

Register _____, _____ 200__ ALASKA ENERGY AUTHORITY.

3 AAC 106.120(a)(2)(A)(vi) is repealed:

(vi) [GROUNDWATER SOURCE DEVELOPMENT AND
TRANSMISSION OF POTABLE WATER] **Repealed** / / ;

(Eff. 2/16/96, Register 137; am ___/___/____, Register _____)

Authority: AS 42.45.010 AS 44.83.080

3 AAC 106.300(3) is amended to read

(3) written endorsement from the governing body of **each** [THE] community **for which a loan from the fund is sought**, if the applicant is a person generating power or selling fuel in the community.

(Eff. 2/16/96, Register 137; am 3/25/2005, Register 173; am ___/___/____, Register _____)

Authority: AS 42.45.250 AS 44.83.080

3 AAC 106.310(4) is amended to read:

(4) the amount of the loan, added to the amounts of all other bulk fuel loans to the same borrower in the same fiscal year, may not exceed **\$750,000, or if the borrower is a cooperative corporation organized under AS 10.15 or an electric cooperative organized under AS 10.25 and uses the loan to purchase bulk fuel on behalf of more than one community, may not exceed the lesser of \$750,000 times the number of eligible communities on whose behalf the bulk fuel is to be purchased, or \$1,800,000** [\$300,000].

(Eff. 2/16/96, Register 137; am 3/25/2005, Register 173; am ___/___/____, Register _____)

Authority: AS 42.45.250 AS 44.83.080

3 AAC 106.900(c) is amended by adding new paragraphs to read:

(c) In AS 42.45 and this chapter, unless the context requires otherwise,

...

(7) “electric utility” has the meaning given in AS 42.05.990(4)(A);

(8) “independent power producer” means a corporation, person, agency, authority or other legal entity or instrumentality, that is not an electric utility and that owns or operates or will own or operate a facility for the generation or production of energy entirely for use by the residents of one or more municipalities or unincorporated communities recognized by the Department of Commerce, Community, and Economic Development for state aid and revenue sharing (Eff. 2/16/96, Register 137; am ___/___/____, Register ____)

Authority: AS 42.45.010 AS 44.83.080

3 AAC 107 is amended by adding a new article to read:

Article 4. Renewable Energy Grant Program

3 AAC 107.600. Purpose. The purpose of 3 AAC 107.600 to 3AAC 107.695 is to adopt regulations for applications for grants, evaluation of applications, recommendations to the legislature for award of grants, award of grants, and administration of grants from the renewable energy fund under AS 42.45.045. (Eff. ___/___/____, Register ____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.605. Public purpose requirements of renewable energy grants.

Expenditures of public funds, including renewable energy grants, must be for a public purpose.

The authority may take actions it determines are appropriate to protect the public purpose of renewable energy grants and the public interest in and benefit from the use of grant funds, including

(1) limiting funding to grants for preliminary development phases, such as reconnaissance or feasibility studies, until the authority determines that subsequent phases are feasible, will result in sufficient benefit to the public, and are otherwise appropriate for grant funding;

(2) seeking repayment of some or all of a grant if the grantee fails to comply with the terms and conditions of the grant or, without the prior approval of the authority, sells, conveys, or encumbers a project constructed with renewable energy grant funds;

(3) requiring review and approval by the Regulatory Commission of Alaska or, if the Regulatory Commission of Alaska does not have or exercise jurisdiction, review and approval by the authority, of rates charged for the use of renewable energy grant-funded assets and for energy generated by renewable energy grant-funded assets;

(4) determining whether an applicant that is not a governmental entity or a utility regulated by the Regulatory Commission of Alaska will own and operate the project in a manner that will provide sufficient public benefit to warrant a recommendation for a grant under this article; in making this determination, the authority may consider the applicant's previous experience, its ownership and financial resources, proposed financial oversight, and other relevant factors. (Eff. ___/___/____, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.610. Eligible applicants. (a) An applicant must meet the requirements of AS 42.45.045(l)(1) and this chapter to apply for a grant from the renewable energy grant fund.

(b) An applicant must demonstrate to the satisfaction of the authority that it will own the renewable energy project; own, lease, or otherwise control the site upon which the project is located; and upon completion of the project, operate and maintain it for its economic life for the benefit of the public; however, the authority may authorize conveyance of an ownership interest or of operational or maintenance responsibilities if it determines the conveyance protects the public interest in and benefit from the grant. (Eff. ___/___/___, Register ____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.615. Eligible projects. (a) A project that meets the requirements of AS 42.45.045(f) – (h), and AS 42.45.045(l)(3) – (l)(5) is eligible for a grant from the renewable energy grant fund.

