

STATE OF ALASKA REQUEST FOR PROPOSALS



ACT DRUG & ALCOHOL COMPLIANCE MONITORING

RFP 2519H018

ISSUED 2/4/2019

MAINTENANCE AND DEVELOPMENT OF ALASKA COMMUNITY TRANSIT'S DRUG AND ALCOHOL COMPLIANCE
MONITORING PROGRAM

ISSUED BY:

DEPARTMENT OF TRANSPORTATION

DIVISION OF PROGRAM DEVELOPMENT, ALASKA
COMMUNITY TRANSIT

PRIMARY CONTACT:

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OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

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

TABLE OF CONTENTS

SECTION 1.	INTRODUCTION & INSTRUCTIONS	4
SEC. 1.01	PURPOSE OF THE RFP	4
SEC. 1.02	CONTRACT AWARD	4
SEC. 1.03	BUDGET	4
SEC. 1.04	DEADLINE FOR RECEIPT OF PROPOSALS	4
SEC. 1.05	PRIOR EXPERIENCE	4
SEC. 1.06	REQUIRED REVIEW	5
SEC. 1.07	QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS	5
SEC. 1.08	RETURN INSTRUCTIONS	5
SEC. 1.09	PROPOSAL CONTENTS	6
SEC. 1.10	ASSISTANCE TO OFFERORS WITH A DISABILITY	7
SEC. 1.11	AMENDMENTS TO PROPOSALS	7
SEC. 1.12	AMENDMENTS TO THE RFP	7
SEC. 1.13	RFP SCHEDULE	7
SEC. 1.14	PRE-PROPOSAL CONFERENCE	7
SEC. 1.15	ALTERNATE PROPOSALS	8
SEC. 1.16	NEWS RELEASES	8
SECTION 2.	BACKGROUND INFORMATION	9
SEC. 2.01	BACKGROUND INFORMATION	9
SECTION 3.	SCOPE OF WORK & CONTRACT INFORMATION	10
SEC. 3.01	SCOPE OF WORK AND DELIVERABLES	10
SEC. 3.02	CONTRACT TERM AND WORK SCHEDULE	19
SEC. 3.03	CONTRACT TYPE	19
SEC. 3.04	PRICE ADJUSTMENTS	19
SEC. 3.05	PROPOSED PAYMENT PROCEDURES	19
SEC. 3.06	INVOICING	19
SEC. 3.07	TRAVEL EXPENSE REIMBURSEMENT	19
SEC. 3.08	CONTRACT PAYMENT	20
SEC. 3.09	LOCATION OF WORK	20
SEC. 3.10	SUBCONTRACTORS	20
SEC. 3.11	JOINT VENTURES	20
SEC. 3.12	RIGHT TO INSPECT PLACE OF BUSINESS	21
SEC. 3.13	F.O.B. POINT	21
SEC. 3.14	CONTRACT PERSONNEL	21
SEC. 3.15	INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES	21
SEC. 3.16	CONTRACT CHANGES - UNANTICIPATED AMENDMENTS	21
SEC. 3.17	NONDISCLOSURE AND CONFIDENTIALITY	21
SEC. 3.18	INSURANCE REQUIREMENTS	22
SEC. 3.19	TERMINATION FOR DEFAULT	22
SECTION 4.	PROPOSAL FORMAT AND CONTENT	23
SEC. 4.01	PROPOSAL FORMAT AND CONTENT	23
SEC. 4.02	INTRODUCTION	23
SEC. 4.03	UNDERSTANDING OF THE PROJECT	23
SEC. 4.04	METHODOLOGY USED FOR THE PROJECT	23

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

SEC. 4.05	MANAGEMENT PLAN FOR THE PROJECT	23
SEC. 4.06	EXPERIENCE AND QUALIFICATIONS	23
SEC. 4.07	COST PROPOSAL.....	23
SEC. 4.08	EVALUATION CRITERIA.....	24
SECTION 5.	EVALUATION CRITERIA AND CONTRACTOR SELECTION	25
SEC. 5.01	UNDERSTANDING OF THE PROJECT (10%)	25
SEC. 5.02	METHODOLOGY USED FOR THE PROJECT (15%)	25
SEC. 5.03	MANAGEMENT PLAN FOR THE PROJECT (15%)	25
SEC. 5.04	EXPERIENCE AND QUALIFICATIONS (20%)	25
SEC. 5.05	CONTRACT COST (40%)	26
SECTION 6.	GENERAL PROCESS INFORMATION	27
SEC. 6.01	INFORMAL DEBRIEFING.....	27
SEC. 6.02	ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES.....	27
SEC. 6.03	SITE INSPECTION.....	27
SEC. 6.04	CLARIFICATION OF OFFERS	27
SEC. 6.05	DISCUSSIONS WITH OFFERORS	28
SEC. 6.06	EVALUATION OF PROPOSALS.....	28
SEC. 6.07	CONTRACT NEGOTIATION	28
SEC. 6.08	FAILURE TO NEGOTIATE	28
SEC. 6.09	OFFEROR NOTIFICATION OF SELECTION	29
SEC. 6.10	PROTEST	29
SEC. 6.11	FORMULA USED TO CONVERT COST TO POINTS	30
SEC. 6.12	EXAMPLES: CONVERTING COST TO POINTS	30
SECTION 7.	GENERAL LEGAL INFORMATION	31
SEC. 7.01	STANDARD CONTRACT PROVISIONS	31
SEC. 7.02	FEDERAL CONTRACT PROVISIONS	31
SEC. 7.03	PROPOSAL AS A PART OF THE CONTRACT	31
SEC. 7.04	ADDITIONAL TERMS AND CONDITIONS	31
SEC. 7.05	HUMAN TRAFFICKING.....	32
SEC. 7.06	RIGHT OF REJECTION	32
SEC. 7.07	STATE NOT RESPONSIBLE FOR PREPARATION COSTS	32
SEC. 7.08	DISCLOSURE OF PROPOSAL CONTENTS	32
SEC. 7.09	ASSIGNMENT	33
SEC. 7.10	DISPUTES	33
SEC. 7.11	SEVERABILITY	33
SEC. 7.12	SUPPLEMENTAL TERMS AND CONDITIONS.....	33
SEC. 7.13	CONTRACT INVALIDATION	33
SEC. 7.14	SOLICITATION ADVERTISING	33
SECTION 8.	ATTACHMENTS.....	34
SEC. 8.01	EXHIBITS AND ATTACHMENTS	34

SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Transportation and Public Facilities (DOT&PF), Division of Program Development, Alaska Community Transit (ACT) seeks services to perform on-site drug and alcohol compliance monitoring, training and technical assistance for the Department's Federal Transit Administration (FTA) grant subrecipients.

SEC. 1.02 CONTRACT AWARD

It is the intent of the state to award one (1) contract in response to this solicitation. The Contractors shall be ranked and selected by points earned per the evaluation criteria in Section 5 of this RFP.

The State shall use the proposed Labor Category Unit Costs to establish costs for the initial term of the awarded contracts.

The contract shall not begin until a 30-day notice of cancellation is completed with the current Contractor.

SEC. 1.03 BUDGET

The Department of Transportation and Public Facilities estimates a total budget of between \$300,000 and \$400,000 for completion of this project. Cost proposals in excess of \$400,000 will be considered non-responsive and the proposal rejected.

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

SEC. 1.04 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **2:00 PM** prevailing Alaska Time on **February 15, 2019**. Emailed, faxed or oral proposals will not be accepted.

SEC. 1.05 PRIOR EXPERIENCE

Proposals must clearly demonstrate the Offeror meets the following minimum prior experience requirements:

1. Ten (10) years of work experience with FTA's drug and alcohol testing regulations
2. Five (5) years of experience providing training to both individuals and a large group setting

Proposals must provide a minimum of three (3) examples demonstrating equivalent services, completed or ongoing, performed by the Offeror within the past three (3) years.

Examples must include:

- 1) Each client firm's name, the contact person and the contact's phone number
- 2) Site Monitoring Review process such as a questionnaire or checklist
- 3) Compliance Review Procedures
- 4) Compliance Reports
- 5) Contractor Status Reports of Project

An offeror's failure to meet these minimum prior experience requirements may cause their proposal to be considered non-responsive and their proposal may be rejected.

