

STATE OF ALASKA

INVITATION TO BID (ITB)



E&O INSURANCE POLICIES

ITB 2017-0800-3694

ISSUED: MAY 5, 2017

THE DEPARTMENT OF ADMINISTRATION, DIVISION OF GENERAL SERVICES (DGS), ON BEHALF OF THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT (DCCED) IS SEEKING A CONTRACT FOR THE PURCHASE OF ERRORS AND OMISSIONS INSURANCE POLICIES BY VARIOUS ALASKA REAL ESTATE LICENSEES.

IMPORTANT NOTICE: If you received this solicitation from the State of Alaska's "Online Public Notice" web site, you must register with the contracting officer listed below in to receive notification of subsequent amendments to the solicitation. Failure to register with the contracting officer may result in the rejection of your bid.

BIDDER'S NOTICE: By signature on this form, the bidder certifies that:

- (1) the bidder has a valid Alaska business license, or will obtain one prior to award of any contract resulting from this ITB. If the bidder possesses a valid Alaska business license, the license number must be written below or one the following forms of evidence submitted with the bid:
 - a canceled check for the business license fee;
 - a copy of the business license application with a receipt date stamp from the State's business license office;
 - a receipt from the State's business license office for the license fee;
 - a copy of the bidder's valid business license;
 - a sworn notarized affidavit that the bidder has applied and paid for a business license;
- (2) the price(s) submitted was arrived at independently and without collusion and that the bidder is complying with:
 - the laws of the State of Alaska;
 - the applicable portion of the Federal Civil Rights Act of 1964;
 - the Equal Employment Opportunity Act and the regulations issued thereunder by the State and Federal Government; and
- all terms and conditions set out in this Invitation to Bid (ITB).

If a bidder fails to comply with (1) at the time designated in the ITB for opening the state will disallow the Alaska Bidder Preference. If a bidder fails to comply with (2) of this paragraph, the state may reject the bid, terminate the contract, or consider the contractor in default. Bids must be also submitted under the name as appearing on the bidder's current Alaska business license in order to receive the Alaska Bidder Preference.

Jason Grove, CPPB Contracting Officer	_____ COMPANY SUBMITTING BID	*DOES YOUR BUSINESS QUALIFY FOR THE ALASKA BIDDER'S PREFERENCE? [] YES [] NO
	_____ AUTHORIZED SIGNATURE	*DOES YOUR BUSINESS QUALIFY FOR THE ALASKA VETERAN PREFERENCE? [] YES [] NO
Phone: (907) 465-5679 TDD: (907) 465-2205	_____ PRINTED NAME	*SEE ITB FOR EXPLANATION OF CRITERIA TO QUALIFY
Email: jason.grove@alaska.gov	_____ DATE	_____ TELEPHONE NUMBER
_____ ALASKA BUSINESS LICENSE NUMBER	_____ FEDERAL TAX ID NUMBER	_____ E-MAIL ADDRESS

INTRODUCTION AND INSTRUCTIONS:

CONTRACT INTENT:

This Invitation to Bid (ITB) is intended to result in non-mandatory use contracts for all salespersons, associate brokers, limited brokers, and brokers licensed by DCCED, Division of Corporations, Business, and Professional Licensing, Real Estate Commission, to purchase errors and omissions insurance policies.

CONTRACT PERIOD:

The length of the contract will be from the date of award, through December 31, 2019, with the option to renew for two additional one-year terms under the same terms and conditions as the original contract. Renewals will be exercised at the sole discretion of the state.

CONTRACT ADMINISTRATION:

The administration of this contract is the responsibility of the procurement officer appointed by DCCED.

BID SUBMISSION AND DEADLINE FOR RECEIPT OF BIDS:

Bidders must submit a hard copy of their bid in a sealed package or via email per the instructions below. Sealed bid packages must be addressed as follows:

State of Alaska
Department of Administration
Division of General Services
Address (see below)
Attention: Jason Grove
ITB Number: 2017-0800-3694

If using U.S. Mail, use the following address:

P.O. Box 110210
Juneau, AK 99811-0210

If using a delivery service such as Fed Ex or UPS, use the following address:

333 Willoughby Avenue, Suite 700
Juneau, AK 99801

If submitting a bid via email, the required bid documents must be in PDF format and emailed to jason.grove@alaska.gov prior to the deadline for receipt of bids. Emails must contain the ITB number in the subject line of the email. Bids received via email will be immediately printed out and placed in a sealed envelope until the deadline for receipt of bids.

