



REQUEST FOR PROPOSALS

M&I BULK FUEL SYSTEMS & BARGE HEADERS RFP 23103

ISSUED JUNE 22, 2023

This is a term Contract for the Maintenance and Improvement (M&I) of existing Bulk Fuel Tank Farms in various locations in Alaska, including but not limited to: Repair, replacement or installation of containment liners, removing water from secondary containment and/or existing tanks, repair or installation of fencing, repair or installation of lighting, oil and water separators, piping repairs, painting, upgrading or replacing appurtenances each assigned project will have specific requirements. More than one Contractor and/or Engineering firm may be selected.

ISSUED BY:

[ALASKA ENERGY AUTHORITY](#)

PRIMARY CONTACT:

[DAWN MOLINA](#)
PROCUREMENT OFFICER
DMOLINA@AKENERGYAUTHORITY.ORG
(907) 771-3904

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

IMPORTANT NOTICE: IF YOU RECEIVED THIS SOLICITATION FROM THE STATE OF ALASKA’S “ONLINE PUBLIC NOTICE” WEB SITE, YOU MUST REGISTER WITH THE PROCUREMENT OFFICER LISTED IN THIS DOCUMENT TO RECEIVE NOTIFICATION OF SUBSEQUENT AMENDMENTS. FAILURE TO CONTACT THE PROCUREMENT OFFICER MAY RESULT IN THE REJECTION OF YOUR OFFER.

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INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Alaska Energy Authority, is soliciting proposals for the Maintenance and Improvement (M&I) of existing Bulk Fuel Tank Farms in various locations in Alaska, including but not limited to: Repair, replacement or installation of containment liners, removing water from secondary containment and/or existing tanks, repair or installation of fencing, repair or installation of lighting, oil and water separators, piping repairs, painting, upgrading or replacing appurtenances each assigned project will have specific requirements. More than one Contractor and/or Engineering firm may be selected. The Authority may award more than one term contract.

SEC. 1.02 BUDGET

The Alaska Energy Authority, will issue a term agreement for \$4,000,000. The Contracting Agency reserves the right in its sole discretion to add additional funds to this contract not to exceed a combined total of \$10,000,000. Contracts will be 2-years with the option for three (3), 1-year renewals.

Payment for the contract is subject to funds already appropriated and identified.

SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **2:00 P.M.** prevailing Alaska Standard Time on **JULY 12, 2023** as indicated by postmark or email timestamp and late proposals will not be considered.

SEC. 1.04 PRIOR EXPERIENCE

No specific minimums have been set for this RFP.

SEC. 1.05 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should be made in writing and received by the procurement officer at least ten days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective proposal and exposure of offeror's proposals upon which award could not be made.

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make that decision.

PROCUREMENT OFFICER: **DAWN MOLINA** – PHONE **907-771-3904** –
dmolina@akenergyauthority.org

SEC. 1.07 RETURN INSTRUCTIONS

1. If submitting a hard copy proposal, Offerors must submit one (1) hard copy of their proposal to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified. The sealed proposal package(s) must be addressed as follows:

Alaska Energy AuthorityAttention: **DAWN MOLINA**Request for Proposal (RFP) Number: **23103**RFP Title: **M&I BULK FUEL SYSTEMS & BARGE HEADERS**If using U.S. mail, please use the following address:**Alaska Energy Authority**Attention: **DAWN MOLINA**Request for Proposal (RFP) Number: **23103****813 W. Northern Lights Blvd.****Anchorage, AK. 99503**If using a delivery service, please use the following address:**813 W. Northern Lights Blvd.****Anchorage, AK. 99503**

2. If submitting a proposal via email, the technical proposal and cost proposal must be saved as separate PDF documents and emailed to dmolina@akenergyauthority.org as separate, clearly labeled attachments, such as “Vendor A – Technical Proposal.pdf” and “Vendor A – Cost Proposal.pdf” (Vendor A is the name of the offeror). The email must contain the RFP number in the subject line.

The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Similar to sending a hard copy proposal, if you are emailing your proposal, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of proposals.

It is the offeror’s responsibility to contact the issuing agency at **(907)-771-3904** to confirm that the proposal has been received. Alaska Energy Authority is not responsible for unreadable, corrupt, or missing attachments.

SEC. 1.08 ASSISTANCE TO OFFERORS WITH A DISABILITY

Offerors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the procurement officer no later than ten days prior to the deadline for receipt of proposals.

SEC. 1.09 AMENDMENTS TO PROPOSALS

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the state's request in accordance with 2 AAC 12.290.

SEC. 1.10 AMENDMENTS TO THE RFP

If an amendment is issued before the deadline for receipt of proposals, the amendment will be posted on the State of Alaska Online Public Notice (OPN) website. The link to the posting of the amendment will be provided to all who were notified of the RFP and to those who have registered with the procurement officer after receiving the RFP from the OPN.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

SEC. 1.11 RFP SCHEDULE

RFP schedule set out herein represents the state's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Standard Time.

ACTIVITY	TIME	DATE
Issue Date / RFP Released		June 22, 2023
Pre-Proposal Conference	3:00 p.m.	June 29, 2023
Deadline for Receipt of Proposals / Proposal Due Date	2:00 p.m.	July 12, 2023
Proposal Evaluations Complete		July 26, 2023
Notice of Intent to Award		July 27, 2023
Contract Issued		August 10, 2023

This RFP does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by Alaska Energy Authority, or the Authority's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

SEC. 1.12 PRE-PROPOSAL CONFERENCE/TELECONFERENCE

A pre-proposal **Conference/Teleconference** will be held at **2:00 P.M.**, Alaska Standard Time, on **JUNE 29, 2023** in the **BIRCH** conference room on the **Basement** floor of the **AIDEA/AEA** building (813 W. Northern Lights Blvd., Anchorage, Alaska). The purpose of the **Conference/ Teleconference** is to discuss the work to be performed with the prospective offerors and allow them to ask questions concerning the

RFP. All questions raised during the meeting must be submitted in writing to the Procurement Officer and will be posted along with the answers on the Alaska Online Public Notice website as an Amendment to the RFP, as soon as possible after the meeting.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for the pre-proposal conference so that reasonable accommodation can be made. Participants may dial into the meeting using the following number:

1-888-585-9008 when prompted enter 351-122-943#

If calling in, please be respectful of other callers and call from a phone that can be muted so as to cancel out background noise and the possibility of feedback. Contact the Contracting Officer, Dawn Molina, at (907) 771-3904 for more information. This is not a mandatory meeting, and there will not be a scheduled site visit prior to the proposal opening.

SEC. 1.13 ALTERNATE PROPOSALS

Offerors may only submit one proposal for evaluation. In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

SEC. 1.14 NEWS RELEASES

News releases related to this RFP will not be made without prior approval of the project director.

SEC. 1.15 BIDDERS QUALIFICATIONS

Before a bid is considered for award, the bidder may be requested by the Authority to submit a statement of facts, in detail, as to his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the contemplated work.

SECTION 2. BACKGROUND INFORMATION

The Alaska Energy Authority (AEA), is soliciting for construction services for multiple small Maintenance & Improvement projects. All projects are in remote areas of Alaska. Future work, includes small projects which individually will not exceed \$1,000,000 each, and most will not exceed \$500,000. The number of projects will be determined by available funding.

Projects will be negotiated according to the hourly rate sheet that was provided in the contractor's proposal with a not to exceed amount and issued with a Notices-to-Proceed.

SEC. 2.01 ADMINISTRATIVE REQUIREMENTS

SEC 2.02 GENERAL

The Contractor shall provide services as identified and authorized by sequentially numbered Notices-to-Proceed. The Contractor shall not perform services or incur billable expense except as authorized by a NTP.

SEC 2.03 PROJECT STAFF

All services must be performed by or under the direct supervision of the following individuals (replacement of, or addition to, the Project Staff named below shall be accomplished only by prior written approval from the Contracting Agency:

<u>Name</u>	<u>Project Responsibilities</u>
-------------	---------------------------------

ENTER NAMES OF CONTRACTOR'S &

SUBCONTRACTOR'S KEY STAFF

SEC 2.04 PROFESSIONAL REGISTRATION

All reports, plans, specification, estimates and similar work products provided by the Contractor shall be prepared by or under the supervision of the Registered Alaskan Engineer or Land Surveyor in responsible charge for the services. These Engineers or Land Surveyors shall be currently registered in the State of Alaska and they shall sign, seal and certify as to the accuracy of each final work product for which they are responsible.

SEC 2.05 BILLING REPORTS

The Contractor shall provide a two-page (typical) report with each monthly billing for months in which services are performed. The report shall specifically describe the services and other items *for which the billing is submitted*, and shall estimate the percent the services are complete. Any delayed costs from previous billing periods that are included in the current billing must be clearly explained in the report.

SEC 2.06 CORRESPONDENCE

All correspondence prepared by the Contractor shall bear the Contracting Agency's assigned Project name and numbers (State & Federal).

SEC 2.07 DOCUMENTS AND REPORTS

Documents and Reports shall be printed with solid black letters that are double spaced on white, 8.5 inch x 11 inch bond or "Xerox Copy" paper. Other size paper may be used for illustrations if they are folded to 8.5 inch x 11-inch size. Original documents and reports shall be printed on one side of the paper only and shall be ready for copying. Documents and reports shall have no black and white photographs, color photographs, or multicolored graphics except as specifically approved by the Contracting Agency. Original, camera ready, copies of final documents and reports shall be submitted to the Contracting Agency for a check before printing.

SEC 2.08 COPIES

When the Contract calls for multiple copies of documents or reports, the copies shall be printed on both sides of the paper. However, the cover and pages with approved illustrations, multicolored graphics, or photographs shall be printed on one side of the page only. All copies - except for originals - shall be bound.

SEC 2.09 PAGE NUMBERS

All documents shall be page numbered to allow every major Section, Chapter, Appendix, etc., to begin on a "right hand," odd numbered page.

SEC 2.10 COVERS

The cover of all documents and reports shall include the following information:

- a. Name of document or report.
- b. Date.
- c. Indicate whether draft or final.
- d. Project Name.
- e. State and Federal Project Number(s).
- f. Prepared for: Alaska Energy Authority.
- g. Prepared by:
- h. Map and/or picture of project area.

SEC 2.11 CONTRACTOR NAME ON PLAN SHEETS AND DOCUMENTS

No Contractor logos shall be allowed on any electronic or hard copy document produced for the Contracting Agency. The Contractor company name shall be included in the box above or below the engineer's seal on each plan sheet. Documents produced for the Contracting Agency shall include the Contractor's company name at the bottom right of the first page, cover sheet or title sheet only. Contractor letterhead shall be allowed only as exhibits in document appendices. The Contractor name shall be in the same font as other lettering on the plan sheet or document, shall be 1/16" or less in height on 11"X17" plan sheets, and shall be in the following format:

PLANS DEVELOPED BY:

COMPANY NAME

SEC 2.12 PLANS, MAPS, AND PLATS

Plans, maps, and plats shall be submitted with solid black ink on A1, 841 x 594 mm original vellum or Mylar in Contracting Agency format. **Final drawings** shall be on Mylar unless another medium is specifically called for in the Contract. All final drawings shall be plotted so that the front surface of the Mylar is inkable and erasable. No Kroy lettering or "sticky back" applications shall be used.

SEC 2.13 RIGHT-OF-WAY BASE MAPS/RIGHT-OF-WAY MAPS

Right-of-Way Base Maps/Right-of-Way Maps shall be submitted to the Contracting Agency with the scale and layout specified by the Contracting Agency. Final Right-of-Way Base Maps shall be submitted on vellum or Mylar. Final Right-of-Way maps shall be on Mylar. **Parcel Plats** shall be submitted on paper with a scale that presents the information legibly and clearly in the Contracting Agency's standard A1, 841 x 594 mm format. A title block and border drawing file will be supplied by the Contracting Agency for the Parcel Plats.

SEC 2.14 DRAFTING

All drawings shall be submitted in either AutoCAD, current format, or DXF format. All submissions shall include the AutoCAD drawing files, or DXF drawing files, on CD ROM discs. A standard layering scheme provided by the Contracting Agency shall be used. Failure to adhere to this scheme will be cause for rejection. The drafting procedures shall be as outlined in the Contracting Agency's Highway Design Drafting Manual -- including current metric revisions.

SEC 2.15 SPECIFICATIONS AND ESTIMATES

Specifications and Estimates shall be submitted with solid black letters that are double spaced on white, 8.5 inch x 11-inch bond or "Xerox Copy" paper. They shall be printed on one side of the paper only and shall be ready for copying. Specifications and estimates shall contain no graphics and no photographs except as specifically approved by the Contracting Agency.

Copies of the Specifications shall be printed on both sides of the paper and shall be bound with a comb binder. Copies of the estimates shall be single sided. For Reviews, copies of estimates shall be included as the first item behind the cover of the Specifications.

All Specifications shall also be submitted on CD ROM discs as document files for Microsoft Word current edition or compatible software written for IBM compatible personal computers.

SEC 2.16 REVISIONS

The Contractor shall modify work products in response to direction from the Contracting Agency. Corrections, adjustments, or modifications necessitated by the review/approval process, but which do not substantially affect the scope, complexity, or character of the services, shall be considered a normal part of the Contractor's services.

SEC 2.17 ERRORS AND OMISSIONS

Except as described in this Statement of Services, work products shall be essentially complete when submitted to the Contracting Agency. Work products having significant errors or omissions will not be accepted until such problems are corrected.

SEC 2.18 REVIEW MEETINGS

Following each review the Contracting Agency will provide written comments and may hold a meeting to discuss the issues. The Contractor's personnel who are in-responsible-charge for the work products under review shall attend the meeting and they may be asked to interpret and provide explanations of the content.

SEC 2.19 COMMENT RESOLUTION

The Contractor shall provide a written response with subsequent submittals that address all written and oral comments from the Contracting Agency. All changes from previous submittals shall be clearly explained.

SEC 2.20 REPRODUCTION AND DISTRIBUTION

When the contract requires only the original or only one copy of a work product to be delivered, the Contracting Agency will reproduce and distribute any other copies required. Items delivered for reproduction shall be organized and camera ready for copying and not stapled or otherwise bound.

The Contractor shall develop the Estimate for this project.

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

Request for Proposal is for the construction services for multiple small Maintenance & Improvement projects. The Contractor shall provide limited pre-construction phase services in concert with a separate engineering firm contracted by the Authority.

For future projects, the Contractor will collaborate with the Engineering Consultant, and AEA as a member of the integrated design team. The Contractor shall provide input on schedule, phasing, constructability, risk, and cost throughout the pre-construction phase of the Project.

The Contractor will provide an hourly rate sheet for in office labor, and field work associated with pre-construction and construction.

During the pre-construction process, the Contractor will provide a proposal for work to be approved by AEA prior to any work see B5 for Notices-to-Proceed process.

The Contractor's tasks during the pre-construction phase (future projects) may include, but are not limited to:

Site Visits:

1. Travel with the Design Consultant and AEA representatives to potential work sites to evaluate bulk fuel infrastructure, resources available, in the community and recommend solutions.

Design Review:

1. Thoroughly review all plans, specifications, reports, diagrams, imagery, shop drawings, as-built plans, site conditions, and all other necessary Projects documentation to provide design validation from a construction expertise perspective.
2. The Contractor shall independently calculate quantities for verification purposes of construction packages.
3. Provide constructability input on all facets of the Project.
4. Provide written reviews or reports and details/ redlines of the Project plans and specification packages at Project milestones. The report should adequately address constructability; bulk fuel phasing; clarifications; design plan and specification errors, omissions, or conflicts; potential impacts to schedule; potential impacts to cost; risk identification; and value engineering suggestions/recommendations.
5. Work with design team to make determinations if early procurement of long lead-time materials are viable and cost effective, or if they have the potential to benefit to the Project or reduce the construction schedule.
6. Provide feedback for appropriate level of plan detailing to complete construction.

7. Actively participate in discussions to study and recommend ideas for design options as it pertains to constructability, innovation, value and quality.
8. Provide timely feedback from design reviews to AEA to assist in decision-making.

Cost Estimating:

1. To help inform decisions, the Contractor shall provide ongoing rough order of magnitude cost estimating as design concepts are being developed and evaluated throughout the planning process. This may include:
 - a. Evaluating means and methods of various construction techniques that may influence design solutions with consideration of cost and schedule impacts, and
 - b. Evaluating industry standard operating and maintenance costs as inputs to life-cycle cost analysis.

Schedule:

1. Provide continuous schedule validation for construction package schedules, overall project schedule, and schedule analysis for impacts of concurrent construction packages as required.
2. Prepare preliminary construction schedules and phasing alternatives at each preconstruction milestone to validate deadlines and help develop project delivery strategies.
3. Continually compare and validate construction schedules with Engineer Team.

Meetings:

1. The Contractor shall participate in project kick off meetings, community presentations, discussions, design review meetings, and project planning meetings.

Construction Phase:

1. Provide construction proposals for potential projects. These proposals will incorporate the design review, site visits and cost estimates as appropriate and will be the basis of negotiation for future projects.
2. Actual construction for future projects will be awarded by separate Notices-to-Proceed.
3. Provide Worker and Public Safety Plan to include COVID 19 Mitigation,
4. Provide daily work reports during construction.

SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

Specific projects will be assigned, described, and authorized by individual Notices-to-Proceeds. The Notices-to-Proceed will incorporate all terms and conditions of the contract. A project is considered assigned when the Contracting Agency contracts the Contractor with the assignment and initiates project specific discussions regarding scope, schedule and budget. The projects will be assigned as-needed by the Contracting Agency, and there is no guarantee that any specific amount of work or overall dollar amounts will be assigned through the duration of the Agreement term. The Authority may award more than one term contract.

a. DURATION

The Term Agreement will initially be for a two year term, with the state option to add three additional one-year extensions and years to complete previously authorized Notices-to-Proceed. No new work may be undertaken during the final extension period that knowingly will take longer than a year.

b. CONTRACT VALUE

The Term Agreement will be awarded for \$4,000,000. Initial project will be assigned with the use of a Notices-to-Proceed to the contract with additional projects added by Notices-to-Proceed. Additional funding may be added to the contract for a maximum not to exceed of \$10,000,000.00 for the life of the contract.

