

Bid #19-083B

**MATANUSKA-SUSITNA BOROUGH
PURCHASING DIVISION**

PALMER, ALASKA



**BIDDING AND CONTRACT DOCUMENTS FOR
Purchase Telehandler**

OPENING DATE & TIME: Monday, April 22, 2019 @ 3:00 PM

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ADVERTISEMENT

MATANUSKA-SUSITNA BOROUGH
350 East Dahlia Ave.
Palmer, Alaska 99645

A D V E R T I S E M E N T

VENDOR		ACCOUNT #	DATE FOR ADVERTISEMENT
Anchorage Daily News		MATA 0070	April 3, 2019
Frontiersman		CONTRACT	April 5, 2019
TYPE OF AD:	<input type="checkbox"/> Display	<input checked="" type="checkbox"/> Classified	<input type="checkbox"/> Public Information

The material herein must be printed in its entirety on the dates shown above. Affidavit of publication is required prior to payment.

MATANUSKA-SUSITNA BOROUGH
REQUEST FOR BID 19-085B
Purchase Telehandler

The Matanuska-Susitna Borough is soliciting bids to purchase a Telehandler which must meet the specifications contained in the Bid Documents.

Bid documents are available to download for free beginning **April 3, 2019** from the MSB Purchasing Division's website at, <http://www.matsugov.us/contractopportunities>. For more information call (907) 861-8601, Fax (907) 861-8617, or e-mail Purchasing@matsugov.us.

Cut off for questions: **April 15, 2019 @ 5:00 PM**

Bids open: **April 22, 2019 @ 3:00 PM in the Purchasing Division**

Bids must be received in the Purchasing Division prior to the time fixed for opening of the bids to be considered. Time of receipt will be determined by the time stamp in the Purchasing Division.

Persons needing accommodation in order to participate should contact the borough ADA coordinator at (907) 861-8404.

The Matanuska-Susitna Borough reserves the right to accept or reject any or all bids, waive any and all technicalities or informalities it deems appropriate. Award of this project is subject to the availability of funding.

4/2/19	Approved by: Signature on File
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DEPARTMENT ACCOUNT NUMBER: **100.100.128.422.000**

SECTION II

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDER

01. EXAMINATION OF BIDDING DOCUMENTS AND SITE

The Bidder shall examine carefully, the Bidding Documents before submitting a Bid. The submission of a Bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements and accuracy of the Bidding Documents.

The Borough assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Agreement, unless such understanding or representations are expressly stated in the Bidding Documents or Addenda.

The Bidder shall include in their Bid sufficient sums to cover all items required by the Agreement, and shall rely entirely upon their own examination in making their Bid. The submission of a Bid shall be taken as prima facie evidence of compliance with this paragraph.

If material required for bidding purposes by these documents is absent, the bidder is required to notify the Purchasing Officer by facsimile (907) 861-8617, or by e-mail to purchasing@matsugov.us.

Any interested party submitting a bid/proposal on Matanuska-Susitna Borough (MSB) projects should first review the MSB Debarment/Suspension List. This listing is available off of the MSB Purchasing Division web page. Any submission of a bid/proposal, with participation or involvement of an individual, company, firm or corporation on this list will render the bid/proposal as non-responsible.

02. INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

Bidders shall notify the Purchasing Officer promptly of any error, omission, or inconsistency that may be discovered during examination of the Bidding Documents and the proposed construction site. Requests from Bidders for interpretation or clarification of the Bidding Documents shall be made in writing, email, or fax to the Purchasing Officer and shall arrive at least five (5) working days prior to the date for opening Bids. Any questions received after this date may not be answered. Oral questions may be presented at a prebid conference if one is provided for in the Bidding Documents. Interpretations, corrections, or changes, if any, to the Bidding Documents shall be made by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally, at the prebid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum. All Addenda issued during the time of bidding shall become part of the Agreement Documents. Questions or requests for clarifications shall be directed to the borough's Purchasing Officer. Questions or requests for clarification directed to any other member of the borough staff, or consultants may be grounds for rejection of bid as being irregular.

It is the Bidders sole responsibility to ascertain that they have received all Addenda issued by the Purchasing Office. Addendum will be issued by facsimile, e-mail, and/or U.S. Mail. All Addenda must be acknowledged in the space provided on the Bid Form. If no Addendum has been issued, leave blank or write or type "N/A" on the Bid Form in the space provided.