The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the bid exceeds this size, the bid must be sent in multiple emails

that are each less than 20mb. It is the bidder's responsibility to contact the contracting officer to confirm that the bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

All bids must be received no later than **1:30 p.m.**, Alaska Time on **Friday, June 2, 2017**, at which time they will be publicly opened.

A bidder's failure to submit its bid prior to the deadline will cause the bid to be disqualified. Late bids will not be opened or accepted for evaluation and disqualified. **Please note that overnight delivery to and within Alaska rarely occurs.**

INVITATION TO BID (ITB) REVIEW:

Bidders shall carefully review this ITB for defects or objectionable material. Comments concerning defects or objectionable material in the ITB must be made in writing and received by the contracting officer listed on the front page of this ITB at least ten (10) days before the deadline for receipt of bids. This will allow time for an amendment to the ITB be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices. 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 contracting officer in writing as required.

QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS:

All questions concerning this ITB must be in writing and directed to the contracting officer:

Jason Grove, CPPB

Phone: (907) 465-5679

TDD: (907) 465-2205

Email: jason.grove@alaska.gov

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

AMENDMENTS TO BIDS OR THE ITB:

Amendments to bids or withdrawals of bids will only be allowed if requested in writing to the contracting officer prior to the deadline for receipt of bids. If an amendment to the ITB itself is issued, notice will be given to those who were provided a copy or notice of the ITB and to those who have registered with the contracting officer. Contact the contracting officer via email to register.

PRE-BID CONFERENCE:

A pre-bid conference will be held on **Friday, May 12, 2017, at 9:00 a.m. Alaska Time** in the Division of General Services (DGS) large conference room in the State Office Building – 333 Willoughby Avenue, 7th Floor, Suite 700, in Juneau, Alaska. The purpose of the conference is to discuss certain terms and conditions in the ITB, and allow potential bidders to ask questions concerning the ITB. Parking spaces marked for visitor parking are available in the parking garage, basement level of the State Office Building.

Potential bidders should read the ITB and come to the meeting prepared to discuss any questions or concerns. Those who wish to participate via teleconference instead of in person may dial into the conference at **(800) 315-6338, access code 05024**.

Bidders with a disability needing accommodation should contact the contracting officer prior to the pre-proposal conference so that reasonable accommodation can be made.

BIDDERS WITH DISABILITIES:

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the contracting officer no later than ten days prior to bid opening to make any necessary arrangements.

AUTHORIZED SIGNATURE:

All bids must be signed by an individual authorized to bind the bidder to the provisions of the ITB. Bids must remain valid for at least 90 days from the deadline for receipt of bids.

BIDDER CERTIFICATION:

By signature on the bid, the bidder certifies 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 ITB;
- 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 the bidder fails to comply with [a] through [h] of this paragraph, the state reserves the right to disregard the bid, terminate the contract, or consider the contractor in default.

BACKGROUND, INSURANCE POLICY REQUIREMENTS, AND OTHER INFORMATION

BACKGROUND:

The Real Estate Commission through the DCCED Division of Corporations, Business and Professional Licensing has been licensing real estate professionals in Alaska since 1954. There are four license types: Broker, Limited Broker, Associate Broker and Salesperson that provide professional real estate services throughout the state. These licenses are issued for a two-year period (biennial). During the last two years, real estate licensees have sold an average of 5063 homes with an average home sale price of \$366,494 in Anchorage.

The State of Alaska Legislature has passed laws requiring all real estate licensees to obtain errors and omissions insurance. DCCED's intent is to obtain contracts for providing errors and omissions insurance policies that meet the requirements of 12 AAC 02.510 – 590 for the licensing period beginning **January 1, 2018**. Coverage may be obtained through the contracts or independently acquired if the coverage meets the requirements of the above referenced regulations.