The actual funded amount depends on the number of Notices-to-Proceed awarded. The Contracting Agency reserves the right in its sole discretion to add additional funds to the contract should the time extensions be exercised. The amount of these funding increases will be determined based on the anticipated project workload.

Individual projects may be funded from a variety of funding sources, which could include State and federal sources. State projects will required Davis Bacon wages and report to DOL.

c. AUTHORIZED NOTICES-TO-PROCEED

Notices-to-Proceed by itself cannot authorize any work and is not a binding contract. A Notices-to-Proceed can only be issued and authorized if there is a fully signed Term Agreement in place with the Contractor.

The Notices-to-Proceed must include a Statement of Services with tasks, measurable deliverables, and delivery schedule identified. The Statement of Services, delivery schedule, and costs will be negotiated between the Project Manager and Contractor for inclusion in the Notices-to-Proceed.

Projects will be assigned via Notices-to-Proceed; however, Contracting Agency reserves the right to apply the following exceptions:

1. If agreement on costs for the project Notices-to-Proceed cannot be reached, the Agency reserves the right to conduct a separate solicitation for any project, or bundled projects when it is economically and /or administratively more efficient and in the best interest of the Agency to do so

SEC. 3.03 DELIVERABLES

The contractor will be required to provide deliverables as assigned per individual Notice to Proceed.

SEC. 3.04 CONTRACT TYPE

This contract is a Term contract.

SEC. 3.05 PROPOSED PAYMENT PROCEDURES

The state will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the project director.

SEC. 3.06 PROMPT PAYMENT FOR STATE PURCHASES

The state is eligible to receive a **5%** discount for all invoices paid within **15** business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated.

SEC. 3.07 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Alaska Energy Authority or the Authority's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. The state is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

SEC. 3.08 CONTRACT PRICE ADJUSTMENTS

Consumer Price Index (CPI): Contract prices will remain firm through **the initial term of the contract (2 years)**.

The contractor or state may request price adjustments, in writing, 30 days prior to the contract renewal date. Requests must be in writing and must be received 30 days prior to the contract renewal date. If the contractor fails to request a CPI price adjustment 30 days prior to the contract renewal date, the adjustment will be effective 30 days after the state receives their written request.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Urban Alaska.

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June **OR** July through December 2024); and

each (January through June **OR** July through December 20__ six-month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed.

All price adjustments must be approved by both the contractor and the procurement officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the procurement officer and signed by the contractor.

SEC. 3.09 LOCATION OF WORK

The location(s) the work is to be performed, completed, and managed **are at various locations statewide**.

The state **will not** provide workspace for the contractor. The contractor must provide its own workspace.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the offeror cannot certify that all work will be performed in the United States, the offeror must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of proposals.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the proposal as non-responsive, or cancel the contract.

SEC. 3.10 THIRD-PARTY SERVICE PROVIDERS

N/A

SEC. 3.11 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform. The Offeror will also need to complete subcontractor list form 00430 as indicated.

Subcontractor experience shall not be considered in determining whether the offeror meets the requirements set forth in SEC. 1.04 PRIOR EXPERIENCE.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

- complete name of the subcontractor;
- complete address of the subcontractor;
- type of work the subcontractor will be performing;
- percentage of work the subcontractor will be providing;
- evidence that the subcontractor holds a valid Alaska business license;

If a subcontractor on the list did not have a valid Alaska business license at the close of the RFP, the Offeror 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 at the close of the RFP.

- a written statement, signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the state to consider their proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

SEC. 3.12 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 3.13 RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, the state may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the state makes such an inspection, the contractor must provide reasonable assistance.

SEC. 3.14 F.O.B. POINT

All goods purchased through this contract will be F.O.B. final destination. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the State of Alaska.

SEC. 3.15 CONTRACT PERSONNEL

Any change of the project team members or subcontractors named in the proposal must be approved, in advance and in writing, by the project director or procurement officer. Changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 3.16 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The project director or procurement officer may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the state to terminate the contract. In this event, the state may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

SEC. 3.17 LIQUIDATED DAMAGES

N/A

SEC. 3.18 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project director will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Alaska Energy Authority or the Authority's designee.

SEC. 3.19 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. “Reasonable care” means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor’s receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the

general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

SEC. 3.20 INDEMNIFICATION

The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission, or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. “Contractor” and “contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the contracting agency’s selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor’s work.

SEC. 3.21 INSURANCE REQUIREMENTS

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

Certificates of Insurance must be furnished to the procurement officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

SEC. 3.22 TERMINATION FOR DEFAULT

If the project director or procurement determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the state may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in SECTION 7. ATTACHMENTS.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 INTRODUCTION

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the state should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP; and, if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

The state discourages overly lengthy and costly proposals, however, in order for the state to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

SEC. 4.02 PROPOSAL CONTENTS

The following information must be included in all proposals.

(a) AUTHORIZED SIGNATURE

All proposals must be signed by an individual authorized to bind the offeror to the provisions of the RFP. Proposals must remain open and valid for at least 90-days from the date set as the deadline for receipt of proposals.

(b) OFFEROR'S CERTIFICATION

By signature on the proposal, offerors certify that they comply with the following:

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- E. all terms and conditions set out in this RFP;
- F. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- G. that the offers will remain open and valid for at least 90 days.

If any offeror fails to comply with [a] through [g] of this paragraph, the state reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

(c) VENDOR TAX ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the state's request.

(d) CONFLICT OF INTEREST

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The procurement officer reserves the right to **consider a proposal non-responsive and reject it** or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the contract to be performed by the offeror.

(e) FEDERAL REQUIREMENTS

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

SEC. 4.03 EXPERIENCE, AND QUALIFICATIONS

Offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- title,
- resume,
- location(s) where work will be performed,
- itemize the total cost and the number of estimated hours for each individual named above.

SEC. 4.04 UNDERSTANDING OF THE PROJECT

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

SEC. 4.05 METHODOLOGY USED FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the methodology they intend to employ and illustrate how the methodology will serve to accomplish the work and meet the state's project schedule.

SEC. 4.06 MANAGEMENT PLAN FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the management plan they intend to follow and illustrate how the plan will serve to accomplish the work and meet the state's project schedule.

SEC. 4.07 COST PROPOSAL

Offerors must complete and submit the attached **Cost Proposal Form 003100**. Provide a proposed total hourly Billing Rate (i.e., inclusive of Direct Cost of Direct Labor, all Indirect Costs, and Fee) only for each of the job FUNCTIONS listed below. Note: Some of these functions may be performed by one or

more employees of the Offeror or Subcontractors; consequently, an individual might be billed under the contract at different rates appropriate to the functions performed. Only the maximum rate paid to any individual for each listed job function – regardless of employer (Offeror or Subcontractor) – must be provided and will be considered for this response. Rates for lower paid individuals or for other job functions, if any, will be addressed during contract negotiations.

Note that the number of hours estimated are for RFP purposes only and do not reflect any specific project. These do however represent the estimated breakdown of how The Authority expects the Offeror's time may be spent over the course of the contract.

EXAMPLE:

#	Job Function	No. of Position	Hourly Billing Rate	Est. Hours	Total
1.	Administrative	1	\$	20	\$
2.	Project / Contract Management	1	\$	300	\$
3.	Cost Estimator	1	\$	20	\$
4.	Site Supervisor	1	\$	100	\$
5.	Mechanical	1	\$	80	\$
6.	Electrical	1	\$	100	\$
7.	Lineman	1	\$	40	\$
8.	Welder	1	\$	40	\$
9.	Laborer lead	1	\$	50	\$
10.	Laborer	1	\$	150	\$
	TOTAL			900	\$

*In accordance with the submittal Checklist ('rfp-b'), item 10.3, *Billing Rates must* be signed and dated by the person who prepares it (may be different signatures for each Subcontractor)

Response will be scored as follows: The maximum hourly rates proposed for the job functions listed above will be multiplied by the percentage of total labor effort (estimated above) and then summed to obtain an aggregate rate for each Offeror. If more than one rate is provided for any job function, only the highest rate will be used. Each Offeror's score will be calculated using the following equation – except that the score will be zero if a rate for each listed function is not provided by an Offeror.

(Lowest aggregate rate from all Offerors) x (MPP*) = Offeror's Criterion Score

(Offeror's aggregate rate)

*MPP = Maximum Possible Points = (5) x (Number of Evaluators) x (Weight)

If no federal funding, then per AS 36.30.250(b), aggregate rates shall be reduced for the above calculation by the following applicable percentages when the rates are from Offerors that designate preferences on page one of Part D.

- ALASKA BIDDER (OFFEROR) PREFERENCE [2 AAC 12.260(d)] 5%
- ALASKA VETERAN-OWNED BUSINESS PREFERENCE [AS 36.30.175] (maximum \$5000)
5%

and only ONE of the following:

- EMPLOYMENT PROGRAM PREFERENCE [AS 36.30.170(c)] 15%
- DISABLED SOLE PROPRIETOR OR 50% DISABLED EMPLOYEES [AS 36.30.170(e & f)]
10%

To claim employment or disabled preference, Offeror must be on the appropriate Alaska Division of Vocational Rehabilitation list at the time designated for opening (i.e., receipt) of proposals.

SEC. 4.08 BID BOND – PERFORMANCE BOND

Bid Bond

Offerors must obtain a bid bond and submit it with the proposal. The amount of the bid bond for this contract is **5% of the total proposal price**. If an offeror is selected to receive the contract and fails to negotiate or fails to deliver a fully executed contract after negotiation, the bid bond will be immediately forfeited to the state. The time limit for negotiation or delivery of a contract is 14-days from the date the offeror receives notice from the procurement officer. Proposals submitted without a bid bond will be rejected.

Performance Bond

Offerors must obtain a letter of commitment for a performance bond from a bonding company and submit it with the proposal. The amount of the performance bond must be equal to the entire dollar value (100%) of an offeror's offer, for the full term of the contract. If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to obtain timely performance of the contract. The actual performance bond must be obtained from the bonding company and provided to the state within 30-days of the date of award of the contract. An offeror's failure to provide the performance bond, within the required time, will cause the state to reject the proposal or cancel the contract.

SEC. 4.09 EVALUATION CRITERIA

All proposals will be reviewed to determine if they are responsive. Proposals determined to be responsive will be evaluated using the criterion that is set out in **SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION**.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 1000

SEC. 5.01 SUMMARY OF EVALUATION PROCESS

The Authority will use the following steps to evaluate and prioritize proposals:

- 1) Proposals will be assessed for overall responsiveness. Proposals deemed non-responsive will be eliminated from further consideration.
- 2) A proposal evaluation committee (PEC), made up of at least three state employees or public officials, will evaluate the Technical portion of all responsive proposals.
- 3) Each responsive Technical Proposal will be sent to the PEC. No cost information will be shared or provided to the PEC.
- 4) The PEC will independently evaluate and score the proposals based on the degree to which they meet the stated evaluation criteria.
- 5) After independent scoring, the PEC will have a meeting, chaired by the procurement officer, where the PEC may have a group discussion prior to finalizing their scores.
- 6) The evaluators will submit their final individual scores to the procurement officer, who will then compile the scores and calculate awarded points as set out in Section 5.03.
- 7) The procurement officer will calculate scores for cost proposals as set out in Section 5.08 and add those scores to the awarded points along with factoring in any Alaska preferences.
- 8) The procurement officer may ask for best and final offers from offerors susceptible for award and revise the cost scores accordingly.
- 9) The state will then conduct any necessary negotiations with the highest scoring offeror and award a contract if the negotiations are successful.

SEC. 5.02 EVALUATION CRITERIA

Proposals will be evaluated based on their overall value to state, considering both cost and non-cost factors as described below. Note: An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

Overall Criteria	Weight
Responsiveness	Pass/Fail

Qualifications Criteria	Weight
Experience and Qualifications	125
Understanding of the Project	125
Methodology Used for the Project	125
Management Plan for the Project	125

Total 500

Cost Criteria	Weight
Cost Proposal	400
Total	400

Preference Criteria	Weight
Alaska Offeror Preference (if applicable)	100
Total	100

TOTAL EVALUATION POINTS AVAILABLE: 1000

SEC. 5.03 SCORING METHOD AND CALCULATION

Each Proposal Evaluation Committee (PEC) member will individually evaluate and score each responsive proposal using the criteria set out in Sections 5.04 through 5.07 and assign a single score of 1 through 10, with 10 representing the highest score and 1 representing the lowest score. Using only whole numbers, PEC members should start with a score of 5 on each section. The score may either increase or decrease depending on the offeror’s response to each question for that section. As an example, if the Offeror provided responses over and above the evaluation questions in a section, they would receive a higher score. However, if the Offeror’s response fails to address all questions of a section or demonstrates some lack of understanding or competency as it relates to a question for that section, the Offeror would then receive a lower score.

After the PEC has scored, the scores for each section will be totaled and the following formula will be used to calculate the total amount of points awarded for each section:

$$\frac{\text{Offeror Total Score}}{\text{Highest Total Score Possible}} \times \text{Max Points} = \text{Points Awarded}$$

Example (Max Points for the Section = 100):

	PEC Member 1 Score	PEC Member 2 Score	PEC Member 3 Score	PEC Member 4 Score	Combined Total Score	Points Awarded
Offeror 1	10	5	5	10	30	75
Offeror 2	5	5	5	5	20	50
Offeror 3	10	10	10	10	40	100

Offeror 1 was awarded 75 points:

$$\frac{\text{Offeror Total Score (30)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (75)}$$

Offeror 2 was awarded 50 points:

Offeror Total Score (20)

$$\frac{\text{Offeror Total Score (20)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (50)}$$

Offeror 3 was awarded 100 points:

Offeror Total Score (40)

$$\frac{\text{Offeror Total Score (40)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (100)}$$

SEC. 5.04 OBJECTIVES AND METHODOLOGY (15%)

Proposals will be evaluated against the questions set out below:

Proposals will be evaluated against the questions set out below:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- 2) How well has the offeror identified pertinent issues and potential problems related to the project?
- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?
- 4) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?
- 5) How well does the methodology match and achieve the objectives set out in the RFP?

SEC. 5.05 PROJECT MANAGEMENT AND COMMITMENTS (15%)

Proposals will be evaluated against the questions set out below:

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- 2) Is the organization, operational, and administrative project team(s) clear?
- 3) How well is accountability completely and clearly defined between team members?
- 4) How well does the management plan illustrate the lines of authority and communication?
- 5) To what extent does the offeror already have the hardware, software, equipment, manpower, facilities, and licenses necessary to perform the contract?
- 6) What current or potential time commitments are described by the offeror, does it appear that the offeror can meet the objectives set out in the RFP?
- 7) Does the offeror describe how they will address an accelerated schedule or multiple projects?

- 8) How well does the quality control procedures described by the offeror address the objectives of the RFP?

SEC. 5.06 EXPERIENCE, QUALIFICATIONS, AND PAST PERFORMANCE (30%)

Proposals will be evaluated against the questions set out below:

1) Questions regarding the personnel:

- a) Do the individuals assigned to the project have experience on similar projects?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c) How extensive is the applicable experience of the personnel designated to work on the project?

2) Questions regarding the firm and subcontractor (if used):

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- b) How successful is the general history of the firm regarding timely and successful completion of projects?
- c) If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?
- d) How well has the Offeror addressed experience in the following:
 - i) Performing work in rural Alaskan Villages on Bulk Fuel infrastructure.
 - ii) Working with mutable local entities, i.e. Village councils, Native corporations, School districts, Cities.
 - iii) Understanding the logistics, supply chain and other challenges of remote Alaskan work.
 - iv) Understanding of State and Federal government funding requirements, restrictions and documentation.
 - v) Understanding of state and federal codes, permitting and compliance.
 - vi) Understanding of State and Federal government wage and labor laws

3) Questions regarding the firm and subcontractor (if used):

- a) How applicable are the example projects described by the offeror to the objectives of the RFP?

SEC. 5.07 CONTRACT COST (40%)

Overall, a minimum of **40%** of the total evaluation points will be assigned to cost. After the procurement officer applies any applicable preferences, the offeror with the lowest total cost will receive the maximum number of points allocated to cost per 2 AAC 12.260(c). The point allocations for cost on the other proposals will be determined using the following formula:

[(Price of Lowest Cost Proposal) x (Maximum Points for Cost)] ÷ (Cost of Each Higher Priced Proposal)

Example (Max Points for Contract Cost = 400):

Step 1

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

Step 2

In this example, the RFP allotted 40% of the available 1,000 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 400 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 400 points.

Offeror #2 receives 374.3 points.

\$40,000 lowest cost x 400 maximum points for cost = 16,000,000 ÷ \$42,750 cost of Offeror #2's proposal = 374.3

Offeror #3 receives 336.8 points.

\$40,000 lowest cost x 400 maximum points for cost = 16,000,000 ÷ \$47,500 cost of Offeror #3's proposal = 336.8

SEC. 5.08 ALASKA OFFEROR PREFERENCE (10%)

Per 2 AAC 12.260, if an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10% of the total available points, which will be added to the offeror's overall evaluation score.

Example:

Step 1

Determine the number of points available to qualifying offerors under this preference:

1000 Total Points Available in RFP x 10% Alaska Offeror preference = 100 Points for the preference

Step 2

Determine which offerors qualify as Alaska bidders and thus, are eligible for the Alaska Offeror preference. For the purpose of this example, presume that all proposals have been completely evaluated based on the evaluation criteria in the RFP. The scores at this point are:

Offeror #1	830 points	No Preference	0 points
Offeror #2	740 points	Alaska Offeror Preference	100 points
Offeror #3	800 points	Alaska Offeror Preference	100 points

Step 3

Add the applicable Alaska Offeror preference amounts to the offerors’ scores:

Offeror #1	830 points		
Offeror #2	840 points (740	points	+ 100 points)
Offeror #3	900 points (800 points + 100 points)		

Offeror #3 is the highest scoring offeror and would get the award, provided their proposal is responsive and responsible.

SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the project director or procurement officer. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, an offeror must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaska Offeror Preference, an offeror must hold a valid Alaska business license prior to the deadline for receipt of proposals. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- a canceled check for the Alaska business license fee;
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- a sworn and notarized statement that the offeror has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time proposals are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of proposals, all offerors must hold any other necessary applicable professional licenses required by Alaska Statute.

SEC. 6.03 SITE INSPECTION

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the state

reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

SEC. 6.04 CLARIFICATION OF OFFERS

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee (PEC) are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the PEC may be adjusted as a result of a clarification under this section.

SEC. 6.05 DISCUSSIONS WITH OFFERORS

The state may conduct discussions with offerors in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the procurement officer or the PEC. If modifications are made as a result of these discussions, they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions.

If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediate previous proposal is considered the offeror's best and final proposal.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made. Any oral modification of a proposal must be reduced to writing by the offeror.

SEC. 6.06 EVALUATION OF PROPOSALS

The procurement officer, or an evaluation committee made up of at least three state employees or public officials, will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

SEC. 6.07 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If

contract negotiations are commenced, they may be held in the AIDEA/AEA Birch conference room on the **Basement** floor of the **AIDEA/AEA** Building in Anchorage, Alaska.

If the contract negotiations take place in Anchorage, Alaska, the offeror will be responsible for their travel and per diem expenses.

SEC. 6.08 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

the state may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

SEC. 6.09 OFFEROR NOTIFICATION OF SELECTION

After the completion of contract negotiation, the procurement officer will issue a written Notice of Intent to Award and send copies of that notice to all offerors who submitted proposals. The notice will set out the names of all offerors and identify the offeror selected for award.

SEC. 6.10 PROTEST

AS 36.30.560 provides that an interested party may protest the content of the RFP.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of proposals.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If an offeror wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing, by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a proposal in order to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;

- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. Fax copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All offerors will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

SEC. 6.11 APPLICATION OF PREFERENCES

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the RFP process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the following website:

Application Of Preferences

- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)
- Alaska Veteran's Preference - AS 36.30.321(f)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Offerors must attach a copy of their certification letter to the proposal. **An offeror's failure to provide this certification letter with their proposal will cause the state to disallow the preference.**

SEC. 6.12 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the price in the proposal. The preference will be given to an offeror who:

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;

- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;
- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 4) 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 (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

Alaska Bidder Preference Certification Form

In order to receive the Alaska Bidder Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference

SEC. 6.13 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and is 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.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Veteran Preference Certification

In order to receive the Alaska Veteran Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC. 6.14 STANDARD CONTRACT PROVISIONS

The contractor will be required to sign the state's Standard Contract Form for Goods and Non-Professional Services (form SCF.DOC/Appendix A). This form is attached with the RFP for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law, and the state reserves the right to reject a proposal that is non-compliant or takes exception with the contract terms and conditions stated in the Agreement. Any requests to change language in this document (adjust, modify,

add, delete, etc.), must be set out in the offeror’s proposal in a separate document. Please include the following information with any change that you are proposing:

- 1) Identify the provision that the offeror takes exception with.
- 2) Identify why the provision is unjust, unreasonable, etc.
- 3) Identify exactly what suggested changes should be made.

SEC. 6.15 QUALIFIED OFFERORS

Per 2 AAC 12.875, unless provided for otherwise in the RFP, to qualify as an offeror for award of a contract issued under AS 36.30, the 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 RFP.

If the offeror leases services or supplies or acts as a broker or agency in providing the services or supplies in order to meet these requirements, the procurement officer may not accept the offeror as a qualified offeror under AS 36.30.

SEC. 6.16 PROPOSAL AS PART OF THE CONTRACT

Part of or all of this RFP and the successful proposal may be incorporated into the contract.

SEC. 6.17 ADDITIONAL TERMS AND CONDITIONS

The state reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

SEC. 6.18 HUMAN TRAFFICKING

By signature on their proposal, the offeror certifies that the offeror is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State’s Trafficking in Persons Report.

The most recent United States Department of State’s Trafficking in Persons Report can be found at the following website: <https://www.state.gov/trafficking-in-persons-report/>

Failure to comply with this requirement will cause the state to reject the proposal as non-responsive or cancel the contract.

SEC. 6.19 RIGHT OF REJECTION

Offerors must comply with all of the terms of the RFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement officer may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the state. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counteroffer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

The State reserves the right to refrain from making an award if it determines that it is not in the best interest of the State.

A proposal from a debarred or suspended offeror shall be rejected.

SEC. 6.20 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

SEC. 6.21 DISCLOSURE OF PROPOSAL CONTENTS

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

The Office of Procurement and Property Management (OPPM), or their designee recognizes that some information an offeror submits might be confidential under the United States or the State of Alaska Constitution, a federal statute or regulation, or a State of Alaska statute: i.e., might be confidential business information (CBI). *See, e.g.*, article 1, section 1 of the Alaska Constitution; AS 45.50.910 – 45.50.945 (the Alaska Uniform Trade Secrets Act); *DNR v. Arctic Slope Regional Corp.*, 834 P.2d 134, 137-39 (Alaska 1991). For OPPM or their designee to treat information an offeror submits with its proposal as CBI, the offeror must do the following when submitting their proposal: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the offeror asserts make the information CBI. If the offeror does not do these things, the information will become public after the Notice of Intent to Award is issued. If the offeror does these things, OPPM or their designee will evaluate the offeror's assertion upon receiving a request for the information. If OPPM or their designee reject the assertion, they will, to the extent permitted by federal and State of Alaska law, undertake reasonable measures to give the offeror an opportunity to object to the disclosure of the information.

SEC. 6.22 ASSIGNMENT

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer.

SEC. 6.23 DISPUTES

A contract resulting from this RFP is governed by the laws of the State of Alaska. If the contractor has a claim arising in connection with the agreement that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632. To the extent not otherwise governed by the preceding, the claim shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 6.24 SEVERABILITY

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

SEC. 6.25 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with Section 6.08 Right of Rejection. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

If conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and

If the state's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

SEC. 6.26 SOLICITATION ADVERTISING

Public notice has been provided in accordance with 2 AAC 12.220.

SEC. 6.27 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:

- a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract.
 - b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
 - **State's Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
 - **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

SECTION 7. ATTACHMENTS

SEC. 7.01 ATTACHMENTS

Attachments:

- 1) 003000-1 PROPOSAL FORM
- 2) 003100 COST PROPOSAL
- 3) 00410 BID BOND
- 4) 00420 BID MODIFICATION
- 5) 00430 SUBCONTRACTOR LIST
- 6) 00510 CONSTRUCTION CONTRACT
- 7) 006100 PERFORMANCE BOND
- 8) 006700 CONTRACTOR'S QUESTIONNAIRE
- 9) 007000 GENERAL CONDITIONS
- 10) 00900-1 FEDERAL ASSURANCES

PROPOSAL FORM

Competitive Sealed Proposals - 3 AAC 109.340(3)

THIS FORM MUST BE THE FIRST PAGE OF EACH COPY OF PROPOSAL. Attach criteria responses as explained in the Submittal Checklist. **No transmittal letter or cover sheet will be used.**

Project: Maintenance and Improvement of Bulk Fuel Systems & Barge Headers

Project: 23103

OFFEROR (PRIME CONTRACTOR)

Contractor :	
Street :	
P.O. Box :	
City, State, Zip :	
Alaska Business License Number :	
General Contractor Registration No. :	
Federal Tax Identification No. :	
Individual(s) to sign contract :	
Title(s) :	
Type of business enterprise (check one) : [] Corporation in the state of	
[] Individual	[] Partnership [] Other(specify)

PROPOSED SUBCONTRACTOR(S)

Subcontractor	AK Business License No.	Contractor Registration No.

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the RFP (give number and date of each).

<u>Addenda</u>	<u>Date Issued</u>	<u>Addenda</u>	<u>Date Issued</u>	<u>Addenda</u>	<u>Date Issued</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

CERTIFICATIONS

I certify: that I am a duly authorized representative of the Contractor; that this Submittal accurately represents capabilities of the Contractor and Subcontractors identified herein for providing the services indicated; and, that the requirements of the Certifications on page 2 of this form for: 1) Alaska Licenses/Registrations, 2) Insurance, 3) Cost and Pricing Data, and 4) Covenant Against Contingent fees - will be complied with in full. These Certifications are material representations of fact upon which reliance will be placed if the proposed contract is awarded. Failure to comply with these Certifications is a fraudulent act. The Contracting Agency is hereby authorized to request any entity identified in this proposal to furnish information deemed necessary to verify the reputation and capabilities of the Contractor and Subcontractors. The undersigned declares, under penalty of perjury under the laws of the United States, that neither he nor the firm, association or corporation of which he is a member, a Offerer on this project has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in connection with this proposal. This proposal is valid for at least ninety days.

Signature: _____

Name: _____ Date :

Title: _____ Telephone(voice/fax) :

CERTIFICATION FOR ALASKA BUSINESS LICENSES/REGISTRATIONS

Contractor and all Subcontractors shall comply with the following applicable requirements of Alaska Statutes prior to contract award unless otherwise noted:

1. **Alaska Business License** (Form 08-070 issued under AS 43.70) for the Prospective Proposer prior to contract award. Required for Construction Subcontractors prior to award of subcontract.
2. **Certificate of Registration** (Form 08-2407) as required by AS 08.18.011 for Construction Contractors, including General Contractors, Specialty Contractors (AS 08.18.024), Residential Contractors (AS 08.18.025), Electrical Contractors (AS 08.18.026), and Mechanical Contractors (AS 08.18.028). Required for the Prospective Proposer prior to contract award. Required for Construction Subcontractors prior to award of subcontract.
3. **Certificate of Registration** for each individual to be in "responsible charge" (AS 08.48.341(14)) for Architecture, Engineering or Land Surveying (Form 08-2407 issued under AS 08.48.211) issued prior to submittal of proposal. Associates, consultants, or specialists under the supervision of a registered individual in "responsible charge" are exempt from registration requirements (AS 08.48.331).
4. **Certificate of Authorization for Corporate Practice** for incorporated Contractors and incorporated Subcontractors for Architecture, Engineering or Land Surveying (Form 08-2407 issued under AS 08.48.241). Corporations offering to provide Architectural, Engineering or Land Surveying services do not need to be registered for such disciplines at the time proposal is submitted provided they obtain corporate registration before contract award (AS 08.48.241).
5. **Certificate of Incorporation** (Alaska firms) or **Certificate of Authorization for Foreign Firm** ("Out-Of-State" firms). All corporations, regardless of type of services provided, must have one of the certificates (AS 10.06.218 and other sections of Title 10.06 - Alaska Corporations Code).
6. **Current Board of Director's Resolution** for incorporated Contractors and incorporated Subcontractors for Architecture, Engineering or Land Surveying (reference AS 08.48.241) which names the person(s) designated in "responsible charge" for each discipline. Such persons shall be licensed in Alaska and shall participate as project staff in the Contract/Subcontracts.
7. **All partners** in a Partnership to provide Architectural, Engineering, or Land Surveying **must be legally registered in Alaska** prior to submittal of proposal for at least one of those disciplines (AS 08.48.251) which the Partnership offers.
8. **Partnerships and Joint Ventures**, regardless of type of services provided, must be licensed/registered in the legal name of the Partnership or Joint Venture as used in this proposal (AS 43.70.020 and 43.70.110(4)).

CERTIFICATION FOR INSURANCE

Contractor will ensure that it and all Subcontractors have insurance coverage to effectuate the requirements of General Conditions of the Construction Contract for Buildings, Article 5 - Bonds, Insurance and Indemnification.

CERTIFICATION - COST AND PRICING DATA

In accordance with AS 36.30.400, any cost and pricing data submitted herewith, or in any future price proposals for the proposed contract, will be accurate, complete and current as of the date submitted and will continue to be accurate and complete during the performance of the contract, if awarded.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Contracting Agency the right to annul the contract, or, at its discretion, to deduct from the contract price, the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by the Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

COST PROPOSAL

Competitive Sealed Proposals - 3 AAC 109.340(3)

Project: Maintenance and Improvement of Bulk Fuel Systems & Barge Headers Project No. : 23103

Note: The purpose of the cost formula is to provide a mechanism for Offerors to submit project costs in a manner that AEA can evaluate and score and then use to establish billing rates for the resultant contract.

#	Job Function	No. of Position	Hourly Billing Rate	Est. Hours	Total
1.	Administrative	1		20	
2.	Project / Contract Management	1		300	
3.	Estimator	1		20	
4.	Site Supervisor	1		100	
5.	Mechanical	1		80	
6.	Electrical	1		100	
7.	Lineman	1		40	
8.	Welder	1		40	
9.	Laborer lead	1		50	
10.	Laborer	1		150	
	TOTAL			900	

*In accordance with the submittal Checklist ('RFP-b'), item 10.3, *Billing Rates must* be signed and dated by the person who prepares it (may be different signatures for each Subcontractor)

TOTAL ESTIMATED COST \$ _____

Materials/Consumables – The cost of materials and consumables required to construct assigned projects will be based on actual costs to the trade Contractor. Only the actual quantities used on the project will be reimbursed. Material and consumables may be marked up 10% of the actual costs.

Equipment – Any equipment that will be charged to an assignment must be approved in advance by the Authority Project Manager. If it is approved, then the equipment will be reimbursed based on an agreed upon rate.

To the CONTRACTING OFFICER of the ALASKA ENERGY AUTHORITY:

In compliance with your REQUEST FOR PROPOSAL the Undersigned proposes to furnish and deliver all the material and do all the work and labor required in the:

Maintenance and Improvement of Bulk Fuel Systems & Barge Headers

The Undersigned declares that we have carefully examined the contract requirements and; that we understand that the

quantities, where such are specified on the Proposal Form for this project, are approximate only and subject to increase or decrease, and that we are willing to perform increased or decreased quantities of work at unit prices proposed under the conditions set forth in the Contract Documents.

The Undersigned hereby agrees to execute the said contract and bonds within fifteen calendar days, or such further time as may be allowed in writing by the Contracting Officer, after receiving notification of the acceptance of this Price Proposal, and it is hereby mutually understood and agreed that in case the Undersigned does not, the accompanying Bid Security shall be forfeited to the State of Alaska, Department of Transportation & Public Facilities as liquidated damages, and the said Contracting Officer may proceed to award the contract to others.

The Undersigned proposes to furnish a Bid Bond in the amount of 5% (of the total proposal) and Performance Bond equal to the entire dollar value (100%) of an offeror's offer, for the full term of the contract.

NON-COLLUSION AFFIDAVIT

The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he nor the firm, association or corporation of which he is a member, a Offeror on this project has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in connection with this proposal.

The Undersigned has read the foregoing proposal and hereby agrees to the conditions stated therein by affixing his/her signature below:

Signature Date

Name and Title of Person Signing

Telephone Number

ALASKA ENERGY AUTHORITY

BID BOND

For

M & I Bulk Fuel Systems & Barge Headers

DATE BOND EXECUTED: _____

PRINCIPAL (Legal name and business address):

TYPE OF ORGANIZATION:

	<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership
	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Corporation
STATE OF INCORPORATION:		

SURETY(IES) (Name and business address):

A.	B.	C.

PENAL SUM OF BOND:	DATE OF BID:

We, the PRINCIPAL and SURETY above named, are held and firmly bound to the State (State of Alaska), in the penal sum of the amount stated above, for the payment of which sum will be made, we bind ourselves and our legal representatives and successors, jointly and severally, by this instrument.

THE CONDITION OF THE FOREGOING OBLIGATION is that the Principal has submitted the accompanying bid in writing, date as shown above, on the above-referenced Project in accordance with contract documents filed in the office of the Contracting Officer, and under the Invitation To Bid therefore, and is required to furnish a bond in the amount stated above.

If the Principal's bid is accepted and he is offered the proposed contract for award, and if the Principal fails to enter into the contract, then the obligation to the State created by this bond shall be in full force and effect.

If the Principal enters into the contract, then the foregoing obligation is null and void.

PRINCIPAL

Signature(s)	1.	2.	3.
Name(s) & Title(s) (Typed)	1.	2.	3.

Corporate Seal

See Instructions on Reverse

CORPORATE SURETY(IES)

Surety A	Name of Corporation	State of Incorporation	Liability Limit \$
Signature(s)	1.	2.	Corporate Seal
Name(s) & Titles (Typed)	1.	2.	

Surety B	Name of Corporation	State of Incorporation	Liability Limit \$
Signature(s)	1.	2.	Corporate Seal
Name(s) & Titles (Typed)	1.	2.	

Surety C	Name of Corporation	State of Incorporation	Liability Limit \$
Signature(s)	1.	2.	Corporate Seal
Name(s) & Titles (Typed)	1.	2.	

INSTRUCTIONS

1. This form shall be used whenever a bid bond is submitted.
2. Insert the full legal name and business address of the Principal in the space designated. If the Principal is a partnership or joint venture, the names of all principal parties must be included (e.g., "Smith Construction, Inc. and Jones Contracting, Inc. DBA Smith/Jones Builders, a joint venture"). If the Principal is a corporation, the name of the state in which incorporated shall be inserted in the space provided.
3. Insert the full legal name and business address of the Surety in the space designated. The Surety on the bond may be any corporation or partnership authorized to do business in Alaska as an insurer under AS 21.09. Individual sureties will not be accepted.
4. The penal amount of the bond may be shown either as an amount (in words and figures) or as a percent of the contract bid price (a not-to-exceed amount may be included).
5. The scheduled bid opening date shall be entered in the space marked Date of Bid.
6. The bond shall be executed by authorized representatives of the Principal and Surety. Corporations executing the bond shall also affix their corporate seal.
7. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
8. The states of incorporation and the limits of liability of each surety shall be indicated in the spaces provided.
9. The date that bond is executed must not be later than the bid opening date.

CONSTRUCTION CONTRACT

M & I Bulk Fuel Systems & Barge Headers

This CONTRACT, between the ALASKA ENERGY AUTHORITY, herein called the Authority, acting by and through its Contracting Officer, and

Company Name

Company Address (Street or PO Box, City, State, Zip)

a/an Individual Partnership Joint Venture Sole Proprietorship Corporation incorporated under the laws of the State of _____, its successors and assigns, herein called the Contractor, is effective the date of the signature of the Contracting Officer on this document.

