

# **INFORMAL REQUEST FOR PROPOSAL 20-091P**

**MATANUSKA-SUSITNA BOROUGH  
PURCHASING DIVISION  
PALMER, ALASKA**



**INFORMAL PROPOSAL DOCUMENTS FOR**

**COORDINATE AND FACILITATE HISTORIC PRESERVATION  
PLAN - PHASE 1 (RE-SOLICIT)**

**CLOSING DATE & TIME: Friday, February 14, 2020 @ 4:00PM**

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**INSTRUCTIONS TO PROPOSERS**

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## INSTRUCTIONS TO PROPOSERS

### 20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1 (RE-SOLICIT)

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#### 01. EXAMINATION OF DOCUMENTS AND SITE

Before submitting a proposal, the Proposer is encouraged to:

- a) Carefully examine and acquaint themselves with all portions of the proposal and specifications.
- b) Fully inform themselves of existing conditions and limitations.
- c) If material required for proposal purposes by these documents is absent, the Proposer is required to notify the Purchasing Officer.
- d) Any interested party submitting a 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 proposal, with participation or involvement of an individual, company, firm or corporation on this list will render the proposal as non-responsible.

#### 02. INTERPRETATION

Should a Proposer find discrepancies in, or omissions from, the drawings or specifications, or be in doubt as to their meaning, they should at once notify the Purchasing Officer who will send written instructions or addenda to all known plan holders. The Purchasing Officer will not be responsible for oral interpretations. **Questions must be received in writing.** Questions received less than five (5) working days before proposal close may not be answered. All addenda issued during the time of proposals 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 proposal as being irregular.** E-mail questions to [purchasing@matsugov.us](mailto:purchasing@matsugov.us) or fax questions to the Purchasing Officer at (907) 861-8617.

#### 03. FORM OF PROPOSAL

Proposals should be submitted in accordance with the Section entitled *Proposal Submission & Evaluation Criteria*.

#### 04. ALTERNATES

Alternate proposals, other than those called for in this solicitation, shall not be considered. The failure of a Proposer to propose upon all alternates called for may cause the rejection of the proposal as irregular.

#### 05. SIGNATURE

The Proposer shall sign the original proposal in longhand, preferably in **blue** ink.

#### 06. SUBMISSION OF PROPOSAL

Electronic Submission Instructions: Email completed proposal to [Purchasing@matsugov.us](mailto:Purchasing@matsugov.us), be sure to include the IRFP number and title in the email subject and/or body of the email.

Paper Submission Instructions: Submit One (1) paper copy of proposal, clearly marked "**ORIGINAL**", with an originally signed submittal page, and one electronic copy on portable USB drive of the submitted proposal documents, in PDF format; both shall be enclosed in a sealed envelope, addressed, marked, and delivered to the following address: Matanuska-Susitna Borough, Purchasing Division, 350 E. Dahlia Avenue. Palmer, Alaska 99645. Sealed envelope should reflect the following in the lower left corner of the envelope: Proposal number, title, date and time of closing.

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

#### 07. SUBMITTAL PAGE

The submittal page must be completed, signed and returned with the proposal. Proposers should acknowledge addenda, if any, on the submittal page. The bottom of the submittal page contains a list of documents that should be included as a part of the proposal. Unless otherwise stated elsewhere in this

solicitation, the submittal page and any required licensing is not counted toward any stipulated page limitation(s).

## **08. MODIFICATIONS**

No oral or telephone modifications of any proposal submitted will be considered.

## **09. WITHDRAWAL OF PROPOSAL**

Proposers may withdraw their proposal either personally or by written request at any time prior to the time set for the proposal closing. No proposal may be withdrawn after the time set for the closing thereof. Proposals may be modified after proposal closing only as a result of negotiations.

## **10. EVIDENCE OF QUALIFICATIONS**

Upon request of the Borough, a Proposer, whose proposal is under consideration for the award of the Agreement, shall submit promptly to the Borough satisfactory evidence of the Proposer'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.

## **11. AWARD**

Award Shall be made in accordance with MSB 3.08.270.

