



ALASKA RAILROAD CORPORATION
327 W. Ship Creek Avenue
Anchorage, AK 99501

ARRC RAIL FLAW DETECTION

INVITATION TO BID #17-42-206086

NOVEMBER 22, 2018

ALASKA RAILROAD CORPORATION
327 WEST SHIP CREEK AVENUE
ANCHORAGE, ALASKA 99501



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327 W. Ship Creek Avenue
Anchorage, AK 99501

November 22, 2017

INVITATION TO BID

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ARRC RAIL FLAW DETECTION

Response Required: This page must be completed and returned ensuring receipt of future addenda or additional information. Please email this to Goemerg@akrr.com All addenda will be forwarded to the contact name and number listed below.

Firms that have not returned this cover sheet will not be informed of addendums and will only be alerted to addendums by checking with the ARRC procurement officer or by checking ARRC's internet site: www.akrr.com, select Corporate/ Procurement then Solicitations. Bidders must acknowledge the receipt of all issued addendums in their proposal/bid submittal.

Company _____

Address _____

Contact _____

Phone _____ Fax _____

Email _____

www.AlaskaRailroad.com

THIS IS NOT AN ORDER

INVITATION NUMBER: #17-41-206086
DATE OF INVITATION: November 22, 2017

INVITATION TO BID
ALASKA RAILROAD CORPORATION
327 W. SHIP CREEK AVE.
ANCHORAGE, ALASKA 99501
ATTENTION: GREG GOEMER (907) 265-2593
Goemerg@akrr.com

SEALED BIDS WILL BE RECEIVED AT: Alaska Railroad Corporation
327 W. Ship Creek Avenue
Anchorage, Alaska 99501

**UNTIL 3:00 PM LOCAL TIME ON DECEMBER 14, 2017 AT
WHICH TIME BIDS WILL BE PUBLICLY OPENED.**

ARRC RAIL FLAW DETECTION

IMPORTANT

A bidder's failure to visit the work site will in no way relieve the bidder of the responsibility of performing the work in strict compliance with the true intent and meaning of the terms, conditions and specifications of this ITB. Any questions the bidders have must be submitted in writing to the Contract Administrator. The Project Manager cannot and will not answer bidders' questions regarding the work to be performed under this ITB or the terms, conditions and specifications of this ITB.

Return your bid in a sealed envelope on which the Solicitation number and title appears. Bids received by facsimile transmission will not be considered for award. Bids shall be submitted on the forms furnished herein. Hand-delivered bids, amendments, or withdrawals must be received by ARRC's Contracts Section before the scheduled time of bid opening.

Your bid must be complete. See instructions and conditions enclosed.

ARRC reserves the right to reject any and all bids, or any part thereof, negotiate changes in bids, accept any bids or any part thereof, waive minor informalities or defects in any bids, and not to award the proposed contract if it is in the best interest of ARRC.

BIDDER/VENDOR TERMS AND CONDITIONS: PROSPECTIVE BIDDERS ARE CAUTIONED TO PAY PARTICULAR ATTENTION TO THIS CLAUSE. Bidder/contractor imposed terms and conditions which conflict with this Invitation to Bid terms and conditions are considered counter offers and, as such, will cause the Alaska Railroad Corporation to consider the bid non-responsive.

If a bidder attaches additional terms and conditions as part of the bid, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Invitation to Bid and the terms and conditions of the bidder/contractor, the terms and conditions of the Invitation to Bid will prevail.

This solicitation is not to be construed as a commitment of any kind nor does it commit the ARRC to pay for any costs incurred in the submission of a bid or for any other costs incurred prior to the execution of a formal contract



The Alaska Railroad is a member of Green Star (<http://www.greenstarinc.org/>). ARRC earned an initial Green Star Award in 1994 and a Green Star Air Quality Award in 2007. The Alaska Railroad considers Green Star membership to be a positive business attribute, and regards a Green Star award as a tangible sign of an organization's commitment to environmental stewardship and continual improvement within its operations.