03. PREPARATION AND SUBMISSION OF BIDS

The Bidder with their usual signature must sign each Bid in longhand, preferably in blue ink. Bids shall be submitted on the bid forms supplied and must be manually signed. Bids shall be submitted in a sealed envelope with the Invitation Number plainly marked on bottom left corner. Bids may be faxed only if specifically stated in bid documents.

Where required on the Bid, Bidders must quote on all items and they are warned that failure to do so may disqualify the Bid. When quotations on all items are not required, Bidders shall insert the words "no bid" in the space provided for any item where no quotation is made. If erasures or other changes appear on the forms, the person signing the Bid must initial each such erasure or change.

Bids shall specify a unit or lump sum price, typed or written in ink in figures, for each bid item called for. In case of error in the extension of prices, the unit price will govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not called for, conditional or alternate bids not called for, qualified bids, or irregularities of any kind.

04. DIRECTIONS FOR DELIVERY OF BIDS

Envelopes containing the bid, must be sealed, addressed and marked indicating bid number, bid name, and bid opening time and date, and delivered to:

Matanuska-Susitna Borough
Purchasing Division
350 East Dahlia Avenue
Palmer Alaska 99645-6488

05. BIDDERS CHECK LIST

A checklist is provided on the Submittal Page as a courtesy to prospective bidders. The checklist may not be all inclusive; it is the Bidder's responsibility to make sure they comply with all requirements within the solicitation documents.

06. RECEIPT AND OPENING OF BIDS

Bids shall be submitted to the Purchasing Division at or before the date and time of opening specified in the Invitation to Bid and the exact date and time of receipt of Bids will be recorded. Late Bids will not be considered. Time of Bid receipt will be determined by time stamp of the Purchasing Division.

Facsimile or other electronic transmitted bids will not be considered. Modification by facsimile of Bids already submitted will be considered if received by the Purchasing Officer at or prior to the time of Bid opening fixed in the Invitation to Bid. Facsimile modifications shall not reveal the amount of the original or revised Bid.

No liability will attach to the Borough for the premature opening of, or the failure to open, a Bid not properly addressed and identified.

Bids may be withdrawn on written or facsimile request received from Bidder prior to the time specified for Bid opening.

If more than one Bid is offered by any one party, by or in the name of their clerk, partner, or other person, all such Bids will be rejected. A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the work.

07. EVIDENCE OF QUALIFICATIONS

Upon request of the Owner, a Bidder whose Bid is under consideration for the award of the Agreement shall submit promptly to the Owner satisfactory evidence of the Bidder's financial resources, their experience, their performance in completing other projects of a similar nature and the organization and equipment they have available for the performance of the Agreement.

08. BIDDER QUALIFICATIONS

Before the Bid is considered for award, the Purchasing Officer reserves the right to determine whether or not a Bidder is responsible and to require the Bidder to complete a Bidder Qualification Form and/or a current financial statement prepared by a Certified Public Accountant.

The Purchasing Officer shall determine whether a Bidder is responsible on the basis of the following criteria:

- The skill and experience demonstrated by the Bidder in performing Agreements of a similar nature.
- The Bidder's record for honesty and integrity.
- The Bidder's capacity to perform in terms of facilities, personnel and financing.
- The Bidder's past performance under Borough Agreements. If the Bidder has failed in any material way to perform its obligations under any Agreement with the Borough, the Bidder may be determined as a non-responsible Bidder.

A Bidder's representations concerning their qualifications will be construed as a covenant under the Agreement. Should it appear that the Bidder has made a material misrepresentation, the Borough shall have the right to terminate the Agreement for the Contractor's breach, and the Borough may then pursue such remedies as provided in the Agreement Documents or as provided by state statute, borough code or as appropriate.

Any determination that a Bidder is non-responsible will be made by the Purchasing Officer. Such determination will be made in writing to the Bidder setting forth the reasons for such determination.

09. ACTION ON BIDS

The Borough reserves the right to reject any and all Bids, and to waive any informalities and irregularities in Bidding or award of the Agreement.

Unless otherwise stated in the Bidding Documents, a purchase order, if awarded, shall be issued to the responsible Bidder who submits the lowest responsive Bid. When the Bidding Documents contain a base bid and alternates, the total of the base bid and the alternates to be awarded shall be used to determine the low Bidder.