## **12. BOROUGH'S RIGHT TO REJECT PROPOSAL**

The right is reserved to reject any or all proposals and to waive any informalities. Informalities that cannot be waived (MSB Code 3.08.250) are timeliness and manual signature requirements.

## **13. 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.

## **14. EXECUTION OF AGREEMENT**

The Proposer whose proposal is accepted shall execute the Agreement and furnish the required insurance within five (5) working days after notice of Intent to Award is issued. The Agreement shall be considered executed by the successful Proposer when an authorized representative of the company or firm signs the Agreement and the insurance certificate(s) are received by the Purchasing Officer. Failure or neglect of the proposer to execute the Agreement within the time specified may result in the award of the Agreement to the next highest rated proposer.

The Borough will execute the Agreement within ten (10) working days after execution by the Contractor as set forth above. The date the Agreement is executed by the Borough is the Agreement Date. The rights of the obligations provided for in the Agreement shall become effective and binding upon the parties of the Agreement Date.

## **15. QUALIFIED AND RESPONSIBLE PROPOSER**

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

## **16. CONSULTANT'S VIOLATION 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 or rental agreement with the Borough which has not been remedied within ten (10) calendar days of receipt of written notice.
- b) This Agreement can be terminated for cause if it is determined that the individual, firm, corporation or business is in arrears of any taxation, lease or rental agreement that is due to the Borough that is not remedied within ten (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 against any amount owing to the same under a contract between the Borough and the same.

## **17. INSURANCE**

Proposer shall review the insurance requirements

listed in the purchase order terms and conditions.

## **18. FLOW DOWN PROVISIONS**

This Agreement may include flow down provisions. This Agreement may be issued in connection with another government agency and may include flow down or contract provisions required by that agency. In the event of a conflict between the terms and conditions of the agreement and any flow down terms and conditions, the flow down terms and conditions shall govern. The Contractor and any sub-contractors agree to comply with any and all flow down or contract provisions required by the Borough or another government agency that are included in the Agreement. In the event that flow down or contract provisions required by other agencies or by law are inadvertently omitted from this Agreement, both parties agree to negotiate in good faith for inclusion of those provisions into the Agreement.

## **19. STATUTORY REQUIREMENTS**

Proposers and proposed subcontractors shall be in compliance with the statutory requirements for Alaska licensing included in the certification statement in this RFP package. Non-compliance shall result in rejection of proposal.

## **20. ACCEPTANCE OF CONTRACT/AGREEMENT TERMS AND CONDITIONS**

By signing the Proposal Form/Proposal Submittal Form, the proposer certifies that they have examined and accept the terms and conditions of the Agreement contained in this solicitation. The acceptance is inclusive of, but not limited to, all AGREEMENT REQUIREMENTS, TERMS AND CONDITIONS, GENERAL PROVISIONS, AND SUPPLEMENTAL CONDITIONS along with any and all conditions contained in the INSTRUCTIONS TO PROPOSERS associated with this solicitation. Submission of a proposal in response to this solicitation certifies that the proposer is willing to accept these terms and understands that failure to accept these terms will subject the proposer to forfeiture of the contract/agreement and loss of any bid guarantee as liquidated damages.

Proposers are encouraged to carefully examine the insurance requirements, any bonding requirements, and any Defense and Indemnification clause contained in the sample contract/agreement.

## **21. MILEAGE AND PER DIEM**

The Matanuska-Susitna Borough will not allow

charges for mileage and/or per diem for projects deemed to be in the core area of Borough. The core area is defined as the area north of Knik River Bridge and south of Chickaloon Road on the Glenn Highway and all areas on Parks Highway south of the Willow Creek Bridge. Mileage and per diem outside the core area will be paid at the rates published by the State of Alaska, AAM 60 - Travel.

## **22. PURCHASE ORDER AGREEMENT**

A purchase order agreement will result from this solicitation, please review the purchase order terms and conditions in section IV.