(b) A project is a “direct use of renewable energy resources” for purposes of the eligibility requirements of AS 42.45.045(f)(2)(B) if it

(1) uses renewable energy resources, including biomass, to generate energy, or

(2) uses renewable energy resources, including biomass, to make a fuel used to generate energy. (Eff. ___/___/___, Register ____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.620. Public notice of application period; solicitation of grant applications. (a) The authority shall provide public notice of the application period by publishing notice on the Authority’s internet web site and on the State of Alaska On-line Public Notice System.

(b) The authority shall publish on its internet web site a request for grant applications that includes the date, time, place, and method for delivering applications, and a description of the application requirements. (Eff. ___/___/___, Register _____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.625. Grant applications. (a) An applicant must submit an application to the authority within the time specified in the request for applications with the documentation and in the format required in the request for grant applications. The application must include:

(1) information showing to the satisfaction of the authority that the applicant is an eligible applicant under AS 42.45.045(l)(1) and 3 AAC 107.605;

(2) information showing to the satisfaction of the authority that the project is eligible under AS 42.45.045 f), (g), (h), and (l)(3) – (l)(5) and 3 AAC 107.610;

(3) information showing to the satisfaction of the authority that the project is technically and economically feasible;

(4) a description of the public benefit from the project;

(5) a description of the project scope of work, schedule, milestones, and budget that includes an estimate of total project costs, the amount of grant funds requested, and identification of other funds or resources that are committed to the purposes of the grant;

(6) a description of the applicant’s financial resources and financial capability of developing the project, including grantee match and other financing necessary for project development; and

(7) additional information as required in the request for grant applications.

(b) Applicants may be required to submit new applications for each solicitation to which they are responding, including applicants who have received funding for initial project development phases or partial funding for their projects. (Eff. ___/___/____, Register ____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.630. Disclosure of applications and other materials submitted to the authority; confidentiality. (a) All grant applications and other materials submitted to the authority under this chapter are subject to the public records disclosure laws, AS 40.25.100 – 40.25.295, and may be disclosed by the authority in response to a public records request unless the authority determines that the material is protected from disclosure under AS 40.25.120.

(b) A person submitting an application or other material under this chapter may request that the authority keep certain information confidential by clearly designating the specific information requested to be kept confidential and specifically describing the basis for asserting that the information is protected from disclosure under AS 40.25.120. If the person believes the information is protected as a trade secret or business proprietary information, the description shall include analysis of whether the person’s commercial privacy interest in protecting the information from disclosure outweighs the public interest in obtaining the information.

(c) If the authority receives a public records request and determines the information requested is protected from disclosure under AS 40.25.120, it will not release the information except to authority personnel and contractors for purposes of evaluating the person’s application. If the authority determines the information may not be protected from disclosure under AS 40.25.120, it will notify the person submitting the information, who is responsible at the person’s own expense for seeking judicial relief or taking other action necessary to protect the material from disclosure under AS 40.25.100 – 40.25.295. (Eff. ___/___/____, Register ____)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.635. Acceptance of applications for consideration. The authority will accept for consideration for grant funding all applications received by the deadline established in the request for applications. The authority may consider applications received after the deadline if it determines that the applicant attempted to timely deliver the application, circumstances outside the control of the applicant caused the late delivery, and acceptance of the application would not prejudice other applicants or cause undue delay in the review process. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.640. Eligibility review of grant applications. The authority shall review each application accepted for consideration under 3 AAC 107.635 to determine if the application is complete, submitted by an eligible applicant, and is for an eligible project. The authority will reject applications that fail to meet these requirements and will notify each applicant whose application is rejected of this decision. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.645. Feasibility and public benefit review of grant applications. (a) The authority, with assistance as needed from consultants and contractors, shall conduct a feasibility and benefit review of each application that passes the eligibility review to determine whether the proposed project appears to be technically and economically feasible, whether the applicant appears to have sufficient financial resources and other resources necessary to complete and

sustainably operate the project as proposed, and whether there appears to be sufficient public benefit from the project as proposed to warrant a recommendation for grant funding.