SEC. 1.06 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and objectionable material must be made in writing and received by the procurement officer at least ten (10) days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, at least ten days before the deadline for receipt of proposals.

SEC. 1.07 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

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

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

PROCUREMENT OFFICER:	Paul Nakachi	PHONE:	907-465-8446
EMAIL:	paul.nakachi@alaska.gov	FAX:	907-465-3124

SEC. 1.08 RETURN INSTRUCTIONS

Offerors must submit one original and three copies of their proposal, in writing, and one CD or flash drive containing an electronic copy of the entire proposal to the procurement officer in a sealed package. **The cost proposal included with the package must be sealed separately** from the rest of the proposal and must be clearly identified. Emailed, faxed or oral proposals **will not be accepted**. The sealed proposal package(s) must be addressed as follows:

Department of Transportation and Public Facilities
Statewide Procurement

Attention: Paul Nakachi
Request for Proposal (RFP) Number: 2519H018

RFP Title: ACT Drug & Alcohol Compliance Monitoring

If using U.S. mail to submit the proposal, please use the following mailing address:

PO Box 112500
Juneau, AK 99811-2500

If using a delivery service, please use the following physical address:

3132 Channel Drive
Room 350
Juneau, AK 99801-3134

IMPORTANT NOTE: There is no true overnight express mail or courier delivery to Juneau, Alaska. Due to weather, scheduling, and location, all expedited mail services take at least 2 nights. This is true for both USPS and courier vendors such as Federal Express.

SEC. 1.09 PROPOSAL CONTENTS

The following information must be included in all proposals.

(a) AUTHORIZED SIGNATURE

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

(b) OFFEROR'S CERTIFICATION

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

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

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

(c) VENDOR TAX ID

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

(d) CONFLICT OF INTEREST

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

(e) FEDERAL REQUIREMENTS

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

(f) D-U-N-S NUMBER

Offerors must submit a valid unique identifier, the D-U-N-S Number, in order to expedite determination of responsibility for this Federally funded RFP. Information on obtaining a D-U-N-S number can be found here:

<https://www.dnb.com/duns-number.html>

SEC. 1.10 ASSISTANCE TO OFFERORS WITH A DISABILITY

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

SEC. 1.11 AMENDMENTS TO PROPOSALS

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

SEC. 1.12 AMENDMENTS TO THE RFP

If an amendment is issued, it will be provided to all who were mailed a copy of the RFP and to those who have registered with the procurement officer after receiving the RFP from the State of Alaska Online Public Notice web site.

SEC. 1.13 RFP SCHEDULE

The RFP schedule set out herein represents the State of Alaska's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted by the same number of days.

- Issue RFP February 4, 2019 at 3:00 PM Alaska Time
- Open RFP February 25, 2019 at 3:00 PM Alaska Time
- Proposal Evaluation Committee complete evaluation by March 6, 2019
- State of Alaska issues Notice of Intent to Award a Contract March 8, 2019
- State of Alaska issues contract March 18, 2019
- Contract starts April 1, 2019

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

SEC. 1.14 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will not be held for this solicitation.

SEC. 1.15 ALTERNATE PROPOSALS

Offerors may only submit one proposal for evaluation.

In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

SEC. 1.16 NEWS RELEASES

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

SECTION 2. BACKGROUND INFORMATION

SEC. 2.01 BACKGROUND INFORMATION

The State of Alaska (SOA), Department of Transportation and Public Facilities (DOT&PF), Alaska Community Transit (ACT) is the Grantee of funds from both the USDOT Federal Transit Administration (FTA) and State funds. ACT is responsible for ensuring subrecipients maintain compliance with state and federal grant requirements. According to the federal Office of Management and Budget (OMB), Alaska Community Transit is defined as a “pass-through” agency whose responsibility is to ensure that subrecipients adhere to applicable programmatic requirements. Grant administration is defined by federal circulars published by the OMB, various federal circulars, State law and by the programmatic requirements of each of the grant programs. The FTA Master Agreement identifies the majority of the requirements of the federal programs; each subrecipient agreement includes a requirement to adhere to applicable elements of the Master Agreement and all other applicable regulations.

The Drug & Alcohol Compliance Monitoring Program (D&ACMP) is not intended to be punitive, but to provide ACT with an opportunity to identify training or other technical assistance needs and identify weaknesses so that the Subrecipient can correct the deficiency. The D&ACMP will also be used to identify a Subrecipient’s best practices and excellence in program management. The agency’s purpose is to oversee Subrecipients’ systems for compliance with the United States Department of Transportation (USDOT) Drug & Alcohol Testing Regulations: 49 CFR (Code of Federal Regulations) Part 40; and, the USDOT, Federal Transit Administration’s (FTA) Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations of : 49 CFR Part 655 and FTA’s interpretations of the regulations

The D&ACMP will be conducted to conform to the monitoring program requirements defined by DOT&PF’s adopted State Management Plan (SMP), and associated state and federal requirements for federal program §5311 and the associated Drug & Alcohol testing requirements.

References:

Attachment 1: Public Transit System Sub-Recipient List

FTA 49 CFR Parts 40: <https://www.transportation.gov/odapc/part40>

FTA 49 CFR 655:

<https://transit-safety.fta.dot.gov/drugandalcohol/regulations/regulations/49cfr655/49cfr655.pdf>

FTA Section 5311: http://www.fta.dot.gov/grants/13093_3555.html

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK AND DELIVERABLES

The ACT team consists of both the Project Manager and Coordinator. All submissions will be addressed to both of these persons. The ACT team and the Contractor will maintain and develop a Drug and Alcohol Compliance Monitoring Program (D&ACMP) to administer the review of subrecipients of FTA's Formula Grants for Other than Urbanized Areas §5311.

For each review year, the Contractor will work with the ACT Team to conduct compliance reviews of subrecipients. These D&ACMP reviews will focus on the following areas:

1. Subrecipient Drug & Alcohol Policies
2. Subrecipient oversight procedures

The ACT Team shall provide a list of all subrecipients as well as a list of subrecipients subject to review in the current year. Upon issuance of a Notice to Proceed, the Contractor shall work with the ACT Team to update and review materials and to plan the review schedule. Field reviews shall be conducted by the Contractor and Project Manager to supplement telephone interviews and electronically submitted information. In addition, upon completion of field reviews, the Contractor shall be responsible for ongoing monthly monitoring and review of compliance plans until all deficiencies have been resolved.

While only select subrecipients are subject to review in any given year, all subrecipients as well as ACT are responsible for an annual MIS report.

The Contractor shall therefore provide the following:

1. Education and technical assistance for all subrecipients
2. Consulting and technical assistance for ACT and its employees
3. MIS reporting

Education, consulting and technical assistance shall be limited to the Contractor's expertise in Drug and Alcohol related subjects, and must generally fall within the scope of work of this RFP. The Contractor will work with the ACT Team to perform and provide the following tasks and deliverables:

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

TASKS AND DELIVERABLES**TASK 1 COMPLIANCE REVIEW PROCEDURES AND SCHEDULE DEVELOPMENT**

The Contractor will work closely with the ACT Team to maintain and develop the on-site D&ACMP compliance review procedures to include:

1. pre and post D&ACMP review desk audit procedures
2. on-site D&ACMP review protocols
3. post review D&ACMP correspondence procedures

ACT's most current list of subrecipients and their locations is identified in Attachment 2. Annually, the ACT Team will provide the Contractor with the number of D&ACMP reviews to be performed and a compliance review schedule. The Contractor will group D&ACMP reviews in order to reduce travel expenses and review multiple grant programs during one review.

Task 1 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Draft Compliance Review Procedures and Schedule	Draft Compliance Review Procedures and Schedule must be submitted to ACT Team within sixty (60) calendar days of Notice to Proceed (NTP).	ACT Team will provide written comments to the Contractor within ten (10) working days of receipt of submission.
Final Compliance Review Procedures and Schedule	The Contractor shall make the ACT Team's recommended changes within ten (10) working days of receipt.	ACT Team will provide the Contractor with written final acceptance (via email) after the ACT Team has reviewed final procedures and schedule.