## **23. 3.08.270 OPEN MARKET PROCEDURE**

- a) The purchasing officer may in the best interest of the borough procure all supplies, services, professional services and construction having an estimated value of not more than \$25,000 on the open market without formal advertising or other formal bid procedures.
- b) Whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid by a qualified and responsible bidder.
- c) Awards, where practicable, shall be made to the lowest responsive, qualified and responsible bidder. The purchasing officer shall keep a record of all open market bids received and awards made on the bids.
- d) When requested by the assembly, the purchasing officer shall provide a report to the assembly of all procurements under this section.

## **24. INFORMAL REQUEST FOR PROPOSAL**

This solicitation is being procured under the open market procedures, MSB Code 3.08.270. If cost for this engagement exceeds \$25,000 the IRFP will be cancelled and a formal RFP will be issued.

**SECTION II**

**SCOPE OF SERVICES**

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## SCOPE OF SERVICES

### 20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1 (RE-SOLICIT)

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#### Project Background

The Matanuska-Susitna Borough (MSB) is in the process of updating its 1987 Historic Preservation Plan (HPP). In June 2019, the MSB received a certified local government grant from the State Historic Preservation Office to begin this update. This grant is for Phase I of the update: inventory of past preservation efforts, public outreach, and development of goals, objectives, and next steps for the preservation plan.

#### Scope of Services

The MSB is seeking a contractor to coordinate and facilitate public meetings, and to develop a final deliverable that summarizes and synthesizes HPP Phase I planning efforts, and recommends next steps for the completion of the plan update in HPP Phase II.

#### **Task 1: General Public Meeting Facilitation**

Contractor is responsible for organizing and facilitating general public meetings (two meetings). Contractor will work with MSB staff to develop meeting agenda and content. These meetings are intended to share information about the MSB's preservation planning efforts; and to solicit public comment to aid in the drafting of a plan during HPP Phase II.

#### Goals:

- Educate the general public on preservation planning
- Educate the general public on previous preservation efforts in the MSB
- Solicit comments regarding preservation planning goals, priorities, objectives and information gaps

#### Deliverables:

- Coordinate and notice/advertise two general public meetings
- Facilitate two general public meetings
- Summary notes from meetings

#### **Task 2: Stakeholder Meeting Facilitation**

Contractor is responsible for organizing and facilitating stakeholder group meetings (two meetings). Contractor will work with MSB staff to develop meeting agenda and content. These meetings are intended to share information about the MSB's preservation planning efforts; and to provide an opportunity for preservation professionals and community knowledge bearers to be involved in, and comment on, the MSB's preservation planning process. Comments should aid the drafting of a plan during HPP Phase II.

Stakeholder Group should include representatives of organizations with knowledge specific to preservation planning in the MSB including: Alaskan native organizations, museum and historical societies, state or federal agencies, and cities. The stakeholder group is intended to also be involved in HPP Phase II.

#### Goals:

- Educate the stakeholder group on previous preservation efforts in the MSB
- Solicit comments regarding preservation planning goals, priorities, objectives, and information gaps.

#### Deliverables:

- Coordinate and notice/advertise two stakeholder meetings
- Facilitate two stakeholder meetings
- Summary notes from meetings

### **Task 3: Final Report**

Contractor is responsible for developing a brief final report that summarizes and synthesizes HPP Phase I planning activities and recommends steps to be taken in HPP Phase II to realize the goal of an updated Historic Preservation Plan. The report should:

- Discuss preservation planning generally; including benefits and potential community use of a preservation plan.
- Discuss past and present historic preservation efforts in the MSB (information provided by MSB staff).
- Summarize information gathered in general public and stakeholder meetings, including potential information gaps, and community goals and priorities.
- Develop next steps for drafting an updated local historic preservation plan.

Deliverables:

- Draft report for review by MSB staff
- Final report

### **Budget and Requirements**

Contractor shall provide a proposed budget that specifies costs aligned with each task. Total compensation is not to exceed \$25,000. Hourly rates are not to exceed \$95.74 per grant requirements.

Contractor must review the *Secretary of the Interior's Standards for Preservation Planning*.

These services are being procured through Title 2: Grants and Agreements Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See attachment 2 for applicable contract provisions.

### **Timeline**

All tasks shall be completed on or before August 1, 2020.

