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| Introduced by: | Mayor       |
| Date:          | 3/11/03     |
| Hearing:       | 4/15/03     |
| Action:        | Enacted     |
| Vote:          | 9 Yes, 0 No |

**KENAI PENINSULA BOROUGH  
ORDINANCE 2003-10**

**AN ORDINANCE AMENDING KPB CHAPTER 5.28 TO CLARIFY THE APPEAL  
PROCESS FOR PROCUREMENT AND PURCHASING ACTIONS**

**WHEREAS,** KPB 5.28.320 currently provides a process for filing appeals to the mayor and then the Assembly by parties adversely affected by actions taken under the purchasing and procurement code; and

**WHEREAS,** additional details regarding the appeal process for protesting actions taken under the purchasing and procurement chapter will provide a more consistent framework for considering future appeals;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** KPB 5.28.320 is hereby amended as follows:

- A. Appeal to Mayor.** Any party bidding or submitting a proposal for a contract with the borough adversely affected by the provisions of this chapter, or regulations promulgated hereunder, or by any acts of the borough in connection with the award of a borough contract, may appeal [IN WRITING] to the mayor in a writing personally received at the office of the borough purchasing officer within 3 business days of the date of notice of intent to award a contract. The appeal may be hand delivered, delivered by mail, or by facsimile and must comply with the requirements of this section.
- B. Contents of Appeal.** A written appeal shall, at a minimum, contain the following:
1. The name, address, and telephone number of the interested party filing the appeal;
  2. The signature of the interested party or the interested party's authorized representative;
  3. Identification of the proposed award at issue;
  4. A statement of the legal or factual grounds for the appeal;
  5. Copies of all relevant documents; and
  6. A fee of \$300 shall be paid to the borough and must be received by the deadline for filing the written appeal. This fee shall be refundable if the appellant prevails in the appeal to the mayor or assembly.
- C. Rejection of Appeal.** The purchasing officer shall reject an untimely or incomplete appeal or an appeal filed without timely payment of the required fee. Such rejection shall

be final and may be appealed to the superior court pursuant to Part VI of the Rules of Appellate Procedure.

- D. **Stay of Award.** If a timely and complete appeal is filed with the fee, the award of the contract shall be stayed until all administrative remedies have been exhausted, unless the mayor determines in writing that award of the contract pending resolution of the appeal is in the best interests of the borough.
- E. **Notice and Response.** Notice of the stay and appeal shall be delivered to any party who may be adversely affected by the mayor's decision by facsimile, first class mail or in person within 3 business days of receipt of a properly filed appeal.
- F. **Mayor's Decision.** The mayor shall issue a written decision to the appellant within 10 business days of the date the appeal is filed. If multiple appeals have been filed, they may be consolidated for purposes of the decision. Copies of the appeal and decision shall be provided to any interested party requesting one. The decision may include any lawful action, including without limitation an amendment of all or any part of the recommended award. For good cause shown the mayor may extend the date for the decision for such additional period as may be necessary.
- G. **Appeal to Assembly.** The mayor's decision may be appealed to the assembly by filing a notice of appeal to the assembly and requesting the mayor to forward the written appeal and the mayor's response to the assembly. The request to appeal to the assembly must be submitted in writing or by facsimile copy of a writing to the borough clerk within [THREE ( ) 3 ( ) WORKING] business days of the mayor's decision. Any appeal not timely filed shall be rejected by the clerk and the appeal forever barred. Appeals to the assembly will be heard at the date and time established by the assembly president, not less than 12 nor more than 35 days after receipt of the appeal. For good cause the assembly president may shorten or extend the hearing date. [EITHER AT THE EARLIER OF 1) THE NEXT ASSEMBLY MEETING OF 2) THE MEETING AT WHICH THE ASSEMBLY WILL CONSIDER AWARD OF THE CONTRACT IF THE MATTER HAS BEEN SUBMITTED TO THE ASSEMBLY FOR ACTION BY THE MAYOR. THE ASSEMBLY MAY AFFIRM THE MAYOR'S ACTION, REMAND THE MATTER BACK TO THE MAYOR OR SCHEDULE A FURTHER HEARING. ]
- H. **Notice and Record On Appeal.**
1. The clerk shall provide all interested parties as defined in paragraph A above including the appellant, the borough administration, and any other parties who submitted a bid or proposal who may be adversely affected by a decision of the assembly, notice of the appeal and scheduled hearing date within 3 business days of receipt of the notice of appeal. Such notice shall also advise the parties of their right to appear and be heard at the appeal, and shall also set forth a schedule for written statements.
  2. The purchasing officer shall submit to the clerk the record of the bid or proposal process including the invitation to bid or request for proposal, any amendments thereto, the appeal filed to the mayor and supporting documentation, and the decision

