

STATE OF ALASKA REQUEST FOR PROPOSALS



LITIGATION SUPPORT FOR JANUS-RELATED LAWSUITS

RFP 2020-0300-4430

ISSUED NOVEMBER 7, 2019

LITIGATION SUPPORT FOR JANUS-RELATED LAWSUITS

ISSUED BY:

DEPARTMENT OF LAW

DIVISION OF ADMINISTRATIVE SERVICES

PRIMARY CONTACT:

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PROCUREMENT OFFICER

PATRICIA.HULL@ALASKA.GOV

(907) 465-4337

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

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

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

A LAW FIRM TO SUPPORT THE STATE'S LITIGATION EFFORTS TO DEFEND THE ATTORNEY GENERAL'S OPINION CONCERNING THE INTERPRETATION OF THE *JANUS* DECISION AND THE GOVERNOR'S ADMINISTRATIVE ORDER IMPLEMENTING THE DECISION.

SEC. 1.02 BUDGET

Department of **LAW**, estimates a budget of between **\$500,000** and **\$600,000** dollars for completion of this project.

Approval or continuation of a contract resulting from this is contingent upon legislative appropriation.

SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **4:00pm prevailing Alaska Time on MONDAY, DECEMBER 2, 2019**. Emailed proposals are acceptable to 03Procurement@alaska.gov Oral proposals are not acceptable.

Late proposals or amendments will be disqualified and not opened or accepted for evaluation.

SEC. 1.04 MINIMUM REQUIREMENTS

To qualify for this RFP, the firm must have all three of the following:

- Attorneys admitted to U.S. Supreme Court Bar
- An office in the Washington-DC metro area
- Have appeared before the Supreme Court

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

SEC. 1.05 REQUIRED REVIEW

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

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

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

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

PROCUREMENT OFFICER: **PATRICIA HULL** – PHONE **907-465-4337** - FAX **907-465-2075** - TDD **907-258-9161**

SEC. 1.07 RETURN INSTRUCTIONS

The Department of Law's preference is that Offerors submit their proposals via email to 03Procurement@alaska.gov well in advance of the 4pm Alaska Time deadline on Monday, December 2nd, 2019. If submitting a proposal via email, the technical proposal and cost proposal must be saved as separate PDF documents and emailed to **03PROCUREMENT@ALASKA.GOV** as separate, clearly labeled attachments, such as "Vendor A – Technical Proposal.pdf" and "Vendor A – Cost Proposal.pdf" (Vendor A is the name of the offeror). The email must contain the RFP number 2020-0300-4430 in the subject line.

NOTE: The **maximum** size of a single email (including all text and attachments) that can be received by the state's email system is **20mb (megabytes)**. Files which exceed this size risk being rejected by the server. If the email containing the proposal exceeds this size, break the proposal into multiple emails that are each less than 20 megabytes. Each email must comply with the requirements described above, with sequential titling (e.g., Vendor A-Technical Proposal part 1, Vendor A –Technical Proposal part 2). It is the offeror's responsibility to contact the issuing agency at **907-465-4337** to confirm that the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

Proposals may be submitted in hard copy. The proposal addressed to the procurement officer must be in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified. The sealed proposal package(s) must be addressed as follows:

Department of **LAW**
Attention: **PATRICIA HULL RFP: 2020-0300-4430**
RFP Title: **JANUS LITIGATION**
PO BOX 110300
JUNEAU, AK 99811-0300

IF USING U.S. MAIL, PLEASE USE THE FOLLOWING ADDRESS:

ATTN: Patricia Hull, Administrative Services
RFP Title: **JANUS LITIGATION**
DEPARTMENT OF LAW
PO BOX 110300
JUNEAU, AK 99811-0300

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

ATTN: PATRICIA HULL RFP JANUS LITIGATION
DEPARTMENT OF LAW
DIMOND COURTHOUSE 6TH FLOOR
123 FOURTH STREET
JUNEAU, AK 99801

Faxed proposals are discouraged. If the proposal is faxed, it is the offeror's responsibility to contact the issuing agency at **907-465-4337** to make arrangements prior to faxing the proposal and to confirm that the proposal has been received prior to the deadline.

The State of Alaska provides one Request for Proposal (RFP). Additional RFPs may be purchased for the cost of reproduction, \$.25 per page.

SEC. 1.08 PROPOSAL CONTENTS

The following information must be included in all proposals.