When the Bidding Documents contain a base bid and additive alternates, the low Bidder will be determined by the total of the lowest base bid and any alternates to be awarded. Additive alternates will be exercised at the option of Owner. Owner may select all, none, or any combination of Alternates in any order. All bids shall be evaluated on the basis of the same alternates.

When the Bidding Documents contain deductive alternates, the low Bidder will be determined by the lowest base bid. If the lowest base bid exceeds the funds available, the low Bidder will be determined by the total of the base bid and any deductive alternates selected. Owner may select all, none, or any combination of Deductive Alternates in any order. All bids shall be evaluated on the basis of the same alternates.

The amount of the purchase order shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by the Purchasing Officer and specified in the Agreement.

On all Bids, Notice of Intent to Award or rejection will be given within sixty (60) days of Bid opening. The notice will be in writing and signed by the Purchasing Officer. A Notice of Intent to Award, and no other act of the Borough or its representatives, constitutes an acceptance of a Bid. The acceptance of a Bid shall bind the successful Bidder to perform on the resultant purchase order.

When vendors and/or contractors propose equal pricing (or tie bids), bids will be reviewed by the Purchasing Officer to determine responsiveness. If all requirements for the bid being responsive are met, then the award or recommendation of the award will be made in favor of the bid which received the earliest time stamp prior to bid opening.

10. INSURANCE

See insurance requirements contained within the Terms and Conditions.

11. ESTIMATES OF QUANTITIES APPROXIMATE ONLY

It is expressly agreed that the quantities shown in the Bid Form, whether for a "Unit Price Bid" or in connection with a "Lump Sum Bid" given under the heading "Bid Form" are approximate only for use as a basis for comparison of Bids and are not to be taken to be either representations or warranties. The Owner does not expressly, nor by implication, agree that the actual amount of work will correspond therewith.

12. EXECUTION OF AGREEMENT

The Bidder whose Bid is accepted shall be issued a purchase order. The Bidder shall furnish the required insurance within five (5) working days after Notice of Intent to Award is issued if required. The purchase order shall be considered fully executed when the purchasing officer signs

the purchase order. The purchase order shall be governed by the terms and conditions set forth within this solicitation.

13. CONTRACTOR'S WARRANTY

All work under the Agreement shall be under warranty by the Contractor for one year from the Final Acceptance Date except when a different period is identified in the SPECIAL PROVISIONS. This warranty shall require the Contractor to remedy promptly, without cost to the Owner, any and all defects in material and workmanship including any consequential damages resulting from defective materials or workmanship. If the defect, in the opinion of the Borough Representative, is of such nature as to demand immediate repair, the Borough shall have the right to take corrective action and the cost thereof shall be borne by the Contractor.

14. CONTRACTORS' VIOLATIONS OF TAX OBLIGATIONS

- A. No Agreement shall be awarded to any individual, firm, corporation, or business who is found to be delinquent in any area of taxation, lease, land payment, or rental agreement, with the Borough which has not been remedied within 10 calendar days of receipt of written notice.
- B. The Agreement can be terminated for cause if it is determined that the individual, firm, corporation, or business is in arrears of any taxation, lease, land payment, or rental agreement, that is due to the Borough that is not remedied within 10 calendar days of notification by regular mail.
- C. The Borough reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent Borough taxes, lease, rental agreement, or land sale payments, against any amount owing to the same under an Agreement between the Borough and the same.

15. BID PROTESTS

Within two days of service of the Purchasing Officer's determination of the apparent successful proposal, a proposer who wishes to protest the determination shall lodge a protest with the Purchasing Officer. The protest shall be in writing on a form provided by the Purchasing Officer. The protest shall describe with particularity the alleged errors in the award recommendation. The Purchasing Officer shall conduct a review and, within three working days of receipt of the protest, issue a determination. Full text of the protest and appeal procedures, as well as the protest form, can be downloaded from the Borough's web site at www.matsugov.us, selecting "Services", then selecting "Forms" under Forms and Documents, then selecting "Purchasing Forms". A copy can also be obtained by contacting the Purchasing Division at (907) 861-8601.

In order to receive notice of the apparent successful proposal, the proposer must provide the Borough with a fax number. It is the responsibility of the proposer to follow the selection process and stay apprised of the bid or proposal due date, the date notice of apparent successful proposer is issued and the period in which protests can be filed.

