

INFORMAL REQUEST FOR PROPOSAL 20-096P

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



INFORMAL PROPOSAL DOCUMENTS FOR

**DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL
UPGRADES**

CLOSING DATE & TIME: Tuesday, February 18, 2020 @ 12:00 PM

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SECTION I

INSTRUCTIONS TO PROPOSERS

INSTRUCTIONS TO PROPOSERS

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

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 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, 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. INSURANCE

Proposer shall review the insurance requirements listed in the sample contract terms and conditions.

19. 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.

20. 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.

21. 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.

22. 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.

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

Award of this solicitation will not exceed \$25,000.

SECTION II

SCOPE OF SERVICES

SCOPE OF SERVICES

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

INTRODUCTION

The Matanuska-Susitna Borough (MSB) is requesting proposals from qualified professional engineers to design upgrades for the residential solid waste tipping wall (The Wall) at the Central Landfill near Palmer, Alaska. The scope of work for the project is to develop engineering plans, specifications and a cost estimate for the proposed upgrades. The improvements shall include extension of the existing soldier pile wall eastward to accommodate new disposal containers, reinforcement of the existing wall as needed, and the replacement and expansion of the existing lighting system in the canopy to an energy efficient LED system. Several containers of varying size will be used for different purposes, including construction debris and burn barrel disposal among others.

LOCATION

The Central Landfill (CLF) is located at the southern terminus of North 49th State Street off the Palmer-Wasilla Highway, near Palmer, Alaska. The existing Wall is where the residential customers dispose of their trash in three 120 CY containers after driving past the scale house.

PRE-PROPOSAL MEETING & SITE INSPECTION:

A pre-proposal meeting & site inspection has been setup for interested parties to ask questions about the project and view the residential tipping wall. Interested parties shall meet at the solid waste division building prior to the start of the meeting. 1201 N 49th State St Palmer, AK 99645. Monday, February 10, 2020 at 10:00 AM on site at Central Landfill.



BUDGET

The total budget for this project, which includes both design and construction, is \$150,000. This project is financed by tipping fees collected by the Solid Waste Division (SWD) and managed through its enterprise fund. Additional SWD funding may be made available, as approved by the Borough Assembly, if necessary to complete the project.

SCOPE OF SERVICES (CONTINUED)

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

SCOPE OF WORK

Task 1: ENGINEERING DESIGN - The Wall improvements shall include extension of the existing soldier pile wall eastward to accommodate new disposal containers, evaluation of the existing Wall for structural and material deficiencies, regrading and paving around the existing wall as needed, and the replacement and expansion of the existing lighting system in the canopy to an energy efficient LED system.

Several smaller containers of varying size will be used for different purposes along the new Wall. The MSB wishes to have at least three new truck bays added to the Wall for waste streams other than the typical municipal solid waste (MSW). These new bays will include room for a 120 CY container for construction and demolition debris, and two 40 CY containers for scrap metal, and burn barrel. A conceptual layout of the proposed project is shown in Figure 1, however, this is only a concept and significant adjustments may occur during design. Other containers may be located near the Wall for materials that may be dropped off as space allows. Such containers may receive food scraps and yard waste for composting, or recycling materials (cardboard, plastic and paper) for later delivery to the Valley Center for Recycling Solutions (VCRS).

The proposed extension for the Wall shall be designed to accommodate the public in a safe and efficient manner. The design shall also include, regrading of the embankment and stabilization of the slope on the west side of the Wall.

Engineering drawings, specifications and cost estimates shall be submitted to the MSB for review and approval prior at the Plans-In-Hand (65%) and Pre-Final (95%) stage of development. All final drawings specifications and engineering reports shall be sealed by a professional engineer licensed in the State of Alaska, in accordance with AS 08.48. Electrical engineering plans and specifications shall be sealed by a professional electrical engineer registered in Alaska.

Deliverables shall include both digital and hard copies. 11 x 17" drawings are required for plan drawing submittals, and electronic drawings shall be compatible with 2017 ACAD file formats. The consultant shall provide three (3) hard copies of each submittal.

Task 2: SURVEY – The existing Wall and the area of the proposed project shall be surveyed by a professional surveyor, licensed in the State of Alaska. Surveys shall be conducted using Alaska State Plane Zone 4, and NAVD 88 for the horizontal and vertical data, respectively. Survey work shall include topographic survey and tie to previously established monuments, as shown in the attached "Survey Control Drawing" by All Points North, dated 8-20-2019.

Survey drawings, field notes and calculations shall be submitted to the MSB for review and approval prior to using the survey data for design. Final survey drawings shall be sealed by a professional surveyor licensed in the State of Alaska, in accordance with AS 08.48.

Deliverables shall include both digital and one (1) hard copy. 11 x 17" drawings are standard for submittals, and drawing files should be compatible with 2017 ACAD programs.

Task 3: ASSISTANCE DURING BIDDING AND CONSTRUCTION – The consultant shall provide the Borough with answers in writing to questions from bidders during the bid phase, and the Contractor during the construction phase of the project. This task shall also include Contractor submittal reviews, revisions to sealed drawings and specifications, and other engineering documents, as needed, to complete construction of the project in accordance with the engineer's plans and specifications.