(a) AUTHORIZED SIGNATURE

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

(b) OFFEROR'S CERTIFICATION

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

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

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

(c) VENDOR TAX ID

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

(d) CONFLICT OF INTEREST

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict.

In addition, using the format in Exhibit 3. (**State of Alaska Conflicts Disclosure Form**) proposer must disclose any matters adverse to the State for which the firm is providing representation. The Attorney General reserves the right to consider a proposal non-responsive and reject it or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the offeror. The Attorney General's determination regarding any questions of conflict of interest shall be final.

(e) FEDERAL REQUIREMENTS

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

SEC. 1.09 ASSISTANCE TO OFFERORS WITH A DISABILITY

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

SEC. 1.10 AMENDMENTS TO PROPOSALS

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

SEC. 1.11 AMENDMENTS TO THE RFP

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

SEC. 1.12 RFP SCHEDULE

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

- Issue RFP **THURSDAY, NOVEMBER 7TH, 2019**
- Last day for preproposal questions **FRIDAY, NOVEMBER 22, 2019**
- Deadline for Receipt of Proposals **4:00pm Alaska Time MONDAY, DECEMBER 2, 2019**
- Proposal Evaluation Committee complete evaluation by **THURSDAY, DECEMBER 5TH, 2019,**
- State of Alaska issues Notice of Intent to Award a Contract **FRIDAY, DECEMBER 6TH, 2019,**
- (Minimum period between issuing Notice of Intent and issuing contract is 10 days - to allow time for protests.)
- State of Alaska issues contract **TUESDAY, DECEMBER 17, 2019,**
- Contract start **WEDNESDAY, DECEMBER 18, 2019.**

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

SEC. 1.13 ALTERNATE PROPOSALS

Offerors may only submit one proposal for evaluation.

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

SEC. 1.14 NEWS RELEASES

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

SECTION 2. BACKGROUND INFORMATION

SEC. 2.01 BACKGROUND INFORMATION

On August 27, 2019, the Attorney General released a formal opinion on the State of Alaska's non-compliance with the United States Supreme Court decision in *Janus v. American Federation of State, County, and Municipal Employees Council 3* holding that the First Amendment prohibits public employers from forcing their employees to subsidize a union. Subsequently, the Attorney General filed a lawsuit in Alaska Superior Court on September 16, 2019, on behalf of the State against the Alaska State Employees Association (ASEA) to stop the automatic deduction of union dues from the paychecks of workers opposed to paying them.

ASEA responded with a counter-suit on September 25th, 2019, naming the Governor, the Attorney General, and the Commissioner of Administration and seeking judicial relief to invalidate and prevent the State and third-party defendants from implementing changes for deducting union membership dues for State employees.

SECTION 3.SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

The Department of **LAW** is soliciting proposals for **LEGAL** services.

The Department wants assistance **REPRESENTING THE STATE IN IT'S LITIGATION EFFORTS TO DEFEND THE ATTORNEY GENERAL'S OPINION CONCERNING THE INTERPRETATION OF THE JANUS V AFSCME DECISION AND THE GOVERNOR'S ADMINISTRATIVE ORDER IMPLEMENTING THE DECISION.**

Contract Term and Work Schedule

The length of the contract will be from the date of award, until the legal matters are resolved.

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

SEC. 3.02 CONTRACT TYPE

This contract is a **TIME AND MATERIALS** contract.

SEC. 3.03 PROPOSED PAYMENT PROCEDURES

The state will make payments based on monthly invoices. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the project director.

SEC. 3.04 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Attorney General or the Attorney General's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract.

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

SEC. 3.05 LOCATION OF WORK

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

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

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

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

SEC. 3.06 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Subcontractor experience **SHALL** be considered in determining whether the offeror meets the requirements set forth in **SEC. 1.04 PRIOR EXPERIENCE**.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

- 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.

An offeror's failure to provide this information, within the time set, may cause the state to consider their proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director.

SEC. 3.07 JOINT VENTURES

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement which identifies the principals involved and their rights and responsibilities regarding performance and payment.

SEC. 3.08 CONTRACT PERSONNEL

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

SEC. 3.09 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

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

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

SEC. 3.10 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS

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

The contractor will not commence additional work until the project director has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Attorney General or the Attorney General's designee.