WITNESSETH: That the Contractor, for and in consideration of the payment or payments herein specified and agreed to by the Department, hereby covenants and agrees to furnish and deliver all the materials and to do and perform all the work and labor required in the construction of the above-referenced project at the prices bid by the Contractor for the respective estimated quantities aggregating approximately the sum of

_____ Dollars
(\$ _____), and such other items as are mentioned in the original Bid, which Bid and prices named, together with the Contract Documents are made a part of this Contract and accepted as such.

It is distinctly understood and agreed that no claim for additional work or materials, done or furnished by the Contractor and not specifically herein provided for, will be allowed by the Authority, nor shall the Contractor do any work or furnish any material not covered by this Contract, unless such work is ordered in writing by the Authority. In no event shall the Authority be liable for any materials furnished or used, or for any work or labor done, unless the materials, work, or labor are required by the Contract or on written order furnished by the Authority. Any such work or materials which may be done or furnished by the Contractor without written order first being given shall be at the Contractor's own risk, cost, and expense and the Contractor hereby covenants and agrees to make no claim for compensation for work or materials done or furnished without such written order.

The Contractor further covenants and agrees that all materials shall be furnished and delivered and all labor shall be done and performed, in every respect, to the satisfaction of the Authority, on or before: _____ or within _____ calendar days. It is expressly understood and agreed that in case of the failure on the part of the Contractor, for any reason, except with the written consent of the Authority, to complete the furnishing and delivery of materials and the doing and performance of the work before the aforesaid date, the Authority shall have the right to deduct from any money due or which may become due the Contractor, or if no money shall be due, the Authority shall have the right to recover _____ Dollars (\$ _____) per day for each calendar day elapsing between the time stipulated for the completion and the actual date of completion in accordance with the terms hereof; such deduction to be made, or sum to be recovered, not as a penalty but as liquidated damages.

The bonds given by the Contractor in the sum of \$ _____ Payment Bond, and \$ _____ Performance Bond, to secure the proper compliance with the terms and provisions of this Contract, are submitted herewith and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contract and hereby agree to its terms and conditions.

CONTRACTOR

Company Name

Signature of Authorized Company Representative

Typed Name and Title

Date

(Corporate Seal)

ALASKA ENERGY AUTHORITY

Signature of Contracting Officer

Typed Name

Date

2. What percent of the total value of this contract do you intend to subcontract? _____ %

3. Do you propose to purchase any equipment for use on this project?
[] No [] Yes If YES, describe type, quantity, and approximate cost:

4. Do you propose to rent any equipment for this work?
[] No [] Yes If YES, describe type and quantity:

5. Is your bid based on firm offers for all materials necessary for this project?
[] Yes [] No If NO, please explain:

C. EXPERIENCE

1. Have you had previous construction contracts or subcontracts with the Authority?
[] Yes [] No

Describe the most recent or current contract, its completion date, and scope of work:

2. List, as an attachment to this questionnaire, other construction projects you have completed, the dates of completion, scope of work, and total contract amount for each project completed in the past 12 months.

I hereby certify that the above statements are true and complete.

Name of Contractor

Name and Title of Person Signing

Signature

Date

ALASKA ENERGY AUTHORITY

PERFORMANCE BOND

Bond No. _____

For

**Quartz Creek to Sterling kVa Pole Removal
Project No. 23040**

KNOW ALL WHO SHALL SEE THESE PRESENTS:

That _____
of _____ as Principal,
and _____
of _____ as Surety,
firmly bound and held unto the State of Alaska in the penal sum of _____ Dollars

(\$ _____) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the State of Alaska, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has entered into a written contract with said State of Alaska, on the _____ of _____ A.D., 20____, for construction of the above-named project, said work to be done according to the terms of said contract.

Now, THEREFORE, the conditions of the foregoing obligation are such that if the said Principal shall well and truly perform and complete all obligations and work under said contract and if the Principal shall reimburse upon demand of the Alaska Energy Authority any sums paid him which exceed the final payment determined to be due upon completion of the project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at _____, this _____ day of _____ A.D., 20_____.

Principal: _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

Surety: _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

The offered bond has been checked for adequacy under the applicable statutes and regulations:

Alaska Energy Authority Authorized Representative

Date

See Instructions on Reverse

INSTRUCTIONS

1. This form shall be used whenever a performance bond is required. There shall be no deviation from this form without approval from the Contracting Officer.
2. The full legal name, business address, phone number, and point of contact of the Principal and Surety shall be typed on the face of the form. Where more than a single surety is involved, a separate form shall be executed for each surety.
3. The penal amount of the bond, or in the case of more than one surety the amount of obligation, shall be typed in words and in figures.
4. Where individual sureties are involved, a completed Affidavit of Individual Surety shall accompany the bond. Such forms are available upon request from the Contracting Officer.
5. The bond shall be signed by authorized persons. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of authority must be furnished.

**ALASKA ENERGY AUTHORITY
SECTION 00 70 00
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**Maintenance and Improvement Bulk Fuel Systems
And Barge Headers**

General Conditions

Project: 23103

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-
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ARTICLE 1 - DEFINITIONS

Wherever used in the Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth below.

The titles and headings of the articles, sections, and subsections herein are intended for convenience of reference.

Terms not defined below shall have their ordinary accepted meanings within the context which they are used. Words which have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning. Words defined in Article 1 are to be interpreted as defined.

Addenda - All clarifications, corrections, or changes issued graphically or in writing by the AUTHORITY after the Advertisement but prior to the opening of Proposals.

Advertisement - The public announcement, as required by law, inviting bids for Work to be performed or materials to be furnished.

Application for Payment - The form provided by the AUTHORITY which is to be used by the CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Approved or Approval - Means written approval by the Contracting Officer or his authorized representative as defined in Article 2.1. 'Approved' or 'Approval' as used in this contract document shall mean that the Authority has received a document, form or submittal from the Contractor and that the Authority has taken "No exceptions" to the item submitted. Unless the context clearly indicates otherwise, approved or approval shall not mean that the Authority approves of the methods or means, or that the item or form submitted meets the requirements of the contract or constitutes acceptance of the Contractor's work. Where approved or approval means acceptance, then such approval must be set forth in writing and signed by the contracting officer or his designee.

A.S - Initials which stand for Alaska Statute.

Authority - The Alaska Energy Authority (AEA). References to "Contracting Agency" means the AUTHORITY. The AUTHORITY is acting as an agent for Owner.

Award - The acceptance, by the AUTHORITY, of the successful bid.

Bid Bond - A type of Proposal Guaranty.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work.

Calendar Day - Every day shown on the calendar, beginning and ending at midnight.

Change Order - A written order by the AUTHORITY directing changes to the Contract Documents, within their general scope.

Consultant - The person, firm, or corporation retained directly by the AUTHORITY to prepare Contract Documents, perform construction administration services, or other Project related services. References to Authority's Consultants shall include Engineer.

Contingent Sum Work Item - When the bid schedule contains a Contingent Sum Work Item, the Work covered shall be performed only upon the written Directive of the Project Manager. Payment shall be made as provided in the Directive.

Contract - The written agreement between the AUTHORITY and the CONTRACTOR setting forth the obligations of the parties and covering the Work to be performed, all as required by the Contract Documents.

Contract Documents - The Contract form, Addenda, the bidding requirements and CONTRACTOR's bid (including all appropriate bid tender forms), the bonds, the Conditions of the Contract and all other Contract requirements, the Specifications, and the Drawings furnished by the AUTHORITY to the CONTRACTOR, together with all Change Orders and documents approved by the Contracting Officer, for inclusion, modifications and supplements issued on or after the Effective Date of the Contract.

Contracting Officer - The person authorized by the Executive Director to enter into and administer the Contract on behalf of the AUTHORITY; who has authority to make findings, determinations and decisions with respect to the Contract and, when necessary, to modify or terminate the Contract. The Contracting Officer is identified on the construction Contract.

Contractor - The individual, firm, corporation or any acceptable combination thereof, contracts with the AUTHORITY for performance of the Work.

Contract Price - The total moneys payable by the AUTHORITY to the CONTRACTOR under the terms of the Contract Documents.

CONTRACTOR's Release – CONTRACTOR's written notification to the AUTHORITY specifying final payment due and releasing the AUTHORITY of any and all claims.

Contract Time - The number of Calendar Days following issuance of Notice-to-Proceed in which the project shall be rendered Substantially Complete, or if specified as a calendar date, the Substantial Completion date specified in the Contract Documents.

Controlling Item - Any feature of the Work on the critical path of a network schedule.

Defective - Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents.

Directive - A written communication to the CONTRACTOR from the Contracting Officer interpreting or enforcing a Contract requirement or ordering commencement of an item of Work.

Drawings - The Drawings which show the character and scope of the Work to be performed and which have been furnished by the AUTHORITY and are by reference made a part of the Contract Documents.

Engineer - The person, firm, or corporation retained directly by the AUTHORITY to prepare Contract Documents, perform construction administration services, or other Project related services.

Equipment - All machinery together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

Final Completion - The Project has progressed to the point that all required Work is complete..

Furnish - To procure, transport, and deliver to the project site materials, labor, or equipment, for installation or use on the project.

General Requirements - Sections of Division 1 of the Specifications which contain administrative and procedural requirements as well as requirements for temporary facilities which apply to Specification Divisions 2 through 16.

Holidays - In the State of Alaska, Legal Holidays occur on:

1. New Years Day - January 1
2. Martin Luther King's Birthday - Third Monday in January
3. President's Day - Third Monday in February
4. Seward's Day - Last Monday in March
5. Memorial Day - Last Monday in May
6. Independence Day - July 4
7. Labor Day - First Monday in September
8. Alaska Day - October 18
9. Veteran's Day - November 11
10. Thanksgiving Day - Fourth Thursday in November
11. Christmas Day - December 25
12. Every Sunday
13. Every day designated by public proclamation by the President of the United States or the Governor of the State as a legal Holiday.

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal Holidays. If the Holiday should fall on a Sunday, except (12) above, Sunday and the following Monday are both legal Holidays. See Title 44, Alaska Statutes.

Install - Means to build into the Work, ready to be used in complete and operable condition and in compliance with Contract Documents.

Interim Work Authorization - A written order by the Project Manager initiating changes to the Contract within its general scope, until a subsequent Change Order is executed.

Invitation for Bids - A portion of the bidding documents soliciting bids for the Work to be performed.

Materials - Any substances specified for use in the construction of the project.

Notice of Intent to Award - The written notice by the AUTHORITY to all Bidders identifying the apparent successful Bidder and establishing the AUTHORITY's intent to execute the Contract when all conditions required for execution of the Contract are met.

Notice to Proceed - A written notice to the CONTRACTOR to begin the Work and establishing the date on which the Contract Time begins.

Onsite Project Representative - The Engineer's authorized representative assigned to make detailed observations relating to contract performance.

Owner – Means Grantee for whom the ALASKA ENERGY AUTHORITY is acting as an agent of.

Payment Bond - The security furnished by the CONTRACTOR and his Surety to guarantee payment of the debts covered by the bond.

Performance Bond - The security furnished by the CONTRACTOR and his Surety to guarantee performance and completion of the Work in accordance with the Contract.

Pre-construction Conference - A meeting between the CONTRACTOR, Project Manager and the Engineer, and other parties affected by the construction, to discuss the project before the CONTRACTOR begins work.

Project Manager - The authorized representative of the Contracting Officer who is responsible for administration of the Contract.

Procurement Manager/Officer - The person authorized by the Contracting Officer to administer the Contract on behalf of the AUTHORITY; who has authority to make findings, determinations and decisions with respect to the Contract and, when necessary present such to the Contracting Officer, to modify or terminate the Contract.

Project - The total construction, of which the Work performed under the Contract Documents, is the whole or a part, where such total construction may be performed by more than one CONTRACTOR.

Proposal - The offer of a Bidder, on the prescribed forms, to perform the Work at the prices quoted.

Proposal Guaranty - The security furnished with a Proposal to guarantee that the bidder will enter into a Contract if his Proposal is accepted by the AUTHORITY.

Quality Assurance (QA) - Where referred to in the technical specifications (Divisions 2 through 16), Quality Assurance refers to measures to be provided by the CONTRACTOR as specified.

Quality Control (QC) - Tests and inspections by the CONTRACTOR to insure the acceptability of materials incorporated into the work. QC test reports are used as a basis upon which to determine whether the Work conforms to the requirements of the Contract Documents and to determine its acceptability for payment.

Regulatory Requirements - Laws, rules, regulations, ordinances, codes and/or orders.

Schedule of Values - Document submitted by the CONTRACTOR and reviewed by the Contracting Officer, which shall serve as the basis for computing payment and for establishing the value of separate items of Work which comprise the Contract Price.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the CONTRACTOR to illustrate material, equipment, fabrication, or erection for some portion of the Work. Where used in the Contract Documents, "Shop Drawings" shall also mean "Submittals".

Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto.

Subcontractor - An individual, firm, or corporation to whom the CONTRACTOR or any other Subcontractor sublets part of the Contract.

Substantial Completion - Although not fully completed, the Work (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.

Supplemental Agreement - A written agreement between the CONTRACTOR and the AUTHORITY covering work that is not within the general scope of the Contract.

Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

Supplier - A manufacturer, fabricator, distributor, material man, or vendor of materials or equipment.

Surety - The corporation, partnership, or individual, other than the CONTRACTOR, executing a bond furnished by the CONTRACTOR.

Unit Price Work - Work to be paid for on the basis of unit prices.

Utility - The privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway or street drainage, and other similar commodities, including publicly owned fire and police signal systems, street lighting systems, and railroads which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary."

Work - Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

ARTICLE 2 – AUTHORIZATION AND LIMITATIONS

2.1 Authorities and Limitations

- 2.1.1 The Contracting Officer alone shall have the power to bind the AUTHORITY and to exercise the rights, responsibilities, authorities and functions vested in the Contracting Officer by the Contract Documents. The Contracting Officer shall have the right to designate in writing authorized representatives to act for him. Wherever any provision of the Contract Documents specifies an individual or organization, whether governmental or private, to perform any act on behalf of or in the interest of the AUTHORITY that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this Contract but only to the extent so specified.
- 2.1.2 The CONTRACTOR shall perform the Work in accordance with any written order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the Contracting Officer. The CONTRACTOR assumes all the risk and consequences of performing the Work in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.
- 2.1.3 The performance or nonperformance of the Contracting Officer or his authorized representative, shall not give rise to any contractual obligation or duty to the CONTRACTOR, any Subcontractor, any Supplier, or any other organization performing any of the Work or any Surety representing them.

2.2 Evaluations by Contracting Officer:

- 2.2.1 The Contracting Officer or his authorized representative will decide all questions which may arise as to:
- a. Quality and acceptability of materials furnished;
 - b. Quality and acceptability of Work performed;
 - c. Compliance with the schedule of progress;
 - d. Interpretation of Contract Documents;
 - e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.
- 2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents the terms "as ordered", "as directed", "as required", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the Contracting Officer".

When such terms are used to describe a requirement, direction, review or judgment of the Contracting Officer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).

2.2.3 The use of any such term or adjective shall not be effective to assign to the AUTHORITY any duty of authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

2.3 Means & Methods:

The means, methods, techniques, sequences or procedures of construction, or safety precautions and the program incident thereto, and the failure to perform or furnish the Work in accordance with the Contract Documents are the sole responsibility of the CONTRACTOR.

2.4 Visits to Site/Place of Business:

The Contracting Officer will make visits to the site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Contracting Officer may, at reasonable times, inspect that part of the plant or place of business of the CONTRACTOR or Subcontractor that is related to the performance of the Contract. Such observations or the lack of such observations shall in no way relieve the CONTRACTOR from his duty to perform the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Incomplete Contract Documents:

The submission of a bid by the Bidder is considered a representation that the Bidder examined the Contract Documents to make certain that all sheets and pages were provided and that the Bidder is satisfied as to the conditions to be encountered in performing the Work. The AUTHORITY expressly denies any responsibility or liability for a bid submitted on the basis of an incomplete set of Contract Documents.

3.2 Copies of Contract Documents:

The AUTHORITY shall furnish to the CONTRACTOR up to six copies of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.

3.3 Scope of Work:

The Contract Documents comprise the entire Contract between the AUTHORITY and the CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements of the place of the Project.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third party benefit, or to authorize anyone not a party to this Contract to maintain a suit pursuant to the terms or provisions of the Contract.

3.4 Intent of Contract Documents:

3.4.1 It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the

intended result will be supplied, without any adjustment in Contract Price or Contract Time, whether or not specifically called for.

- 3.4.2 Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the Contract Documents or if not stated the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, on the Effective Date of the Contract if there was no Advertisement). However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the AUTHORITY and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the AUTHORITY or any of the AUTHORITY's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3.

3.5 Discrepancy in Contract Documents:

- 3.5.1 Before undertaking the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures, and dimensions shown thereon and all applicable field measurements. Work in the area by the CONTRACTOR shall imply verification of figures, dimensions and field measurements. If, during the above study or during the performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Documents, or a discrepancy between the Contract Documents and any standard specification, manual, code, or Regulatory Requirement which affects the Work, the CONTRACTOR shall promptly report such discrepancy in writing to the Contracting Officer. The CONTRACTOR shall obtain a written interpretation or clarification from the Contracting Officer before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this determination shall be at his own risk and expense. However, the CONTRACTOR shall not be liable to the AUTHORITY for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

3.5.2 Discrepancy - Order of Precedence:

When conflicts errors or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

- Contents of Addenda
- Supplementary Conditions
- General Conditions
- General Requirements
- Technical Specifications
- Drawings
- Recorded dimensions will govern over scaled dimensions
- Large scale details over small scale details
- Schedules over plans
- Architectural drawings over structural drawings Structural drawings over mechanical and electrical drawings

3.6 Clarifications and Interpretations:

The Contracting Officer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the Contracting Officer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

3.7 Reuse of Documents:

Neither the CONTRACTOR nor any Subcontractor, or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the AUTHORITY shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or for the AUTHORITY and they shall not reuse any of the Contract Documents on extensions of the Project or any other project without written consent of the Contracting Officer.