16. MATANUSKA-SUSITNA BOROUGH BUSINESS LICENSE

Matanuska-Susitna Borough Code, Chapter 3.36, requires that all entities conducting business within the Borough boundaries have a current business license issued by the Matanuska-Susitna Borough. Prior to any award as a result of this solicitation, the Contractor may be required to provide proof that they have a current Matanuska-Susitna Business License or proof that they have applied for one. Copies of this borough code and instructions on obtaining a business license may be obtained at the Collection Counter, Finance Department, or by calling 907-861-8632. MSB §3.36.040.

17. PROCEDURES FOR AWARD

Purchase Order(s) shall be awarded by written notice issued by the Purchasing Officer to the lowest qualified, responsive, and responsible Bidder, provided that, if the lowest bids are approximately equal, local bidder preference may be applied.

18. LOCAL BIDDER PREFERENCE

Purchase orders shall be awarded to the lowest qualified, responsive and responsible Bidder, provided that, if the lowest bids are approximately equal, that is, within the lesser of \$2,000 or 5 percent of each other, preference may be given to local Bidders who maintain and operate businesses within the boundaries of the Borough. MSB 3.08.240

19. QUALIFIED AND RESPONSIBLE BIDDER

The Borough reserves the right to require the Bidder to submit information pertaining to its products, service, reputation, and experience, in order to determine, at the Borough's sole discretion, if the Bidder is a qualified vendor. Past dealings with the Borough and other government agencies will be considered in determining if the Bidder is a responsible vendor.

20. THIRD-PARTY FINANCING AGREEMENTS AND/OR ASSIGNMENTS OF PAYMENT NOT ALLOWED

Because of additional administrative and accounting time required of borough departments/divisions when third party financing agreement and/or assignments of payment are permitted, they will not be allowed under any agreement resulting from this Invitation to Bid.

21. LICENSE REQUIREMENTS

All Contractors, and sub-contractors must comply with state of Alaska requirements regarding licensing. Reference the state of Alaska's licensing requirements for performing work under this contract.

22. DESCRIPTIVE LITERATURE

- A. "Descriptive literature" means information (e.g., cuts, illustrations, drawings and brochures) that is submitted as part of a bid. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in this solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5)

methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective contractor or for operating or maintaining equipment.

- B. Descriptive literature must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in the solicitation for receipt of bids. Failure to submit descriptive literature on time may, at the discretion of the Purchasing Officer, require rejection of the bid.
- C. The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation may, at the discretion of the Purchasing Officer, require rejection of the bid.

23. SPECIAL PROVISIONS

- A. Any bid not meeting the requirements of this Solicitation may be considered non-responsive.
- B. Unless otherwise provided for elsewhere in this solicitation, the F.O.B. Destination for this solicitation is:

Delivery addresses are contained in the Scope of Work / Specifications

Any bid quoting other than F.O.B. Destination will be considered non-responsive.

- C. Bid may not be withdrawn for a period of sixty (60) days from the date of bid opening.

SECTION III

SCOPE OF WORK/SPECIFICATIONS

Bid # 19-083B

Purchase Telehandler

Specifications

GENERAL SPECIFICATION:

Schedule A: It is the purpose of this specification to describe a new, unused and of the manufacturer's latest current model and design telehandler.

Unit shall include all standard equipment and accessories as advertised in the manufacturer's specification sheet of model offered, unless specified herein.

APPLICATION:

Primary application is for use in setting up firefighter testing and training props as well as snow plowing in the winter months.

TYPICAL UNIT:

*CAT TL943D and above

*JCB 509-45 and above

MINIMUM REQUIRED FEATURES:

Minimum rated load capacity of 9000 lbs.

Minimum reach of 42'

Minimum 74 horse power engine

Fully heated cab

2 wheel drive with 4 wheel drive capability

Schedule B: Used telehandler, model year 2015 or newer with less than 2500 operating hours which meets the minimum required features listed above. The telehandler attachments (Additive Alternates) for the used unit shall be bid on Additive Alternates, Schedule B.

Additive Alternates: (Schedule "A" = new and unused / Schedule "B" = used and compatible with used telehandler as specified on Schedule "B").

