 or more must be an

(1) attorney licensed under AS 08.08 to practice law in the state, with a minimum of ten years' experience, including experience in the areas of construction law or public procurement law; or

(2) architect or engineer licensed under AS 08.48 to practice in the state, with a minimum of ten years' experience, including experience in public construction or public contract administration; no more than two individuals who qualify under this paragraph may serve on a panel.

1850.7 <u>Arbitrator Referral</u>.

(a) The contract manager's supervisor shall serve a copy of the current list of arbitrators to the parties following the filing of the answering statement.

(b) The parties shall promptly confer and, within 15 days after the date the list was served, shall notify the contract manager's supervisor as to whether they agree on an arbitrator or, if the contract manager's supervisor has referred the appeal to a panel under Rule 1850.5(b), on three arbitrators, subject to the requirements in Rule 1850.6(d) regarding composition of the panel. The parties shall provide the names of the agreed arbitrator or panel to the contract manager's supervisor.

(c) If the parties agree on an arbitrator or a panel, the contract manager's supervisor shall refer the appeal to that arbitrator or panel.

(d) If the parties do not agree on an arbitrator or a panel, each party shall, within 15 days after the date the list was served, strike from the list the name of each arbitrator to whom the party objects, number the remaining names in order of preference, and return the list to the contract manager's supervisor. The contract manager's supervisor shall select an arbitrator or a panel from remaining names on the list based on the parties' orders of preference, and shall refer the appeal to that arbitrator or panel.

(e) If a party does not return the list to the contract manager's supervisor within 15 days after the date the list was served, the contract manager's supervisor may consider all arbitrators on the list to be acceptable to that party. If a party strikes all names from the list, or if, for purposes of assembling a panel, the party does not provide unstruck names sufficient to assemble a panel in accordance with the composition requirements in Rule 1850.6(d), the contract manager's supervisor may select any arbitrator or a panel from the list, and refer the appeal to that arbitrator or panel, subject to recusal, disclosure, and challenge under Rule 1850.8.

1850.8 Recusal, Disclosure, and Challenge.

(a) An arbitrator shall decline appointment if any circumstance prevents the arbitrator from being impartial or independent, including any bias, any personal or financial interest in the outcome of the arbitration, or any past or present business or personal relationships with the parties or their representatives.

(b) An arbitrator shall disclose to the parties any circumstances that might reflect adversely on the arbitrator's impartiality or independence, even if the arbitrator does not believe those circumstances justify recusal.

(c) A party may challenge an arbitrator by filing a request for recusal with the contract manager's supervisor within five days after the date the party receives the arbitrator's disclosure. The request must describe the basis for recusal in sufficient detail to make the alleged grounds clear to the contract manager's supervisor. A copy shall be served on the other party and the arbitrator. The other party may file and serve a response within five days after service of the request for recusal. The arbitrator may not file a response.

(d) After reviewing a request for recusal and the response, if any, the contract manager's supervisor shall determine whether to recuse the arbitrator. The contract manager's supervisor decision is final and binding.

1850.9 Vacancies.

(a) If an arbitrator is unable to perform the duties of the office for any reason, including recusal, the contract manager's supervisor shall appoint a substitute arbitrator in accordance with Rules 1850.6-1850.7, and shall reassign the appeal to that arbitrator.

(b) If a vacancy occurs in a panel, the remaining arbitrator or arbitrators shall continue with the determination of the dispute, unless the parties jointly request the contract manager's supervisor to appoint a substitute arbitrator in accordance with Rules 1850.6-1850.7.

(c) A substitute arbitrator is subject to the same requirements of disclosure, recusal, and challenge under Rule 1850.8 as an arbitrator initially appointed.

(d) A substitute arbitrator shall promptly review the record and shall resume the appeal process from the point where the previous arbitrator left it.

1850.10 Communication with Arbitrator and Service of Documents.

(a) A party or a person acting on behalf of a party may not communicate unilaterally with the arbitrator concerning the dispute, except with the other party's authorization and for the limited purpose of scheduling a time, place or date for a proceeding.

(b) The arbitrator may not discuss the appeal with any witness or third party and may not comment on the arbitration to the press or public.

(c) Correspondence, documents, and electronic mail filed with or delivered to the arbitrator by a party shall be served upon the other party in the manner prescribed for service of pleadings in the Alaska Rules of Civil Procedure.