ARRC Disadvantaged Business Enterprise (DBE) Program

ARRC is an equal opportunity corporation that encourages the participation of DBEs as prime contractors and subcontractors on its contracts funded in whole or in part by the Federal Transit or Federal Highway Administrations. The ARRC currently has a 100% race-neutral DBE program and does not set DBE goals on individual contracts. Nonetheless, the ARRC aspires to achieve an overall DBE participation of 3.67% in FY 2017

ARRC shall not be held responsible for bidder's lack of understanding of what is required by this bid. Should a bidder not understand any aspect of this bid, or require further explanation, or clarification regarding the intent or requirements of this bid, it shall be the responsibility of the bidder to seek guidance from the ARRC.

Please direct all responses and/or questions concerning this invitation to bid to Greg Goemer, Alaska Railroad Corporation, Supply Management, 327 W. Ship Creek Avenue, Anchorage, AK 99501, telephone number 907-265-2593, email address goemerg@akrr.com. Questions must be submitted in written form prior to December 11, 2017. Questions submitted after that date will not be accepted.

Sincerely,

Greg Goemer

Greg Goemer
Sr. Contract Administrator
Alaska Railroad Corporation

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APPENDIX A
ALASKA RAILROAD CORPORATION
REQUIRED DOCUMENTS

REQUIRED FOR BID Bids will not be considered if the following documents are not completely filled out and submitted at the time of bidding:

1. Construction Bid Form - [Form 395-0121]
2. Bidders Questionnaire - [Form 395-0136]
3. Cost Schedule - Appendix F

REQUIRED AFTER NOTICE OF APPARENT LOW BIDDER The apparent low bidder is required to complete and submit the following documents within after receipt of written notification:

1. Contractor's QA/QC Plan
2. Contractor's Site Health & Safety Plan

REQUIRED FOR AWARD In order to be awarded the contract, the successful bidder must completely fill out and submit the following documents within the time specified in the intent to award letter:

1. Certificate of Insurance - [from Insurance Carrier]
2. Contractors Business License
3. ARRC Contract and Notice to Proceed, (ARRC Generated)

APPENDIX B

SPECIFIC TERMS AND CONDITIONS

Terms and Conditions: Any contract resulting from this Request for Proposals shall incorporate all of the terms and conditions referenced in this solicitation package.

Period of Performance: The contract shall be for one year with ARRC's option to renew the contract for an additional four (4) one year periods. A work week shall consist of five (5) each, eight (08) hour days. The contract work will be performed seasonally under the direction of the Director of Maintenance Production and Planning throughout contract.

Successful Contractor shall obtain an Alaska Business License, and shall be responsible for keeping it current for the duration of the contract. This is a requirement of the State of Alaska and a requirement for any Contractor working on public projects in the State.

Contractor Liability: The contractor shall be liable for any damage or loss to ARRC property resulting from any act or omission on the part of the Contractor or its agents and/or subcontractor while on or in possession of ARRC property. The basis for evaluation of such damage or loss shall be the cost of repairing such damage or replacing any items that in the opinion of the Contracting Officer is irreparable. In the event of negligence or failure on the part of the Contractor to promptly make such repairs and/or replacements, such costs as may be incurred by ARRC to remedy the loss shall be deducted from any amount due, or to become due, under the contract. The Contractor shall not, however, be liable for loss or destruction of, or damage to ARRC property if such loss or destruction of, or damage to, ARRC property is due to causes resulting from normal and expected operational procedures or from causes beyond the control of and without the fault or negligence of the Contractor or its agents and/or subcontractors.

Character of Workers: The Contractor shall provide a sufficient number of competent, suitable qualified personnel to perform the work as required by the contract documents. The Contractor shall at all times maintain good discipline and order at the work site. ARRC may, in writing, require the Contractor to remove from the work any employee the ARRC deems incompetent, careless, or otherwise detrimental to the progress of the work, but the ARRC shall have no duty to exercise this right.

Safety and Protection: The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

(1) All employees on the site and other persons and organizations who may be affected thereby;

(2) All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

(3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

In the performance of this contract, the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the ARRC may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor with no change in contract amount, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, or the public enemy or governmental authorities. The Contractor shall designate a responsible safety representative at the site. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the ARRC.

Work Safety on Railroad Property: The safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the work pursuant to this contract. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed while working on Alaska Railroad Corporation ("ARRC") property. Further railroad safety information may be obtained from the ARRC Safety Office at 907-265-2515. Safety information is also available on the ARRC website at www.alaskarailroad.com.