TASK 2 INFORMATIONAL LETTER

The Contractor shall prepare and update the current Informational Letter. The Informational Letter and Questionnaire (Task 3) will be emailed to the subrecipient thirty (30) calendar days prior to their D&ACMP review (Task 5). The content of the letter must:

1. Identify the time and date of the review
2. Describe the Contractor's background, experience and qualifications
3. Describe the Contractor services
4. Provide the Contractor's estimated schedule and completion date
5. Request the name of subrecipient's contact person, address, telephone numbers and email address
6. Request subrecipient's subcontractors or vendors that must attend the review
7. Provide a list of documents and other information subject to review, including a deadline for submission of materials requested
8. Include the Contractor's signature and contact information

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

Task 2 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Prepare Informational Letter	Updated letter must be submitted to ACT Team within ten (10) working days of receipt.	ACT Team will provide written comments to the Contractor within ten (10) working days of receipt of submission.
Final Informational Letter	Final letter must be submitted to ACT Team seven (7) calendar days after written comments are received.	ACT Team will provide the Contractor with written acceptance (via email).

TASK 3 QUESTIONNAIRES

The Contractor shall prepare and update questionnaires based on the FTA Drug and Alcohol Testing Program. Questionnaires will be emailed to subrecipients thirty (30) days prior to their D&ACMP review.

A. The Contractor shall ensure questionnaires address each of the following content areas:

1. General administrative duties
2. Pre-employment testing
3. Reasonable suspicion testing
4. Post-accident testing
5. Random testing
6. Service agent oversight
7. Contractor oversight
8. Specimen collection
9. Medical review
10. Referral to substance abuse professional
11. Subrecipient drug & alcohol plan

B. Questionnaires shall:

1. Be based on the most current FTA regulations and circulars
2. Refer to Federal policies and regulations as appropriate
3. Utilize a best practices standard, identifying and clearly making reference to widely accepted and researched industry best practices as applicable
4. Aim for a Flesch Kincaid Grade Level 8 (eighth grade reading level)
5. Be organized in “like” categories

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

Task 3 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Prepare Questionnaires	Updated Questionnaires must be submitted to Team within twenty-one (21) working days of receipt.	ACT Team will provide the Contractor with comments within fourteen (14) working days of receipt of submission.
Final Questionnaires	Final Questionnaires must be submitted to ACT Team seven (7) calendar days after written comments are received by the Contractor.	ACT Team will provide the Contractor with written acceptance via email within seven (7) calendar days of submission and will post on ACT website.

TASK 4 DRUG AND ALCOHOL POLICIES

The Contractor shall review current subrecipient drug and alcohol policies to verify that they meet FTA requirements under 49 CFR Parts 40 and 655.

For subrecipients that demonstrate inadequate compliance plans, the Contractor will develop templates for drug and alcohol policies to meet these FTA requirements. The templates will be adaptable to allow for subrecipients with zero tolerance policies as well as for subrecipients with conditional return to work policies. The Contractor shall distribute the templates to each Section 5311 subrecipient that does not have a compliant drug and alcohol policy.

The Contractor shall create a collection site review checklist that provides step-by-step instructions for the subrecipient to evaluate the collection site. Subrecipients will use the checklist to:

1. monitor collection sites periodically to ensure performance of breath alcohol and urine drug collections are in full compliance with all sections of 49 CFR Part 40
2. indicate any deficiencies and findings from the collection site

The checklist must be reviewed by the Contractor during the Program Review with a copy provided to the ACT Project Manager as part of the review report in Task 5.

Task 4 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Draft Templates	Draft Templates must be submitted to ACT Team twenty-one (21) calendar days from NTP	ACT Team will provide the Contractor with comments within ten (10) working days of receipt of submission.
Final Templates	Final Templates must be submitted to ACT Team seven (7) calendar days after written comments are received by the Contractor.	ACT Team will provide the Contractor with written acceptance via email within seven (7) calendar days of submission.

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Collection Site Review Check-off List	Collection Site Review Check-off List must be submitted to ACT Team twenty-one (21) calendar days from NTP.	ACT Team will provide the Contractor with written acceptance via email within seven (7) calendar days of submission.
Review of Subrecipient Drug & Alcohol Policies	All Subrecipient Drug & Alcohol Policies must be reviewed for compliance and comments submitted to both Subrecipient and ACT Team within one hundred-twenty (120) working days from NTP	

TASK 5 REVIEW AND REPORTS

Following submission and receipt of the Informational Letter (Task 2), the Contractor shall meet with each subrecipient at the location(s) where service is delivered and where records are maintained. The Contractor shall use the Questionnaire from Task 3, as the basis for each D&ACMP review. The Contractor may complete a portion of the D&ACMP review by telephone, as appropriate for the content and situation.

The Contractor shall prepare a written report after each D&ACMP review detailing any deficiencies or best practices. Reports will be submitted to the ACT Team by email within fourteen (14) days following the review. The D&ACMP Review Report must include:

1. subrecipient name
2. date of contact
3. employee contact name
4. telephone number
5. email address

The D&ACMP review will document findings for corrective action by the subrecipient. The report must establish a target date for subrecipient's preparation and completion of the Compliance Plan (Task 6), document the subrecipient intent to correct each deficiency, and the timeline for correction. Deficiency findings will range from an immediate correction for life safety issues, to within six months for non-life threatening issues.

Monthly D&ACMP Review Reports

The Contractor will submit monthly D&ACMP Review Reports electronically, to the ACT Project Manager. Each report must include the contract number. The ACT Team will specify the format for the reports. The D&ACMP reports will identify each subrecipient's:

1. deficiencies
2. weaknesses
3. best practices
4. operational/managerial efficiencies

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

Task 5 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
All D&ACMP Reviews	(a) The Contractor shall complete six (6) D&ACMP reviews six (6) months from Contract NTP and one-hundred percent (100%) of subrecipient's CMP reviews shall be completed 36 months from Contract NTP.	ACT Team may direct the Contractor to schedule D&ACMP reviews to coincide with ACT Project Manager's business needs. ACT Team will provide the contractor with a minimum of sixty (60) days advance notice of all requested D&ACMP reviews.
	(b) The Contractor shall notify ACT Team, in writing, seven (7) calendar days after the subrecipients' sixty (60) day Compliance Plan period has expired or been completed, and notify ACT Team of status of subrecipients' Compliance Plan with their identified deficiencies.	
D&ACMP Monthly Reports	The Contractor shall submit a monthly progress report detailing each subrecipient who has completed the CMP review and whether subrecipient will be engaged in implementing a Compliance Plan.	
D&ACMP Progress Report #1	Progress report #1 status of subrecipients' Compliance Plan must be submitted to ACT Team fourteen (14) calendar days after subrecipient submits Compliance Plan to the Contractor.	
D&ACMP Progress Report #2	Progress report #2 must be submitted to ACT Team seven (7) calendar days after the sixty (60) day subrecipient Compliance Plan period has expired or been completed. This is to update ACT Coordinator and close out subrecipient Compliance Plan.	ACT Team will provide the Contractor with written acceptance (via email).

TASK 6 COMPLIANCE PLAN PREPARATION AND SCHEDULE

The Contractor shall engage and direct subrecipient's to complete preparation of their Compliance Plan within sixty (60) days after the Contractor submits the D&ACMP results to the ACT Team. The Contractor shall assist any subrecipient who requests assistance, in preparing their Compliance Plan. The subrecipient will submit their Compliance Plan to the Contractor for preview. The Contractor shall review for completeness and understanding before the Compliance Plan is submitted to ACT Project Manager for review and acceptance. The Contractor will monitor subrecipient's Compliance Plan schedule.

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

The Contractor shall submit a monthly report (email acceptable) identifying all subrecipients with deficiencies in their D&ACMP review to the ACT Team. The report will identify the subrecipients' progress toward implementing the Compliance Plan.