(b) The authority may reject applications that it determines do not appear to be technically and economically feasible or that do not provide sufficient public benefit and will notify each applicant whose application is rejected of the reasons for rejection.

(Eff. ___/___/____, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.650. Requests for reconsideration. (a) An applicant whose application is rejected in the eligibility review or the feasibility and public benefit review may request that the executive director of the authority reconsider the decision of the authority's staff to reject the application by submitting a written request for reconsideration. The request must be in writing stating the basis for reconsideration and must be received by the authority within 5 days after the applicant has received notice of the rejection.

(b) The executive director may concur with the decision of staff and reject the application, request additional information from the applicant prior to making a final decision, or allow the application to be considered at the next stage of review or evaluation if the executive director determines that the authority erred in its review of the application.

(c) The decision of the executive director is the final decision of the authority. (Eff. ___/___/____, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.655. Evaluation of grant applications. (a) The authority, with assistance as needed from consultants and contractors, shall evaluate each application that passes the

feasibility and benefit review under 3 AAC 107.645 for the purpose of ranking applications and making recommendations to the legislature for grant funding.

(b) The evaluation criteria

(1) shall include

(A) the extent to which the proposed project serves an area of the state in which the average cost of energy to each resident of the area exceeds the average cost to residents of other areas of the state;

(B) the extent to which the applicant will provide matching resources for the project;

(C) the likely economic and technical feasibility of the project;

(D) the public benefits of the project, including economic benefits; and

(E) the ability of the applicant to fund, operate, and maintain the project for the life of the project; and

(2) may include

(A) local support for the project;

(B) the readiness of the applicant to proceed with the phases of the project proposed for grant funding;

(C) other projects existing or proposed in the same area;

(D) the applicant's compliance with the requirements of previous funding requests or grant awards; and

(E) other criteria as identified in the request for applications.

(c) As a result of the evaluation, the authority may decide to recommend grant funding as requested by the applicant, decide to not recommend a project for grant funding, or decide to recommend grant funding in amounts or for project phases different from what the applicant

requests. In recommending grant funding for phases different from what the applicant requests, the authority may limit its recommendation to grant funding for one or more preliminary project phases before recommending a grant for project construction, such as reconnaissance, energy resource monitoring, feasibility, or design and permitting phases of the project. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.660. Ranking of applications. (a) To establish a statewide balance of recommended projects the authority shall provide to the renewable energy fund advisory committee established under AS 42.45.045(i) a statewide and regional ranking of all applications recommended for funding.

(b) In consultation with the advisory committee established in AS 42.45.045(i) the authority shall make a final prioritized list of all recommended projects taking into consideration the amount of total funds that may be available, number of projects within each region, regional rank, and statewide score. The final prioritized list may include changes to the recommendations made following the evaluation under 3 AAC 107.655

(c) The authority will publish a final prioritized list of recommended projects on its internet web site and will provide it to the legislature in accordance with AS 42.45.045(d). Award of any grant is subject to legislative appropriation. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.670. Additional information from applicant. (a) At any stage in the review, evaluation, recommendation, or award process, the authority may request that an applicant clarify, modify, or supplement its application. This may include, but is not limited to

(1) a request for information sufficient for the authority to confirm an application meets the requirements of the request for applications;

(2) a request for information sufficient for the authority to confirm the applicant's willingness and ability to adjust the project scope and budget as required by the authority in making its recommendation or as required by the legislature in approving the grant.

(b) Failure to provide timely or adequate information requested by the authority may result in rejection of the application, modification of the authority's recommendations, or canceling a notice of intent to award a grant. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.675. Grant agreement. (a) As a condition of grant funding under this chapter, the applicant must sign a grant agreement prepared by the authority that contains the terms and conditions of the grant. The grant agreement may include

(1) a description of the project to be funded with the grant, a project schedule, and milestones that must be met before disbursement of grant funds, such as completion and approval by the authority of pre-construction phases of the project and obtaining site control and permits for construction of the project;

(2) requirements for project management;

(3) a description of allowable costs;

(4) requirements for the documentation of expenditures and procurements;

(5) procedures for making grant payments to the grantee;

(6) requirements for the grantee's accounting and reporting;

(7) requirements for the grantee's maintenance and retention of project records;

(8) hiring preferences applicable under AS 36.10.150 - 36.10.180 and 8 AAC 30.064 - 30.088 to the grantee and its agents, contractors, and subcontractors;

(9) procedures for verifying the provision of the grantee's matching contributions to the project; and

(10) other terms and conditions that the authority determines are appropriate to ensure the public purpose of and maximize the public benefit from the grant.