1850.11 Public Access.

(a) Correspondence, documents, and electronic mail filed with or delivered to the arbitrator or the contract manager's supervisor by the parties relating to the appeal, recordings and transcripts of arbitrations, and decisions and orders of the arbitrator or panel are public records.

(b) The arbitrator's or panel's notes, drafts, research, and other deliberative materials and work product are confidential.

(c) Arbitrations and pre-arbitration proceedings are open to the public.

1850.12 Preliminary Conference.

(a) The arbitrator may schedule one or more preliminary conferences at the arbitrator's own initiative or at the request of a party. A panel shall designate one of its members to conduct preliminary conferences. Preliminary conferences may be conducted by telephone.

(b) At a preliminary conference, the arbitrator shall address any matters relating to scheduling and the future conduct of the case, including clarification of the claims, a schedule for the arbitration, motions, subpoenas, exchange of expert reports, discovery disputes, and any other preliminary matters raised by the parties.

(c) After the preliminary conference, requests to postpone a scheduled hearing may only be granted on a showing of good cause.

1850.13 Discovery and Exchange of Information.

(a) At the request of any party or at the arbitrator's own initiative, the arbitrator may direct the production of documents, the identification of witnesses to be called including the anticipated topics of testimony, and any other discovery that the arbitrator considers necessary or desirable.

(b) The arbitrator may direct the parties to prepare and file stipulations of uncontested facts.

(c) The arbitrator may not allow discovery other than discovery allowed under AS 09.43.070, Rule 1800.15, and this section, except as ordered by the arbitrator in extraordinary cases and upon a clear showing that the interests of justice so require.

(d) The arbitrator shall rule on discovery disputes. The arbitrator may impose sanctions, including claim preclusion, if a party fails to comply with the arbitrator's discovery decisions.

(e) The arbitrator shall resolve discovery matters in a manner consistent with the expedited nature of arbitration.

1850.14 Attendance.

(a) The parties or their representatives shall attend the arbitration and all related proceedings. A party may be represented by an attorney.

(b) If a party or its representative fails to appear at a proceeding, and the arbitrator proceeds in the party's absence as provided in Rule 1800.24, a decision may not be entered solely on the grounds of default. The party who is present at a proceeding shall submit such evidence and argument as the arbitrator may require to make a decision.

1850.15 Conduct of Arbitration.

(a) The parties shall exchange copies of all exhibits they intend to introduce at least five business days before the arbitration, and shall provide each arbitrator with a complete copy of the proposed exhibits.

(b) The parties shall each make a brief opening argument at the start of the arbitration.

(c) The contractor shall present its evidence in support of the claim. ARRC shall then present its evidence opposing the claim and in support of any counterclaim. If a counterclaim is presented, the contractor may present rebuttal evidence.

(d) The parties may cross-examine opposing witnesses. The arbitrator may ask questions of witnesses and of the parties or their representatives at any time.

(e) Following presentation of the evidence, the parties shall each present a brief closing argument and shall specify the relief requested.

(f) The arbitrator shall declare the record on the claim closed when the arbitrator is satisfied that the presentations of the parties are complete.

(g) If the arbitrator requests documents or briefs to be filed following the arbitration, the record on the claim shall be declared closed as of the final date set by the arbitrator for receipt of the documents or briefs.

(h) The time in which, under Rule 1800.24, the arbitrator must issue a decision begins to run on the day after the date the record on the claim is declared closed.

(i) The arbitrator may vary the procedures in this section, and may limit the time allowed for any of these procedures, if each party is given a fair opportunity to present its case.

1850.16 Authority of Arbitrator.

(a) The arbitrator or panel shall be in charge of the arbitration and all related proceedings, and shall have the full authority of a hearing officer as described in Rule 1800.15.

(b) The arbitrator or panel shall conduct the arbitration fairly, impartially, and informally, with a view to expediting resolution of the dispute.

(c) The arbitrator's or panel's rulings on all preliminary and procedural matters, including venue, scheduling, discovery, and evidentiary matters, are final and binding on the parties.

(d) The arbitrator or panel may not participate in settlement discussions between the parties or in a mediation with the parties.

1850.17 Evidence.

(a) The formal rules of evidence do not apply to arbitrations or hearings under Rules 1850.2-1850.22, with the exception of legal privileges recognized by the law of this state, including the attorney-client privilege and the spousal privilege.

