

## **ADDENDUM #7**

### **NOME COURTHOUSE LEASE PROJECT #NOM-L-18-0014**

Date: April 25, 2019

To All Plan Holders:

The following changes, additions, clarifications, and/or deletions are hereby made a part of the Contract Documents for the above noted project, fully and completely as if the same were fully contained therein. All other terms, conditions, and specifications of the original Invitation to Bid, remain unchanged.

**This amendment must be acknowledged in the space provided on the Bid Schedule.**

The Submittal Date and Time is UNCHANGED. The Submittal Date is: May 2, 2019 at 10:00 a.m. AST.

The modifications directed by this Addendum #4 are described on this page and the following attachments:

1. Addendum Text: 2 pages

#### **CHANGES TO PREVIOUS ADDENDA**

1. None.

#### **CHANGES TO RFP**

1. None.

#### **ADDITIONAL INFORMATION REGARDING LEASE TERMS**

Prospective offerors have raised questions about the provision in the procurement documents permitting the court system to terminate the lease if the legislature fails to provide funds necessary to support continuation of the lease. The provision in the procurement documents appears in Paragraph 5.E of the General Lease Conditions, as follows:

E Termination: Because the payment of rent by the ACS is subject to appropriation by the legislature of the State of Alaska, the lease may be terminated upon 120 days written notice to the Landlord if the legislature enacts an appropriations bill which reduces the operating budget of the ACS below its adjusted base for the immediately preceding fiscal year. The Supreme Court must authorize lease termination, and may do so only after declaring a budget emergency.

This provision is required under the Alaska Court System Procurement Guidelines ("PrG"), Section 5-501.08.3, which provides as follows:

Contract cancellation: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract will be cancelled. The contractor may be reimbursed only for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services, supplies or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any appropriations available for these purposes.

Section 5-501.08.3 of the PrG is required under AS 36.30.390(c). Therefore, the court system must include this provision in all of its contracts.

The court system has never invoked this provision to cancel a lease, and we consider the likelihood of cancellation of the Nome lease to be remote - particularly, because the Nome Court is designated as a Superior Trial Court site. Nevertheless, the court system must retain the right to cancel the lease under Paragraph 5.E of the General Lease Conditions.

The court system is aware of a recent court case in which the court found a lease for the Legislative Information Office Building (LIO), to be unlawful, and the lease was cancelled. That case did NOT involve termination under AS 36.30.390(c). The case was based on the court's finding that the agency's issuance of the lease was in violation of other statutes requiring competitive bidding of leases. In the case of the Nome lease, the court system is conducting the procurement in full compliance with all statutory requirements.

**END OF ADDENDUM #7**