Contract Documents prepared by the CONTRACTOR in connection with the Work shall become the property of the AUTHORITY.

ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

4.1 Availability of Lands:

The AUTHORITY shall furnish as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use of the CONTRACTOR in connection with the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the AUTHORITY, unless otherwise provided in the Contract Documents. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The CONTRACTOR shall provide all waste and disposal areas, including disposal areas for hazardous or contaminated materials, at no additional cost to the AUTHORITY.

4.2 Visit to Site:

The submission of a bid by the CONTRACTOR is considered a representation that the CONTRACTOR has visited and carefully examined the site and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

4.3 Explorations and Reports:

Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the AUTHORITY in preparation of the Contract Documents. The CONTRACTOR may for his purposes rely upon the accuracy of the factual data contained in such reports, but not upon interpretations or opinions drawn from such factual data contained therein or for the completeness or sufficiency thereof. Except as indicated in the immediately preceding sentence and in paragraphs 4.4 and 9.9, CONTRACTOR shall have full responsibility with respect to surface and subsurface conditions at the site.

4.4 Utilities:

- 4.4.1 The horizontal and vertical locations of known underground utilities as shown or indicated by the Contract Documents are approximate and are based on information and data furnished to the AUTHORITY by the owners of such underground utilities.
- 4.4.2 The CONTRACTOR shall have full responsibility for:
 - a. Reviewing and checking all information and data concerning utilities.
 - b. Locating all underground utilities shown or indicated in the Contract Documents which are affected by the Work.
 - c. Coordination of the Work with the owners of all utilities during construction.
 - d. Safety and protection of all utilities as provided in paragraph 6.17.
 - e. Repair of any damage to utilities resulting from the Work in accordance with 4.4.4 and 4.5.
- 4.4.3 If Work is to be performed by any utility owner, the CONTRACTOR shall cooperate with such owners to facilitate the Work.
- 4.4.4 In the event of interruption to any utility service as a result of accidental breakage or as result of being exposed or unsupported, the CONTRACTOR shall promptly notify the utility owner and the Project Manager. If service is interrupted, repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until provisions for continued service has been approved by the local fire authority.

4.5 Damaged Utilities:

When utilities are damaged by the CONTRACTOR, the utility owner shall have the choice of repairing the utility or having the CONTRACTOR repair the utility. In the following circumstances, the CONTRACTOR shall reimburse the utility owner for repair costs or provide at no cost to the utility owner or the AUTHORITY, all materials, equipment and labor necessary to complete repair of the damage:

- a. When the utility is shown or indicated in the Contract Documents.
- b. When the utility has been located by the utility owner.
- c. When no locate was requested by the CONTRACTOR for utilities shown or indicated in the Contract Documents.
- d. All visible utilities.
- e. When the CONTRACTOR could have, otherwise, reasonably been expected to be aware of such utility.

4.6 Utilities Not Shown or Indicated:

If, while directly performing the Work, an underground utility is uncovered or revealed at the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after

becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.19) identify the owner of such underground utility and give written notice thereof to that owner and to the Project Manager. The Project Manager will promptly review the underground utility to determine the extent to which the Contract Documents and the Work should be modified to reflect the impacts of the discovered utility. The Contract Documents will be amended or supplemented in accordance with paragraph 9.2 and to the extent necessary through the issuance of a change document by the Contracting Officer. During such time, the CONTRACTOR shall be responsible for the safety and protection of such underground utility as provided in paragraph 6.17. The CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are directly attributable to the existence of any underground utility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

4.7 Survey Control:

The AUTHORITY will identify sufficient horizontal and vertical control data to enable the CONTRACTOR to survey and layout the Work. All survey work shall be performed under the direct supervision of a registered land surveyor when required by paragraph 7.8. Copies of all survey notes shall be provided to the AUTHORITY at an interval determined by the Project Manager. The Project Manager may request submission on a weekly or longer period at his discretion. Any variations between the Contract Documents and actual field conditions shall be identified in the survey notes. Survey notes are to be in a format acceptable to the AUTHORITY.

ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION

5.1 Delivery of Bonds:

When the CONTRACTOR delivers the executed Contract to the Contracting Officer, the CONTRACTOR shall also deliver to the Contracting Officer such bonds as the CONTRACTOR may be required to furnish in accordance with paragraph 5.2.

5.2 Bonds:

5.2.1 The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount as shown on the Contract as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These bonds shall remain in effect for one year after the date of Final Acceptance and until all obligations under this Contract, except special guarantees as per 12.7, have been met. All bonds shall be furnished on forms provided by the AUTHORITY (or copies thereof) and shall be executed by such Sureties as are authorized to do business in the State of Alaska. The Contracting Officer may at his option copy the Surety with notice of any potential default or liability.

5.3 Replacement of Bond and Surety:

If the Surety on any bond furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.2, or otherwise becomes unacceptable to the AUTHORITY, or if any such Surety fails to furnish reports as to his financial condition as requested by the AUTHORITY, the CONTRACTOR shall within five days thereafter substitute another bond and Surety, both of which must be acceptable to AUTHORITY.

An individual Surety may be replaced by a corporate Surety during the course of the Contract period. If the Surety desires to dispose of the collateral posted, the AUTHORITY may, at its option, accept substitute collateral.

5.4 Insurance Requirements:

5.4.1 The CONTRACTOR shall provide evidence of insurance with a carrier or carriers satisfactory to the AUTHORITY covering injury to persons and/or property suffered by the Alaska Energy Authority or a third party, as a result of operations which arise both out of and during the course of this Contract by the CONTRACTOR or by any Subcontractor. This coverage will also provide protection against injuries to all employees of the CONTRACTOR and the employees of any Subcontractor engaged in Work under this Contract.

5.4.2 The CONTRACTOR shall maintain in force at all times during the performance of Work under this agreement the following policies and minimum limits of liability. Where specific limits and coverages are shown, it is understood that they shall be the minimum acceptable. The requirements of this paragraph shall not limit the CONTRACTOR's responsibility to indemnify under paragraph 5.5. Additional insurance requirements specific to this Contract are contained in the Supplementary Conditions, when applicable.

a. Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who provides services under this contract, to include:

1. Waiver of subrogation against the Authority and Employer's Liability Protection in the amount of \$500,000 each accident/\$500,000 each disease.
2. If the Contractor directly utilizes labor outside of the State of Alaska in the prosecution of the work, "Other States" endorsement shall be required as a condition of the contract.
3. Whenever the work involves activity on or about navigable waters, the Workers' Compensation policy shall contain a United States Longshoreman's and Harbor Worker's Act endorsement, and when appropriate, a Maritime Employer's Liability (Jones Act) endorsement with a minimum limit of \$1,000,000.

b. Commercial General Liability Insurance: on an occurrence policy form covering all operations by or on behalf of the CONTRACTOR with combined single limits not less than:

1. If the CONTRACTOR carries a *Comprehensive General Liability* policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage and Personal Injury Liability of:
\$1,000,000 each occurrence
\$2,000,000 aggregate
2. If the CONTRACTOR carries a *Commercial General Liability* policy, the limits of liability shall not be less than:
\$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage)

\$1,000,000 for Personal Injury Liability

\$2,000,000 aggregate for Products-Completed Operations

\$2,000,000 general aggregate

The Authority and the Owner shall be named as “Additional Insured” under all liability coverages listed above.

- c. Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with combined single limits not less than:

\$1,000,000 each occurrence

- d. Builder’s Risk Insurance: Coverage shall be on an “All Risk” completed value basis including “quake and flood” and protect the interests of the AUTHORITY, the CONTRACTOR and Subcontractors at all tiers. Coverage shall include all materials, supplies and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site, in transit from port of arrival to job site, or while temporarily located away from the Project site.

In addition to providing the above coverages the CONTRACTOR shall require that all indemnities obtained from any SUBCONTRACTORS be extended to include the Authority and Owner as an additional named indemnitees. CONTRACTOR shall further require that the Authority and the Owner be named as additional insured on all liability insurance policies maintained by all SUBCONTRACTORS under their contracts with CONTRACTOR, and that an appropriate waiver of subrogation in favor of the Authority be obtained with respect to all other insurance policies.

- e. Other Coverages: As specified in the Supplementary Conditions, if required.

- 5.4.3 a. In addition to providing the above coverages the Contractor shall, in any contract or agreement with subcontractors performing work, require that all indemnities and waivers of subrogation it obtains, and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the AUTHORITY and the Owner and to add the ALASKA ENERGY AUTHORITY and the Owner as additional named indemnitees and as additional insured.
- b. Evidence of insurance shall be furnished to the AUTHORITY prior to the award of the contract. Such evidence, executed by the carrier's representative and issued to the AUTHORITY, shall consist of a certificate of insurance or the policy declaration page with required endorsements attached thereto which denote the type, amount, class of operations covered, effective (and retroactive) dates, and dates of expiration. Acceptance by the AUTHORITY of deficient evidence does not constitute a waiver of contract requirements.
- c. When a certificate of insurance is furnished, it shall contain the following statement: "This is to certify that the policies described herein comply with all aspects of the insurance requirements of (Project Name and Number)."

5.5 Indemnification:

The CONTRACTOR shall indemnify, save harmless, and defend the AUTHORITY, the

OWNER its agents and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from the CONTRACTOR or SUBCONTRACTOR's performance of WORK under this Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the AUTHORITY's negligence.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision of Work:

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Contract shall be performed in a skillful and workmanlike manner. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

6.2 Superintendence by CONTRACTOR:

The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent. The Project Manager shall be advised in writing of the superintendent's name, local address, and telephone number. This written advice is to be kept current until Final Acceptance by the AUTHORITY. The superintendent will be the CONTRACTOR's representative at the site and shall have full authority to act and sign documents on behalf of the CONTRACTOR.

All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The CONTRACTOR shall cooperate with the Project Manager in every way possible.

6.3 Character of Workers:

The CONTRACTOR shall provide a sufficient number of competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site. The Project Manager may, in writing, require the CONTRACTOR to remove from the Work any employee the Project Manager deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the Project Manager shall have no duty to exercise this right.

6.4 CONTRACTOR to Furnish:

Unless otherwise specified in the General Requirements, the CONTRACTOR shall furnish and assume full responsibility for all materials, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance testing, start-up and completion of the Work.

6.5 Materials and Equipment:

All materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the Project Manager, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be

effective to assign to the AUTHORITY or any of the AUTHORITY's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 2.3.

6.6 Anticipated Schedules:

- 6.6.1 Prior to submitting the CONTRACTOR's first Application for Payment the CONTRACTOR shall submit to the Project Manager for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work.
- 6.6.2 Prior to submitting the CONTRACTOR's first Application for Payment, the CONTRACTOR shall submit to the Project Manager for review:

Anticipated schedule of Shop Drawing submissions; and

Anticipated Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission.

6.7 Finalizing Schedules:

Prior to processing the first Application for Payment the Project Manager and the CONTRACTOR will finalize schedules required by paragraph 6.6. The finalized progress schedule will be acceptable to the AUTHORITY as providing information related to the orderly progression of the Work to completion within the Contract Time; but such acceptance will neither impose on the AUTHORITY nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawing and other required submissions will be acknowledgment by the AUTHORITY as providing a workable arrangement for processing the submissions. If accepted, the finalized Schedule of Values will be acknowledgment by the AUTHORITY as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the AUTHORITY or relieve the CONTRACTOR of his responsibility to adjust his forces, equipment, and work schedules as may be necessary to insure completion of the Work within prescribed Contract Time. Should the prosecution of the Work be discontinued for any reason, the CONTRACTOR shall notify the Project Manager at least 24 hours in advance of resuming operations.

6.8 Adjusting Schedules:

Upon substantial changes to the schedule or upon request the CONTRACTOR shall submit to the Project Manager for acceptance (to the extent indicated in paragraph 6.7 and the General Requirements) adjustments in the schedules to reflect the actual present and anticipated progress of the Work.

6.9 Substitutes or "Or-Equal" Items:

- 6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by

words indicating that substitution is limited or not permitted, materials or equipment of other Suppliers may be accepted by the Project Manager only if sufficient information is submitted by the CONTRACTOR which clearly demonstrates to the Project Manager that the material or equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Project Manager will include the following as supplemented in the General Requirements.

- 6.9.2 Requests for review of substitute items of material and equipment will not be accepted by the Project Manager from anyone other than the CONTRACTOR.
- 6.9.3 If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the Project Manager for Approval thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as the specified. The application will state that the evaluation and Approval of the proposed substitute will not delay the CONTRACTOR's timely achievement of Substantial or Final Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the AUTHORITY for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
- 6.9.4 All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the AUTHORITY in evaluating the proposed substitute. The AUTHORITY may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed substitute. The Project Manager may reject any substitution request which the Project Manager determines is not in the best interest of the OWNER.
- 6.9.5 Substitutions shall be permitted during or after the bid period as allowed and in accordance with Document 00 02 00 - Invitation for Bids, Document 00 70 00 – General Conditions, and Document 01 60 00 – Materials and Equipment.

6.10 Substitute Means and Methods:

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if the CONTRACTOR submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Project Manager will be similar to that provided in paragraph 6.9 as applied by the Project Manager and as may be supplemented in the General Requirements.

6.11 Evaluation of Substitution:

The Project Manager will be allowed a reasonable time within which to evaluate each proposed substitute. The Project Manager will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Contracting Officer's prior written Approval which will be evidenced by either a Change Order or a Shop Drawing Approved in accordance with Sections 6.20 and 6.21. The Contracting Officer may require the CONTRACTOR to furnish at the

CONTRACTOR's expense a special performance guarantee or other Surety with respect to any substitute.

6.12 Dividing the Work:

The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.13 Subcontractors:

The CONTRACTOR may utilize the services of appropriately licensed Subcontractors on those parts of the Work which, under normal contracting practices, are performed by Subcontractors, in accordance with the following conditions:

- 6.13.1 The CONTRACTOR shall not award any Work to any Subcontractor without prior written Approval of the Contracting Officer. This Approval will not be given until the CONTRACTOR submits to the Contracting Officer a written statement concerning the proposed award to the Subcontractor which shall contain required Equal Employment Opportunity documents, evidence of insurance whose limits are acceptable to the CONTRACTOR, and an executed copy of the subcontract. All subcontracts shall contain provisions for prompt payment, release of retainage, and interest on late payment amounts and retainage as specified in AS 36.90.210. Contracts between subcontractors, regardless of tier, must also contain these provisions.
- 6.13.2 The CONTRACTOR shall be fully responsible to the AUTHORITY for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.
- 6.13.3 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the AUTHORITY and contains waiver provisions as required by paragraph 13.17 and termination provisions as required by Article 14.
- 6.13.4 Nothing in the Contract Documents shall create any contractual relationship between the AUTHORITY and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the AUTHORITY to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The AUTHORITY will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.
- 6.13.5 The CONTRACTOR and Subcontractors shall coordinate their work and cooperate with other trades so to facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision or failure to make proper provisions in time by another trade, such conditions shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time.

6.13.6 The CONTRACTOR shall include on his own payrolls any person or persons working on this Contract who are not covered by written subcontract, and shall ensure that all Subcontractors include on their payrolls all persons performing Work under the direction of the Subcontractor.

6.14 Use of Premises:

The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the AUTHORITY by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall hold the AUTHORITY harmless.

6.15 Structural Loading:

The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.16 Record Documents:

The CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Directives, Change Orders, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to paragraph 3.6) in good order and annotated to show all changes made during construction. These record documents together with all Approved samples and a counterpart of all Approved Shop Drawings will be available to the Project Manager for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Project Manager. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

6.17 Safety and Protection:

The CONTRACTOR alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.17.1 All employees on the Work and other persons and organizations who may be affected thereby;

6.17.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.17.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The

CONTRACTOR shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time except as stated in 4.6, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, of the public enemy or governmental authorities. The CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until Final Acceptance (except as otherwise expressly provided in connection with Substantial Completion).

6.18 Safety Representative:

The CONTRACTOR shall designate a responsible safety representative at the site. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the Project Manager.

6.19 Emergencies:

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the AUTHORITY, is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the Project Manager prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the AUTHORITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Paragraph 9.2, as determined appropriate by the Project Manager.

6.20 Shop Drawings and Samples:

- 6.20.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the CONTRACTOR shall submit to the Project Manager for review and Approval in accordance with the accepted schedule of Shop Drawing submissions the required number of all Shop Drawings, which will bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Project Manager may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Project Manager to review the information as required.
- 6.20.2 The CONTRACTOR shall also submit to the Project Manager for review and Approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 6.20.3 Before submission of each Shop Drawing or sample the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation

requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.20.4 At the time of each submission the CONTRACTOR shall give the Project Manager specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Project Manager for review and Approval of each such variation. All variations of the proposed Shop Drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by the AUTHORITY in evaluating the proposed variation. If the variation may result in a change of Contract Time or Price, or Contract responsibility, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the AUTHORITY of his intent. The AUTHORITY may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Project Manager may reject any variation request which the Project Manager determines is not in the best interest of the AUTHORITY.

6.21 Shop Drawing and Sample Review:

- 6.21.1 The Project Manager will review with reasonable promptness Shop Drawings and samples, but the Project Manager's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the Project Manager and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the Project Manager on previous submittals.
- 6.21.2 The Project Manager's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Project Manager of each such variation at the time of submission as required by paragraph 6.20.4. The Contracting Officer if he so determines, may give written Approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review comments shall suffice as a modification. Approval by the Contracting Officer will not relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.20.3.
- 6.21.3 The AUTHORITY shall be responsible for all AUTHORITY review costs resulting from the initial submission and the resubmittal. The CONTRACTOR shall, at the discretion of the AUTHORITY, pay all review costs incurred by the AUTHORITY as a result of any additional re-submittals.

6.21.4 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Project Manager's review and Approval of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR.

6.22 Maintenance During Construction:

The CONTRACTOR shall maintain the Work during construction and until Substantial Completion, at which time the responsibility for maintenance shall be established in accordance with paragraph 13.10.