Attachments:

Light material bucket – 4 yard

Pallet forks – 48"

Utility forks - - minimum 72"

Man lift

Sweeper – minimum 96"

Stabilizers

- Descriptive Literature shall be included with the bid form to be considered responsive.
- Delivery required within 120 days upon receipt of order
- Bid prices must include all shipping and handling costs to Wasilla, Alaska 99654.
- Deliver to:
 - Matanuska-Susitna Borough Department of Public Safety
 - Central Mat-Su Station 62
 - Mile Post 7, Knik Goosebay Road
 - Wasilla, Alaska 99654

SECTION IV

BID FORM

**BID FORM
SOLICITATION #19-083B
Purchase Telehandler**

Having carefully examined the Scope of Work and all Bidding and Contract Documents as listed in the "Table of Contents" and in compliance with the "Invitation for Bids", the undersigned hereby proposes to furnish all materials, labor, equipment, and supervision necessary to complete **19-083B, Purchase Telehandler** for the Matanuska-Susitna Borough in full accordance with the Bidding Documents. **Bid will be awarded to the responsive and responsible bidder who meet specifications and deemed most cost effective for the Borough either Schedule "A" or Schedule "B" and any selected alternates.**

It is not required to bid on both schedules.

Bid Prices must be inclusive of all shipping and handling charges to Wasilla, Alaska, 99654.

BID ITEM	DESCRIPTION	BID PRICE
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SCHEDULE A

A1.	Model Year 2019 Telehandler per Bid Documents and Specifications (New & Unused)	\$ _____
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ALTERNATES (SCHEDULE A)

Additive Alternate #A1	Light material bucket – 4 yard	\$ _____
Additive Alternate #A2	Pallet forks 48"	\$ _____
Additive Alternate #A3	Utility forks - minimum 72"	\$ _____
Additive Alternate #A4	Man Lift	\$ _____
Additive Alternate #A5	Sweeper 96" minimum	\$ _____
Additive Alternate #A6	Stabilizers	\$ _____

Signature

Date

Company Name

BID FORM CONTINUED ON FOLLOWING TWO (2) PAGES

**BID FORM (CONTINUED)
SOLICITATION #19-083B
Purchase Telehandler**

SCHEDULE B

BID ITEM	DESCRIPTION	BID PRICE
B1.	Model Year 2015 or newer Telehandler per Bid Documents and Specifications	\$ _____

ALTERNATES (SCHEDULE B)

Additive Alternate #B1	Light material bucket – 4 yard	\$ _____
Additive Alternate #B2	Pallet forks 48"	\$ _____
Additive Alternate #B3	Utility forks - minimum 72"	\$ _____
Additive Alternate #B4	Man Lift	\$ _____
Additive Alternate #B5	Sweeper 96" minimum	\$ _____
Additive Alternate #B6	Stabilizers	\$ _____

Signature

Date

Company Name

BID FORM CONTINUED ON FOLLOWING ONE (1) PAGE

BID FORM (CONTINUED)
SOLICITATION #19-083B
Purchase Telehandler

By signing below, the Bidder is hereby certifying to the following –

1. The Bidder has carefully examined the bid documents for solicitation for the above named bid and agrees to perform all specified services for the sum(s) provided.
2. The individual signing below, or the firm association or corporation of which they are a member, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this solicitation.
3. The individual signing below is authorized by the firm association or corporation to bind such association or corporation to a legal contract.
4. The individual signing below, or the firm association or corporation of which they are a member, is not debarred or suspended from doing business with the Matanuska-Susitna Borough.
5. They are acknowledging receipt of the following Addenda Numbers (if no addenda have been issued, either leave blank or write "N/A"):

Addenda numbers being acknowledged: _____
--

Company Name

Date

Mailing Address

Signature

City, State and Zip Code

Printed (or typed) Name

Contact Person (printed or typed)

Title (printed or typed)

Phone Number

Email Address

Facsimile Number

State and Specialty license number

<p>It shall be the responsibility of the Bidder to see that their bid is received at or before the date and time fixed for opening.</p>	<p>To be considered responsive, Bidders should include the following with their bid:</p> <ul style="list-style-type: none"> ✓ Signed Bid Form (acknowledging Addenda if applicable) ✓ Descriptive Literature – photos encouraged for used unit ✓ Other items as required in Instructions to Bidders and Specifications/Scope of work
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SECTION V

TERMS AND CONDITIONS

CONTRACT TERMS AND CONDITIONS

Section headings are for purposes of convenience only and are not intended to form a part of nor to be used for interpretation of the text hereof, nor are any provision listed in any particular order of precedence. By the acceptance of this Purchase Order and/or commencement of performance for Goods, Seller agrees that the following terms and conditions apply to this contract.