(b) If an applicant fails to execute the grant agreement within 30 days after receiving it from the authority, the authority may cancel a notice of intent to award the grant and may offer the grant funds to another eligible applicant, subject to appropriation and approval by the legislature. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.680. Grant closeout; return of unexpended and improperly spent grant funds. Upon completion of the grant-funded work or termination of the grant, the authority will close out the grant and the grantee shall return to the authority any grant funds and interest on grant funds not spent on project work under the terms and conditions of the grant agreement.

The grant agreement may provide that specified obligations of the grantee survive grant closeout.

(Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.685. Project operations and maintenance reporting. For all renewable energy projects constructed with funding provided under this article, the grantee shall provide to the authority reports on project operations and maintenance for the periods and with the information specified by the authority in the grant agreement. The authority may require

information on project operations and maintenance activities and cost, other costs of the project, energy output, estimated fuel displacement resulting from the energy output, discussion of operational issues, and other information useful to the authority for its evaluation of the project and the grant. Failure to provide this information may result in the grantee being ineligible for future grants from the authority. (Eff. ___/___/____, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.690. Dispute resolution. Any unresolved dispute concerning a grant awarded under this chapter section shall be raised in accordance with the procedures established in 3 AAC 108.915 and shall be decided by the executive director or a designee of the executive director, whose decision shall be provided in writing to the grantee and shall be the final decision of the authority. (Eff. ___/___/____, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 107.695. Definitions. In 3 AAC 107.600 – 3 AAC 107. 690, unless the context indicates otherwise,

- (1) “authority” means the Alaska Energy Authority;
- (2) “biofuel” means a solid, liquid, or gaseous fuel derived from biomass;
- (3) “biomass” means organic matter that is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, and animal wastes, municipal wastes, and aquatic plants;
- (4) “independent power producer” means a corporation, person, agency, authority, or other legal entity or instrumentality that is not an electric utility, that owns or operates or will own or operate a facility for the generation or production of energy entirely for use by the

residents of one or more municipalities or unincorporated communities recognized by the Department of Commerce, Community, and Economic Development for state aid and revenue sharing;

(5) “match” means those resources dedicated by the grantee for the completion of the project. Matching resources may be cash, loan proceeds, or grantee provided equipment, labor, or other materials or services needed for the completion of the project;

(6) “renewable energy resource” has the meaning given in AS 42.45.045 (l)(5);

(7) “wasteheat recovery” means systems for the recovery of unused heat from systems or processes in operation when the applicant applies for a grant under this article. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.045 AS 44.83.080

3 AAC 108.910 is amended to read:

3 AAC 108.910. Protests. (a) [A PERSON WHO IS ADVERSELY AFFECTED BY A PROPOSED OR FINAL ACTION OF THE AUTHORITY OR WHO HAS A CONTRACT CLAIM AGAINST THE AUTHORITY UNDER THIS CHAPTER MAY SUBMIT TO THE AUTHORITY A PROTEST OR CLAIM] 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 the authority in accordance with this section, except as otherwise specified in the solicitation, provided by statute, or required as a condition of assistance received by the authority under [3 AAC 105.120] **3 AAC 105.020**.

(b) [A PROTESTER OR CLAIMANT MAY SUBMIT A PROTEST OR CLAIM BY FACSIMILE TRANSMISSION, BY MAIL, OR BY PERSONAL DELIVERY TO THE AUTHORITY. A PROTEST OR CLAIM MUST BE IN WRITING, MUST BE SIGNED BY

THE PROTESTER, AND MUST INCLUDE] **The protest must be submitted to the authority's procurement manager in writing, signed by the protester or protester's representative, and include the following information:**

- (1) the name, address, and telephone number of the protester [OR CLAIMANT];
- (2) the signature of the protester [OR CLAIMANT,] or the protester's [OR CLAIMANT'S] representative;
- (3) identification of the solicitation [, CONTRACT, OR OTHER MATTER] at issue;
- (4) a detailed statement of the legal and factual grounds for the protest [OR CLAIM], including copies of relevant documents; and
- (5) a statement of the remedy requested; in a protest of a procurement action, the protester is limited to remedies that would apply in a protest under AS 36.30.