SEC. 3.11 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees to honor Attorney-Client communications as confidential and all deliberative process documents. 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 provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

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

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

SEC. 3.12 INSURANCE REQUIREMENTS

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

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

Offerors must review form **APPENDIX B2**, attached, for details on required coverage. No alteration of these requirements will be permitted without prior written approval from the Department of Administration, Division of Risk Management. Objections to any of the requirements in **APPENDIX B2** must be set out in the offeror's proposal.

SEC. 3.13 TERMINATION FOR DEFAULT

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

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in **SECTION 8. EXHIBITS**.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 PROPOSAL FORMAT AND CONTENT

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

SEC. 4.02 INTRODUCTION

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

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

Sec. 4.03 ORGANIZATION AND RESOURCES

Offerors must provide comprehensive narrative statements that describe the organization and its human and physical resources.

SEC. 4.04 EXPERIENCE AND QUALIFICATIONS

In addition to meeting the Minimum Requirements under Section 1.04, offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Offerors must provide resumes that identify each person who will actually work on the contract and provide the following information about each person listed:

- title,
- education and experience, including cases before the Supreme Court
- offerors must provide reference names and phone numbers.

SEC. 4.05 COST PROPOSAL

Cost proposals must include the hourly rates of all attorneys proposed in the Narrative proposal.

For the purposes of evaluation only, proposal price will be determined according to the following formula:

$$\begin{aligned} & (\text{Hourly rate of Lead attorney} \times 200) + (\text{Average Hourly Rate of Senior Attorneys} \times 100) + \\ & (\text{Average Hourly Rate of Junior Attorneys/Associates} \times 100) = \text{Proposal Price} \end{aligned}$$

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

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

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

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

SEC. 5.01 EXPERIENCE AND QUALIFICATIONS (50%)

Proposals will be evaluated against the questions set out below:

1) Questions regarding the personnel:

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

SEC. 5.02 ORGANIZATION AND RESOURCES (20%)

1) Questions regarding the firm and its resources:

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

SEC. 5.03 CONTRACT COST (20%)

20% of evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the preferences referenced under Sections 6.10—6.12.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 3.15.

SEC. 5.04 ALASKA OFFEROR PREFERENCE (10%)

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10% of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

SECTION 6. GENERAL PROCESS INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

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

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, an offeror must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran and Alaska Offeror Preference, an offeror must hold a valid Alaska business license prior to the deadline for receipt of proposals. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

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

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

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

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

SEC. 6.03 CLARIFICATION OF OFFERS

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

SEC. 6.04 DISCUSSIONS WITH OFFERORS

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

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

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

SEC. 6.05 EVALUATION OF PROPOSALS

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

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

SEC. 6.06 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held in the **LAW** conference room on the **SIXTH** floor of the **BRADY** Building in **ANCHORAGE**, Alaska.

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

SEC. 6.07 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

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

SEC. 6.08 OFFEROR NOTIFICATION OF SELECTION

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

SEC. 6.09 PROTEST

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

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

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

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

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

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

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

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

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

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

SEC. 6.10 APPLICATION OF PREFERENCES

Certain preferences apply to all contracts for professional services, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the RFP

process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the **Department of Administration, Division of General Service's** web site:

<http://doa.alaska.gov/dgs/pdf/pref1.pdf>

- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)
- Alaska Veteran's Preference - AS 36.30.321(f)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Offerors must attach a copy of their certification letter to the proposal. **An offeror's failure to provide this certification letter with their proposal will cause the state to disallow the preference.**

Sec. 6.11 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the price in the proposal. The preference will be given to an offeror who:

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;
- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;
- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 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.

Alaska Bidder Preference Statement

In order to receive the Alaska Bidder Preference, the proposal must include a statement certifying that the offeror is eligible to receive the Alaska Bidder Preference. To fulfill this requirement, you may return a completed and signed Alaska Bidder Questionnaire (Exhibit 1).

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

If the offeror is a joint venture which includes a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner of each LLC or partnership that is included in the joint venture and include a statement certifying that all of those members or partners are residents of the state.

SEC. 6.12 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and is a:

- A. sole proprietorship owned by an Alaska veteran;
- B. partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- C. limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- D. corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans.

Alaska Veteran Preference Statement

In order to receive the Alaska Veteran Preference, the proposal must include a statement certifying that the offeror is eligible to receive the Alaska Veteran Preference.