**SECTION III**

**PROPOSAL SUBMISSION & EVALUATION CRITERIA**

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## PROPOSAL SUBMISSION & EVALUATION CRITERIA

### 20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1 (RE-SOLICIT)

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#### PROPOSAL SUBMISSION

1. Each proposer shall submit one clearly marked proposal, to include the signed "Submittal Page", preferably in blue ink and One complete electronic copy on Portable USB (if dropped off or mailed). Electronic copy should be merged into one complete file and provided in PDF format. Proposers may email proposal to [Purchasing@matsugov.us](mailto:Purchasing@matsugov.us). Proposer should **not** include cover letters or resumes.
2. The proposals shall be organized in sections as indicated within the evaluation criteria below. The proposal should be limited to **five to ten** single-sided, single spaced pages in length. It is requested that a minimum font size of 10 be used wherever practical.
3. The selected proposal shall be open for inspection after recommendation of award is issued. All scored proposals submitted shall be open for inspection upon execution of an agreement resulting from this solicitation. Offerors should not include proprietary information in proposals if such information should not be disclosed to the public. Any language within a submittal purporting to render all or portions of a proposal confidential will be disregarded. Proprietary information which may be provided after selection for contract negotiations will be confidential if expressly agreed to by the Contracting Agency.

#### BASIS OF SELECTION & AWARD

1. Award of this proposal shall be made in accordance with MSB 3.08.270.
2. This solicitation does not guarantee that a contract will be awarded. All proposals may be summarily rejected if in the best interest of the Borough. Our intent, however, is to select a Contractor in the best interest of the Borough based on a combination of qualifications and pricing. The Contracting Agency expressly reserves the right to waive minor informalities and negotiate changes.
3. All proposals received will be evaluated and ranked in the order of most advantageous to the Borough.

#### TECHNICAL PROPOSAL CRITERIA

1. Demonstrated comprehension of required services and proposed strategy for performance.
2. Relevant experience and credentials of proposed personnel including any subcontractors.
3. Reasonableness of proposed schedule for performance.

## PROPOSAL SUBMISSION & EVALUATION CRITERIA (CONTINUED)

### 20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1 (RE-SOLICIT)

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#### COST PROPOSAL

1. A cost proposal shall be prepared in the below format and broken out by tasks to perform the contract. Note that a cost proposal is not a bid. It is a negotiable offer. A Fixed Price contract is desirable; however, a time and materials not to exceed contract may result if a Fixed Price cannot be negotiated.
2. Firms **should** prepare their cost proposal in the below format.
  - a) Direct Costs of Direct Labor (DCDL). Provide a table with the following columns (Names required only for key staff and persons "in-responsible-charge"): Job Classification, Name, Total Hours, Rate (\$/hr), Estimated Cost per person(\$). Include a total of DCDL.
  - b) Indirect Costs (IDC). Provide a list of the planned indirect costs, include a total of IDC.
  - c) Subcontracts. List each if applicable, the amount for each and attach an estimate in this format for each. Include a total for subcontracts if applicable.
  - d) Expenses. (Equipment, transportation, food and lodging, reproduction, etc. - if not included in Indirect Costs.) Amounts shall be based on actual cost to the proposer, without any profit or other markup. Provide a table with the following columns: Item, Quantity, Cost (\$/Unit), Estimated Cost per expense. Include a total of expenses.
  - e) Total Estimated Cost. Sum of DCDL + IDC + Subcontracts + Expenses.
  - f) Proposed Fee. List a proposed *amount* (not a percentage) for profit.
  - g) Total Cost Proposal. Sum of Total Estimated Cost plus Proposed Fee.

**SECTION IV**

**SUBMITTAL PAGE**

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**SUBMITTAL PAGE**

**20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1  
(RE-SOLICIT)**

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By signing below, the Proposer hereby certifies to the following –

1. The individual signing below, or the firm associated 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 a free competitive process in connection with this solicitation.
2. The individual signed below is authorized by the firm association or corporation to bind such association or corporation to a legal contract.
3. 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.
4. They are acknowledging receipt of the following Addenda Numbers (if no addenda have been issued, either leave blank or write "N/A" or "None").