(b) The arbitrator or hearing officer shall determine the admissibility, relevance, and materiality of evidence. Evidence of any type may be admitted if a reasonable person would rely upon it in the conduct of serious affairs, and if admission of the evidence would further the arbitrator's understanding of the matter.

(c) The arbitrator or hearing officer shall determine the admissibility, relevance, and materiality of evidence offered. The arbitrator may refuse to admit or may disregard evidence that the arbitrator considers cumulative, unreliable, or unnecessary. The arbitrator may limit or reject presentation of evidence that the arbitrator considers of slight value compared to the time and effort involved in presentation.

(d) The arbitrator may order the exclusion of any witness other than a party or the party's representative.

1850.18 Burden of Proof. The party presenting the claim or counterclaim has the burden of proving the claim or counterclaim by a preponderance of the evidence.

1850.19 Record and Transcript.

(a) The arbitration shall be tape-recorded. A party requesting copies of the tapes shall pay the costs of duplication and make any necessary arrangements to duplicate the tapes.

(b) A party desiring a transcript shall make arrangements directly with a court reporter. The requesting party shall pay the costs of the court reporter and the transcript, if prepared.

(c) If a transcript is prepared, a copy shall be provided to the arbitrator at no cost. A copy shall be provided to the other party upon payment of its pro rata share of the court reporter and transcript costs incurred by the requesting party.

1850.20 Form of Decision.

(a) The arbitrator's decision must be written. The original shall be filed with the contract manager's supervisor and served on the parties within the time limits set out in Rule 1800.24.

(b) In the decision, the arbitrator shall state the relief granted and shall provide sufficient detail to make the basis of the arbitrator's resolution of the claim clear. Findings of fact and conclusions of law are not required if the arbitrator considers them unnecessary to an understanding of the arbitrator's reasoning.

(c) In the decision, the arbitrator shall identify the prevailing party in the claim or state that there is no prevailing party.

(d) In the decision, the arbitrator shall state whether the expenses of the arbitrator, including the arbitrator's fees, any required travel, and any other expenses of the arbitrator, shall be borne equally by the parties or assessed in whole or part against a specified party.

1850.21 Attorneys Fees, Costs and Offers of Judgment.

(a) The prevailing party in a construction contract claim case may file a motion for attorney's fees and costs with the arbitrator or hearing officer in accordance with Alaska Rules of Civil Procedure 68, 79, and 82.

(b) Either party to an arbitration of a construction contract claim or a hearing of a construction contract claim may serve on the adverse party an offer to allow a final decision to be entered in complete satisfaction of the claim. The offer shall be made, accepted, or rejected as provided for an offer of judgment under Rule 68 of the Alaska Rules of Civil Procedure. Acceptance or rejection of the offer has the same consequences as acceptance or rejection of an offer of judgment made in a civil action under Rule 68 of the Alaska Rules of Civil Procedure. For purposes of Alaska Rule of Civil Procedure 68(b), the arbitrator or hearing officer shall consider one of the following dates to be the equivalent of the date on which parties in a civil action have made disclosures required by Alaska Rule of Civil Procedure 26:

(1) the date set under Rules 1850.12-1850.13 as a deadline for mutual initial disclosure, if any;

(2) if a deadline for mutual initial disclosure has not been set, a date that the arbitrator sets with consideration to the specific discovery methods applied to a particular arbitration.

(c) The opposing party may file an opposition to the motion for attorney's fees and costs with the arbitrator or hearing officer in accordance with Alaska Rules of Civil Procedure 68, 79, and 82.

(d) The arbitrator or hearing officer may not allow reply memoranda in support of a motion for attorney's fees and costs.

(e) The arbitrator or hearing officer shall rule promptly on the motion for attorney's fees and costs. In the ruling, the arbitrator or hearing officer shall state the amount of the award granted, if any, and shall provide sufficient detail to make the basis of the arbitrator's or hearing officer's resolution of the motion clear. Findings of fact and conclusions of law are not required if the arbitrator or hearing officer considers them unnecessary to an understanding of the arbitrator's or hearing officer's reasoning.