01. DEFINITIONS

- a) "Buyer" shall mean the Matanuska-Susitna Borough.
- b) "Seller" shall mean the person or entity signing this Contract to supply the Goods required by the Buyer.
- c) "Contract" shall mean all terms and conditions, exhibits, amendments, modifications or other such documents set forth herein which shall govern the performance of the Seller. The term "Contract" and "Purchase Order" are interchangeable.
- d) "Goods" shall mean the material and/or equipment to be provided by Seller, as described by Buyer, and any additional material and/or equipment as may be required in connection with this Contract.
- e) "Destination" shall mean the area or location designated by the Buyer to which Goods shall be delivered.

02. RELATIONSHIP OF PARTIES

Seller, including its employees, agents or representatives, shall be deemed an independent contractor and not an agent or employee of the Buyer. All benefits, coverage's and claims of its employees shall be the sole discretion of the Seller. Unless specifically authorized in writing by the Buyer, Seller shall have no authority to make commitments of any kind on behalf of the Buyer.

03. INTEREST OF MEMBERS OF THE BOROUGH AND OTHERS

No officer, member, or employee of the Borough, and no member of its governing body, and no other public official of the governing body, shall participate in any decision relating to this Supply and Purchase Contract which affects his personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested in having any personal or pecuniary interest, direct or indirect, in this Supply and Purchase Contract.

04. CONFLICT OF INTEREST

The Seller, all employees of the Seller, contractors and other personnel employed by the Seller providing materials or services under this Supply and Purchase Contract shall in no way stand to gain financially from the terms of this contract except for wages, salaries or bonuses paid by the Seller and shall abide by federal, state, and local laws and regulations associated with conflict of interest and financial disclosure. The Seller covenants, that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Seller further covenants that in the performance of this contract, no person having any such interest shall be employed.

05. RISK OF LOSS

Notwithstanding any agreement with respect to deliver terms or payment of transportation charges, Seller shall bear risk of loss or damage as to Goods rejected by Buyer or as to which acceptance has been revoked. Further, until delivery of Goods, including related services and information, risk of loss, regardless of cause, is Seller's responsibility.

06. WARRANTY

Seller warrants that the Goods supplied are merchantable, of highest quality, comply with specifications, drawings and data submitted to or by Buyer in connection with this Contract, are free from defects, whether patent or latent, in design, material and workmanship and are suitable for the particular use for which the items are purchased and are free and clear of all liens and encumbrances. Seller further warrants that it has secured Buyer's right to own, sell or use Goods delivered under this Contract. Such warranty, together with service warranties, guarantees and other express or implied warranties, shall run in favor of the Buyer and shall survive any inspection, delivery or payment of and for the Goods. Seller will be responsible for all damages and costs incurred by Buyer arising out of or in connection with any breach of warranty. For purposes of this Contract, Goods shall include any documentation, such as quality control or test records, certificates of compliance that may be specified in connection with the Contract or are customarily furnished in the trade.

07. REMOVAL OF DEFECTIVE MATERIAL

Seller will promptly remove, and replace at the Buyer's sole discretion, any material that the Buyer designates as nonconforming or defective.

08. BUYER SUPPLIED PROPERTY

Buyer shall retain title to any drawings, sketches, designs, patterns, dies, molds, copying equipment and materials of every description paid for or supplied by Buyer for use in the performance of this Contract. Seller shall hold and maintain any such items at its risk and expense, shall keep such items insured at its expense while in its custody or control in an amount equal to the replacement cost thereof with loss payable to the Buyer and shall not use such items except in performance of this Contract. All such items shall be delivered to the Buyer upon demand in the same condition as when received, except for reasonable wear and tear and except to the extent such items have been incorporated into Goods delivered to Buyer or consumed in the normal performance of this Contract.

09. DRAWINGS, DATA AND MANUALS

Seller will supply proper operating, training, maintenance, installation drawings, technical data and any other documentation that is required by the contract documents.