Task 6 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Subrecipient Compliance Plan	(a) Subrecipient shall submit their Compliance Plan to Consultant and ACT Team for review and comment thirty (30) calendar days after the initial D&ACMP review.	ACT Team will provide written comments to the Contractor fourteen (14) calendar days of receipt of subrecipient's submittal of draft Compliance Plan. The Contractor will incorporate AKDOT&PF's suggested changes. *If ACT Team does not provide comments back to the Contractor fourteen (14) calendar days receipt from subrecipient, the comments will not be incorporated in the response back to the subrecipient.
	(b) Consultant shall review and incorporate ACT Team's recommended changes for and submit the final Compliance Plan to subrecipient forty-five (45) calendar days after subrecipient's Compliance Plan review.	
Subrecipient Completion of Compliance Plan	(a) The Contractor shall ensure subrecipient completes their Compliance Plan sixty (60) calendar days from subrecipient's initial CMP review.	
	(b) The Contractor shall submit subrecipients' final Compliance Plan to ACT Team.	
Compliance Plan Site Review Report	(a) The Contractor shall ensure subrecipients complete their Compliance Plan within six (6) months of the ACT Team's acceptance of subrecipient's final Compliance Plan.	ACT Team will provide the Contractor with written acceptance (via email).
	(b) The Contractor shall notify ACT Team, in writing, (email acceptable) 60 days after the subrecipient's initial D&ACMP review and verify that the Compliance Plan has been completed by subrecipient.	

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

TASK 7 TELEPHONE AND EMAIL ACCESS

The Contractor shall establish and maintain a toll free telephone line and email address for assisting subrecipients.

The Contractor shall provide verbal and written assistance for subrecipient's to complete their D&ACMP review plan. The Contractor will respond to subrecipient's questions or requests for information within twenty-four (24) hours, excluding weekends and holidays. The Contractor must maintain a written Communication Log of all calls, questions, responses, and date and time of the Contractor's response to subrecipients. The Contractor shall copy the ACT Team on all email responses to subrecipients. The State reserves the right to periodically review the Contractor's Communications Log.

Task 7 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Toll free telephone number and email address.	Telephone and e-mail access must be established and operative within ten (10) working days of NTP.	
Call Log with copies of all email responses as issued by Consultant (email acceptable).	The Contractor shall submit all call logs and copies of emails every year of Contract in June to the ACT Team.	ACT Team will provide the Contractor with written acceptance (via email).

TASK 8 ANNUAL SUMMARY OF FINDINGS

Annually, each June of the contract term, the Contractor must report findings to the ACT Team. The findings must include a statewide evaluation of program compliance with recommendations. The report shall be organized by:

1. type of subrecipient (public, private, etc.)
2. type of findings
3. number of and severity of findings

Task 8 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Written Summary Report	The Contractor shall submit Written Summary Report's every year of the Contract in June to ACT Team.	ACT Team will provide the Contractor with written acceptance (via email).

TASK 9 TECHNICAL ASSISTANCE, CONSULTATION AND TRAINING

The Contractor shall provide both ACT and subrecipients with consultation and technical assistance in areas related to drug and alcohol compliance. The Contractor may further be asked to provide drug and alcohol related training at the annual Transit Managers Meeting. It is expected that there would be no more than 5

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

hours of presentation/training.

The Contractor may anticipate a maximum of one (1) new subrecipient annually. New subrecipients will be evaluated for compliance with appropriate regulations prior to grant funding being initiated.

Task 9 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
Program Sub-recipients	The Contractor shall assist current sub-recipients and new subrecipients with technical questions and will conduct a new subrecipient D&ACMP review within thirty (30) days of notification from ACT Team of a new subrecipient or a subrecipient that needs assistance.	ACT Team will provide the Contractor with information regarding current subrecipients and new subrecipients.
	The Contractor shall provide individual and/or group training as needed.	
AK DOT&PF	The Contractor shall provide technical assistance and consultation as needed.	

TASK 10 MIS REPORTS

The Contractor shall obtain, review and approve the annual statistics in the electronically-submitted reports of the 5311 subrecipients and Third Party Administrator to ensure accuracy. The Contractor will prepare the Annual Report for the Transportation Workplace Drug and Alcohol Testing Management Information System (MIS). The report must be complete and submitted to the USDOT Drug & Alcohol Testing Management System by the due date designated by FTA (typically March 16).

Task 10 Deliverables:

DELIVERABLE	SCHEDULE	ACT TEAM RESPONSIBILITIES
MIS Reports	The Contractor shall verify accuracy of subrecipient MIS reports and prepare the annual report by March 10, notifying the ACT Team when it is complete.	

TASK 11 CONTINGENCY

As needed, the Contractor will update Tasks 1 through 10 to meet new state and federal law requirements or policy changes, or to conduct agreed upon procedures.

SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

The length of the contract will be from the date of award, approximately March 18, 2019 for approximately one year, through December 31, 2019, with four (4) one-year renewal options through December 31, 2023. Renewal options will be exercised solely by the State.

Unless otherwise provided in this RFP, the State and the successful offeror/contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least 30-days before the desired date of cancellation.

SEC. 3.03 CONTRACT TYPE

This is an as-needed, fixed price with cost adjustment contract.

SEC. 3.04 PRICE ADJUSTMENTS

Contract rates will remain firm through December 31, 2019. Annually the contractor may request a price adjustment. The contractor must request price adjustments, in writing, 30 days prior to the contract renewal date. If a contractor fails to request a price adjustment 30 days prior to the adjustment date, the adjustment will be effective 30 days after the state receives and approves their written request

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

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average July through December 2018 and each July through December six-month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed.

SEC. 3.05 PROPOSED PAYMENT PROCEDURES

The state will make monthly payments based on a work performed during the previous month.

SEC. 3.06 INVOICING

The monthly billing shall estimate the percent of the services that are complete to date, for that period of performance of the contract. Each invoice must:

- Reference the Contractor name
- Reference the Contract number
- Reference the date(s) services were performed
- Itemize the contract services provided by sub-recipient and by Deliverable Task number
- Include the Contractor's signed certification that the amount invoiced is for the services described in the Section 5 Statement of Work during the period invoiced.

The State reserves the right to request copies of payment documents.

SEC. 3.07 TRAVEL EXPENSE REIMBURSEMENT

Travel Expenses, shall be reimbursed in accordance with the *Alaska Administrative Manual 60* (AAM 60).

The State will reimburse the Contractor's actual receipted travel expenses per the following criteria:

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

- Airfare is limited to coach fare
- Lodging
- Reimbursement for meals will not exceed \$60.00 per day
- Rental vehicles are limited to mid-size or less make and model as opposed to premium options
- All travel costs must be shown as separate line items on the invoice
- Actual receipts must be provided with invoice for all travel expenses, other than meals

Any travel must comply to the greatest possible extent with the following State of Alaska Travel policies (AAM 60 Travel.pdf) located at: <http://doa.alaska.gov/dof/manuals/aam>

All Travel reimbursement must be preapproved in writing by the Project Manager.

SEC. 3.08 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Commissioner of the Department of Transportation & Public Facilities or the Commissioner's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract.

The state is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

SEC. 3.09 LOCATION OF WORK

A portion of the work will be performed in various locations throughout Alaska or to be determined locations provided for within the Scope of Work. The remainder of the work shall be performed at the contractor's worksite. With exception to site access for interviews, the State will not provide workspace for the Contractor. The Contractor must provide its own workspace.

Travel expenses should not be included in the cost proposal. Contractor travel expenses will be reimbursed by the State per criteria identified in Section 3.07.

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

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

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

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

SEC. 3.10 SUBCONTRACTORS

Subcontractors will not be allowed.

SEC. 3.11 JOINT VENTURES

Joint ventures will not be allowed.

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

SEC. 3.12 RIGHT TO INSPECT PLACE OF BUSINESS

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

SEC. 3.13 F.O.B. POINT

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

SEC. 3.14 CONTRACT PERSONNEL

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

SEC. 3.15 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

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

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

SEC. 3.16 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS

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

The contractor will not commence additional work until the project director has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Transportation & Public Facilities or the Commissioner's designee.

SEC. 3.17 NONDISCLOSURE AND CONFIDENTIALITY

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

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

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

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

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

SEC. 3.18 INSURANCE REQUIREMENTS

The successful offeror must provide proof of workers' compensation insurance prior to contract approval.