In the event Contractor or its subcontractor will be performing activities on or in close proximity to a railroad track, the Contractor shall be responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection ("RWP") regulations (49 CFR 214, Subpart C). Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on these regulations. All RWP related Work shall be conducted in strict compliance with the RWP safety standards set forth in 49 CFR 214, Subpart C and the Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any RWP related Work. Specific information on Railroad Safety Plans may be obtained from the ARRC Safety Office at 907-265-2515.

In the event Contractor will be performing activities on a railroad bridge, the provisions of 49 CFR 214 regarding bridge worker safety shall apply. All bridge related Work shall be conducted in strict compliance with the bridge worker safety standards set forth in 49 CFR 214 and the Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any bridge related Work.

Contractor shall arrange with ARRC to keep itself informed on the time of arrival of all trains and shall stop any of Contractor's or Subcontractor's operations which might be or cause a hazard to the safe passage of the train past the work site from 10 minutes before the expected arrival of the train until it has passed or at any other time as directed by the flagman.

ARRC flag protection is required before any activity can occur on or near a railroad operating facility such as a track, yard, bridge or shop building. For incidental work, such as surveying or inspection, an ARRC qualified flagman will provide a safety briefing prior to the commencement of the Work to discuss how and when protection from train traffic is to be provided. For any activity involving a disturbance or potential disturbance to the track, track embankment, or any railroad facility, ARRC may require a specific Railroad Safety Plan prior to startup. Projects which involve activities which cross the tracks or are longitudinal to the tracks will require a specific Railroad Safety Plan and a one hour ARRC provided training course for Contractor's project supervisors prior to the initiation of Work on ARRC property.

The Contractor shall arrange for ARRC flag protection when performing any work within 20 feet of any track. All work within 20 feet of the track shall cease when a train passes and all Contractor employees shall maintain a distance of at least 20 feet from the track until the train has safely passed. In addition, any work that could come within 20 feet of the track will cease when a train passes. For example, crane or pile driving activities shall stop when trains pass when the maximum boom and suspended load radius can come within 20 feet of the tracks. Pile driving shall not be done when trains are passing the work site. Vehicles and other construction equipment shall not be operated or parked closer than 20 feet from any track without ARRC flag protection.

Track outages require ARRC's prior approval. Prior to a proposed track outage, the Contractor shall submit a closure plan to ARRC for approval. The plan will describe the work to be accomplished, the equipment, manpower and other resources required, and the schedule. Once approved by ARRC, the Contractor shall follow the plan. ARRC reserves the right to assume control of the work to reestablish rail service if the schedule is not met. Contractor shall bear all costs and damages which may result from failure to meet the closure schedule.

Whenever an ARRC flag person is required for performance of the work, he or she will be provided by the ARRC at no expense to the Contractor. A minimum of 48 hours notice is required for ARRC flag protection.

****NOTE****

FRA Drug & Alcohol Testing Compliance.

All contractors and subcontractors providing Roadway Worker services for ARRC will be required to register with BROWZ, a third-party company that ARRC has engaged to verify and track contractor compliance with 49 C.F.R. Part 219 as well as other contractor responsibilities. The cost for each contractor to register will vary based on the services provided, and will be paid by the contractor directly to BROWZ

Emergencies: In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the ARRC, is obligated to act to prevent threatened damage, injury or loss.

APPENDIX C

SCOPE OF WORK

Contractor shall perform ultrasonic rail testing and inspection services for the ARRC. The tests shall meet all of the requirements of 49CFR 213.237, and any revision thereto. The majority of the ARRC's rail is 115#, however, there is some 141, 90, 75, and 70 pound rail. Inspection equipment must be capable of detecting defects between joint bars and in the area enclosed by joint bars (ultrasonic type method). Upon completion of testing Contractor shall provide a report based upon information generated by a continuous search for internal defects in track rail. There is approximately 535 miles of track. Contractor shall be required to perform rail flaw detection two (2) times a year per schedule of track to be inspected listed below.

Equipment: All equipment used for ultrasonic rail testing will be insulated. Equipment shall be a Hyrail vehicle that can operate on Alaska highways even during spring 75% weight restriction season.