Further information about the Real Estate Commission can be found at:

<https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/RealEstateCommission.aspx>

There is no guaranteed number of licensees who will participate. The current licenses requiring coverage are estimated as follows:

License Type	Number
Salesperson	2,125
Associate Broker	458
Broker	473
Limited Broker	2
Total:	3,058

POLICY REQUIREMENTS:

The contractor is required to provide errors and omissions insurance policies to all licensees who apply under this contract. All policies must be on a yearly basis beginning January 1, 2018, and must meet the following requirements of 12 AAC 02.510-590:

12 AAC 02.510 MINIMUM STANDARDS.

(a)The master errors and omissions insurance policy must provide to each active individual licensee, or former licensees who have purchased coverage in accordance with (a)(4) of this section, at a minimum, the following terms of coverage:

- (1) not less than \$100,000 limit of liability for each licensee per covered wrongful act or per covered claim depending on the policy form used by the insurer; claims expenses including the cost for investigation or defense must be in addition to the limit of liability; if the limit of liability is on a
(A) covered wrongful act basis, two or more claims arising out of a single wrongful act or a series of related wrongful acts may be considered one claim;

- (B) covered claim basis, two or more related wrongful acts may be considered one claim;
 - (2) an annual aggregate limit of liability of not less than \$300,000 per licensee;
 - (3) a deductible amount for each covered wrongful act of not more than \$5,000 for every \$300,000 annual aggregate limit of liability; an additional deductible for investigation and defense costs may be considered;
 - (4) an extended reporting period of 90 days and an option to purchase an additional three years extended reporting period for a premium not to exceed 200 percent of the premium charged for the last year of the terminating coverage;
 - (5) the ability of a licensee, upon payment of an additional premium, to obtain higher limits of coverage or to purchase additional coverages from the group insurer as may be available from the insurer;
 - (6) the coverage provided under the master errors and omissions insurance policy must be individual and specific to the licensee and must cover the licensee regardless of changes in real estate broker or changes in the business or relationship between a real estate broker and the licensee; and
 - (7) prior acts coverage must be offered to a licensee who has maintained the same or similar coverage, continually in-force until the date and the time that coverage begins under the master errors and omissions insurance policy coverage.
- (b) The master errors and omissions insurance policy must contain a provision requiring the consent of the insured to settle a claim except that the insured may not unreasonably withhold consent.
- (c) The insurer that is selected to provide the master errors and omissions insurance policy shall
- (1) maintain an A.M. Best rating of "B+" or better and financial size category of class VI or higher;
 - (2) maintain a certificate of authority issued under AS 21.09 by the director of insurance to transact insurance business in this state and be in compliance with AS 21;
 - (3) provide the master errors and omissions insurance policy after notification by the Real Estate Commission that it is the successful bidder of a competitive bidding process under AS 36.30;
 - (4) enter into contract to provide the master errors and omissions insurance policy in conformity with AS 08.88.172, 12 AAC 02.510 – 12 AAC 02.590, and AS 21; and
 - (5) collect premiums, maintain records, and report to the Real Estate Commission the names of those insured and prior claims experience if known, date of claim, amount paid, nature of claim, and claims information on a quarterly basis or an annual basis or on request by the Real Estate Commission.

12 AAC 02.520. EXCEPTIONS TO COVERAGE.

Except as provided in this section, the master errors and omissions insurance policy may not exclude coverage for claims brought against the insured licensee arising out of a wrongful act by the licensee when performing a professional service for which a real estate license is required. The policy may limit or exclude coverage for claims brought against a licensee that arise as follows:

- (1) out of claims or lawsuits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
- (2) out of loss assumed under a contract or an agreement, except for liability the insured would have had in the absence of the agreements;

- (3) from a criminal, dishonest, fraudulent, or intentional act or omission; this exclusion does not apply to an insured person who did not personally participate in committing the act or omission and who, upon having knowledge of the act or omission, reported it to the Real Estate Commission, or appropriate law enforcement authorities;
- (4) from unlawful discrimination committed by or for the insured person;
- (5) from fines or penalties imposed by a tribunal or other governmental agency;
- (6) from bodily injury, personal injury, advertising injury, or property damage;
- (7) from related business activities for which a license is not required under AS 08.88;
- (8) from the presence of or the actual, alleged, or threatened discharge, dispersal, release, or escape of hazardous materials, nuclear materials, or pollutants;
- (9) from prior wrongful acts unless specific prior wrongful acts coverage is provided;
- (10) from any violation of 15 U.S.C. 77a – 77aa (Securities Act of 1933) or 15 U.S.C. 78a – 78mm (Securities Exchange Act of 1934) or any state blue sky or securities law or similar state or federal statutes; or
- (11) other standard exclusions that are typical in a professional liability insurance policy and that have been approved by the director of insurance under AS 21.42:
- (12) from the insolvency of an insured person;
- (13) from an injury or damage that the insured had reason to expect; or
- (14) from the conversion, misappropriation, commingling, or defalcation of funds or other property.