6.23 Continuing the Work:

The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the AUTHORITY. No Work shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the CONTRACTOR and the Contracting Officer may otherwise agree in writing.

6.24 Consent to Assignment:

The CONTRACTOR shall obtain the prior written consent of the Contracting Officer to any proposed assignment of any interest in, or part of this Contract. The consent to any assignment or transfer shall not operate to relieve the CONTRACTOR or his Sureties of any of his or its obligations under this Contract or the Performance Bonds. Nothing herein contained shall be construed to hinder, prevent, or affect an assignment of monies due, or to become due hereunder, made for the benefit of the CONTRACTOR's creditors pursuant to law.

6.25 Use of Explosives:

6.25.1 When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall exercise the utmost care not to endanger life or property, including new Work and shall follow all Regulatory Requirements applicable to the use of explosives. The CONTRACTOR shall be responsible for all damage resulting from the use of explosives.

6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided not closer than 1,000 feet from any building, camping area, or place of human occupancy.

6.25.3 The CONTRACTOR shall notify each public utility owner having structures in proximity to the site of his intention to use explosives. Such notice shall be given sufficiently in advance to enable utility owners to take such steps as they may deem necessary to protect their property from injury. However, the CONTRACTOR shall be responsible for all damage resulting from the use of the explosives, whether or not, utility owners act to protect their property.

6.26 CONTRACTOR's Records:

6.26.1 Records of the CONTRACTOR and Subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of this Contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Contracting Officer for purposes of investigation to ascertain compliance with Regulatory Requirements and provisions of the Contract Documents.

- 6.26.2 Payroll records must contain the name and address of each employee, his correct classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid. The CONTRACTOR and Subcontractors shall make employment records available for inspection by the Contracting Officer and representatives of the U.S. and/or State Department of Labor and will permit such representatives to interview employees during working hours on the Project.
- 6.26.3 Records of all communications between the AUTHORITY and the CONTRACTOR and other parties, where such communications affected performance of this Contract, must be kept by the CONTRACTOR and maintained for a period of three years from Final Acceptance. The AUTHORITY or its assigned representative may perform an audit of these records during normal work hours after written notice to the CONTRACTOR.

6.27 Load Restrictions

The CONTRACTOR shall comply with all load restrictions as set forth in the "Administrative Permit Manual", and Title 17, Chapter 25, of the Alaska Administrative Code in the hauling of materials on public roads, beyond the limits of the project, and on all public roads within the project limits that are scheduled to remain in use upon completion of the project.

Overload permits may, at the discretion of the State, be issued for travel beyond the project limits for purposes of mobilization and/or demobilization. Issuance of such a permit will not relieve the CONTRACTOR of liability for damage which may result from the moving of equipment.

The operation of equipment of such weight or so loaded as to cause damage to any type of construction will not be permitted. No overloads will be permitted on the base course or surface course under construction. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The CONTRACTOR shall be responsible for all damage done by his equipment.

ARTICLE 7 - LAWS AND REGULATIONS

7.1 Laws to be Observed

The CONTRACTOR shall keep fully informed of all federal and state Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the AUTHORITY and its representatives against claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the AUTHORITY shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

7.2 Permits, Licenses, and Taxes

- 7.2.1 The CONTRACTOR shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all federal, state and local taxes incurred by the CONTRACTOR, in the performance of this Contract. Proof of

payment of these taxes is a condition precedent to final payment by the AUTHORITY under this Contract.

- 7.2.2 The CONTRACTOR's certification that taxes have been paid (as contained in the *Release of Contract*) will be verified with the Department of Revenue and Department of Labor, prior to final payment.
- 7.2.3 If any federal, state or local tax is imposed, charged, or repealed after the date of bid opening and is made applicable to and paid by the CONTRACTOR on the articles or supplies herein contracted for, then the Contract shall be increased or decreased accordingly by a Change Order.

7.3 Patented Devices, Materials and Processes

If the CONTRACTOR employs any design, device, material, or process covered by letters of patent, trademark or copyright, the CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. The CONTRACTOR and the Surety shall indemnify and save harmless the AUTHORITY, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the AUTHORITY for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

7.4 Compliance of Specifications and Drawings:

If the CONTRACTOR observes that the Specifications and Drawings supplied by the AUTHORITY are at variance with any Regulatory Requirements, CONTRACTOR shall give the Project Manager prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 9.2. as determined appropriate by the Project Manager. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Regulatory Requirements, and without such notice to the Project Manager, the CONTRACTOR shall bear all costs arising there from; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings supplied by the AUTHORITY are in accordance with such Regulatory Requirements.

7.5 Accident Prevention:

The CONTRACTOR shall comply with AS 18.60.075 and all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

7.6 Sanitary Provisions:

The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees and AUTHORITY representatives as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

7.7 Business Registration:

Comply with AS 08.18.011, as follows: "it is unlawful for a person to submit a bid or work as a contractor until he has been issued a certificate of registration by the Department of Commerce. A

partnership or joint venture shall be considered registered if one of the general partners or ventures whose name appears in the name under which the partnership or venture does business is registered."

7.8 Professional Registration and Certification:

All craft trades, architects, engineers and land surveyors, electrical administrators, and explosive handlers employed under the Contract shall specifically comply with applicable provisions of AS 08.18, 08.48, 08.40, and 08.52. Provide copies of individual licenses within seven days following a request from the Contracting Officer.

7.9 Local Building Codes:

The CONTRACTOR shall comply with AS 35.10.025 which requires construction in accordance with applicable local building codes to include the obtaining of required permits.

7.10 Air Quality Control:

The CONTRACTOR shall comply with all applicable provisions of AS 46.03.04 as pertains to Air Pollution Control.

7.11 Archaeological or Paleontological Discoveries:

When the CONTRACTOR's operation encounters prehistoric artifacts, burials, remains of dwelling sites, or paleontological remains, such as shell heaps, land or sea mammal bones or tusks, the CONTRACTOR shall cease operations immediately and notify the Project Manager. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the site until so directed. Should the Contracting Officer order suspension of the CONTRACTOR's operations in order to protect an archaeological or historical finding, or order the CONTRACTOR to perform extra Work, such shall be covered by an appropriate Contract change document.

7.12 Applicable Alaska Preferences: Not Applicable.

7.13 Preferential Employment: Not Applicable.

7.14 Wages and Hours of Labor:

7.14.1 One certified copy of all payrolls shall be submitted weekly to the State Department of Labor and, upon request, to the Contracting Officer to assure to assure compliance with AS 36.05.040, *Filing Schedule of Employees Wages Paid and Other Information*. The CONTRACTOR shall be responsible for the submission of certified copies of payrolls of all Subcontractors. The certification shall affirm that the payrolls are current and complete, that the wage rates contained therein are not less than the applicable rates referenced in these Contract Documents, and that the classification set forth for each laborer or mechanic conforms to the Work performed. The CONTRACTOR and his Subcontractors shall attend all hearings and conferences and produce such books, papers, and documents all as requested by the Department of Labor. Should federal funds be involved, the appropriate federal agency shall also receive a copy of the CONTRACTOR's certified payrolls. Regardless of project funding source, copies of all certified payrolls supplied to the State Department of Labor by the CONTRACTOR shall be supplied also to the Project Manager upon request, including submittals made by, or on behalf of, subcontractors.

7.14.2 The following labor provisions shall also apply to this Contract:

- a. The CONTRACTOR and his Subcontractors shall pay all employees unconditionally and not less than once a week;
- b. wages may not be less than those stated under AS 36.05.010, regardless of the contractual relationship between the CONTRACTOR or Subcontractors and laborers, mechanics, or field surveyors;
- c. the scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the site of the Work;
- d. the AUTHORITY shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the CONTRACTOR or Subcontractors the difference between
 1. the rates of wages required by the Contract to be paid laborers, mechanics, or field surveyors on the Work, and
 2. the rates of wages in fact received by laborers, mechanics or field surveyors.

7.14.3 Within three calendar days of award of a construction contract, the CONTRACTOR shall file a "Notice of Work" with the Department of Labor and shall pay all related fees. The Contracting Officer will not issue Notice to Proceed to the CONTRACTOR until such notice and fees have been paid to the Department of Labor. Failure of the CONTRACTOR to file the Notice of Work and pay fees within this timeframe shall not constitute grounds for an extension of contract time or adjustment of contract price.

7.15 Overtime Work Hours and Compensation:

Pursuant to 40 *U.S.C.* 327-330 and AS 23.10.060 -.110, the CONTRACTOR shall not require nor permit any laborer or mechanic in any workweek in which he is employed on any Work under this Contract to work in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek on Work subject to the provisions of the *Contract Work Hours and Safety Standards Act* unless such laborer or mechanic receives compensation at a rate not less than one and one half times his basic rate of pay for all such hours worked in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek whichever is the greater number of overtime hours. In the event of any violation of this provision, the CONTRACTOR shall be liable to any affected employee for any amounts due and penalties and to the AUTHORITY for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each Calendar Day on which such employee was required or permitted to be employed on such Work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this paragraph.

7.16 Covenant Against Contingent Fees:

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warrant, the AUTHORITY shall have the right to annul this Contract without liability or, in its discretion, to deduct price of consideration from the Contract or otherwise

recover the full amount of such commission, percentage, brokerage, or contingent fee.

7.17 Officials Not to Benefit:

No member of or delegate to the U.S. Congress, the Alaska State Legislature or other state official shall be admitted to any share or part of this Contract, nor to any benefit that may arise there from. However, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

7.18 Personal Liability of Public Officials:

In carrying out any of the provisions thereof, or in exercising any power or authority granted to the Contracting Officer by the Contract, there will be no liability upon the Contracting Officer nor upon AUTHORITY employees authorized as his representatives, either personally or as officials of the AUTHORITY, it being always understood that in such matters they act as agents and representatives of the AUTHORITY.

ARTICLE 8 - OTHER WORK

8.1 Related Work at Site:

8.1.1 The AUTHORITY reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract.

8.1.2 When separate contracts are let within the limits of the Project, the CONTRACTOR shall conduct his Work so as not to interfere with or hinder the work being performed by other contractors. The CONTRACTOR when working on the same Project with other contractors shall cooperate with such other contractors. The CONTRACTOR shall join his Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

8.1.3 If the fact that other such work is to be performed is identified or shown in the Contract Documents the CONTRACTOR shall assume all liability, financial or otherwise, in connection with this Contract and indemnify and save harmless the AUTHORITY from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the CONTRACTOR because of the presence and operations of other contractors.

8.1.4 If the fact that such other work is to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in Contract Price or Contract Time, the CONTRACTOR shall notify the Project Manager of such required increase within fifteen (15) calendar days following receipt of the Contracting Officer's notice. Should the Project Manager find such increase(s) to be justified, a Change Order will be executed.

8.2 Access, Cutting, and Patching:

The CONTRACTOR shall afford each utility owner and any other contractor who is a party to such a direct contract with the AUTHORITY (or the AUTHORITY, if the AUTHORITY is performing the additional work with the AUTHORITY's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with the work of others. The CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, the CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering

their work and will only cut or alter such other work with the written consent of the Project Manager. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the AUTHORITY and other contractors.

8.3 Defective Work by Others:

If any part of the CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor, utility owner, or the AUTHORITY, the CONTRACTOR shall inspect and promptly report to the Project Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

8.4 Coordination:

If the AUTHORITY contracts with others for the performance of other work at the site, Project Manager will have authority and responsibility for coordination of the activities among the various prime contractors.

ARTICLE 9 - CHANGES

9.1 AUTHORITY's Right to Change

Without invalidating the Contract and without notice to any Surety, the AUTHORITY may, at any time or from time to time, order additions, deletions or revisions in the Work within the general scope of the Contract, including but not limited to changes:

- 9.1.1 In the Contract Documents;
- 9.1.2 In the method or manner of performance of the Work;
- 9.1.3 In Authority-furnished facilities, equipment, materials, services, or site;
- 9.1.4 Directing acceleration in the performance of the Work.

9.2 Authorization of Changes within the General Scope.

Additions, deletions, or revisions in the Work within the general scope of the Contract as specified in 9.1 shall be authorized by one or more of following ways:

- 9.2.1 Directive (pursuant to paragraph 9.3)
- 9.2.2 A Change Order (pursuant to paragraph 9.4)
- 9.2.3 AUTHORITY's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by paragraph 6.20.4.

9.3 Directive

- 9.3.1 The Contracting Officer shall provide written clarification or interpretation of the Contract Documents (pursuant to paragraph 3.6).
- 9.3.2 The Project Manager may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents.
- 9.3.3 The Project Manager may order the Contractor to correct Defective Work or methods which are not in conformance with the Contract Documents.
- 9.3.4 The Project Manager may direct the commencement or suspension of Work or emergency related Work (as provided in paragraph 6.19).
- 9.3.5 Upon the issuance of a Directive to the CONTRACTOR by the Project Manager, the CONTRACTOR shall proceed with the performance of the Work as prescribed by such Directive.
- 9.3.6 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the CONTRACTOR shall immediately provide written notice to the Project Manager depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Project Manager finds the increase in Contract Price or the extension of Contract Time justified, a Change Order will be issued. If however, the Project Manager does not find that a Change Order is justified, the Project Manager may direct the CONTRACTOR to proceed with the Work. The CONTRACTOR shall cooperate with the Project Manager in keeping complete daily records of the cost of such Work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such Work will be made on a "cost of the work basis" as provided in 10.4

9.4 Change Order

A change in Contract Time, Contract Price, or responsibility may be made for changes within the scope of the Work by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided. Changes in Contract Price and Contract Time shall be made in accordance with Articles 10 and 11. A Change Order shall be considered executed when it is signed by the AUTHORITY.

9.5 Shop Drawing Variations

Variations by shop drawings shall only be eligible for consideration under 9.4 when the conditions affecting the price, time, or responsibility are identified by the CONTRACTOR in writing and a request for a Change Order is submitted as per 6.20.4.

9.6 Changes Outside the General Scope; Supplemental Agreement

Any change which is outside the general scope of the Contract, as determined by the Project Manager, must be authorized by a Supplemental Agreement signed by the appropriate representatives of the AUTHORITY and the CONTRACTOR.

9.7 Unauthorized Work:

The CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in paragraph 6.19 and except in the case of uncovering Work as provided in paragraph 12.4.2.

9.8 Notification of Surety:

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any bond to be given to a Surety, the giving of any such notice will be the CONTRACTOR's responsibility, and the amount of each applicable bond will be adjusted accordingly.

9.9 Differing Site Conditions:

9.9.1 The CONTRACTOR shall promptly, and before such conditions are disturbed (except in an emergency as permitted by paragraph 6.19), notify the Project Manager in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, and which could not have been discovered by a careful examination of the site, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Project Manager shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly.

9.9.2 Any claim for additional compensation by the CONTRACTOR under this clause shall be made in accordance with Article 15. In the event that the Contracting Officer and the CONTRACTOR are unable to reach an agreement concerning an alleged differing site condition, the CONTRACTOR will be required to keep an accurate and detailed record which will indicate the actual "cost of the work" done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. The Project Manager shall be given the opportunity to supervise and check the keeping of such records.

9.10 Interim Work Authorization

An Interim Work Authorization may be used to establish a change within the scope of the Work; however, only a Change Order shall establish associated changes in Contract Time and Price. Work authorized by Interim Work Authorization shall be converted to a Change Order. The basis of payment shall be as stated in the Interim Work Authorization, unless it states that the basis of payment has not been established and is to be negotiated, in which case the Cost of the Work shall be documented pursuant to Article 10.4, to establish a basis for negotiating a lump sum price for the Change Order.

ARTICLE 10 - CONTRACT PRICE; COMPUTATION AND CHANGE

10.1 Contract Price:

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order or Supplemental Agreement.

10.2 Claim for Price Change:

Any claim for an increase or decrease in the Contract Price shall be submitted in accordance with the terms of Article 15, and shall not be allowed unless notice requirements of this Contract have been met.

10.3 Change Order Price Determination:

The value of any Work covered by a Change Order for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of subparagraphs 10.9.1 through 10.9.3, inclusive).

10.3.2 By mutual acceptance of a lump sum price that includes overhead and profit. The following maximum rates of cost markup (to cover both overhead and profit of the CONTRACTOR) shall be used in the negotiation of a Lump Sum Change Order:

- a. 17% - where a cost is borne directly by prime contractor (first tier contractor).
- b. 10% - where a cost is borne by a subcontractor (lower tier contractor).

Where the cost is borne by a subcontractor acting as a first tier contractor, the allowable overhead and profit markup for lump sum change orders shall not exceed 17%. Any lower tier subcontractors, including the CONTRACTOR in this case, for whom the first tier subcontractor performs the work, shall be allowed an overhead and profit markup that does not exceed 10%.

10.3.3 When 10.3.1 and 10.3.2 are inapplicable, on the basis of the "cost of the work" (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 10.6).

10.3.4 Before a Change Order or Supplemental Agreement is approved, the CONTRACTOR shall submit cost or pricing data regarding the changed or extra Work. The CONTRACTOR shall certify that the data submitted is, to his best knowledge and belief, accurate, complete and current as of a mutually determined specified date and that such data will continue to be accurate and complete during the performance of the changed or extra Work.

10.4 Cost of the Work:

The term "cost of the work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the AUTHORITY, such costs shall be in amount no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in subparagraph 10.5:

- 10.4.1 Payroll costs for employees in the direct employ of the CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by the AUTHORITY and the CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include manual workers up through the level of foreman but shall not include general foremen, superintendents, and non-manual employees. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the AUTHORITY.
- 10.4.2 Cost of all materials and equipment furnished and incorporated or consumed in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the CONTRACTOR unless the AUTHORITY deposits funds with the CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the AUTHORITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the AUTHORITY, and the CONTRACTOR shall make provisions so that they may be obtained.
- 10.4.3 Payments made by the CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by the AUTHORITY, CONTRACTOR shall obtain competitive quotes from Subcontractors or Suppliers acceptable to the CONTRACTOR and shall deliver such quotes to the AUTHORITY who will then determine which quotes will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of "cost of the work" plus a fee, the Subcontractor' "cost of the work" shall be determined in the same manner as the CONTRACTOR's "cost of work" as described in paragraphs 10.4 through 10.5; and the Subcontractor's fee shall be established as provided for under subparagraph 10.6.2 clause b. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services necessary for the completion of the Work.
- 10.4.5 Supplemental costs including the following:
- a. The proportion of necessary transportation, travel and subsistence expenses of the CONTRACTOR's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of the CONTRACTOR.
 - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements Approved by the AUTHORITY and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

For any machinery or special equipment (other than small tools) which has been authorized by

the Project Manager, the CONTRACTOR shall receive the rental rates in the current edition and appropriate volume of the "Rental Rate Blue Book for Construction Equipment", published by Dataquest, Inc., 1290 Ridder Park Drive, San Jose, CA 95131. Hourly rental rates shall be determined as follows:

The established hourly rental rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 176, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.