Track to be inspected twice yearly:

Main Line Mile Post (MP) 2.9 (Seward) to MP 470.3 (Fairbanks)

Whittier Branch MP F0.0 (Whittier) to MP F12.4 (Portage)

Anchorage Airport Spur MP J0.0 to MP J2.8

Palmer Branch MP A0.0 to MP A6.5

Eielson Branch G0.0 to MP G24.5 (Eielson)

Fairbanks Airport Spur MP H0.0 to MP H10.0

Track to be inspected once yearly:

All sidings associated with tracks listed above.

Note: All arrangements for testing shall be coordinated with ARRC no later than fourteen (14) calendar days prior to actual testing. Contractor shall be mobilized in Alaska to ready and perform required inspections within six (6) weeks of notifications. The ARRC may issue a long-term inspection schedule, which will allow the contractor to plan a year in advance.

Reports: Contractor will be required to provide daily reports to ARRC. Upon completion of rail inspection for that day, one (1) paper copy of the report shall be submitted to the appropriate ARRC supervisor listing the date, location, and nature of the any and all internal rail defects found. Additionally, one (1) electronic copy of the report shall be emailed to the ARRC Superintendent of Maintenance daily. After completion of the site testing, a summary report shall be furnished to ARRC.

APPENDIX D

FORMS

**ALASKA RAILROAD CORPORATION
SERVICE BID FORM of**

NAME _____

ADDRESS _____

To the CONTRACTING OFFICER, ALASKA RAILROAD CORPORATION:

In compliance with your Invitation for Bids No. _____, dated _____, the Undersigned proposes to furnish and deliver all the services and perform all the work required in said Invitation according to the specifications and requirements contained therein and for the amount and prices named herein as indicated on the Cost Schedule, which is made a part of this Bid.

The Undersigned hereby agrees to execute said contract and bonds, if any, within **Ten (10) Calendar Days**, or such further time as may be allowed in writing by the Contracting Officer, after receiving notification of the acceptance of this Bid, and it is hereby mutually understood and agreed that in case the Undersigned does not, the accompanying bid guarantee, if any, shall be forfeited to the Alaska Railroad Corporation as liquidated damages, and said Contracting Officer may proceed to award the contract to others.

The Undersigned agrees to commence performance within **Ten (10) Calendar Days** after the effective date of the Notice to Proceed and to complete performance by _____, unless extended in writing by the Contracting Officer.

The Undersigned acknowledges receipt of the following addenda to the requirements and/or specifications for this Invitation for Bids (give number and date of each).

Addenda Number	Date Issued	Addenda Number	Date Issued	Addenda Number	Date Issued
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

NON-COLLUSION AFFIDAVIT

The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association, or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

The Undersigned has read the foregoing proposal and hereby agrees to the conditions stated therein by affixing his/her signature below:

_____ Name and Title of Person Signing	_____ Signature
---	--------------------

_____ Telephone Number	_____ Facsimile Number
---------------------------	---------------------------

395-0129 (12/99)

BIDDERS QUESTIONNAIRE
(Revised 1-31-06)

Note: Failure to provide the information requested in this questionnaire may be cause for rejection of your bid or offer on the grounds of nonresponsiveness and/or nonresponsibility.

Project _____

Name of Your Business: _____

Street Address: _____

Mailing Address if Different: _____

City: _____ State: _____ Mailing Zip: _____

Telephone: _____ Fax: _____ E-Mail: _____

Date Firm Established: _____

1 How many years has the business been under the above name? _____

Previous business name(s) if any: _____

2 Federal Tax ID Number: _____

2.1 Business License Number: _____

Bid Acceptance Period _____ Days. (Bids providing less than thirty-day (30) calendar days for acceptance may be considered nonresponsive and may be rejected.)

Discount for prompt pay _____ % _____ days.

The bidder shall list any variations from or exceptions to the Terms, Conditions or Specifications of the Solicitation

Continued on the next page

List the three most recent contracts performed by your company where the commodity or service requested in this solicitation was the primary commodity or service supplied. Include the client's name, contract amount, contract date, person to contact regarding performance, their telephone, facsimile number and e-mail.

Clients name, Contact person, Contact info. Description of Work and Contract Amount
(telephone, fax, and email)

<u>List any other business related experience:</u>	

Are you acting as a broker or the primary supplier in this transaction?