12 AAC 02.530. STANDARDS FOR EQUIVALENT COVERAGE.

An insurer issuing equivalent coverage under AS 08.88.172(c)(2) shall hold a certificate of authority issued under AS 21.09. All activities contemplated under AS 08.88.172 must be covered. The insurance must meet the minimum coverage standards of 12 AAC 02.510, except that

- (1) a policy with a higher deductible amount or self-insured retention will qualify as equivalent coverage for purposes of AS 08.88.172(c)(2) if, when applying to obtain or renew the license, the insured licensee provides the Real Estate Commission with
 - (A) an affidavit certifying that the insured licensee has the financial resources in set-aside funds to pay the higher deductible amount or self-insured retention; and
 - (B) a certificate of insurance from the insured licensee's insurer and
- (2) a broker employing other real estate licensees may comply with the requirements of 12 AAC 02.510(a)(1) and (2) by obtaining insurance with coverage of a minimum of \$300,000 per wrongful act and \$1,000,000 aggregate, if all licensees associated with the broker are covered.

12 AAC 02.540. NOTIFICATION REQUIRED FOR CANCELLATION.

If equivalent insurance coverage obtained by a licensee under AS 08.88.172(c)(2) is to lapse or not be renewed, the insurer shall notify the Real Estate Commission of the intent to lapse or not to renew a minimum of 30 days before the expiration date of the term. It is the responsibility of the broker or licensee, as applicable, to instruct the insurer to provide the notice required by this section to the Real Estate Commission with named licensees covered.

12 AAC 02.550. MAXIMUM AMOUNT OF PREMIUM.

The maximum amount of premium to be charged a licensee annually under the master errors and omissions insurance policy **may not exceed \$2,500.**

12 AAC 02.560. METHOD OF ADJUSTMENT.

Every three years after the initial procurement of the master errors and omissions insurance policy, the department may adjust the amount of coverage under 12 AAC 02.510(a). The department will not make an adjustment if the department finds the adjustment will significantly reduce the number of insurers willing to bid on a contract to offer the master errors and omissions insurance policy.

An adjustment in the limits of liability under 12 AAC 02.510(a) must be an increment of no less than \$25,000. The department will give notice of the adjustments under this section by posting the amounts on its Internet website. An adjustment under this section does not take effect until the renewal or the issuance of a new master errors and omissions insurance policy.

12 AAC 02.590. DEFINITIONS.

In this chapter, unless the context requires otherwise,

- (1) "aggregate limit" means the maximum liability of an insurer regardless of the number of claims during the policy term;
- (2) "director of insurance" means the person appointed under AS 21.06.010 to head the division of insurance of this state;
- (3) "equivalent coverage" means errors and omissions insurance coverage obtained independently of the master errors and omissions insurance policy available from the Real Estate Commission and that complies with the requirements, terms, and conditions as set out in 12 AAC 02.510 – 12 AAC 02.590;
- (4) "errors and omissions insurance" means professional liability insurance that provides coverage to holders of active real estate brokers, associate brokers, and salespersons licensed in this state for wrongful acts made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of one or more specific insurance policies in place;
- (5) "extended reporting period" means a designated period of time after an errors and omissions insurance policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period;
- (6) "master errors and omissions insurance policy" means the policy obtained by the Real Estate Commission under AS 08.88.172 that meets the requirements of 12 AAC 02.510 – 12 AAC 02.590;
- (7) "prior acts coverage" means the insurance policy provides coverage for claims that are made during a current policy period, but one or more acts causing the claim or injuries for which the claim is made occurred before the inception of the current policy period;
- (8) "wrongful act" means a negligent act, error, or omission.