SCOPE OF SERVICES (CONTINUED)

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

SCOPE OF WORK (CONTINUED)

Upon completion of the project, the MSB will provide red-lined drawings from the Contractor and Construction Manager to develop Record Drawings. Record drawings shall be provided no less than 30 days from the delivery of the red-lined drawings, and shall be delivered in both one hard copy and digital format.

SCHEDULE

It is the desire of the MSB Solid Waste Division to complete the Wall upgrades during the 2020 construction season. This schedule requires that final plans and specifications be ready to advertise for bids no later than April 30, 2020. The anticipated schedule is as follows:

- February 20, 2020 Notice to Proceed
- March 24, 2020 Plans-In-Hand Submittal
- April 24, 2020 Pre-Final Submittal
- May 13, 2020 Final Plans and Specifications
- May/June 2020 Construction Bid Advertisement
- June 16, 2020 Award of Construction Contract (pending Assembly approval)
- August 21, 2020 Construction Completion

SECTION III

PROPOSAL SUBMISSION & EVALUATION CRITERIA

PROPOSAL SUBMISSION & EVALUATION CRITERIA

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

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. Alternatively, proposers may email proposal to Purchasing@matsugov.us prior to date & closing time. 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 **two** single-sided, single spaced pages in length. It is requested that a minimum font size of 10 be used wherever practical. There is no page limit for the cost proposal.
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. Sooner

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.

COST PROPOSAL

1. A cost proposal shall include all tasks to perform the contract and be prepared in the format shown below. 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.

PROPOSAL SUBMISSION & EVALUATION CRITERIA (CONTINUED)

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

COST PROPOSAL (CONTINUED)

- 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

SUBMITTAL PAGE

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

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.
- ✓ Any other items required within the Instructions to Proposers & Specifications/Scope of Services.

SECTION V

SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the MATANUSKA-SUSITNA BOROUGH and **SELECTED CONSULTANT**.

Section 01 Definitions

In this Agreement:

- A. The term "Borough" means the Matanuska-Susitna Borough.
- B. The term "Consultant" means Selected Consultant.
- C. The term "Manager" means the manager of the Matanuska-Susitna Borough or his authorized representative.

Section 02 Employment of Consultant

The Borough hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 03 Scope of Services

The Consultant shall perform all the services provided for by this Agreement which are described with particularity in Exhibit "C", entitled Scope of Services, attached hereto and incorporated by reference as if fully set forth herein.

Section 04 Personnel

Personnel shall be limited to employees of Selected Consultant and its **Sub-Consultants**.

Section 05 Time of Performance

The services of the Consultant shall commence upon execution of this Agreement by both parties and shall be completed by _____, 20____. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 06 Compensation

A. Subject to the provisions of this Agreement, the Borough shall pay the Consultant a total sum for all services and expenses for the term of this Agreement not exceeding the sum as set forth in Exhibit "B", attached hereto and incorporated herein by reference, for services required by this Agreement.

B. Travel or per diem required for the performance of services pursuant to this Agreement shall be subject to Exhibit "B".

C. Except as otherwise provided in this Agreement, the Borough shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the Borough.

Section 07 Method and Time of Payment

- A. The Borough will pay to the Consultant the amount set forth in Exhibit "B" which shall constitute the full and complete compensation for the Consultant's professional services. That sum will be paid on approval of billings submitted pursuant to a schedule set forth in Exhibit "B". If not identified within Exhibit "B", normal billing cycle is 30 calendar days from receipt of an approved invoice. A billing is a summary of expenditures to date by line item categories (e.g., Personal Services, Travel, Contractual, Commodities and Equipment). Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the Borough requests said documentation.
- B. No payment will be disbursed until the completed task and associated expenditures have been approved by the Borough.
- C. All invoices must be submitted in duplicate and addressed as follows:

Matanuska-Susitna Borough
Attention: Accounts Payable
350 East Dahlia Avenue
Palmer, Alaska 99645

- D. It is expressly understood and agreed that in no event shall the total compensation due the Consultant exceed **INSERT DOLLAR AMOUNT IN WORDS (\$000.00)**

Section 08 Termination of Agreement for Cause

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Borough shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the Borough and shall be delivered to the Borough by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Exhibit "B" of this Agreement only for work completed to the Borough's satisfaction in accordance with Exhibit "C" of this Agreement and the other terms of this Agreement.

Section 09 Termination for Convenience of Borough

The Borough may terminate this contract at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8 above are the property of the Borough and shall be delivered to the Borough by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Exhibit "B" of this Agreement only for work completed to the Borough's satisfaction in accordance with Exhibit "C" of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10 Causes Beyond Control

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section,

means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The Borough will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11 Modifications

- A. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- B. It is expressly understood that the Borough may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the Borough.

Section 12 Equal Employment Opportunity

- A. The Consultant 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 Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, 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 Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.
- B. The Consultant shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 12 (A) for applicants for employment and employees as the Borough may require.