The successful offeror must secure the insurance coverage required by the state. The coverage must be satisfactory to the Department of Administration Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

Offerors must review form APPENDIX B1, attached, for details on required coverage. No alteration of these requirements will be permitted without prior written approval from the Department of Administration, Division of Risk Management. Objections to any of the requirements in APPENDIX B1 must be set out in the offeror's proposal.

SEC. 3.19 TERMINATION FOR DEFAULT

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

This clause does not restrict the state's termination rights under the contract provisions of the Standard Contract Form, Appendix A, attached in Section 8. ATTACHMENTS.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 PROPOSAL FORMAT AND CONTENT

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

SEC. 4.02 INTRODUCTION

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

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

SEC. 4.03 UNDERSTANDING OF THE PROJECT

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

SEC. 4.04 METHODOLOGY USED FOR THE PROJECT

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

SEC. 4.05 MANAGEMENT PLAN FOR THE PROJECT

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

SEC. 4.06 EXPERIENCE AND QUALIFICATIONS

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

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

- title,
- resume,
- location(s) where work will be performed,

Offerors must provide reference names and phone numbers for similar projects the offeror's firm has completed.

SEC. 4.07 COST PROPOSAL

Cost proposals must include an itemized list of all direct and indirect costs associated with the performance of the contract, including, but not limited to, total number of hours at various hourly rates, direct expenses,

payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit.

SEC. 4.08 EVALUATION CRITERIA

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

An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

SEC. 5.01 UNDERSTANDING OF THE PROJECT (10%)

Proposals will be evaluated against the questions set out below:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- 2) How well has the offeror identified pertinent issues and potential problems related to the project?
- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?
- 4) Has the offeror demonstrated an understanding of the state's time schedule and can meet it?

SEC. 5.02 METHODOLOGY USED FOR THE PROJECT (15%)

Proposals will be evaluated against the questions set out below:

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?
- 2) How well does the methodology match and achieve the objectives set out in the RFP?
- 3) Does the methodology interface with the time schedule in the RFP?

SEC. 5.03 MANAGEMENT PLAN FOR THE PROJECT (15%)

Proposals will be evaluated against the questions set out below:

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- 2) How well is accountability completely and clearly defined?
- 3) Is the organization of the project team clear?
- 4) How well does the management plan illustrate the lines of authority and communication?
- 5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?
- 6) Does it appear that the offeror can meet the schedule set out in the RFP?
- 7) Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- 8) To what degree is the proposal practical and feasible?
- 9) To what extent has the offeror identified potential problems?

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS (20%)

Proposals will be evaluated against the questions set out below:

1) Questions regarding the personnel:

- a) Do the individuals assigned to the project have experience on similar projects?

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

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

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

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- b) How successful is the general history of the firm regarding timely and successful completion of projects?
- c) Has the firm provided letters of reference from previous clients?
- d) If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?

SEC. 5.05 CONTRACT COST (40%)

Overall, a minimum of **40%** of the total evaluation points will be assigned to cost.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 6.11.

SECTION 6. GENERAL PROCESS INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

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

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, an offeror must hold a valid Alaska business license. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

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

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

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

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

SEC. 6.03 SITE INSPECTION

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

SEC. 6.04 CLARIFICATION OF OFFERS

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

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

substantive change to the proposal. The evaluation by the procurement officer or the PEC may be adjusted as a result of a clarification under this section.

SEC. 6.05 DISCUSSIONS WITH OFFERORS

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

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

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

SEC. 6.06 EVALUATION OF PROPOSALS

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

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

SEC. 6.07 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held in the Administrative Services Director's conference room on the 3rd floor of the Department of Transportation & Public Facilities Building in Juneau, Alaska.

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

SEC. 6.08 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

- if the offeror and the state, after a good faith effort, simply cannot come to terms,

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

SEC. 6.09 OFFEROR NOTIFICATION OF SELECTION

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award (NIA) and send copies to all offerors. The NIA will set out the names of all offerors and identify the proposal selected for award.

SEC. 6.10 PROTEST

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

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

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten (10) days prior to the deadline for receipt of proposals.

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

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

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

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;
- detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

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

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

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

SEC. 6.11 FORMULA USED TO CONVERT COST TO POINTS

The distribution of points based on cost will be determined as set out in 2 AAC 12.260(c). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined using the formula:

$[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})] \div (\text{Cost of Each Higher Priced Proposal})$

SEC. 6.12 EXAMPLES: CONVERTING COST TO POINTS**(a) FORMULA USED TO CONVERT COST TO POINTS****STEP 1**

List all proposal prices.

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

STEP 2

In this example, the RFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 40 points.

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

Offeror #2 receives 37.4 points.

$\$40,000 \text{ lowest cost} \times 40 \text{ maximum points for cost} = 1,600,000 \div \$42,750 \text{ cost of Offeror \#2's proposal} = 37.4$

Offeror #3 receives 33.7 points.

$\$40,000 \text{ lowest cost} \times 40 \text{ maximum points for cost} = 1,600,000 \div \$47,500 \text{ cost of Offeror \#3's proposal} = 33.7$

SECTION 7. GENERAL LEGAL INFORMATION

SEC. 7.01 STANDARD CONTRACT PROVISIONS

The contractor will be required to sign and submit the State's Standard Contract Form for Goods and Non-Professional Services (SCF.DOC, Appendix A). This form is attached in **SECTION 8. ATTACHMENTS** for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. Objections to any of the provisions of SCF.DOC, Appendix A must be set out in the offeror's proposal.

SEC. 7.02 FEDERAL CONTRACT PROVISIONS

Required Contract Provisions for Federal-Aid Contracts, Form Federal Aid Provisions (FTA) pages 1 through 21 is attached to this document. This contract incorporates the provisions by reference, with the same force and effect as if they were given in full text. The Contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

CONTRACT FUNDING:

The funding of the resultant contract will be provided by the U.S. Federal Transit Administration (FTA). Federal funds are identified and appropriated for the first term of the contract. Payment and performance obligations for additional terms of the contract are subject to the availability and appropriation of funds.

STATEMENT OF FINANCIAL ASSISTANCE:

Statement of Financial Assistance: This Procurement is subject in part to financial assistance grants agreement between the State of Alaska and U.S. Federal Transit Administration (FTA).

Sec. 36.30.890. Federal Assistance

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

2 AAC 12.730. Federal Assistance

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. Authority: AS 36.30.040; AS 36.30.890

SEC. 7.03 PROPOSAL AS A PART OF THE CONTRACT

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

SEC. 7.04 ADDITIONAL TERMS AND CONDITIONS

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

SEC. 7.05 HUMAN TRAFFICKING

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

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <https://www.state.gov/j/tip/rls/tiprpt/2018/282584.htm>

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

SEC. 7.06 RIGHT OF REJECTION

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

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

Minor informalities that:

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

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it determines that to be in its best interest.

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

SEC. 7.07 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

SEC. 7.08 DISCLOSURE OF PROPOSAL CONTENTS

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

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

SEC. 7.09 ASSIGNMENT

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

SEC. 7.10 DISPUTES

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

SEC. 7.11 SEVERABILITY

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

SEC. 7.12 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with **SEC. 7.06 RIGHT OF REJECTION**. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

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

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

SEC. 7.13 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

SEC. 7.14 SOLICITATION ADVERTISING

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

SECTION 8. ATTACHMENTS

SEC. 8.01 EXHIBITS AND ATTACHMENTS

EXHIBITS

Exhibit A	Standard Contract Form with Appendix A
Exhibit B	Insurance Requirements-Appendix B1
Exhibit C	Proposal Evaluation Form
Exhibit D	Notice of Intent to Award a Contract
Exhibit E	Federal Aid Contract Provisions (FTA)

ATTACHMENTS

Attachment 1	Subrecipient List
Attachment 2	Cost Proposal Form
Attachment 3	FTA Lobbying Certification
Attachment 4	FTA Offeror's Questionnaire
Attachment 5	Proposal Checklist

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

STANDARD CONTRACT FORM Goods and Non-Professional Services

The parties' contract comprises this Standard Contract Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number	2. Contract Title	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number	7. Alaska Business License Number	
This contract is between the State of Alaska,			
8. Department of	Division	hereafter the State, and	
9. Contractor			hereafter the Contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it. ARTICLE 2. Performance of Contract: 2.1 Appendix A (General Conditions), Items 1 through 18, govern contract performance. 2.2 Appendix B sets forth the liability and insurance provisions of this contract. 2.3 Appendix C sets forth the scope of work/services to be performed by the contractor. ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends _____. ARTICLE 4. Considerations:			
11. Department of	Attention: Division of		
Mailing Address	Attention:		
12. CONTRACTOR		13. CONTRACTING AGENCY	
Name of Firm		Department/Division	
Signature of Authorized Representative		Signature of Procurement Officer	
Typed or Printed Name of Authorized Representative		Typed or Printed Name of Procurement Officer	
Date		Date	

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

APPENDIX A**GENERAL CONDITIONS****1. Inspections and Reports:**

The department may inspect, in the manner and at reasonable times it considers appropriate, all of the contractor's facilities and activities under this contract. The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

2. Suitable Materials, Etc.:

Unless otherwise specified, all materials, supplies or equipment offered by the contractor shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.