REQUIRED CERTIFICATIONS:

To be considered responsive, the contractor must hold an A.M. Best rating of B+ or better and financial size category of class VI or higher. The contractor must also hold a Certificate of Authority issued under AS 21.09 by the director of insurance to transact insurance business in Alaska and compliance with AS 21.

The contractor must maintain these ratings throughout the entire contract period and must notify the Real Estate Commission if there is a change in their ratings.

REPORTING REQUIREMENTS:

Upon the request of either the Real Estate Commission or the DCCED procurement officer, the contractor shall provide the names of those insured, claims information, prior claims experience if known, nature of the claim, date of claim and amount paid on either a quarterly or annual basis. The parties may work together may to determine what type of information is to be provided, including the report format.

CONTRACT PRICES:

The contract resulting from this ITB will include U.S. Department of Labor Consumer Price Index (CPI) price adjustments. The contractor may 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 contract renewal date, the adjustment will be effective 30 days after the state receives the written request. All price adjustments must be approved by the contracting officer prior to the implementation of the adjusted prices. Approval shall be in the form of a contract amendment issued by the contracting officer.

Price adjustments will be made in accordance with the percentage change in the (CPI-U) for All Urban Consumers, All Items, Anchorage 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 (January through June 2017), and each January through June six-month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive price adjustments will be allowed.

Policy premiums may also be increased or decreased yearly based on an actuarial review of premium, loss and expense experience for the program, provided the contractor and the Real Estate Commission agree to the change(s). Any increase must be supported by documentation, and the contractor is required to file any premium rate changes with the DCCED Division of Insurance along with other data that may be required by that division.

12 AAC 02.560 allows the state to adjust the amount of coverage required under 12 AAC 02.510(a) every three years after the establishment of a contract resulting from this ITB. Should the state adjust the amount of coverage required, the contractor will be allowed to adjust the insurance premiums under the contract after negotiation with the Real Estate Commission.

If adjustments to the amount of coverage will cause an unacceptable risk for the contractor, the contractor will not be forced to accept the adjustments under the contract and the contract will be resolicited.

Any premium rate changes or adjustments will be documented via an amendment to the contract.

POLICY AMOUNTS:

For all licensees who seek E&O policies through this contract, the contractor is allowed to loss rate for individual licensees within the minimum and maximum policy amounts offered in response to the ITB, provided the contractor does not exceed the maximum yearly cost identified on the Bid Schedule.

For licensees the contractor determines are high enough risk that the yearly policy amount should exceed the maximum yearly cost, the contractor shall work with the Real Estate Commission to identify and establish the criteria in which this scenario applies along with the yearly policy rate for those licensees. That cost cannot exceed the maximum yearly cost of \$2,500 set forth by 12 AAC 02.550.

CONTRACT PAYMENT:

All payments are the responsibility of the insured licensee and are not the responsibility of the state. All invoices must be sent to the licensee's address of record or address provided to the contractor by the licensee.

Licensees shall be billed monthly and if available from the contractor, have the option of setting up automatic payment from their banking account. If a licensee cancels their policy, the licensee is only responsible for payment up until the time of cancellation. The contractor may also offer yearly, bi-annually, or similar type payment options provided the licensee receives a pro-rated refund for the remaining balance, if for whatever reason during the policy term, the licensee no longer requires E&O insurance.

GENERAL PROCESS INFORMATION

ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES:

Prior to the award of a contract, a bidder must hold a valid Alaska business license. However, to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license at the time of the deadline for receipt of bids. Bidders may contact the Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, for information on these licenses:

Web: <https://www.commerce.alaska.gov/web/cbpl/>

Phone: (907) 465-2550

Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

- (a) copy of an Alaska business license;
- (b) certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid (see front page);
- (c) a canceled check for the Alaska business license fee;
- (d) a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- (e) a sworn and notarized affidavit that the bidder has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time bids 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.

At the time designated for bid opening, all bidders must hold any other necessary applicable professional licenses required by Alaska Statute.

ALASKA BIDDER PREFERENCE:

An Alaska Bidder Preference of five percent will be applied the bid price for evaluation purposes. The preference will be given to a bidder who:

- (1) holds a current Alaska business license at the time designated for bid opening;
- (2) submits a proposal for goods or services under the name appearing on the bidder's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

"Place of business" means that location at which normal business activities are conducted, services are rendered, or goods are made, stored, or process; a post office box, mail drop, telephone, or answering service does not, by itself, constitute a "place of business."