Seller shall submit any drawings, technical data or other such documents required for performance of this Contract for review by Buyer. Seller shall comply with all comments of the Buyer regarding such documents, but the Buyer's review shall not relieve Seller of its responsibility for correctness of engineering, design, workmanship, material and all other aspects of the Goods or from any other liability hereunder. Omissions from design drawings and technical data (data) which are manifestly necessary to carry out the Work shall not relieve

the Seller from performing such omitted details or Work, but they shall be performed as if fully and correctly set forth and described in the data. All documents including but not limited to studies, calculations, assumptions, data, findings, results and reports and other information resulting from the performance of Seller hereunder shall become property of the Buyer. Seller shall, unless otherwise directed, deliver to the Buyer all such documents and information and Buyer shall have the right to use them for any purpose whatsoever.

10. DELAYS

Time is of the essence in Seller's performance of this Contract. If Seller does not deliver material timely in accordance with the requirements of this Supply and Purchase Contract, Seller understands Buyer's work may be disrupted and delayed, and Seller may be required to pay Buyer any reasonable damages sustained as a result, unless the Contract provides for Liquidated Damages, at which point the Liquidated Damages would be applicable.

11. EXCESS MATERIAL

Seller agrees to accept the return of any Goods that may become excess, as determined by Buyer, and payment due from Buyer shall be equitably reduced.

12. SUBSTITUTIONS

No substitutions will be permitted without the express written consent of the Buyer. If Seller proposes any substitution, Seller guarantees that the substitution is equal in quality, capacity, durability, appearance, function, ease of maintenance, and ease of installation to the material originally specified.

13. INSPECTIONS AND TESTING

Buyer may inspect and test material at any time. Seller will facilitate Buyer's inspection and testing which may take place at the factory, in the warehouse, on the road, or in the field.

14. AUDITS

At any time during normal business hours and as often as the Borough or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of the Contractor's records with respect to all matters covered by this contract and the Seller will permit representatives of the Borough or the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records, personnel information, conditions of employment, and other data relating to all matters covered by this contract.

15. COMPLIANCE WITH THE LAW

Seller shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, license and permit conditions or requirements (hereinafter "Laws"), including, but not limited to, all Laws pertaining to the environment, natural resources, employment, health and safety, and any other Laws affecting Seller's performance of this Contract. All fees and charges in connection with Seller's compliance with applicable Laws shall be borne by Seller. In the event of a violation by Seller of any Laws, or the failure of Seller to comply with same,

Seller shall pay all fines, penalties and other expenses, including attorney fees, imposed upon or incurred by Seller or Buyer in connection therewith.

16. CHANGES

Buyer, by written order, may delete material to be supplied under this Supply and Purchase Contract, and the Supply and Purchase Contract Price will be equitably reduced. Buyer may order an increase in material to be supplied at the unit prices stated in the Supply and Purchase Contract. If no unit prices are stated, Seller will promptly, at the request of the Buyer, quote prices, and Buyer will promptly accept or reject the quote.

17. TRANSPORTATION CHARGES

Except in cases where Goods were quoted F.O.B. Destination, and unless otherwise agreed to in writing, transportation charges shall be prepaid and separately invoiced to Buyer. No insurance or premium transportation costs will be allowed unless authorized by Buyer.

18. ASSIGNMENTS AND SUBCONTRACTORS

The Contractor may not assign any interest in the Contract to another person, nor delegate any duties to a subcontractor or other person without the prior written approval of the Purchasing Officer. Any attempt by the Contractor to assign any interest or delegate duties under the Supply and Purchase Contract shall give the Buyer the right to immediately terminate this Contract.

19. INDEMNITY

The Seller shall indemnify, defend, and hold and save the Buyer, its elected and appointed officers, agents, and employees harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. The Seller shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from Seller, or Seller's officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Buyer or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, Seller shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Buyer, its agents, or employees.

20. OFFSETTING ACCOUNTS

Buyer may offset against the price of this Supply and Purchase Contract the amounts of any obligations of Seller to Buyer, whether arising out of this or any other project.

21. TERMINATION

Buyer has the absolute right to terminate or suspend Work under this Contract by written notice to Seller. Such termination or suspension may be made in whole or in part and shall be at the

sole discretion of the Buyer, may be done at any time and may be for any reason. Notice of termination or suspension may specify the schedule or manner and other conditions of the termination or suspension and Seller shall comply with therewith. In such event, Seller shall be entitled to payment for the Work performed up to the time of such termination or suspension in accordance with the terms of this Contract, including such expenditures as in the judgment of the Buyer are necessarily incurred by Seller in the orderly termination or suspension of its Work as prescribed in the notice.