issued by the mayor. The clerk shall prepare the record on appeal and provide copies to interested parties upon payment of appropriate copying fees. Prior to the scheduled hearing the clerk shall distribute copies of the record to all assembly members, the purchasing officer and the mayor.

I. **Quasi-judicial Process.** The borough assembly shall act in its quasi-judicial capacity when considering an appeal under this section and shall accordingly remain impartial and refrain from ex parte contact with any interested party regarding a specific invitation to bid or request for proposals from the time it has been issued. Any assembly member found to have violated this provision shall be recused from participation in the appeal.

J. **Written Arguments and Evidence.** Written arguments and submittals of evidence shall be filed in the following manner:

1. Written arguments due. Written arguments shall be filed by the parties on a date set by the clerk no later than 5 business days prior to the hearing. All exhibits, evidence, and affidavits supporting a party's position shall be filed on the date written arguments are due.
2. Party participation. Any eligible party wishing to participate in the appeal must submit its mailing address, telephone and facsimile numbers, if any, to the clerk, in writing, within 5 business days of the clerk issuing notice of the appeal. The clerk shall provide the parties, the mayor and assembly with written submittals before the hearing date.

K. **Hearing.** The following procedures shall be followed by the assembly for conduct of the hearing:

1. The hearing shall consist of oral argument by the parties. Testimony shall not be taken unless specifically requested by the assembly.
2. The following order and time limitations shall be followed for the hearing, unless for good cause shown the assembly permits a change:
  - a. call to order and roll call;
  - b. appellant, 15 minutes (if more than one appellant, each is allowed 15 minutes);
  - c. borough, 15 minutes;
  - d. successful bidder or proponent, 15 minutes;
  - e. testimony, if any allowed, subject to time limits set at the assembly's discretion; and
  - f. if testimony is allowed, closing statements by each party in the same order as arguments were presented.
3. The assembly shall deliberate and issue a decision upon closing the hearing. The assembly may, with proper notice, continue the proceedings to a time certain as is convenient and expeditious for the assembly and parties. Every effort shall be made to conclude the proceedings in an efficient manner, while providing a complete and impartial review of the arguments, evidence, briefing, and testimony.

L. **Decision.**

1. The assembly may either uphold the mayor's decision, remand the matter back to the mayor or order a rejection of all bids or proposals. The assembly shall make written

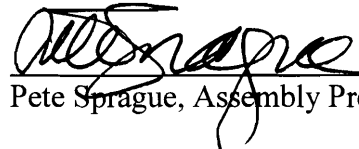
findings of fact which are supported by the substantial evidence in the record, written conclusions and an order. The assembly member chairing the hearing shall execute the order. If the matter is remanded to the mayor, any further appeals of the mayor's decision shall be to the superior court pursuant to Part VI of the Alaska Rules of Appellate Procedure.

2. "Substantial evidence" means relevant evidence a reasonable mind might accept to support a conclusion.
3. The clerk shall serve the written decision on the parties in person or by mail within 10 business days after the oral decision. If facsimile service is requested by a party, service by U.S. mail shall follow.

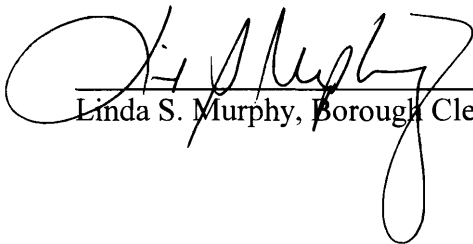
K. **Appeal to Superior Court.** Appeals may be taken from the written decision of the assembly within 30 days of the date of the decision pursuant to Part VI of the Alaska Rules of Appellate Procedure.

**SECTION 2.** This ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF APRIL, 2003.**

  
Pete Sprague, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