\_\_\_\_\_  
(List Addenda numbers that you are acknowledging receipt of)

\_\_\_\_\_  
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 (optional)

\_\_\_\_\_  
Facsimile Number

\_\_\_\_\_  
State and Professional License Numbers

It shall be the responsibility of the Proposer to that their proposal is received at or before the date and time fixed for closing.

**Proposers should include the following with their proposal.**

- ✓ Signed Submittal Page (acknowledging Addenda I.A.)
- ✓ One proposal, to include technical and cost proposals.
- ✓ Copy of Insurance Certificate that meets requirements.
- ✓ Any other items required within the Instructions to Proposers & Specifications/Scope of Services.

## **SECTION V**

### **ATTACHMENTS**

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Attachment 1 Secretary of the Interiors Standards for Preservation Planning & MSB Grant Information. (25 pages).

Attachment 2 Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. (14 pages)

**SECTION IV**

**PURCHASE ORDER TERMS AND CONDITIONS**

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## PURCHASE ORDER TERMS AND CONDITIONS

### 20-091P, COORDINATE AND FACILITATE HISTORIC PRESERVATION PLAN - PHASE 1 (RE-SOLICIT)

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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 buyer and/or the 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

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

It is highly recommended that the Contractor confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

The Contractor shall procure and maintain the following insurances:

#### 1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 10/01) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 10/99) covering Automobile Liability, symbol 1 "any auto".
3. Worker's Compensation insurance as required by the State of Alaska and

Employers Liability Insurance.

4. Professional Liability insurance against liability arising out of the rendering or failure to render professional services under this agreement on a form acceptable to the Borough.

## 2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

### 1. General Liability

\$500,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury.

\$500,000 Products/Completed Operations

\$1,000,000 General Aggregate Limit. The general aggregate limits shall apply separately to each project.

If the general liability insurance is written on a claims made form, the Contractor shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

### 2. Auto Liability:

\$250,000 Bodily Injury/Death per Person

\$500,000 Bodily Injury Total

\$100,000 Property Damage

### 3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employers liability shall be endorsed to the following minimum limits:

Bodily Injury - \$100,000 Per Occurrence

Bodily Injury - \$100,000 Per Employee

Bodily Injury by Disease - \$500,000 Policy Limit

### 4. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Contractor to combine an excess liability or umbrella policy with the general liability, auto liability or employers liability. In the instance where the Contractor purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

### 5. Professional Liability:

\$1,000,000.00 combined single limit per occurrence. The professional liability insurance shall be maintained in effect until final acceptance by the Borough of the completed project.

If the professional liability insurance is written on a claims made form, the Consultant shall provide insurance for a period of two years after final repayment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this agreement.

### 3. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the Borough. The Contractor may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, the Contractor shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### 4. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

#### 1. General Liability, Automobile Liability

- a. The Borough, its Administrator, officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the

Contractor; products and completed operations of the Contractor premises owned, occupied or used by the Contractor or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees and volunteers.

- b. The Contractor's insurance coverage shall be primary insurance as respects the Borough, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor insurance and shall not contribute to it.
- c. The Contractor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

## 2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the Borough.

## 3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Borough. Such notice shall be mailed by the Contractor to the attention of the Borough's Purchasing Officer.

## 5. Acceptability of Insurers

Insurance is to be placed with insurers with a minimum A.M. Best rating of A-VII.

## 6. Verification of Coverage

Contractor shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before work commences. The Borough reserves the right to require complete, certified copies of all required insurance policies, at any time.

## 7. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

## 8. Lapse in Coverage

A lapse in insurance coverage is a material breach of this agreement which may result in immediate termination of the agreement, pursuant to the appropriate Section within the contract.

## 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. 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.

### 34. 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.

### 35. INTERGRATION

A. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated by reference into this Agreement as if fully set forth herein:

B. The following documents are incorporated in by reference into this Agreement:

1. 20-091P Solicitation Documents
2. MSB Business License
3. State of Alaska Business License
4. Firm's Proposal & Fee