Section 13 Interest of Members of 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 Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 14 Assignability

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.

Section 15 Interest of Consultant

The Consultant covenants, that it 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 Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Section 16 Findings Confidential

To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the Borough requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the Borough.

Section 17 Publication, Reproduction and Use of Materials

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The Borough shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 18 Audits and Inspections

At any time during normal business hours and as often as the Borough or the Comptroller General of the United States may deem necessary, the consultant and any sub-consultants shall make available for examination all of its records with respect to all matters covered by this Agreement and 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 of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

Section 19 Jurisdiction; Choice of Law

Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 20 Non-Waiver

The failure of the Borough at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

Section 21 Permits, Laws and Taxes

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 22 Relationship of the Parties

The Consultant shall perform its obligations hereunder as an independent Consultant of the Borough. The Borough may administer this Agreement and monitor the Consultant's compliance with this Agreement but shall not supervise or otherwise direct the Consultant except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 23 Agreement Administration

- A. The Borough Manager, or their designee, will be the representative of the Borough administering this Agreement.
- B. The services to be furnished by the Consultant shall be administered, supervised, and directed by:

Consultant printed name	Title

- C. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to a written approval of the Matanuska-Susitna Borough.

Section 24 Integration

- 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 full text or by reference into this Agreement:

FULL TEXT	REFERENCE
Exhibit "A" – Proposal & Submittal Page	Matanuska-Susitna Borough Business License
Exhibit "B" – Fee Schedule	State of Alaska Business License
Exhibit "C" – Scope of Services	Professional License
Exhibit "D" – Addendum(a)	20-096P Solicitation Documents
Exhibit "E" – Certificate of Insurance	

Section 25 Defense and Indemnification

- A. The consultant shall indemnify, defend, and hold harmless the contracting agency from and against any claim of, or liability for, negligent acts, errors, and omissions of the consultant under this agreement. The consultant is not required to indemnify, defend, or hold harmless the contracting agency for a claim of, or liability for, the independent negligent acts, errors, and omissions of the contracting agency. If there is a claim of, or liability for, a joint negligent act, error, or omission of the consultant and the contracting agency, the indemnification, defense, and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "consultant" and "contracting agency" include the employees, agents, and contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, and omissions" means negligence other than in the contracting agency's selection, administration, monitoring, or controlling of the consultant, or in approving or accepting the consultant's work.
- B. If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause shall remain enforceable.

Section 26 Interpretation and Enforcement

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 27 Consultant 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.

Section 28 Severability

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 29 Understanding

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

profession services and construction may be amended by the manager or the purchasing officer with the approval of the assembly, as set forth in MSB 3.08.161, only for the following reasons:

1. to change the quantity order or date of delivery under contract for supplies, where necessary to meet unforeseen borough requirements;
2. to change the quantity of services or professional services to be rendered, or to change the scope of a project under a contract for services or professional services where necessary to meet unforeseen changes in borough requirements;
3. to change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen borough requirements, or to change the specification under a construction contract because unforeseen conditions render the original specification impracticable;
4. to change the time for completing a project under a contract for services, professional services or construction;
5. to correct an error in contract specifications made by the borough in good faith or to resolve a good faith dispute between the borough and a contractor as to a party's rights and obligations under the contract; and
6. to change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the borough.

For these purposes, the Purchasing Officer is defined as **Rustin Krafft** during absences of the purchasing officer, the Assistant Purchasing Officer has been delegated the authority to act as the Purchasing Officer.

AUTHORITY OF THE BOROUGH PROJECT MANAGER

The Borough Project Manager has the authority to monitor and administer the Agreement, but cannot make changes to the amount of the contract nor change the completion date of the contract

I hereby acknowledge that I have read and understand the authority granted to the parties by the Matanuska-Susitna Borough.

CONSULTANT SIGN ACKNOWLEDGEMENT HERE: _____

Section 35 Fund Verification

Fund source and verification of funds for this project: Purchase Order **##-####**

MATANUSKA-SUSITNA BOROUGH

SELECTED CONSULTANT

RUSTIN M. KRAFFT

Purchasing Officer

STATE OF ALASKA

Third Judicial District

Sign Name: _____

Print Name: _____

Title: _____

On _____, 20__, _____ personally appeared before me,

- 1. [] who is personally known to me
- 2. [] whose identity I proved on the basis of _____
- 3. [] whose identity I proved on the oath/affirmation of _____, a credible witness

to be the signer of the **Agreement 20-096P, DESIGN RESIDENTIAL SOLID WASTE TIPPING WALL UPGRADES**, and he/she acknowledged that he/she signed it.

Notary Public
My Commission expires: _____

STATE OF ALASKA

Third Judicial District

On _____, 20__, RUSTIN M. KRAFFT, Purchasing Officer, personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledged that he signed it on behalf of the Matanuska-Susitna Borough.

Notary Public
My Commission expires: _____

SECTION IV

ATTACHMENTS

Attachment 1 Wall Figure (1 page)

Attachment 2 Landfill Survey Control (1 page)