SEC. 6.13 ALASKA OFFEROR PREFERENCE

2 AAC 12.260(e) provides Alaska offerors a 10% overall evaluation point preference. Alaska bidders, as defined in AS 36.30.990(2), are eligible for the preference. An Alaska offeror will receive 10 percent of the total available points added to their overall evaluation score as a preference.

SEC. 6.14 FORMULA USED TO CONVERT COST TO POINTS

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

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

SEC. 6.15 EXAMPLES: CONVERTING COST TO POINTS & APPLYING PREFERENCES

(a) FORMULA USED TO CONVERT COST TO POINTS

STEP 1 ALASKA BIDDER PREFERENCE

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1 \$40,000

Offeror #2 \$42,750

Offeror #3 \$47,500 *Qualifies for Alaska Bidder Preference so for purposes of proposal evaluation price is reduced by 5% to \$45,125

STEP 2

In this example, the RFP allotted 20% of the available 100 points to cost. The lowest cost will receive the maximum number of points.

Offeror #1 receives 20 points.

Offeror #2 receives 18.7135 points. *\$40,000 lowest cost / Offer #2 \$42,750 X 20 =18.7135 points*

Offeror #3 receives 17.7285 points. *\$40,000 lowest cost / Offeror #3 adjusted cost \$45,125 X 20 = 17.7285 points*

STEP 3 ALASKA OFFEROR PREFERENCE

In this example, the number of points available to qualifying offerors is 10 (10% of all points possible)

STEP 4

Determine which offerors qualify as Alaska bidders and are eligible for the 10 point Alaska Offeror preference. For the purpose of this example, presume all proposals have been completely evaluated based on the evaluation criteria in the RFP. The scores at this point are:

Offeror #1	80 points	No Preference	0	points
Offeror #2	77.7134 points	No preference	0	points
Offeror #3	74.7284 points	Alaska Offeror Preference	10	points

STEP 5 Add the applicable Alaska Offeror Preference to offeror’s score(s):

Offeror #1	83 points
Offeror #2	77.7134 points
Offeror #3	84.7284 (74.7284 plus 10 points for Alaska Offeror Preference)

Offeror #3 is the highest scoring offeror and would receive the contract award.

SECTION 7. LEGAL STANDARD CONTRACT PROVISIONS

The contractor will be required to sign and submit the State's Standard Legal Services Contract form. This form is attached in **SECTION 8. EXHIBITS** for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. Objections to any of the provisions in Appendix A must be set out in the offeror’s proposal.

SEC. 7.01 PROPOSAL AS A PART OF THE CONTRACT

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

SEC. 7.02 ADDITIONAL TERMS AND CONDITIONS

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

SEC. 7.03 HUMAN TRAFFICKING

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

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

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

SEC. 7.04 RIGHT OF REJECTION

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

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

Minor informalities that:

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

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

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

SEC. 7.05 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

SEC. 7.06 DISCLOSURE OF PROPOSAL CONTENTS

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

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

officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

SEC. 7.07 ASSIGNMENT

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

SEC. 7.08 DISPUTES

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

SEC. 7.09 SEVERABILITY

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

SEC. 7.10 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with **SEC. 7.05 RIGHT OF REJECTION**. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

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

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

SEC. 7.11 CONTRACT INVALIDATION

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

SEC. 7.12 SOLICITATION ADVERTISING

Public notice has been provided in accordance with 2 AAC 12.220

SEC. 7.13 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated Federal Tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The Contractor must promptly notify the Procurement Officer in writing of any new, increased, or decreased Federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the Procurement Officer.
- **After-imposed or Increased Taxes and Duties:** Any Federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed

on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:

- a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract;
 - b) The contractor warrants, in writing, that no amount of the newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in Federal excise tax or duty for goods or services under the contract, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Procurement Officer.
 - **State's Ability to Make Changes:** The State reserves the right to request verification of Federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
 - **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

SECTION 8. EXHIBITS

1. Alaska Bidder Preference Questionnaire
2. Proposal Evaluation Form
3. Standard Legal Services Agreement Form plus its appendices A-D
4. Law Conflicts Disclosure Format
5. Cost Proposal Format

SEC. 8.02 EXHIBIT 2: PROPOSAL EVALUATION WORKSHEET

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

Offeror Name: _____

Evaluator Name: _____

Date of Review _____

RFP Number: **2020-0300-4430 JANUS LITIGATION**

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

5.01 Experience and Qualifications of Personnel: 50% (50 points possible)

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

Points for 5.01 _____

5.02 Organization and Resources: 20% (20 Points possible)

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

Points for 5.02 _____

5.03 Contract Cost — Maximum Point Value for this Section — 20 Points

Points for 5.03 _____

To be calculated by Procurement Officer

Overall, a minimum of **20** percent of the total evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the preferences referenced under **SECTION 6.10-6.12**

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in **SECTION 6.15**.

