

TO:	Mayor and Assembly
FROM:	Brad Ryan, Borough Manager
DATE:	May 26, 2023
SUBJECT:	Appointment of Bidding Review Board

As I reported at the May 18, 2023 Assembly meeting, the Municipality is processing a protest from AMES 1 LLC for the rejection of its bid for the Solid Waste Transfer Facility project.

Pursuant to [SMC 4.05.045](#) Bidding review board:

- A. There is established a bidding review board. The bidding review board shall consist of three persons appointed by the assembly. The members of the bidding review board shall serve one-year terms. The bidding review board shall adopt written rules of procedure for the purpose of ensuring the expeditious resolution of protests.
- B. The bidding review board shall hear protests as provided in this chapter and may perform such other related duties as the manager or assembly may, from time to time, request.

I would like to request that the Assembly appoint a three-person bidding review board at this meeting. The borough attorney has recommended that the board follow similar rules of procedure as those adopted by the City and Borough of Juneau bidding review board (attached).

In considering the makeup of the bidding review board, the ability to understand quasi-judicial proceedings and the ability to remain neutral is important. Because of this, the Assembly might consider appointing certain positions instead of particular people, such as:

- Chair of the Planning & Zoning Commission
- Chair of the Historic District Commission
- Former elected official as at-large member

Another idea would be to appoint positions from non-municipal community organizations. However, this decision is completely up to the Assembly.



Municipality of Skagway

GATEWAY TO THE KLONDIKE

P.O. BOX 415 SKAGWAY, ALASKA 99840

(PHONE) 907-983-2297 – Fax 907-983-2151

WWW.SKAGWAY.ORG

MUNICIPALITY OF SKAGWAY BIDDING REVIEW BOARD – HEARING PROCEDURES

1. Intent and Construction. A hearing before the Municipality of Skagway (MOS) Bidding Review Board is intended to be an informal, fair proceeding, for review of the Borough Manager's written response to the protest, with due regard for the rights of the parties involved. These rules of procedure are intended to ensure the expeditious resolution of protests and shall be interpreted in a manner consistent with that intent.
2. Parties. The parties to the hearing are the protester; the apparent lower bidder or successful proposer; any other interested party that has appealed the decision of the manager; and MOS staff. A party may be represented by an attorney, but attorneys are not required.
3. Attendance. A party or the party's designated representative must attend the hearing. A party who fails, without good cause, to appear at the hearing waives their right to participate in the hearing.
4. Burden of Proof. A protestor seeking a Board recommendation in their favor bears the burden of persuasion to show that the manager's response to the protest is erroneous.
5. Evidence to be considered. The Board shall consider the written protest documents submitted to the manager, the manager's written response, and the documents relied on by the manager in preparing the written response.
6. Conduct of Hearing.
 - (a) The chair or, in the absence of the chair, the vice-chair, shall preside at the hearing. The chair shall maintain decorum and assure that all parties have a reasonable opportunity to present their cases.
 - (b) The hearing shall be recorded. A party may request a copy of the recording or a transcript of the hearing. The requesting party shall bear the cost of copying or transcription.
 - (c) The board members may ask questions of the parties, or counsel concerning any matter related to the hearing, at any time, subject to the procedural direction of the chair.
 - (d) Unless otherwise determined by the chair, each party shall have 30 minutes to present oral argument to support their position and to state what, if any action,

they wish the board to recommend. The protestor shall present first, and may reserve a portion of their time for rebuttal. No new issue may be raised in rebuttal.

- (e) After the parties have presented their argument, the board shall deliberate in executive session.
7. Recommendation. The board shall issue a written recommendation, with findings of fact and conclusions of law, in compliance with and as provided in Skagway Municipal Code. The board may prepare the recommendation itself or direct the prevailing party to submit a recommendation for the board's review and adoption.
 8. Presence at Hearing and Voting. A majority of the board members shall be present during the hearing and deliberations. A board member who was not present at the hearing shall not participate in the board's deliberations or in the board's decision.