3. Disputes:

If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620-AS 36.30.632

4. Default:

In case of default by the contractor, for any reason whatsoever, the State of Alaska may procure the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

5. No Assignment or Delegation:

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Procurement Officer.

6. No Additional Work or Material:

No claim for additional supplies or services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Procurement Officer.

7. Independent Contractor:

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

8. Payment of Taxes:

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

9. Compliance:

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

10. Conflicting Provisions:

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) seek to limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

11. Officials Not to Benefit:

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

12. Contract Prices:

Contract prices for commodities must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. Prices for services must be in U.S. funds and include applicable federal duty, brokerage fee, packaging, and transportation cost so that the services can be provided without further cost.

13. Contract Funding:

Contractors are advised that funds are available for the initial purchase and/or the first term of the contract. Payment and performance obligations for succeeding purchases and/or additional terms of the contract are subject to the availability and appropriation of funds.

14. Force Majeure:

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

15. Contract Extension:

Unless otherwise provided, the State and the contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect, and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least thirty (30) days before the desired date of cancellation.

16. Severability:

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

17. Continuing Obligation of Contractor:

Notwithstanding the expiration date of this contract, the contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance and parts availability requirements have completely expired.

18. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

APPENDIX B¹**INDEMNITY AND INSURANCE****Article 1. Indemnification**

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

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

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

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

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

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PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

Offeror Name: _____

Evaluator Name: _____

Date of Review: _____

RFP Number: 2519H018

EVALUATION CRITERIA AND SCORING

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

5.01 Understanding of the Project—10 Points

Proposals will be evaluated against the questions set out below.

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

NOTES:

- 2) How well has the offeror identified pertinent issues and potential problems related to the project?

NOTES:

- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?

NOTES:

- 4) Has the offeror demonstrated an understanding of the state's time schedule and can meet it?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.01:

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5.02 Methodology Used for the Project—15 Points

Proposals will be evaluated against the questions set out below.

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?

NOTES:

- 2) How well does the methodology match and achieve the objectives set out in the RFP?

NOTES:

- 3) How well does the methodology interface with the time schedule in the proposal?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.02:

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5.03 Management Plan for the Project—15 Points

Proposals will be evaluated against the questions set out below.

1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?

NOTES:

2) How well is accountability completely and clearly defined?

NOTES:

3) Is the organization of the project team clear?

NOTES:

4) How well does the management plan illustrate the lines of authority and communication?

NOTES:

5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

NOTES:

6) Does it appear that offeror can meet the schedule set out in the RFP?

NOTES:

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

7) Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?

NOTES:

8) To what degree is the proposal practical and feasible?

NOTES:

9) To what extent has the offeror identified potential problems?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.03:

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5.04 Experience and Qualifications—20 Points

Proposals will be evaluated against the questions set out below.

1) Questions regarding the personnel.

- a) Do the individuals assigned to the project have experience on similar projects?

NOTES:

- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

NOTES:

- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

NOTES:

2) Questions regarding the firm.

- a) Has the firm demonstrated experience in completing similar projects on time and within budget?

NOTES:

- b) How successful is the general history of the firm regarding timely and successful completion of projects?

NOTES:

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- c) Has the firm provided letters of reference from previous clients?

NOTES:

- d) If a subcontractor will perform work on the project, how well do they measure up to the evaluation used for the offeror?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.04:

EVALUATOR'S COMBINED POINT TOTAL FOR

SECTIONS 5.01-5.04:

THIS SECTION TO BE COMPLETED BY THE PROCUREMENT OFFICER

5.05 Contract Cost — 40 POINTS

Overall, a minimum of 40 percent of the total evaluation points will be assigned to cost.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in SECTION 6.11.

EVALUATOR'S POINT TOTAL FOR 5.05:

MAXIMUM POINT VALUE ALL SECTIONS

—

100 Points

EVALUATOR'S COMBINED POINT TOTAL FOR

ALL EVALUATED SECTIONS:

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

State of Alaska
Department of Transportation & Public Facilities
Statewide Contracting & Procurement
P.O. Box 112500
(3132 Channel Drive, Suite 350)
Juneau, AK 99811-2500

Phone: (907) 465-8949**FAX: (907) 465-3124****NOTICE OF INTENT TO AWARD A CONTRACT****Date:****RE: RFP 2519H018 ACT Drug & Alcohol Compliance Monitoring****Procurement Officer: Paul Nakachi**

This is notice of the state's intent to award a contract. A tabulation of the offers received, listed in the order of ranking, appears below. An offeror who wishes to protest this Notice of Intent must file a protest within ten (10) calendar days following the date this Notice is issued. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day.

Protests must comply with the requirements of AS 36.30.560:

AS 36.30.560. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents;
and
- (5) the form of relief requested.

The offeror identified here as having submitted the most advantageous offer (highest ranked), is instructed not to proceed until a Contract, Notice of Award, or Notice to Proceed is received from the state. A company or person who proceeds prior to receipt of a Contract Notice of Award, or Notice to Proceed does so without a contract and at their own risk. AS 36.30.365.

Highest Ranked Offer:**Other Offers Received:**



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

**REQUIRED CONTRACT PROVISIONS
for
FEDERAL-AID (FTA) CONTRACTS**

I. General	Page 1
II. Fly America Requirements	1
III. Buy America Requirements	2
IV. Charter Bus and School Bus Requirements	2
V. Cargo Preference Requirements	2
VI. Seismic Safety Requirements	2
VII. Energy Conservation Requirements	3
VIII. Clean Water Requirements	3
IX. Bus Testing	3
X. Pre-Award and Post Delivery Audit Requirements	3
XI. Lobbying	4
XII. Access to Records and Reports	4
XIII. Federal Changes	5
XIV. Bonding Requirements	5
XV. Clean Air	7
XVI. Recycled Products	7
XVII. Davis-Bacon and Copeland Anti-Kickback Acts	8
XVIII. Contract Work Hours and Safety Standards Act	12
XIX. Reserved	12
XX. No Government Obligation to Third Parties	12
XXI. Program Fraud and False or Fraudulent Statements and Related Acts	12
XXII. Termination	13
XXIII. Government-wide Debarment and Suspension (Nonprocurement)	15
XXIV. Privacy Act	16
XXV. Civil Rights Requirements	16
XXVI. Breaches and Dispute Resolution	16
XXVII. Patent and Rights in Data	17
XXVIII. Transit Employee Protective Agreements	19
XXIX. Disadvantaged Business Enterprises (DBE)	19
XXX. Reserved.	19
XXXI. Incorporation of Federal Transit Administration (FTA) Terms	19
XXXII. Drug and Alcohol Testing	20
XXXIII. Appendix	21

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required

Contract Provisions and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. In this contract, *Grantor and FTA* means Federal Transit Administration; *Alaska DOT&PF and agency* means the Alaska Department of Transportation and Public Facilities; *AMHS* means Alaska Marine Highway System.