(c) [TO BE CONSIDERED, UNLESS THE AUTHORITY AGREES TO CONSIDER AN UNTIMELY PROTEST OR CLAIM FOR GOOD CAUSE SHOWN,

(1) a] **A** protest based on alleged improprieties in a bid or solicitation must be received by the authority at least 10 days before the due date of the bid or proposal[;]. **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 the contract is issued by the procurement officer. The authority may change these deadlines or accept a late-filed protest for good cause shown.**

[(2) A CONTRACT CLAIM MUST BE RECEIVED BY THE AUTHORITY WITHIN 90 DAYS AFTER THE CONTRACTOR BECOMES AWARE OF THE BASIS OF THE CLAIM OR SHOULD HAVE KNOWN OF THE BASIS OF THE CLAIM, WHICHEVER IS EARLIER; AND

(3) A PROTEST OF OTHER ACTION OF THE AUTHORITY, INCLUDING A NOTICE OF INTENT TO AWARD A CONTRACT, MUST BE RECEIVED BY THE AUTHORITY WITHIN 10 DAYS AFTER THE AUTHORITY PROVIDES NOTICE OF THE ACTION.]

(d) Upon receiving a protest [OR CLAIM,] the authority shall provide notice of the protest [OR CLAIM] to other interested persons.

(e) [THE AUTHORITY'S PROCUREMENT MANAGER SHALL PROVIDE THE DECISION OF THE AUTHORITY AS TO PROCUREMENT PROTESTS AND CONTRACT CLAIMS.] The authority's procurement manager shall issue a written decision on a procurement protest within 15 days after receipt of all relevant information from the protester and the authority[, AND SHALL ISSUE A WRITTEN DECISION ON A CONTRACT CLAIM WITHIN 90 DAYS OF RECEIPT OF ALL RELEVANT INFORMATION FROM THE CONTRACTOR AND THE AUTHORITY], unless the executive director extends the time for decision for good cause shown. [A PROTESTER OR CLAIMANT WHO IS DISSATISFIED WITH A DECISION OF THE PROCUREMENT MANAGER MAY APPEAL THE DECISION TO THE BOARD OF DIRECTORS OR, WHEN THE BOARD OF DIRECTORS HAS AUTHORIZED THE EXECUTIVE DIRECTOR TO MAKE THE FINAL DECISION OF THE AUTHORITY, TO THE EXECUTIVE DIRECTOR. A PROTESTER MUST SUBMIT ITS APPEAL OF A PROCUREMENT ACTION WITHIN 10 DAYS AFTER THE PROTESTER RECEIVES THE PROCUREMENT MANAGER'S DECISION.

(f) UPON RECEIVING AN APPEAL OF A PROCUREMENT PROTEST OR CONTRACT CLAIM UNDER (e) OF THIS SECTION OR A PROTEST OF OTHER ACTION OF THE AUTHORITY, THE EXECUTIVE DIRECTOR SHALL REVIEW THE PROTEST OR CLAIM, RELEVANT INFORMATION FROM AGENCY STAFF, INCLUDING ANY

DECISION OF THE PROCUREMENT MANAGER'S DECISION, AND OTHER RELEVANT INFORMATION, AND SHALL

(1) PREPARE A RECOMMENDED DECISION FOR CONSIDERATION BY THE BOARD OF DIRECTORS OF THE AUTHORITY; OR

(2) CONDUCT A HEARING AND PREPARE A RECOMMENDED DECISION FOR CONSIDERATION BY THE BOARD OF DIRECTORS OF THE AUTHORITY;

(3) DESIGNATE A HEARING OFFICER TO CONDUCT A HEARING AND PREPARE A RECOMMENDED DECISION FOR CONSIDERATION BY THE BOARD OF DIRECTORS OF THE AUTHORITY; OR

(4) REFER THE MATTER TO A MEDIATOR OR ARBITRATOR FOR RESOLUTION, SUBJECT TO APPROVAL OF THE RESOLUTION BY THE BOARD OF DIRECTORS OF THE AUTHORITY.

(g) THE BOARD OF DIRECTORS OF THE AUTHORITY WILL ADOPT A RECOMMENDED DECISION PREPARED UNDER (f) OF THIS SECTION, ADOPT THE RECOMMENDED DECISION WITH MODIFICATIONS, REJECT THE RECOMMENDED DECISION, OR RETURN THE RECOMMENDED DECISION TO THE EXECUTIVE DIRECTOR OR HEARING OFFICER FOR ADDITIONAL FINDINGS.