- ☐ Broker
☐ Primary Supplier

Business Information (Please check all that apply):

- ☐ The business is Individual
☐ The business is a Partnership
☐ The business is a Non-Profit
☐ The business is a Joint-Venture
☐ The business is a Corporation incorporated under the laws of the State of _____
☐ The business is full-time
☐ The business is part-time
☐ The business is not a certified Disadvantaged Business (DBE)
☐ Business is a certified DBE
☐ DBE was certified by State DOTPF
☐ DBE was certified by the Municipality of Anchorage
☐ Business is an 8(a)/WBE/MBE and is certified by SBA
☐ Business was certified by _____
☐ DBE Certification # is _____

Firms Annual Gross Receipts:

- ☐ <\$500,000
☐ \$500,000 - \$999,999
☐ \$1,000,000 - \$4,999,999
☐ \$5,000,000 - \$9,999,999
☐ \$10,000,000 - \$16,999,999
☐ >\$17,000,000

Completed by: _____ Title: _____

Signature: _____ Date: _____

APPENDIX E

GENERAL TERMS AND CONDITIONS (Revised 3/4/08)

The following terms and conditions supersede the terms and conditions on the reverse side of ARRC's purchase order to the extent that they are inconsistent therewith and shall be deemed to have the same force and effect as though expressly stated in any such purchase order into which this document is incorporated.

1. Definitions.

"ARRC" shall mean the Alaska Railroad Corporation.

"Contractor" shall mean the person or entity entering into the contract to perform the work or services specified therein for ARRC.

"Contract" shall mean these General Terms and Conditions, the contract form to which they are annexed, and all other terms, conditions, schedules, appendices or other documents attached to the contract form or incorporated by reference therein.

"Services" shall mean any work, direction of work, technical information, technical consulting or other services, including but not limited to design services, analytical services, consulting services, construction management services, engineering services, quality assurance and other specialized services furnished by Contractor to ARRC under the contract.

2. Inspection and Reports. ARRC may inspect all of the Contractor's facilities and activities under this contract in accordance with the provisions of ARRC Procurement Rule 1600.9. The Contractor shall make progress and other reports in the manner and at the times ARRC reasonably requires.

3. Claims. Any claim by Contractor for additional compensation or equitable adjustment arising under this contract which is not disposed of by mutual agreement must be made by Contractor in accordance with the time limits and procedures specified in sections 1800.12 et seq. of ARRC's Procurement Rules, which by this reference are hereby incorporated herein.

4. Nondiscrimination.

4.1 The Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental handicap, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the positions do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. To the extent required by law, the Contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical or mental handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

4.2 The Contractor shall cooperate fully with ARRC efforts which seek to deal with the problem of unlawful discrimination, and with all other ARRC efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

4.3 Full cooperation in Paragraph 4.2 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.4 Failure to perform under this section constitutes a material breach of the contract.

5. Cancellation/Termination.

5.1 ARRC may, for its sole convenience, cancel this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such cancellation, Contractor shall be entitled to receive payment in accordance with the payment provisions of this contract for services rendered or charges incurred prior to the effective date of termination. Contractor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. In no event shall ARRC be liable for unabsorbed overhead or anticipatory profit on unperformed services.

5.2 In addition to ARRC's right to cancel this contract for its convenience, ARRC may, by written notice of default to Contractor, terminate the contract in whole or in part in the following circumstances:

(1) The Contractor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Contractor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(2) Reasonable grounds for insecurity arise with respect to Contractor's expected performance and Contractor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(3) Contractor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

5.3 Upon receipt of a notice of cancellation or termination, Contractor shall immediately discontinue all service and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to ARRC all reports, plans, drawings, specifications, data, summaries or other material and information, whether completed or in process, accumulated by Contractor in performance of the contract. In the event of termination for default, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the amount to be paid on this contract exceeds the expense of finishing the work, compensation for additional managerial and administrative services and such other costs and damages as ARRC may suffer as a result of Contractor's default, such excess shall be paid to Contractor. If such expense, compensation, costs and damages shall exceed such unpaid balance, Contractor shall be liable for and shall pay the differences to ARRC. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. No Assignment or Delegation. The Contractor may not assign, subcontract 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 prior written consent of ARRC. The hiring or use of outside services, subcontractors or consultants in connection with the work shall not be permitted without the prior written approval of ARRC. No such approval shall relieve Contractor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Contractor's relationship to ARRC in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action. The personnel performing services under this contract shall at all times be under Contractor's exclusive direction and control and shall be employees of the Contractor, and not of ARRC.