The adjusted monthly rate is that resulting from application of the rate adjustment formula in order to eliminate replacement cost allowances in machine depreciation and contingency cost allowances.

Attachments shall not be included unless required for the time and materials work.

For equipment not listed in The Blue Book, the CONTRACTOR shall receive a rental rate as agreed upon before such work is begun. If agreement cannot be reached, the AUTHORITY reserves the right to establish a rate based on similar equipment in the Blue Book or prevailing commercial rates in the area.

These rates shall apply for equipment used during the CONTRACTOR's regular shift of 10 hours per day. Where the equipment is used more than 10 hours per day, either on the CONTRACTOR's normal work or on time and materials, and either on single or multiple shifts, an overtime rate, computed as follows, shall apply:

The hourly overtime rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.

Equipment which must be rented or leased specifically for work required under this section shall be authorized in writing by the Project Manager. The CONTRACTOR shall be paid invoice price plus 15%.

When it is necessary to obtain equipment from sources beyond the project limits exclusively for time and materials, work, the actual cost of transferring the equipment to the site of the work and return will be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance will be limited to the amount of the freight bill or invoice. If the CONTRACTOR hauls the equipment with his own forces, the allowance will be limited to the rental rate for the hauling unit plus operator wages. In the event that the equipment is transferred under its own power, the moving allowance will be limited to one-half of the normal hourly rental rate plus operator's wages. In the event that the move-out is to a different location, payment will in no instance exceed the amount of the move-in. Move-in allowance shall not be made for equipment brought to the project for time and materials work which is subsequently retained on the project and utilized for completion of contract items, camp maintenance, or related work.

Equipment ordered to be on a stand-by basis shall be paid for at the stand-by rental rate for the number of hours in the CONTRACTOR'S normal work shift, but not to exceed 8 hours per day. The stand-by rental rate shall be computed as follows:

The hourly stand-by rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, all multiplied by the area adjustment factor.

Time will be recorded to the nearest one-quarter hour for purposes of computing compensation to the CONTRACTOR for equipment utilized under these rates.

The equipment rates as determined above shall be full compensation, including overhead and profit, for providing the required equipment and no additional compensation will be made for other costs such as, but not limited to, fuels, lubricants, replacement parts or maintenance costs. Cost of repairs, both major and minor, as well as charges for mechanic's time utilized in servicing equipment to ready it for use prior to moving to the project and similar charges will not be allowed.

- d. Sales, consumer, use or similar taxes related to the Work, and for which the CONTRACTOR is liable, imposed by Regulatory Requirements.
- e. Deposits lost for causes other than negligence of the CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the CONTRACTOR in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and Approval of the AUTHORITY. No such losses, damages and expenses shall be included in the "cost of the work" for the purpose of determining the CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraphs 10.6.2.a and 10.6.2.b.
- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- I. Cost of premiums for additional bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by the AUTHORITY in accordance with Article 5.

10.5 Excluded Costs:

The term "cost of the work" shall not include any of the following:

- 10.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing agency, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
- 10.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

- 10.5.3 Any part of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.i above).
- 10.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 CONTRACTOR's Fee:

The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows.

- 10.6.1 A mutually acceptable fixed fee; or if none can be agreed upon.
- 10.6.2 A fee based on the following percentages of the various portions of the "cost of the work":
- a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's fee shall be twenty percent;
 - b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's fee shall be ten percent; and if a subcontract is on the basis of "cost of the work" plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors and multiple tiers thereof shall be fifteen percent;
 - c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;
 - d. The amount of credit to be allowed by the CONTRACTOR to the AUTHORITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an amount equal to ten percent of the net decrease; and
 - e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.a through 10.6.2.d, inclusive.

10.7 Cost Breakdown:

Whenever the cost of any Work is to be determined pursuant to paragraphs 10.4 and 10.5, the CONTRACTOR will submit in a form acceptable to the AUTHORITY an itemized cost breakdown together with supporting data.

10.8 Cash Allowances:

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors

or Suppliers and for such sums within the limit of the allowances as may be acceptable to the Contracting Officer. CONTRACTOR agrees that:

- 10.8.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
- 10.8.2 CONTRACTOR's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.9 Unit Price Work:

- 10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the AUTHORITY in accordance with paragraph 10.10.
- 10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item. If the "Basis of Payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.
- 10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of Work performed and accepted or materials furnished, in conformance with the Contract Documents. When the accepted quantities of Work or materials vary from the quantities stated in the bid schedule, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of Work and materials furnished, completed and accepted; except as provided below:
 - a. When the quantity of Work to be done or material to be furnished under any item, for which the total cost of the item exceeds 10% of the total Contract Price, is increased by more than 25 percent of the quantity stated in the bid schedule, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable unit price adjustment on that portion of the Work above 125 percent of the quantity stated in the bid schedule.
 - b. When the quantity of Work to be done or material to be furnished under any major item, for which the total cost of the item exceeds 10% of the total Contract Price, is decreased by more than 25 percent of the quantity stated in the bid schedule, or change documents either party to the Contract, upon demand, shall be entitled to an equitable price adjustment for the quantity

of Work performed or material furnished, limited to a total payment of not more than 75 percent of the amount originally bid for the item.

10.10 Determinations for Unit Prices:

The Project Manager will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Project Manager will review with the CONTRACTOR preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Project Manager's acknowledgment thereof will be final and binding on the CONTRACTOR, unless, within 10 days after the date of any such decisions, the CONTRACTOR delivers to the Project Manager written notice of intention to appeal from such a decision.

ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE

11.1 Commencement of Contract Time; Notice to Proceed:

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

11.2 Starting the Work:

No Work on Contract items shall be performed before the effective date of the Notice to Proceed. The CONTRACTOR shall notify the Project Manager at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed after Award has been made, to permit him to order long lead materials which could cause delays in Project completion. However, granting is within the sole discretion of the Contracting Officer, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.

11.3 Computation of Contract Time:

11.3.1 When the Contract Time is specified on a Calendar Day basis, all Work under the Contract shall be completed within the number of Calendar Days specified. The count of Contract Time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein.

Calendar Days shall continue to be counted against Contract Time until and including the date of Substantial Completion of the Work.

11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Final Completion.

11.3.3 The Contract Time shall be as stated is 00800, Supplementary Conditions.

11.4 Time Change:

The Contract Time may only be changed by a Change Order or Supplemental Agreement.

11.5 Extension Due to Delays:

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the

CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the AUTHORITY in its contractual capacity, acts of another contractor in the performance of a contract with the AUTHORITY, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension, provided that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Contracting Officer shall grant a further period of the time prior to the date of final settlement of the Contract), notify the Project Manager in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

11.6 Essence of Contract:

All time limits stated in the Contract Documents are of the essence of the Contract.

11.7 Reasonable Completion Time:

It is expressly understood and agreed by and between the CONTRACTOR and the AUTHORITY that the date of beginning and the time for Substantial Completion of the Work described herein are reasonable times for the completion of the Work.

11.8 Delay Damages:

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, he and his Sureties shall be liable for damages resulting from his refusal or failure to complete the Work within the specified time.

Liquidated and actual damages for delay shall be paid by the CONTRACTOR or his Surety to the AUTHORITY in the amount as specified in the Supplementary Conditions for each Calendar Day the completion of the Work or any part thereof is delayed beyond the time required by the Contract, or any extension thereof. If a listing of incidents resulting from a delay and expected to give rise to actual or liquidated damages is not established by the Contract Documents, then the CONTRACTOR and his Surety shall be liable to the AUTHORITY for any actual damages occasioned by such delay. The CONTRACTOR acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the AUTHORITY will sustain by reason of delayed completion. These liquidated and actual damages are intended as compensation for losses anticipated arising, and including those items enumerated in the Supplementary Conditions.

These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or AUTHORITY costs, fees, and charges related to reprocurement. If a default termination occurs, the CONTRACTOR or his Surety shall pay in addition to these damages, all excess costs and expenses related to completion as provided by Article 14.2.5.

For each calendar day that the work remains incomplete after the expiration of the Contract Time, liquidated damages in the amount as stated in 00800, Supplemental Conditions shall be assessed to the CONTRACTOR. If no money is due the CONTRACTOR, the AUTHORITY shall have the right to recover said sum from the CONTRACTOR, the surety or both. The amount of these deductions is to reimburse the AUTHORITY for estimated liquidated damages incurred as a result of the CONTRACTOR's failure to complete the work within the time specified. As liquidated

damages, such deductions are not to be considered as penalties.

Permitting the CONTRACTOR to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the AUTHORITY of any of its rights under the Contract.

ARTICLE 12 - QUALITY ASSURANCE

12.1 Warranty and Guaranty:

The CONTRACTOR warrants and guarantees to the AUTHORITY that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this article.

12.2 Access to Work:

The AUTHORITY and the AUTHORITY's consultants, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections:

12.3.1 The CONTRACTOR shall give the Project Manager timely notice of readiness of the Work for all required inspections, tests or Approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with AUTHORITY's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for Approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the CONTRACTOR. The AUTHORITY may perform additional tests and inspections which it deems necessary to insure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.4 If any Work (including the work of others) that is to be inspected, tested or Approved is covered without written concurrence of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the Project Manager timely notice of CONTRACTOR's intention to cover the same and the Project Manager has not acted with reasonable promptness in response to such notice.

12.3.5 Neither observations nor inspections, tests or Approvals by the AUTHORITY or others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

12.4 Uncovering Work:

12.4.1 If any Work is covered contrary to the written request of the Project Manager, it must, if requested by the Project Manager, be uncovered for the Project Manager's observation and replaced at the CONTRACTOR's expense.

12.4.2 If the Project Manager considers it necessary or advisable that covered Work be observed inspected or tested, the CONTRACTOR, at the Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the AUTHORITY shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

12.5 AUTHORITY May Stop the Work:

If the Work is Defective, or the CONTRACTOR fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Contracting Officer may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Contracting Officer to stop the Work shall not give rise to any duty on the part of the Contracting Officer to exercise this right for the benefit of the CONTRACTOR or any other party.

12.6 Correction or Removal of Defective Work:

If required by the Project Manager, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Project Manager, remove it from the site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.7 One Year Correction Period:

If within one year after the date of Substantial Completion of the relevant portion of the Work or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the AUTHORITY and in accordance with the Project Manager's written instructions, either correct such Defective Work, or, if it has been rejected by the Project Manager, remove it from the site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the AUTHORITY may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of the

AUTHORITY before Substantial Completion of all the Work, the correction period for that item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the statute of limitations for bringing an action.

12.8 Acceptance of Defective Work:

Instead of requiring correction or removal and replacement of Defective Work, the Project Manager may accept Defective Work, the CONTRACTOR shall bear all direct, indirect and consequential costs attributable to the Project Manager's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the AUTHORITY shall be entitled to an appropriate decrease in the Contract Price. If the AUTHORITY has already made final payment to the CONTRACTOR, an appropriate amount shall be paid by the CONTRACTOR or his Surety to the AUTHORITY.

12.9 AUTHORITY May Correct Defective Work:

If the CONTRACTOR fails within a reasonable time after written notice from the Project Manager to proceed to correct Defective Work or to remove and replace rejected Work as required by the Project Manager in accordance with paragraph 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the AUTHORITY may, after 7 days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the AUTHORITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Project Manager may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or approved remote storage sites or for which the AUTHORITY has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the Project Manager and his authorized representatives such access to the site as may be necessary to enable the Project Manager to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the AUTHORITY in exercising such rights and remedies will be charged against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the AUTHORITY shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of time because of any delay in performance of the work attributable to the exercise, by the Project Manager, of the AUTHORITY's rights and remedies hereunder.

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values:

The Schedule of Values established as provided in paragraph 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Preliminary Payments:

Upon approval of the Schedule of Values the CONTRACTOR may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Requirements. Direct costs shall include the cost of bonds, insurance, approved materials stored on the site or at approved remote storage sites, deposits required by a Supplier prior to fabricating materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total Contract Price as stated in the Contract.

13.3 Application for Progress Payment:

The CONTRACTOR shall submit to the Project Manager for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. Progress payments will be made as the Work progresses on a monthly basis.

13.4 Review of Applications for Progress Payment:

Project Manager will either indicate in writing a recommendation of payment or return the Application for Payment to the CONTRACTOR indicating in writing the Project Manager's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

13.5 Stored Materials and Equipment:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that the AUTHORITY has received the materials and equipment free and clear of all charges, security interests and encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the AUTHORITY's interest therein, all of which will be satisfactory to the Project Manager. No payment will be made for perishable materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant materials until planted.

13.6 CONTRACTOR's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the AUTHORITY no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

13.7 Withholding of Payments:

The AUTHORITY may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without Approval of Shop Drawings, or by an unapproved Subcontractor, or for unsuitable storage of materials and equipment.

13.7.2 The Contract Price has been reduced by Change Order,

- 13.7.3 The AUTHORITY has been required to correct Defective Work or complete Work in accordance with paragraph 12.9.
- 13.7.4 The AUTHORITY's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1.a through 14.2.1.k inclusive.
- 13.7.5 Claims have been made against the AUTHORITY or against the funds held by the AUTHORITY on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the AUTHORITY to a set off.
- 13.7.6 Subsequently discovered evidence or the results of subsequent inspections or test, nullify any previous payments for reasons stated in subparagraphs 13.7.1 through 13.7.5.
- 13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of his obligations under any provision of this Contract.

13.8 Retainage:

At any time the AUTHORITY finds that satisfactory progress is not being made it may in addition to the amounts withheld under 13.7 retain a maximum amount equal to 10% of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Project Manager finds that satisfactory progress is being made.

13.9 Request for Release of Funds:

If the CONTRACTOR believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies, shall be given to the AUTHORITY, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the AUTHORITY shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

13.10 Substantial Completion:

When the CONTRACTOR considers the Work ready for its intended use the CONTRACTOR shall notify the Project Manager in writing that the Work or a portion of Work which has been specifically identified in the Contract Documents is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the AUTHORITY issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Project Manager, the CONTRACTOR and Engineer(s) shall make an inspection of the Work to determine the status of completion. If the Project Manager does not consider the Work substantially complete, the Project Manager will notify the CONTRACTOR in writing giving the reasons therefore. If the Project Manager considers the Work substantially complete, the Project Manager will within fourteen days execute and deliver to the CONTRACTOR a certificate of Substantial Completion with tentative list of items to be completed or corrected. At the time of delivery of the certificate of Substantial Completion the Project Manager will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents.

The AUTHORITY shall be responsible for all AUTHORITY costs resulting from the initial inspection and the first re-inspection, the CONTRACTOR shall pay all costs incurred by the AUTHORITY resulting from re-inspections, thereafter.

13.11 Access Following Substantial Completion:

The AUTHORITY shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the AUTHORITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

13.12 Final Inspection:

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Project Manager will make a final inspection with the CONTRACTOR and Engineer(s) and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the AUTHORITY resulting from re-inspections.

13.13 Final Completion and Application for Payment:

After the CONTRACTOR has completed all such corrections to the satisfaction of the Project Manager and delivered schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, and other documents - all as required by the Contract Documents; and after the Project Manager has indicated in writing that the Work has met the requirements for Final Completion, and subject to the provisions of paragraph 13.18, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all remaining certificates, warranties, guarantees, releases, affidavits, and other documentation required by the Contract Documents.

13.14 Final Payment:

13.14.1 If on the basis of the Project Manager's observation of the Work during construction and final inspection, and the Project Manager's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents; and the Project Manager is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the AUTHORITY will process final Application for Payment. Otherwise, the Project Manager will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the final Application for Payment.

13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Project Manager shall, upon receipt of the CONTRACTOR's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the AUTHORITY for Work not fully completed or corrected is less than the retainage provided for in paragraph 13.9, and if bonds have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the AUTHORITY with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.15 Final Acceptance:

Following certification of payment of payroll and revenue taxes, and final payment to the CONTRACTOR, the AUTHORITY will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except as provided in paragraph 13.17.

When it is anticipated that restarting, testing, adjusting, or balancing of systems will be required following Final Acceptance and said requirements are noted in Section(s) 01 77 00, such Work shall constitute a continuing obligation under the Contract.

13.16 CONTRACTOR's Continuing Obligation:

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and material men in accordance with the Contract Documents shall be absolute. Neither any progress or final payment by the AUTHORITY, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the AUTHORITY or Owner, nor any act of acceptance by the AUTHORITY nor any failure to do so, nor any review and Approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the AUTHORITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

13.17 Waiver of Claims by CONTRACTOR:

The making and acceptance of final payment will constitute a waiver of all claims by the CONTRACTOR against the AUTHORITY other than those previously made in writing and still unsettled.

13.18 No Waiver of Legal Rights:

The AUTHORITY shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are Defective. The AUTHORITY shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of his failure to comply with requirements of the Contract Documents. Neither the acceptance by the AUTHORITY, or any representative of the AUTHORITY, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the AUTHORITY, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by the AUTHORITY of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION

14.1 AUTHORITY May Suspend Work:

14.1.1 The AUTHORITY may, at any time, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without cause the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both,

directly attributable to any suspension if the CONTRACTOR makes an Approved claim therefore as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.

14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or Approved remote storage sites.