22. KEY PERSONNEL

To the extent that Key Personnel are specified for the performance of this Contract, such Key Personnel are considered to be essential to such performance. Prior to diverting any of the specified individuals to other programs, Seller shall notify Buyer not less than ten (10) days in advance and gain approval of Buyer. Seller shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation. No substitutions or deviations shall be made by the Seller without the written consent of the Buyer.

23. ATTORNEY'S FEES

In the event of litigation arising out of this Contract, or performance or interpretation thereof, the court will award attorney fees pursuant to the Rule 82 of the Alaska Rules of Civil Procedure.

24. JURISDICTION AND CHOICE OF LAW

Any civil action arising from this Supply and Purchase Contract shall be brought in the Superior Court for the Third Judicial District of the state of Alaska at Palmer or in the Federal District Court for the State of Alaska in Anchorage. The law of the state of Alaska shall govern the rights and obligations of the parties.

25. NON-WAIVER

The failure of the Buyer at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provisions, no in any way effect the validity of this contract or any part thereof, or the right of the Buyer thereafter to enforce each and every protection hereof.

26. SEVERABILITY

If any provision of the Supply and Purchase Contract or the application thereof to any person or circumstances is held invalid, the remainder of this contract and its application to other persons or circumstances shall not be affected thereby.

27. NOTICES

Any notice required pertaining to the subject matter of the Contract shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

Buyer: Matanuska-Susitna Borough, Purchasing Office
350 East Dahlia Avenue, Palmer, Alaska 99645

Seller: _____

28. EQUAL EMPLOYMENT OPPORTUNITY

A. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. The Seller shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Seller agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam war era. The Seller will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Contract. The Seller shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in this section for applicants for employment and employees as the Buyer may require.

B. The Seller shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the Buyer may require.

29. INSURANCE

Seller warrants that it has obtained or will obtain such public liability, product liability, property damage employees' liability and compensation insurance as will protect Buyer from all risks arising out of the manufacture, sale or use of the Goods. If requested by Buyer, Seller shall furnish to the Buyer within three (3) days following the receipt of this Contract, a Certificate of Insurance acceptable to the Buyer evidencing compliance with the minimum insurance coverage required by Buyer as stated on the Insurance Requirements, the terms and conditions of which are incorporated herein.

30. STOP WORK ORDER

Buyer may, at any time, by written notice to Seller, stop all or part of the Work hereunder for up to ninety (90) days. Upon receiving a stop-work order, Seller shall immediately comply with

its terms and take all reasonable steps to avoid incurring any additional costs allocable to such work. Within ninety (90) days after the effective date of the stop-work order, Buyer shall either cancel the stop-work order or terminate the Work covered by the stop-work order. Buyer shall make an equitable adjustment in the delivery schedule and/or price if the stop-work order results in an increase in time or cost for performance. Seller must assert a claim for equitable adjustment within fifteen (15) days after the end of the work stoppage.

31. WORK PERFORMED AT SELLER'S RISK

Seller shall perform all work at its risk and if the Work or any portion thereof shall be damaged in any way before the final completions and acceptance of the Work, Seller shall promptly repair or replace such damaged Work without expense to the Buyer. Seller shall be responsible for any loss or damage to equipment or other articles used or held for use in connection with the Work.

32. FLOW DOWN PROVISION

In the event that this Contract is issued in connection with another government agency, the Buyer will make every effort to include any flow down or contract provisions required by that agency in this Contract. The Buyer reserves the right to include, and Seller agrees to comply with any flow down or other agency provisions. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both Buyer and Seller agree to negotiate in good faith for that provisions inclusion into the Contract.

33. CONTRACTS ENFORCEABLE AGAINST THE BOROUGH (MSB CODE 3.08.120)

A contract for supplies, services, professional services or construction, or any amendment to the contract, may not be enforced against the borough unless its terms have been approved in accordance with this chapter, and unless the contract or amendment to the contract has been set forth in writing, executed in accordance with this chapter.

34. UNDERSTANDING

The Seller acknowledges that the Seller has read and understands the terms of this Contract, has had the opportunity to review the same with counsel of the Seller's choice, and is executing this contract of the Seller's own free will.