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 ARRC under this contract.

9. Ownership of Work Product. Except for items that have preexisting copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by Contractor to ARRC in the performance of this contract (collectively "Work Product") shall become the property of ARRC and may be used by ARRC for any other purpose without additional compensation to the Contractor. Contractor hereby grants ARRC an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to use all proprietary and confidential information and other intellectual property that may be incorporated into any of Contractor's Work Product for ARRC. Should ARRC elect to reuse said Work Product, ARRC shall indemnify, hold harmless and defend Contractor and its subcontractors against any damages or liabilities arising from said reuse. When Work Product produced by the Contractor and its Subcontractors under this Contract are reused by ARRC, the Contractor's and Subcontractor's signatures, professional seals, and dates shall be removed. If such Work Product requires professional signature and seal, it will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for the new project for which such Work Product is being reused.

Contractor hereby represents and warrants to and for the benefit of ARRC and its successors and assigns that no part of its work product for ARRC will infringe any patent rights or copyrights or utilize any proprietary, confidential or trade secret information or other intellectual property for which

Contractor does not have the unqualified right to grant ARRC the license and sublicensing rights referred to above. Contractor shall defend, indemnify and hold harmless ARRC, its successors and assigns, and their respective representatives, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by Contractor or any other person which arises out of, results from or is based upon the manufacture, use or sale by ARRC or any of its successors or assigns of any of Contractor's work product for ARRC. ARRC shall have the right to select its legal counsel and control its defense in any litigation resulting from any such claim.

10. Governing Law. This contract, and all questions concerning the capacity of the parties, execution, validity (or invalidity) and performance of this contract, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Alaska.

11. Alaska Executive Branch Ethics Act Requirements. No officer or employee of the State of Alaska or of the ARRC and no director of the ARRC or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 et seq. Contractor shall not make or receive any payments, gifts, favors, entertainment, trips, secret commissions, or hidden gratuities for the purpose of securing preferential treatment or action from or to any party. This obligation will apply to the activities of Contractor's employees and agents in their relations with ARRC employees, their families, vendors, subcontractors, and third parties arising from this contract and in accomplishing work hereunder. Certain gratuities may be given or accepted if:

- (1) there is no violation of any law or generally accepted ethical standards;
- (2) the gratuity is given as a courtesy for a courtesy received and does not result in any preferential treatment or action;
- (3) the gratuity is of limited value (less than \$150) and could not be construed as a bribe, payoff or deal; and
- (4) public disclosure would not embarrass ARRC.

ARRC may cancel this contract without penalty or obligation in the event Contractor or its employees violate the provisions of this section.

12. Non-Disclosure of Confidential Information. Contractor acknowledges and agrees that for and during the entire term of this contract, any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor pursuant to the performance of this contract shall be considered and kept as the private, confidential and privileged records of ARRC and will not be divulged to any person, firm, corporation, regulatory agency or any other entity except upon the prior written consent of ARRC. Furthermore, upon termination of this contract, Contractor agrees that it will continue to treat as private, privileged and confidential any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor during the term of the contract and will not release any such information to any person, firm, corporation, regulatory agency or any other entity, either by statement, deposition or as a witness except upon the express written authority of ARRC. ARRC shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information.

Contractor's agreement of non-disclosure as specified in this section applies except to the extent required for (1) performance of services under this contract; (2) compliance with professional standards of conduct for preservation of the public safety, health, and welfare (so long as Contractor has given ARRC prior notice of the potential hazard and ARRC has had a reasonable opportunity to correct the hazard prior to disclosure); (3) compliance with a court order or subpoena directed against Contractor (so long as Contractor has given ARRC prior notice of such and ARRC has had an opportunity to contest the same in a court of law); or (4) Contractor's defense against claims arising from performance of services under this contract.

13. Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract, and that it has not paid or agreed to pay any person, company, individual, or firm any commission, gift, percentage, fee, contingent upon or resulting from the award or making of this contract. For the breach or violation of this warranty, ARRC may terminate this contract without liability and, at its discretion, deduct from the contract price or otherwise recover the full amount of the commission, percentage, gift, or fee.

14. Standard of Performance. Contractor shall perform its services with care, skill and diligence in accordance with normally accepted industry standards and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications and other items and services furnished under this Contract. Contractor shall comply with all applicable federal, state and local laws and ordinances, codes, and regulations in performing its services. If any failure to meet the foregoing standard of performance appears within one (1) year after the services are accepted by ARRC, Contractor shall, at a minimum, reperform the work at no cost to ARRC and shall reimburse ARRC for any additional costs that may be incurred by ARRC or any of its contractors or subcontractors as a result of such substandard work. If Contractor should fail to reperform the work, or if ARRC determines that Contractor will be unable to correct substandard services before the time specified for completion of the project, if any, ARRC may correct such unsatisfactory work itself or by the use of third parties and charge Contractor for the costs thereof. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

15. Warranty. In the event Contractor supplies equipment, goods, materials or other supplies in addition to services under this contract, Contractor warrants that said items: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications, if any, stated in the contract. Contractor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials or other supplies provided under this contract. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

16. Indemnification. Contractor shall defend, indemnify and hold ARRC harmless from and against all claims and actions asserted by a third party (or parties) and related damages, losses and expenses, including attorney's fees, arising out of or resulting from the services performed or neglected to be performed by Contractor or anyone acting under its direction or control or in its behalf in the course of its performance under this contract and caused by any error, omission or negligent act, provided that Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the independent negligence of ARRC. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent

negligence of ARRC, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. The term "independent negligence" is negligence other than ARRC's selection, administration, monitoring, or controlling contractor and in approving or accepting Contractor's work.

17. 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 contract 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, ARRC shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the ARRC contracting officer prior to beginning work and must provide for a 30-day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the Contractor's services.

17.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this contract, worker's compensation insurance as required by applicable law. The Contractor shall be responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S.L. & H. and Jones Acts) must also be included.

17.2 Comprehensive (Commercial) General Liability Insurance: With coverage limits not less than \$1,000,000 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17.3 Comprehensive Automobile Liability Insurance: Covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17.4 Professional Liability (E&O) Insurance: Covering all errors, omissions or negligent acts of the Contractor, its subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to ARRC. Limits required are per the following schedule:

<u>Contract Amount</u>	<u>Minimum Required Limits</u>
Under \$100,000	\$ 500,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$1,000,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$2,000,000 per Occurrence/Annual Aggregate
Over \$1,000,000	Negotiable-Refer to Risk Management

18. ARRC's Rights Not Waived by Payment. No payment made by ARRC shall be considered as acceptance of satisfactory performance of Contractor's obligations under this contract. Nor shall

any payment be construed as acceptance of substandard or defective work or as relieving Contractor from its full responsibility under the contract.

19. Nonwaiver. A party's failure or delay to insist upon strict performance of any of the provisions of this contract, to exercise any rights or remedies provided by this contract or by law, or to notify the other party of any breach of or default under this contract shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this contract and shall not be deemed a waiver of any right to insist upon strict performance of this contract or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this contract operate as a waiver of any of the provisions of this contract. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded the nonbreaching or nondefaulting party by any other provisions of this contract, or by law.

20. Savings Clause. If any one or more of the provisions contained in the contract shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. Headings. The headings of sections and paragraphs of this contract are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

22. Forum Selection. The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the contract, to recover damages for breach or default under the contract, or otherwise arising under or by reason of the contract, other than in the courts of the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably consent to the jurisdiction of said courts.

23. Conflict of Interest. Contractor shall act to prevent any actions or conditions which could result in a conflict with ARRC's best interests. This obligation shall apply to the activities of Contractor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.

24. Publicity. Contractor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and/or services furnished under this contract without the prior written consent of the ARRC.

25. Audit. ARRC has the right to audit at reasonable times the accounts and books of the Contractor in accordance with the provisions of ARRC Procurement Rule 1600.10.

26. Internal Controls and Record Keeping. Contractor shall keep full and accurate records and accounts of all of its activities in connection with this contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.