14.2 Default of Contract:

14.2.1 The Contracting Officer may give the contractor and his surety a written Notice to Cure Default if the contractor:

- a. fails to begin work in the time specified,
- b. fails to use sufficient resources to assure prompt completion of the work,
- c. performs the work unsuitably or neglect or refuse to remove and replace rejected materials or work,
- d. stops work,
- e. fails to resume stopped work after receiving notice to do so,
- f. becomes insolvent (except that if you declare bankruptcy, termination will be under Title 11 US Code 362 and/or 365. Your bankruptcy does not relieve the surety of any obligations to assume the Contract and complete the work in a timely manner.
- g. Allows any final judgment to stand against him unsatisfied for period of 60 days, or
- h. Makes an assignment for the benefit of creditors without the consent of the Contracting Officer, or
- i. Disregards Regulatory Requirements of any public body having jurisdiction, or
- j. Otherwise violates in any substantial way any provisions of the Contract Documents, or
- k. fails to comply with Contract minimum wage payments or civil rights requirements, or
- l. are party to fraud, deception, misrepresentation , or
- m. for any cause whatsoever, fails to carry on the Work in an acceptable manner.

14.2.2 The Notice to Cure Default will detail the conditions determined to be in default, the time within which to cure the default and may, in the Contracting Officer's discretion, specify the actions necessary to cure the default. Failure to cure the delay, neglect or default within the time specified in the Contracting Officer's written notice to cure authorizes the Authority to terminate the contract. The Contracting Officer may allow more time to cure than originally stated in the Notice to Cure Default if he deems it to be in the best interests of the Authority. The Authority will provide you and your surety with a written Notice of Default Termination that details the default and the failure to cure it.

- 14.2.3 If the CONTRACTOR or Surety, within the time specified in the above notice of default, shall not proceed in accordance therewith, then the AUTHORITY may, upon written notification from the Contracting Officer of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The AUTHORITY may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the AUTHORITY has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the AUTHORITY may deem expedient. The AUTHORITY may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the Contracting Officer are required for the completion of said Contract in an acceptable manner.
- 14.2.4 The Contracting Officer may, by written notice to the CONTRACTOR and his Surety or his representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the Contracting Officer may, at his option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the AUTHORITY for Approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for Approval of subcontracts as stated in the Contract Documents.
- 14.2.5 After the notice of termination is issued, the Authority may take over the work and complete it by contract or otherwise and may take possession of and use materials, appliances, equipment or plant on the work site necessary for completing the work.
- 14.2.6 Rather than taking over the work itself, the Authority may transfer the obligation to perform the work from the contractor to your surety. The surety must submit its plan for completion of the work, including any contracts or agreements with third parties for completion, to the Authority for approval prior to beginning work. The surety must follow the Contract requirements for approval of subcontracts, except that the limitation on percent of work subcontracted will not apply.
- 14.2.7 On receipt of the transfer notice, the surety must take possession of all materials, tools, and appliances at the work site, employ an appropriate work force, and complete the Contract work, as specified. The Contract specifications and requirements shall remain in effect. However the Authority will make subsequent Contract payments directly to the Surety for work performed under the terms of the Contract. CONTRACTOR forfeits any right to claim for the same work or any part thereof. CONTRACTOR is not entitled to receive any further balance of the amount to be paid under the Contract.
- 14.2.8 Upon receipt of the notice terminating the services of the CONTRACTOR, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons to finish the Work and provide the materials therefore, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to the Surety, the Surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.

- 14.2.9 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by paragraph 11.8, and for the excess cost of completion, and all costs and expenses incurred by the AUTHORITY in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract until the Work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the AUTHORITY and any amounts due to persons for whose benefit the AUTHORITY has withheld funds, such excess shall be paid by the AUTHORITY to the CONTRACTOR. If the damages, costs, and expenses due the AUTHORITY exceed the unpaid balance, the CONTRACTOR and his Surety shall pay the difference.
- 14.2.10 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

14.3 Rights or Remedies:

Where the CONTRACTOR's services have been so terminated by the AUTHORITY, the termination will not affect any rights or remedies of the AUTHORITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the AUTHORITY will not release the CONTRACTOR from liability.

14.4 Convenience Termination:

- 14.4.1 The performance of the Work may be terminated by the AUTHORITY in accordance with this section in whole or in part, whenever, for any reason the Contracting Officer shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying termination is for the convenience of the AUTHORITY the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.
- 14.4.2 Immediately upon receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the CONTRACTOR shall:
- a. Stop Work on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
 - d. With the written Approval of the Contracting Officer, to the extent he may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;

- e. Submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Contracting Officer;
- f. Transfer to the Contracting Officer the completed or partially completed record drawings, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the AUTHORITY;
- g. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the CONTRACTOR and in which the AUTHORITY has or may acquire any interest.

The CONTRACTOR shall proceed immediately with the performance of the above obligations.

14.4.3 When the AUTHORITY orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with Article 13 of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at invoice cost plus 15 % with materials becoming the property of the AUTHORITY - or the CONTRACTOR may retain title to the materials and be paid an agreed upon lump sum. Materials on order shall be cancelled, and the AUTHORITY shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid 10% of the cost, freight not included, of materials cancelled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be cancelled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the AUTHORITY. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

- a. The following costs are not payable under a termination settlement agreement or Contracting Officer's determination of the termination claim:
 - 1. Loss of anticipated profits or consequential or compensatory damages
 - 2. Unabsorbed home office overhead (also termed "General & Administrative Expense") related to ongoing business operations
 - 3. Bidding and project investigative costs
 - 4. Direct costs of repairing equipment to render it operable for use on the terminated work

14.4.4 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless extensions in writing are granted by the Contracting Officer upon written request of the CONTRACTOR made within the 90 day period. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.

14.4.5 The CONTRACTOR and the Contracting Officer may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.

14.4.6 In the event of the failure of the CONTRACTOR and the Contracting Officer to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:

- a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;
- b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;
- c. So far as practicable, claims by the contractor for idled or stand-by equipment shall be made as follows: Equipment claims will be reimbursed as follows:
 1. Contractor-owned equipment usage, based on the contractor's ownership and operating costs for each piece of equipment as determined from the contractor's accounting records. Under no circumstance, may the contractor base equipment claims on published rental rates.
 2. Idle or stand-by time for Contractor-owned equipment, based on your internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle or stand-by equipment time.
 3. Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered Contractor-owned equipment. Equipment leased from an affiliate, division, subsidiary or other organization under common control with you will be considered Contractor-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates you have agreed to pay and no more than forty percent of the lessor's leasing business, measured in dollars, is with organizations affiliated with the lessor.

14.4.7 The CONTRACTOR shall have the right of appeal under the AUTHORITY's claim procedures, as defined in Article 15, for any determination made by the Contracting Officer, except if the CONTRACTOR has failed to submit his claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

- a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;
- b. Any claim for which the AUTHORITY may have against the CONTRACTOR;
- c. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the AUTHORITY; and,
- d. All progress payments made to the CONTRACTOR under the provisions of this section.

- 14.4.8 Where the Work has been terminated by the AUTHORITY said termination shall not affect or terminate any of the rights of the AUTHORITY against the CONTRACTOR or his Surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the AUTHORITY due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or his Surety from liability.
- 14.4.9 The contractor's termination claim may not include claims that pre dated the notice for termination for convenience. Those claims shall be prosecuted by the contractor under Article 15.
- 14.4.10 The contractor's termination claim may not exceed the total dollar value of the contract as awarded plus agreed upon change orders less the amounts that have been paid for work completed.
- a. Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the AUTHORITY at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under his Contract and relating to the Work terminated hereunder.
 - b. Cost Principles. The Authority may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under this Subsection to the extent they are applicable to construction contracts and consistent with the specifications of this Contract. The provisions of this contract control where they are more restrictive than, or inconsistent with, these federal cost principles.”

ARTICLE 15 - CLAIMS AND DISPUTES

15.1 Notification

- 15.1.1 The CONTRACTOR shall notify the AUTHORITY in writing as soon as the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a claim for additional compensation or an extension of Contract Time or of any dispute regarding a question of fact or interpretation of the Contract. The AUTHORITY has no obligation to investigate any fact or occurrence that might form the basis of a claim or to provide any additional compensation or extension of Contract Time unless the CONTRACTOR has notified the AUTHORITY in writing in a timely manner of all facts the CONTRACTOR believes form the basis for the claim.
- 15.1.2 If the CONTRACTOR believes that he is entitled to an extension of Contract Time, then the CONTRACTOR must state the contract section on which he basis his extension request, provide the AUTHORITY with sufficient information to demonstrate that the CONTRACTOR has suffered excusable delay, and show the specific amount of time to which the CONTRACTOR is entitled. The AUTHORITY will not grant an extension of Contract Time if the CONTRACTOR does not timely submit revised schedules under **Section 01 32 00**.
- 15.1.3 If the matter is not resolved by agreement within 7 days, the CONTRACTOR shall submit an Intent to Claim, in writing, to the AUTHORITY within the next 14 days.
- 15.1.4 If the CONTRACTOR believes additional compensation or time is warranted, then he must immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The

CONTRACTOR shall provide the AUTHORITY access to any such records and furnish the AUTHORITY copies, if requested. Equipment costs must be based on the CONTRACTOR's internal rates for ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against the Authority for additional time, compensation or both, the contractor must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the Authority.

- 15.1.5 If the claim or dispute is not resolved by the Project Manager, then the CONTRACTOR shall submit a written Claim to the Contracting Officer 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. The Contracting Officer will issue written acknowledge of the receipt of the Claim.
- 15.1.6 The CONTRACTOR waives any right to claim if the AUTHORITY was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs or if the Claim is not filed on the date required.

15.2 Presenting the Claim

- 15.2.1 The Claim must include all of the following:
- a. The act, event, or condition the claim is based on
 - b. The Contract provisions which apply to the claim and provide relief
 - c. The item or items of Contract work affected and how they are affected
 - d. The specific relief requested, including Contract Time if applicable, and the basis upon which it was calculated
 - e. A statement certifying that the claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of your knowledge and belief, and that the amount requested accurately reflects the Contract adjustment which the CONTRACTOR believes is due.

15.3 Claim Validity, Additional Information, and AUTHORITY's Action

- 15.3.1 The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that it was caused by the act, event, or condition complained of and that the Contract provides entitlement to relief for such act, event, or condition.
- 15.3.2 The AUTHORITY can make written request to the CONTRACTOR at any time for additional information relative to the Claim. The CONTRACTOR shall provide the AUTHORITY the additional information within 30 days of receipt of such a request. Failure to furnish the additional information may be regarded as a waiver of the Claim.

15.4 Contracting Officer's Decision

- 15.4.1 The CONTRACTOR will be furnished the Contracting Officer's Decision within 90 days, unless the Contracting Officer requests additional information or gives the CONTRACTOR notice that the time for issuing a decision is being extended for a specified period. The Contracting Officer's decision is final and conclusive unless,

within 14 days of receipt of the decision, the CONTRACTOR delivers a Notice of Appeal to the Executive Director of the Authority.

15.5 Appeals on a Contract Claim.

15.5.1 An appeal from a decision of the Contracting Officer on a contract claim may be filed by the CONTRACTOR with the Executive Director of the Authority. The appeal shall be filed within 14 days after the decision is received by the CONTRACTOR. An appeal by the CONTRACTOR may not raise any new factual issues or theories of recovery that were not presented to and decided by the Contracting Officer in the decision under Section 15.4, except that a CONTRACTOR may increase the contractor's calculation of damages if the increase arises out of the same operative facts on which the original claim was based. The CONTRACTOR shall file a copy of the appeal with the Contracting Officer.

- a. An appeal must contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.
- b. The Executive Director shall handle the appeal of a claim under this section expeditiously.

15.6 Construction Contract Claim Appeals.

15.6.1 The appeal from a decision of the Contracting Officer of a claim involving a construction contract shall be resolved by:

- a. binding and final arbitration under AS 09.43.010 - 09.43.180 (Uniform Arbitration Act) if the claim is:
 1. less than \$250,000 and the CONTRACTOR requests arbitration of the claim; or
 2. \$250,000 or more and both the agency and the CONTRACTOR agree to arbitration of the claim; or
- b. a hearing under the Authority's established policy and procedures if the claim is not handled by arbitration under 15.6.1 of this subsection.

15.7 Fraud and Misrepresentation in Making Claims

Criminal and Civil penalties authorized under State or federal law (including, but not limited to, forfeiture of all claimed amounts) may be imposed on the CONTRACTOR if the CONTRACTOR makes or uses a misrepresentation in support of a claim or defraud or attempt to defraud the AUTHORITY at any stage of prosecuting a claim under this Contract.”

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ALASKA ENERGY AUTHORITY
SECTION 00 90 00
FEDERAL ASSURANCES

Because this contract is funded with federal funds, the following contract provisions shall apply, where applicable, to all work performed on the contract by the contractor's own organization and by subcontractors. As provided in this Section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions and further require their inclusion in any lower tier subcontracts or purchase orders that may in turn be made. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all applicable Required Contract Provisions.

90.1 BREACHES AND DISPUTE RESOLUTION.

Contracts in excess of \$250,000. Any dispute arising under this Contract which is not disposed of by mutual agreement shall be resolved in accordance with 2 AAC 108.915.

90.2 TERMINATION.

Contracts in excess of \$10,000. This Contract may be terminated by either party upon 10 days written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination ("Default Termination"). If the Authority terminates this agreement, the Authority will pay the Contractor a sum equal to the percentage of Work completed that can be substantiated either by the Contractor to the satisfaction of the Authority, or by the Authority. If the Authority becomes aware of any non-conformance with the Work or this agreement by the Contractor, the Authority will promptly notify the Contractor in writing of the non-conformance. Should the Contractor's Work remain in non-conformance after having received written notification, the percentage of total compensation attributable to the non-conforming Work may be withheld. The Authority may at any time suspend or terminate ("Convenience Termination") this Agreement for its needs or convenience with or without cause upon written notice. In the event of a Convenience Termination, the Contractor will be compensated for all authorized Work and authorized expenditures performed to the date of receipt of written notice of termination plus reasonable expenses. No fee or other compensation will be due for any incomplete portion of the Work.

90.3 EQUAL EMPLOYMENT OPPORTUNITY.

Except as otherwise provided under [41 CFR Part 60](#), **all construction contracts** must include, and all contractors and subcontractors must comply with, the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

90.4 DAVIS-BACON ACT, AS AMENDED ([40 U.S.C. 3141-3148](#)).

Construction contracts in excess of \$2,000 are required to comply with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing

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wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. **A copy of the current prevailing wage determination issued by the Department of Labor is included in this solicitation.** Contract and subcontract awards must be conditioned upon the acceptance of the wage determination. All suspected or reported violations must be reported to the Federal awarding agency.

90.5 COPELAND “ANTI-KICKBACK” ACT ([40 U.S.C. 3145](#))

Construction contracts in excess of \$2,000 are required to comply with the **Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#))**, as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Each contractor or sub recipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected or reported violations must be reported to the Federal awarding agency.

90.6 CONTRACT WORK HOURS/SAFETY STANDARDS ACT ([40 U.S.C. 3701-3708](#)).

Construction contracts in excess of \$100,000 that involve the employment of mechanics or laborers are required to comply with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

90.7 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

If the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

90.8 CLEAN AIR ACT ([42 U.S.C. 7401-7671q](#).) AND THE FEDERAL WATER POLLUTION CONTROL ACT ([33 U.S.C. 1251-1387](#)), AS AMENDED

Contracts in excess of \$150,000 are required to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

90.9 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 & 12689)

A contract award **greater than or equal to \$25,000** (see [2 CFR 180.220](#)) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” **Contractors that**

apply or bid for an award exceeding \$25,000 must sign and submit the attached “Debarment” certification with their bid.

90.10 BYRD ANTI-LOBBYING AMENDMENT ([31 U.S.C. 1352](#))

Each contractor and subcontractor must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Disclosures shall be forwarded from tier to tier up to the Authority. **Contractors that apply or bid for an award exceeding \$100,000 must sign and submit the attached “Lobbying” certification with their bid.**

90.11 PROCUREMENT OF RECOVERED MATERIALS.

A state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, **where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000**; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

90.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Contractors and subcontractors are prohibited from entering into a contract (or extending or renewing a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). See [§ 200.216](#).

90.13 DOMESTIC PREFERENCES FOR PROCUREMENTS.

As appropriate and to the extent consistent with law, and to the greatest extent practicable, Contractors are required to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all contracts and purchase orders for work or products under this award. See [§ 200.322](#).

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Project: 23103

DEBARMENT, SUSPENSION, INELIGIBILITY & VOLUNTARY EXCLUSION – 2 CFR 200.214; Executive Orders 12549 and 12689 [Applicable to all federally assisted contracts which exceed \$25,000]**Instructions for Certification:**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective contractor and lower tier participants knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
2. The prospective contractor and lower tier participants shall provide immediate written notice to the Authority if at any time the prospective contractor and lower tier participants learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Orders [12549](#) and 12689. You may contact the Authority for assistance in obtaining a copy of those regulations.
4. The prospective contractor and lower tier participants agrees by submitting this bid or proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
5. The prospective contractor and lower tier participants further agrees by submitting this bid or proposal that it will require the language of this certification be included in all subcontracts and all lower tier participants shall certify compliance with this requirement.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction

(1) The prospective contractor and lower tier participants certifies, by submission of this bid or proposal, that neither it nor its "principals" is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective contractor and lower tier participants is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The Contractor, _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 2 CFR §180 apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

Project: 23103

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING - 31 USC §1352

[Applicable to all federally assisted contracts and to all related subcontracts which exceed \$100,000]

A bidder must submit to the Authority the below certification with its bid response for any federally assisted contract that exceeds \$100,000. Bids that are not accompanied by a completed certification may be rejected as nonresponsive.

1. The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and **submit Standard Form-LLL, "Disclosure Form to Report Lobbying,"** in accordance with its instructions.

2. The undersigned also agrees that he or she shall require that the language of this certification be **included in all lower tier subcontracts, which exceed \$100,000** and that all such recipients shall certify and disclose accordingly.

3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

End of Federal Assurances