II. FLY AMERICA REQUIREMENTS

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

The Fly America requirements flow down from the Alaska DOT&PF to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that the Alaska DOT&PF receipt of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

III. BUY AMERICA REQUIREMENTS

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

The Buy America requirements flow down from the Alaska DOT&PF to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 C.F.R. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the Alaska DOT&PF the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

IV. CHARTER BUS AND SCHOOL BUS REQUIREMENTS

The Charter Bus and School Bus requirements apply to the following type of contract: Operational Service Contracts.

The Charter Bus requirements flow down from the Alaska DOT&PF to first tier service contractors.

Charter Service Operations – The contractor agrees to comply with 49 U.S.C. 5323 (d) and 49 CFR Part 604, which provides the Alaska DOT&PF of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

The School Bus Requirements flow down from the Alaska DOT&PF to first tier service contractors.

School Bus Operations – Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, the Alaska DOT&PF in receipt of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Alaska DOT&PF may not use federally funded equipment, vehicles, or facilities.

V. CARGO PREFERENCE REQUIREMENTS

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference – Use of United States-Flag Vessels – The Contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated “on board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and the Alaska DOT&PF (through the contractor in the case of a subcontractors bill-of-lading.)

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

VI. SEISMIC SAFETY REQUIREMENTS

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

The Seismic Safety requirements flow down from the Alaska DOT&PF to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including work performed by all subcontractors.

Seismic Safety – The contractor agrees that any new building or addition to an existing building will be designed and

constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

VII. ENERGY CONSERVATION REQUIREMENTS

The Energy Conservation requirements are applicable to all contracts.

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Energy Conservation – The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

VIII. CLEAN WATER REQUIREMENTS

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Clean Water:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Alaska DOT&PF and understands and agrees that the Alaska DOT&PF will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

IX. BUS TESTING

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in the Master Agreement.

Bus Testing – The Contractor (Manufacturer) agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Alaska DOT&PF at a point in the procurement process specified by the Alaska DOT&PF which will be prior to the Alaska DOT&PF's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Alaska DOT&PF prior to Alaska DOT&PF's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

X. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

These requirements should not flow down, except to the turnkey contractor as stated in the Master Agreement.

The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling

stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XI. LOBBYING

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 USC 1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7.

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 USC 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d).

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities" Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC § 1601, et seq.] Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Alaska DOT&PF.

XII. ACCESS TO RECORDS AND REPORTS

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts" in the appendix.

FTA does not require the inclusion of these requirements in subcontracts.

Access to Records – The following access to records requirements apply to this Contract:

1. Where the Purchaser is not the Alaska DOT&PF but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the Purchaser is the Alaska DOT&PF and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a

subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the Alaska DOT&PF or a subgrantee of the Alaska DOT&PF in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

XIII. FEDERAL CHANGES

The Federal Changes requirement applies to all contracts.

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the

term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XIV. BONDING REQUIREMENTS

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the Alaska DOT&PF, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bonding requirements flow down to the first tier contractors.

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to Alaska DOT&PF and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Alaska DOT&PF to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of Alaska DOT&PF.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of Alaska DOT&PF, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Alaska DOT&PF's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Alaska DOT&PF as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense Alaska DOT&PF for the damages occasioned by default, then the undersigned bidder agrees to indemnify Alaska DOT&PF and pay over to Alaska DOT&PF the difference between the bid security and Alaska DOT&PF's total damages, so as to make Alaska DOT&PF whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Alaska DOT&PF determines that a lesser amount would be adequate for the protection of the Alaska DOT&PF.

2. The Alaska DOT&PF may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Alaska DOT&PF may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the Alaska DOT&PF may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Alaska DOT&PF's interest.

(a) The following situations may warrant a performance bond:

1. Alaska DOT&PF property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the Alaska DOT&PF, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Alaska DOT&PF determines that a lesser amount would be adequate for the protection of the Alaska DOT&PF.

2. The Alaska DOT&PF may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Alaska DOT&PF may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Alaska DOT&PF's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Alaska DOT&PF shall determine the amount of the advance payment bond necessary to protect the Alaska DOT&PF.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Alaska DOT&PF shall determine the amount of the patent indemnity to protect the Alaska DOT&PF.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to Alaska DOT&PF, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Alaska DOT&PF, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Alaska DOT&PF and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the

guarantee at no cost to Alaska DOT&PF. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Alaska DOT&PF written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

XV. CLEAN AIR

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XVI. RECYCLED PRODUCTS

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

These requirements flow down to all contractor and subcontractor tiers.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XVII. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon

poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first

day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree

on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The Alaska DOT&PF shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Alaska DOT&PF may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Alaska DOT&PF. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Alaska DOT&PF for transmission to the FTA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Alaska DOT&PF.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less

than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, Alaska DOT&PF, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's

hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable

predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Alaska DOT&PF, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

XVIII. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the Federal Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The Alaska DOT&PF shall upon its own

action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

XIX. RESERVED

XX. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicable to all contracts.

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Alaska DOT&PF, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XXI. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

These requirements are applicable to all contracts.

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXII. TERMINATION

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the Alaska DOT&PF including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

a. Termination for Convenience (General Provision) The Alaska DOT&PF may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Alaska DOT&PF to be paid the Contractor. If the Contractor has any property in its possession belonging to the Alaska DOT&PF, the Contractor will account for the same, and dispose of it in the manner the Alaska DOT&PF directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Alaska DOT&PF may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Alaska DOT&PF that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Alaska DOT&PF, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The Alaska DOT&PF in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Alaska DOT&PF's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Alaska DOT&PF setting forth the nature of said breach or default, Alaska DOT&PF shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Alaska DOT&PF from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that Alaska DOT&PF elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this

Contract, such waiver by Alaska DOT&PF shall not limit Alaska DOT&PF's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The Alaska DOT&PF, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Alaska DOT&PF shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Alaska DOT&PF may terminate this contract for default. The Alaska DOT&PF shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Alaska DOT&PF.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Alaska DOT&PF may terminate this contract for default. The Alaska DOT&PF shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Alaska DOT&PF goods, the Contractor shall, upon direction of the Alaska DOT&PF, protect and preserve the goods until surrendered to the Alaska DOT&PF or its agent. The Contractor and Alaska DOT&PF shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Alaska DOT&PF.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Alaska DOT&PF may terminate this contract for default. The Alaska DOT&PF shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Alaska DOT&PF may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Alaska DOT&PF resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Alaska DOT&PF in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Alaska DOT&PF, acts of another Contractor in the performance of a contract with the Alaska DOT&PF, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the Alaska DOT&PF in writing of the causes of delay. If in the judgment of the Alaska DOT&PF, the delay is excusable, the time for completing the work shall be extended. The judgment of the Alaska DOT&PF shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Alaska DOT&PF.

i. Termination for Convenience or Default (Architect and Engineering) The Alaska DOT&PF may terminate this contract in whole or in part, for the Alaska DOT&PF's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Alaska DOT&PF shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Alaska DOT&PF, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Alaska DOT&PF may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Alaska DOT&PF.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Alaska DOT&PF.

j. Termination for Convenience of Default (Cost-Type Contracts) The Alaska DOT&PF may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Alaska DOT&PF or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Alaska DOT&PF, or property supplied to the Contractor by the Alaska DOT&PF. If the termination is for default, the Alaska DOT&PF may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Alaska DOT&PF and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Alaska DOT&PF, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Alaska DOT&PF determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Alaska DOT&PF, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

XXIII. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*,

and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Alaska DOT&PF. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Alaska DOT&PF, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XXIV. PRIVACY ACT

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XXV. CIVIL RIGHTS REQUIREMENTS

The Civil Rights Requirements apply to all contracts.