27. Force Majeure. Neither ARRC nor Contractor shall be responsible for failure to perform the terms of this contract when performance is prevented by force majeure, provided that: (1) notice and reasonably detailed particulars are given to the other party and (2) the cause of such failure or omission is remedied so far as possible with reasonable dispatch. The term "force majeure" shall mean acts of God, earthquakes, fire, flood, war, civil disturbances, governmentally imposed rules, regulations or other causes whatsoever, whether similar or dissimilar to the causes herein

enumerated, which is not within the reasonable control of either party and which through the exercise of due diligence, a party is unable to foresee or overcome. In no event shall force majeure include normal or reasonably foreseeable or reasonably avoidable operational delays.

28. Permits and Licenses. The Contractor shall, at its own expense, obtain all necessary permits, licenses, certifications and any other similar authorizations required or which may become required by the government of the United States or any state or by any political subdivision of the United States or of any state except where laws, rules or regulations expressly require the ARRC to obtain the same.

29. Environmental Protection. When performing all obligations under the contract, Contractor shall comply with all specific instructions of ARRC with regard to environmental concerns, regardless of whether such instructions are based upon specific law, regulation or order of any governmental authority.

30. Set Off. If ARRC has any claim against the Contractor related or unrelated to this contract, it may set off the amount of such claim against any amount due or becoming due under this contract.

31. Observance of Rules. The contractor's personnel performing work or services hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work.

32. No Third-Party Beneficiary Rights. No provision of this contract shall in any way inure to the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

33. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument signed by both ARRC and the Contractor.

34. Key Personnel Changes. Contractor shall secure prior written approval from ARRC for any changes of key personnel assigned to perform services under this contract. ARRC reserves the right to reject any of Contractor's employees whose qualifications and/or experience in ARRC's good faith and reasonable judgment do not meet the standards necessary for the performance of the services required under this contract.

APPENDIX F

COST SCHEDULE

A bidder's failure to provide the information requested in this Appendix may be cause for rejection of the offer on the basis of non-responsiveness. Cost shall be based on a work schedule of five consecutive days of 8 hours per day. Cost shall be according to the Scope of Work (Appendix C) and all of the requirements outlined in this bid

For the purposes of this bid, low bid will be based on two inspections per year, one inspection of three (3) weeks and a second for a period of five (5) weeks, {(daily charge x 5 days per week)(estimated 8 weeks of inspection) + (mobilization/Demobilization cost = Low bidder)}. In all practicality, actual contract amount will differ from the low bid amount. Contractors' schedule may have an effect on the award of a contract.

Period of Performance: The period of performance for this contract is for one year with an ARRC's option to renew the contract for four (4) additional one year terms. Any future price increases shall be indexed using a "consumer price index".

Interested bidders shall provide a fully loaded rate in accordance with Appendix C., Scope of Work. A bidder's failure to provide the information requested in this appendix shall be cause for rejection of the bid on the basis of non-responsiveness. All bids submitted in response to this bid must be signed by an individual with the legal authority to submit the bid on behalf of the company.

The day rate should include the personnel, equipment, and overhead.

Please provide fully loaded rates for the following:

1. 8-hours per day rate \$_____ day rate x 40 days \$_____ Total 2018
2. Per hour overtime rate \$_____ Hourly rate
3. Flat rate for mobilization roundtrip to Seattle \$_____ Mob/Demob
4. For shipping purposes please fill in the following
_____ Unit's weight
_____ length
_____ height
_____ width

Award Criteria: The Alaska Railroad reserves the right to the low, responsive, responsible bidder by either line item or on configuration basis or by both methods; or to reject any or all bids, to waive any informalities in bids, to reject or accept in whole or in part such bids; whichever may be deemed by the Contract Administrator to be in the best interest of the Alaska Railroad. This bid is contingent on the availability to the ARRC's funds.

The Undersigned has read the foregoing ITB and hereby agrees to the terms and conditions stated therein by affixing his/her signature below.

NON-COLLUSION AFFIDAVIT: The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association, or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

BIDDERS NAME AND ADDRESS

COMPANY NAME

SIGNATURE BY AND FOR THE BIDDER

COMPANY ADDRESS

PRINTED NAME OF ABOVE BIDDER

DATE OF BID

CONTACT PHONE NUMBER

CONTACT EMAIL