1850.22 Rules of Procedure. In the event of conflict between a provision of AS 09.43.010-09.43.180 (Uniform Arbitration Act) and a provision of these Rules, the provision of these Rules shall be given precedence in arbitrations or hearings conducted under Rules 1850.2-1850.22.

1900.0 INTERGOVERNMENTAL RELATIONS

1900.1 Cooperative Purchasing Authorized. ARRC may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, professional services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made

available to local public procurement units. Purchasing through the general services administration or from the federal supply schedules of the general services administration may be made without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with 41 U.S.C. §§251-266.

1900.2 Interagency Sale, Acquisition or Use of Supplies and Services.

(a) ARRC may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of Rules 1200.1-1300.8.

(b) ARRC may enter into an agreement, independent of the requirements of Rules 1200.1-1300.8, with another public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

1900.3 Joint Use of Facilities and Equipment. ARRC may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

1900.4 Supply of Personnel, Information, and Technical Services.

(a) ARRC may, upon written request from another public procurement unit or external procurement activity, provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay ARRC the direct and indirect cost of furnishing the personnel, in accordance with an agreement between parties.

(b) The informational, technical, and other services of ARRC may be made available to another public procurement unit or external procurement activity except that the requirements of ARRC has precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

1900.5 Definitions. In Rules 1900.1-1900.4

(1) "cooperative purchasing" means procurement conducted by ARRC and a public procurement unit, or by ARRC with an external procurement activity;

(2) "external procurement activity" means a buying organization not located in this state that, if located in this state, would qualify as a public procurement unit; an agency of the United States is an external procurement activity;

(3) "local public procurement unit" means a municipality or other subdivision of the state or other entity that expends public funds for the procurement of supplies, services, professional services, and construction, and any nonprofit corporation operating a charitable hospital;

(4) "public procurement unit" means either a local public procurement unit or a state public procurement unit;

(5) "state public procurement unit" means the Department of Administration and any other contracting agency of the state.

2000.0 GENERAL PROVISIONS

2000.1 Application of Rules.

(a) These Rules apply to every expenditure of ARRC funds irrespective of their sources, including federal assistance except as otherwise specified in Rule 2000.2, under a contract, except that these Rules do not apply to

(1) award of grants;

(2) contracts for professional witnesses to provide for professional services or testimony relating to existing or probable claims or lawsuits in which ARRC is or may become a party;

(3) contracts for medical doctors and dentists;

(4) acquisitions and disposal of real property or an interest in real property, except for office or warehouse space to be used by ARRC;

(5) disposal of obsolete or surplus property, material, supplies and equipment;

(6) purchases of income-producing assets, insurance or banking services;

(7) the purchase of books, book binding services, newspapers, periodicals, audio-visual materials, network information services access, professional memberships, archival materials, objects of art, and items for museum or archival acquisition having cultural, historical or archaeological significance;

(8) contracts for supplies or services for research projects funded by money received from private grants;

(9) guest speakers or performers for an educational or cultural activity or seminars and training services;

(10) purchases of curatorial and conservation services to maintain, preserve and interpret objects of art and items having cultural, historical or archaeological significance to the state;

(11) expenditures when rates are set by law or ordinance;

(12) contracts that are to be performed outside of the country and that require a knowledge of the customs, procedures, rules, or laws of the area;

(13) procurements of contracts with the media for advertising;

(14) contracts for travel services, including airplane travel, hotel accommodations, and travel agency services, but excluding motor vehicle rentals;

(15) contracts entered into with a regional development organization; in this paragraph, "regional development organization" means a nonprofit organization or nonprofit corporation formed to encourage economic development within a particular region of the state that includes the entire area of each municipality within that region and that has a board of directors that represents the region's economic, political, and social interests;

(b) Except for Rules 1900.1-1900.5, these Rules do not apply to contracts between ARRC and an agency of the state and its political subdivisions, or the state and other governments.

(c) Nothing in these Rules prevents ARRC from complying with the terms and conditions of a grant, gift, bequest, cooperative agreement or federal assistance agreement.

2000.2 **Federal Assistance.** If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of these Rules and an applicable federal statute, regulation, policy or requirement, the federal statute, regulation, policy or requirement shall prevail.

2000.3 **Reporting of Anti-Competitive Practices.** When for any reason collusion or other anti-competitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the person who suspects the collusion or other anti-competitive practices.