(h) IN CONDUCTING A HEARING UNDER THIS SECTION, THE HEARING OFFICER OR EXECUTIVE DIRECTOR 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 RELATING TO THE HEARING PROCEDURES, 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; AND

(9) ADMINISTER OATHS OR AFFIRMATIONS.

(i) THE BOARD OF DIRECTORS OF THE AUTHORITY MAY DELEGATE TO THE EXECUTIVE DIRECTOR AUTHORITY TO MAKE THE FINAL DECISION REGARDING PROTESTS OF PROCUREMENT ACTIONS AND OF OTHER ACTIONS AS THE BOARD DETERMINES IS APPROPRIATE.

(j) A DECISION BY THE BOARD OF DIRECTORS OF THE AUTHORITY, OR BY THE EXECUTIVE DIRECTOR ON ACTIONS AS DELEGATED TO THE EXECUTIVE DIRECTOR, IS A FINAL DECISION FOR PURPOSES OF JUDICIAL REVIEW.] (Eff. ___/___/___, Register ___)

Authority: AS 42.45.400 AS 44.83.080

3 AAC 108 is amended by adding new sections to read:

3 AAC 108.915. Contract and grant claims. (a) A person who has a claim against the authority under a contract or grant agreement with the authority may submit to the authority a claim in accordance with this section, except as otherwise specified in the contract or grant, provided by statute, or required as a condition of assistance received by the authority under 3 AAC 105.020.

(b) The claim shall be submitted to the procurement manager or the procurement manager's designee in writing, signed by the protester, and include the following information

- (1) the name, address, and telephone number of the protester or claimant;
- (2) the signature of the protester or claimant, or the protester's or claimant's representative;
- (3) identification of the solicitation, contract or other matter at issue;
- (4) a detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; and

(5) a statement of the remedy requested.

(c) A written notice claim under a contract or grant must be received by the authority within 30 days after the claimant becomes aware of the basis of the claim or should have known of the basis of the claim, and the information required in (b)(4) and (b)(5) of this section and any other relevant information must be received by the authority within 60 days after the claimant submits the notice of claim. The authority may change these deadlines or accept a late-filed claim for good cause shown

(d) Upon receiving a claim, the authority shall provide notice of the claim to other interested persons.

(e) The procurement manager or the procurement manager's designee shall issue a written decision on a claim within 90 days of receipt of all relevant information from the claimant and the authority, unless the executive director extends the time for decision for good cause shown. (Eff. ___/___/___, Register ___)

Authority: AS 42.45.400 AS 44.83.080

3 AAC 108.920. Appeals. (a) A claimant who is dissatisfied with a decision of the procurement manager or the procurement manager's designee may appeal the decision to the board of directors or, when the board of directors has authorized the executive director to make the final decision of the authority, to the executive director. A protester or a claimant must submit its appeal within 10 days after receipt of the procurement manager's decision.

(b) Upon receiving an appeal under (a) of this section or a protest or a claim, the executive director shall review the protest or claim, relevant information from agency staff, including any decision of the procurement manager's decision, and other relevant information, and shall

(1) prepare a final decision or a recommended decision for consideration by the board of directors of the authority; or

(2) conduct a hearing and prepare a final decision or recommended decision for consideration by the board of directors of the authority;

(3) designate a hearing officer to conduct a hearing and prepare a recommended decision for consideration by executive director or the board of directors of the authority; or

(4) refer the matter to a mediator or arbitrator for a recommended decision, subject to approval by the executive director or the board of directors of the authority.

(c) The board of directors of the authority will adopt a recommended decision prepared under (b) of this section, adopt the recommended decision with modifications, reject the recommended decision, or return the recommended decision to the executive director or hearing officer for additional findings.

(d) In conducting a hearing under this section, the hearing officer or executive director 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 relating to the hearing procedures, 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; and

(9) administer oaths or affirmations.

(e) The board of directors of the authority may delegate to the executive director authority to make the final decision regarding protests of procurement actions and of other actions as the board determines is appropriate.

(f) A decision by the board of directors of the authority, or by the executive director on actions as delegated to the executive director, is a final decision for purposes of judicial review.

(Eff. ___/___/___, Register ___)

Authority: AS 42.45.400 AS 44.83.080