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

XXVI. BREACHES AND DISPUTE RESOLUTION

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions

for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Alaska DOT&PF's [Contracting Officer]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [Contracting Officer]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [Contracting Officer] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Alaska DOT&PF, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Alaska DOT&PF and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Alaska DOT&PF is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Alaska DOT&PF, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

XXVII. PATENT AND RIGHTS IN DATA

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to

finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

The patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

The FTA patent clause is substantially similar to the text of 49 CFR Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Alaska DOT&PF or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Alaska DOT&PF or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause

below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Alaska DOT&PF or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Alaska DOT&PF and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Alaska DOT&PF or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Alaska DOT&PF or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Alaska DOT&PF nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any

license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Alaska DOT&PF or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Alaska DOT&PF or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Alaska DOT&PF and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Alaska DOT&PF and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Alaska DOT&PF and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

XXVIII. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Alaska DOT&PF's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the

future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the Alaska DOT&PF and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXIX. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

See the Special Provision Section 120 Disadvantaged Business Enterprise (DBE) Program for the requirements of the Alaska DOT&PF for DBE.

XXX. RESERVED

XXXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The incorporation of FTA terms applies to all contracts.

The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Alaska DOT&PF requests which would cause Alaska DOT&PF to be in violation of the FTA terms and conditions.

XXXII. DRUG AND ALCOHOL TESTING

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Anyone who performs a safety-sensitive function for the Alaska DOT&PF or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized

area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Alaska, or the Alaska DOT&PF, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before April 15 and to submit the Management Information System (MIS) reports before before March 15 to the Contracting Officer. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

XXXII. APPENDIX

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II Non State Grantees						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

ATTACHMENT 1 – SUBRECIPIENT LIST**CENTRAL REGION****Bethel**

City of Bethel
Bill Ferguson, Transit Manager
P.O. Box 1388
Bethel, AK. 99559
(907) 543-3039
wferguson@cityofbethel.net

Girdwood

Glacier Valley Transit
Dawn Johnson, Executive Director
P.O. Box 686
Girdwood, AK 99587
(907)382-9908
djohnson@alYESkaresort.com

Gulkana

Soaring Eagle
Sandra Tsinnie, Transit Manager
P.O. Box 254
Gulkana, AK 99586
(907) 822-4545
stsinnie@gulkanacouncil.org

Kenai

Central Area Rural Transit System (CARTS)
Jennifer Beckmann, Executive Director
P.O. Box 993
Soldotna, AK 99669
(907)262-6345
jbeckmann@ridecartsak.org

Matanuska-Susitna Borough

Sunshine Transit
Kimberly Schlosser, Transit Manager
HC 89 Box 99676
Talkeetna, AK 99676
(907) 733-9279
kim.sunshine@mtaonline.net

Matanuska-Susitna Borough

Valley Transit
Jennifer Tew, Executive Director
225 W. Riley Avenue
Wasilla, AK 99654
(907) 892-8802
jtew@valleytransitak.org

(cont.)

CENTRAL REGION (Continued)**Tok/Anchorage/Fairbanks**

Interior Alaska Bus Line

Ashley Sawyer, Director

P.O. Box 635

Tok, AK 99780

(907) 883-0207

akbus3@aptalaska.net

SOUTHEAST REGION**Juneau, Douglas**

City and Borough of Juneau

Capital Transit

Ed Foster, Transit Superintendent

10099 Bentwood Place

Juneau, AK. 99801

(907) 789-6903

ed.foster@juneau.org

Ketchikan

Ketchikan Gateway Borough

The Bus

Kyan Reeve, Transit Manager

344 Front Street

Ketchikan, AK. 99901

(907) 228-6675, ext 175

kyanr@borough.ketchikan.ak.us

Inter-Island Ferry Authority

Dennis Watson, General Manager

P.O. Box 495

Craig, AK. 99921-0495

(907) 826-4849, ext. 26

dwatson@interislandferry.com

Sitka

Center for Community

Community Rides

Connie Sipe, Executive Director

700 Katlian Street, Suite B

Sitka, AK 99835

(907)747-6960

csipe@cfc.org

ACT DRUG & ALCOHOL COMPLIANCE MONITORING

ATTACHMENT 2 – COST PROPOSAL

The purpose of the cost formula is to provide a mechanism for offerors to submit fully loaded hourly rates in a manner that DOT&PF can evaluate and score cost per Section 6.06. The hourly rates identified will establish billing rates for the resultant contract. Offerors must complete and submit all portions of this fixed fee price summary cost proposal. Failure to do so may result in the proposal being declared non-responsive and rejected.

In their performance of the tasks/deliverables described in RFP Section 3, offerors must identify the employee and the fully loaded hourly rate for each applicable job class. If the offeror's job classifications differ from those provided, the offeror must furnish a job description, the title and hourly billing rate for like position classifications.

If the offeror has multiple levels of the job classes provided, the offeror must submit each job class proposed with a job description, the title, identify the employee and the hourly rate. The total number of estimated hours must equal the State's estimated number of hours for that job class.

Offeror: _____ D-U-N-S Number _____

Job Class	Employee Name	Est. # of Hours	Hourly Rate	Total Cost (Est. Hours X Hourly Rate)
Project Manager or Principal In Charge		80	\$	\$
Lead Reviewer		250	\$	\$
Secondary Reviewer		200	\$	\$
Support Staff		70	\$	\$

Total Extended Cost: \$ _____

(This cost will be evaluated per Section 6.06)

ATTACHMENT 2 – COST PROPOSAL (NON-EVALUATED COSTS)

Offerors must identify any additional job classes and the fully loaded hourly rates for each. These non-evaluated costs shall establish rates to be incorporated into the resultant contract.

Job Class	Employee Name	Fully Loaded Hourly Rate
		\$
		\$
		\$
		\$
		\$



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

FTA CERTIFICATION REGARDING LOBBYING

Project Name:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

FTA OFFEROR'S/BIDDER'S QUESTIONNAIRE

Project Name:

1. Do you have the financial resources adequate to perform the contract, or the ability to obtain them?

☐ Yes ☐ No If no, please describe any arrangements you have made to finance this work:

2. Have you ever failed to complete a contract due to insufficient funds?

☐ Yes ☐ No If yes, please explain:

3. Do you have the ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments?

☐ Yes ☐ No If no, please explain:

4. Do you have a satisfactory performance record for similar projects?

☐ Yes ☐ No If no, please explain:

5. Do you have a satisfactory record of integrity and business ethics?

☐ Yes ☐ No If no, please explain:

6. For the duration of this project/contract do you agree to stay compliant with applicable licensing and tax laws and regulations?

☐ Yes ☐ No If no, please explain:

7. Do you have the necessary staff, or the ability to obtain them?

☐ Yes ☐ No If no, please explain:

8. Do you meet all qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations?

☐ Yes ☐ No If no, please explain:

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

_____ Company Name

_____ Signature of Company's Authorized Official

_____ Name and Title of Company's Authorized Official

_____ Date

ATTACHMENT 5 – CHECKLIST

This checklist is provided to assist both the offeror and the State in identifying the RFP requirements within the proposal. There may be additional requirements beyond those listed on this checklist. Offerors are responsible for thoroughly reviewing the RFP to make sure that they have met all the requirements and have provided all necessary information.

Offerors must complete and return this form. Failure to do so may result in the proposal being deemed non-responsive and the proposal rejected. Completion of this form does not guarantee a declaration of responsiveness.

Offeror: _____

REQUIREMENTS:	Indicate proposal page number(s) where evidence of the requirements has been provided:
Proposal not qualified or restricts the rights of the State per Section 7.06	
Offeror's Certification per Section 1.09(b)	
Conflict of Interest Statement per Section 1.09(d)	
Authorized Signature per Section 1.09(a)	
Minimum Prior Experience evidence per Section 1.05	
Vendor Tax ID per Section 1.09(c)	
Alaska Business License per Section 6.02	
Firm address and contact info, including contact person per Section 4.02 Introduction	
Understanding of the project per Section 4.03	
Methodology used for the project per Section 4.04	
Management Plan for the project per Section 4.05	
Organizational Chart per Section 4.06 Experience and Qualifications	
Similar experience of personnel (resumes) per Section 4.06	
Examples of equivalent services per Section 1.05	
	✓ below
One original and three (3) copies, plus one (1) CD-ROM or flash drive of proposal per Section 1.08	
One copy of Cost Proposal Worksheet (Attachment 2, 2pgs.) in sealed separate envelope per Section 6.07 & 1.08	
Completed FTA Certification Regarding Lobbying form	
Completed FTA Offeror Questionnaire	