2000.4 **Product Endorsement.** Requests for approval of a news release or advertisement stating that the ARRC, or any of its operating units or personnel, uses a product made or service offered by another firm must be approved by the CEO.

2000.5 **Use of ARRC Name.** The design or ordering of material that includes the use of the ARRC name or symbols must be approved by the Vice President, Corporate Affairs.

2000.6 **Standardization.** In order to maximize purchasing power, standardization of supplies, materials, and equipment is to be achieved wherever appropriate.

2000.7 **Purchases by Employees.** Employees may not purchase through the ARRC any materials purchased or used by the ARRC other than those that are sold as surplus.

2000.8 **Commitment Authority.** Only those persons to whom authority has been delegated by the Board may commit the ARRC to the purchase of materials, equipment, supplies, and services.

2000.9 **Interpretation of Rules.** Interpretation of these Rules is the responsibility of the procurement supervisor. The procurement supervisor shall adopt and maintain a uniform set of forms and procedures for using departments that prescribe the time, manner and form of making requisitions for supplies, services and construction.

2000.10 **Definitions.** In these Rules, unless the context in which a term is used clearly requires a different meaning or a different definition is prescribed for a particular provision,

(1) "Alaska bidder" means a person who

(A) holds a current Alaska business license;

(B) submits a bid or proposal for goods, services, or construction under the name appearing on the person's current Alaska business license;

(C) has maintained a place of business in the state staffed by the bidder or offeror or an employee of the bidder or offeror for a period of six months immediately preceding the date of the bid or proposal;

(D) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under former AS 32.05, AS 32.06, or AS 32.11 and all partners are residents of the state; and

(E) if a joint venture, is composed entirely of ventures that qualify under (A)--(D) of this paragraph;

(2) "change order" means a written order signed by the procurement officer, directing the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor;

(3) "competitive sealed bidding" means the procedure under Rules 1200.1-1200.10;

(4) "competitive sealed proposals" means the procedure under Rules 1300.1-1300.8;

(5) "construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a structure, building, or other improvement of any kind to real property other than privately owned real property leased for the use of ARRC; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation and maintenance of an improvement to real property;

(6) "contract" means all types of ARRC agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment, services, professional services, or construction;

(7) "contract manager" means the project manager, project engineer or other person authorized to manage or administer a contract for ARRC; it also includes an authorized representative of a contract manager acting within the limits of authority;

(8) "contract manager's supervisor" means the vice president of the department in which the contract manager works;

(9) "contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract;

(10) "design-build construction contract" means a construction contract between ARRC and a design-builder to furnish architecture, engineering, and related design services, and to furnish construction services, including labor and materials;

(11) "employment program" means a non-profit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment;

(12) "grant" means property furnished by the state, whether real or personal, designated by law, including an appropriation Act, as a grant;

(13) "hearing" does not include a hearing in an arbitration;

(14) "in writing" has the meaning given to "written" in this section;

(15) "lowest responsive and responsible bidder" means the individual, firm, company, or entity determined by the procurement officer to be the most responsive, responsible, and advantageous bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid including price and is awarded or given notice of intent to award.

(16) "minor informalities" means matters of form rather than substance which are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other bidders;

(17) "nonresponsive" means a bid or proposal that does not conform in all material respects to the solicitation;

(18) "person" means a business, individual, union, committee, club, other organization, or group of individuals;

(19) "procurement" means buying, purchasing, renting, leasing, or otherwise acquiring supplies, equipment, services, or construction; it also includes functions that pertain to the obtaining of a supply, equipment, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;

(20) "procurement officer" means a person authorized to solicit, enter into and administer contracts for ARRC; it also includes an authorized representative of a procurement officer acting within the limits of authority;

(21) "procurement supervisor" means the Director of Supply Management; it also includes an authorized representative of the procurement supervisor acting within the limits of authority;

(22) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;

(23) "services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance; it does not include employment agreements or collective bargaining agreements;

(24) "solicitation" means an invitation to bid, a request for proposals, a request for quotation, or any other document issued by ARRC for the purpose of soliciting bids or proposals to perform an ARRC contract;

(25) "supplies" means all property of ARRC, including equipment, and materials; it includes privately owned real property leased for the use of ARRC, such as office space, but does not include the acquisition or disposition of other interests in land;

(26) "written" means the product of forming characters on paper, other materials, or viewable screens, that can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.