"Staffed" means that a bidder or at least one employee of the bidder is a resident of Alaska under AS 16.05.415(a).

Alaska Bidder Preference Statement

To receive the Alaska Bidder Preference, the bid must also include a statement certifying that the bidder is eligible to receive the Alaska Bidder Preference.

If the bidder is a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner and certify that all members or partners are residents of the state.

ALASKA VETERAN PREFERENCE:

If a bidder qualifies for the Alaska Bidder Preference and is a qualifying entity as defined in AS 36.30.321(f), a five percent Alaska Veteran Preference shall be applied to the bid price for evaluation purposes. The preference may not exceed \$5,000.

Qualifying entity means a:

- (2) sole proprietorship owned by an Alaska veteran;
- (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- (4) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans.

Alaska Veteran Preference Statement

To receive the Alaska Veteran Preference, the bid must include a statement certifying that the offeror is eligible to receive the Alaska Veteran Preference.

If the bidder is a partnership, LLC, or corporation as identified in (2), (3), or (4) of this subsection, the statement must also identify each partner or member and certify that all members or partners are Alaska veterans, or identify the individuals who are owners and certify which of those individuals are Alaska veterans.

ALASKANS WITH DISABILITIES PREFERENCE:

If a bidder qualifies for the Alaska bidder preference under AS 36.30.321(a) and AS 36.30.990[25], and is a qualifying entity as defined in AS 36.30.321(d), they will be awarded an Alaskans with Disabilities Preference of ten percent (10%) in accordance with AS 36.30.321(d).

PREFERENCE QUALIFICATION:

To qualify for the Alaska Veterans Preference or Alaskans with Disabilities Preference, a bidder must add value by actually performing, controlling, managing, and supervising the services provided, or a bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

ESTIMATED QUANTITIES:

The number of Real Estate licensees referenced herein are the state's estimated requirements and may vary more or less from the number of Real Estate licensees requiring coverage. The state does not guarantee any minimum or maximum number of purchases from this contract.

METHOD OF AWARD:

After bids have been opened and evaluated, the bids will be tabulated and a Notice of Intent to Award will be issued. The purpose of this notice is to list the name of each company or person that submitted a bid along with their bid price. It also provides notice of the state's intent to award this contract to the bidder indicated. A copy of the Notice of Intent will be sent to each company or person who responded to the ITB.

A bidder identified as the apparent low responsive and responsible bidder shall not proceed until a Contract Award, or some other form of written notice is given by the contracting officer. A bidder who proceeds prior to receiving Contract Award or some other form of written notice from the contracting officer does so without a contract and at their own risk.

Bidders must use ITB 2017-0800-3694 Bid Schedule v2 to enter the minimum and maximum yearly cost for a policy that meets the requirements specified in this ITB, for each real estate licensee type. Those costs will be combined and award will be made to the overall lowest responsive and responsible bidder. To be considered responsive, bidders must bid on all real estate licensee types.

REQUIRED BID RESPONSE INFORMATION:

- 1.** Completed and signed first page of ITB.
- 2.** Completed ITB 2017-0800-3694 – Bid Schedule.
- 3.** Proof of A.M. Best rating of B+ or better and financial size category of class VI or higher.
- 4.** Proof of Certificate of Authority issued under AS 21.09 by the director of insurance to transact insurance business in Alaska and compliance with AS 21.
- 5.** If applicable, Alaska Bidder and Veteran Preference certification as set forth in the General Process Information section of the ITB.
- 6.** Proof of insurance in accordance with the General Legal Information section.

Failure to provide items 1 – 5 will result in the bid being found non-responsive and rejected. If item 6 is not provided with the bid, it must be obtained by the contracting officer prior to the award of the contract.

GENERAL LEGAL INFORMATION

COMPLIANCE WITH ADA:

By signature of their bid the bidder certifies that they comply with the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government. Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance with 28 CFR Part 35 Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

CONTRACT PERFORMANCE LOCATION:

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

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

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 bid or proposal as non-responsive, or cancel the contract.

HUMAN TRAFFICKING:

By signature on their bid, the bidder certifies that the bidder 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: <http://www.state.gov/j/tip/>

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

SUBCONTRACTORS AND JOINT VENTURES:

Subcontractors and joint ventures are allowed under this contract.

If a bid with subcontractors is selected, the state may request the following information about each prospective subcontractor:

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

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

A bidder's failure to provide this information within five working days from the date of the state's request may cause the bid to be considered non-responsive.

If submitting a bid as a joint venture, the bidder must submit a copy of the joint venture agreement which identifies the principals involved and their rights and responsibilities regarding performance and payment.

INDEMNIFICATION:

The contractor shall indemnify, hold harmless, and defend the state 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 state.

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.

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.

Proof of insurance is required for the following:

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

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

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

Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim and \$2,000,000 annual aggregate.

Copies of Certificates of Insurance may be supplied with the bid and must be obtained by the contracting officer prior to the award of a contract. Failure to supply satisfactory proof of insurance within the time required will cause the state to declare the bidder non-responsible and reject the bid.

NONDISCLOSURE AND CONFIDENTIALITY:

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

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines (i) 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 (ii) 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.

FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER:

Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

For the purposes of award, offers made in accordance with this ITB must be good and firm for a period of ninety (90) days from the date of bid opening.

EXTENSION OF PRICES:

In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

BID PREPARATION COSTS:

The state is not liable for any costs incurred by the bidder in bid preparation.

CONFLICT OF INTEREST:

An officer or employee of the State of Alaska may not seek to acquire, be a party to, or possess a financial interest in, this contract if (1) the officer or employee is an employee of the administrative unit that supervises the award of this contract; or (2) the officer or employee has the power to take or withhold official action that would affect the award or execution of the contract.

Each bid shall include a statement indicating whether the bidder or any individuals who will work under 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 DCCED reserves the right to consider a bid 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 respondent. The commissioner's determination regarding any questions of conflict of interest shall be final.

ASSIGNMENT(S):

Assignment of rights, duties, or payments under a contract resulting from this ITB is not permitted unless authorized in writing by the DCCED procurement officer. Bids that are conditioned upon the state's approval of an assignment will be rejected as nonresponsive.

FORCE MAJEURE: (Impossibility to perform)

The contractor is not liable for the consequences of any failure to perform, or default in performing, any of its 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 contractor. For the purposes of this agreement, Force Majeure will mean war (whether declared or 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.

CONTRACT EXTENSION:

Unless otherwise provided in this ITB, the State and the successful bidder/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.

COMPLIANCE:

In the performance of a contract that results from this ITB, 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; and pay all applicable federal, state, and borough taxes. The contracting officer may reject any bid that does not comply with all material and substantial terms, conditions, and performance requirements of the ITB. Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the contracting officer may determine the bid to be a counter-offer and the bid may be rejected.

DEFAULT:

A contractor's failure to comply with any of the terms and conditions of this contract may result in a default action by the state. It is generally the state's policy to provide contractors the opportunity to correct deficiencies before declaring default.

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

CONTRACT CANCELLATION:

The state reserves the right to cancel a contract awarded as a result of this ITB at its convenience upon thirty calendar days written notice to the contractor. The state is liable only for payment in accordance with payment provisions of the contract for services or supplies provided before the effective date of termination.

DISPUTES:

If a contractor has a claim regarding a contract resulting from this ITB that it cannot resolve with the state by mutual agreement, it shall pursue a claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

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 provision held to be invalid.

GOVERNING LAW; FORUM SELECTION:

A contract resulting from this ITB is governed by the laws of the State of Alaska. To the extent not otherwise governed by the Disputes section of this ITB, any claim concerning the contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

PROTEST:

AS 36.30.560 provides that an interested party may protest the content of the ITB. 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 the ITB, the protest must be received, in writing, by the contracting officer at least ten days prior to the deadline for receipt of bids.

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

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

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

The contracting officer will issue a written response to the protest. The response will set out the contracting 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 bidders will be notified of any protest and may receive a copy of the protest if requested. The review of protests, decisions of the contracting officer, appeals, and hearings, will be conducted in accordance with AS 36.30, Article 8 – Legal and Contractual Remedies.