5.04 Alaska Offeror Preference — 10 Percent of 100 = 10 points

Points for 5.04 (if applicable): _____

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10 percent of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

TOTAL POINTS: _____

Sec. 8.03 EXHIBIT 3: STANDARD LEGAL SERVICES AGREEMENT

STANDARD AGREEMENT FORM

1. Agency Contract Number	2. Billing Contact	3a. Appropriation 03	3b. Unit	3c. Program
4. EN Doc Type and #	Project	Case Number = Function	6. AK Business License #	Vendor Number
This contract is between the State of Alaska,				
7. Department of Law	Division		hereafter the State and	
8. Contractor				
VENDOR phone		Email	hereafter the Contractor	
Mailing Address	Street or P.O. Box	City	State	ZIP+4
9.				
ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.				
ARTICLE 2. Performance of Service:				
2.1 Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract.				
2.2 Appendix B sets forth the liability and insurance provisions of this contract.				
2.3 Appendix C sets forth the services to be performed by the contractor.				
ARTICLE 3. Period of Performance: The period of performance for this contract begins _and ends <u>with the resolution of the matter.</u>				
ARTICLE 4. Considerations:				
4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$ 000 in accordance with the provisions of Appendix D.				
4.2 When billing the State, the contractor shall refer to Contract #20-XX-XXX and shall mail the invoice to the address below with a courtesy copy in PDF format emailed to 03ContractPayments@alaska.gov				
10. Department of Law				
Mailing Address 1031 W. 4 th Avenue, Suite 200 Anchorage, AK 99501		Attention:		
11. CONTRACTOR		13. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the variety, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.		
Name of Firm				
Signature of Authorized Representative	Date			
Typed or Printed Name of Authorized Representative				
Title EIN:				
12. CONTRACTING AGENCY		Signature of Head of Contracting Agency or		Date
Department/Division Law/Civil-	Date			
Signature of Project Director		Typed or Printed Name Kevin G. Clarkson		
Typed or Printed Name of Project Director		Attorney General		
Title Assistant Attorney General		Authorized by AS 36.30.130		

NOTICE: This contract has no affect until signed by the head of contracting agency or designee.

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

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

Article 3. Disputes.

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. 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, disability, 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 state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State 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.
- 4.6 Full cooperation in paragraph 4.5 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.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

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

Article 9. Payment of Taxes.

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

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

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

Article 12. Conflicting Provisions.

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

Article 13. Officials Not to Benefit.

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

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

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

Article 16. Force Majeure:

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

APPENDIX B²
INDEMNITY AND INSURANCE

Article 1. Indemnification

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

Article 2. Insurance

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

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

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

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

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Claim / Annual Aggregate
\$100,000-\$499,999	\$500,000 per Claim / Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Claim / Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

APPENDIX C

Article 1. Services to be performed by the Contractor

Article 1.1. At the specific direction of the Attorney General's Office, the Contractor, shall

It is agreed between the parties that the State shall determine the scope of the services to be rendered by the Contractor. It is further agreed that the State may require a separate contract on any matter which, in its judgment, may be sufficiently complicated or prolonged to justify a separate contract.

Article 2. Contract Management

Article 2.1 The designated contact person for the Contractor is _____. The Contractor's services under this agreement shall be directed and managed from the contractor's _____ office. The Contractor may assign other consulting professionals to provide services under the contract after providing notice to, and obtaining approval from, the Project Director. All such individuals assigned to provide services under this Contract shall work under the direction and management of the individual listed above.

Article 2.2 The Contractor will maintain the involvement of those individuals identified in Article 2.1 above. In the event of an unforeseeable circumstance that requires substitution for any of those individuals, the Contractor shall notify the State in writing of the proposed substitution. The State reserves the right to accept or reject a proposed substitute. In addition, before substitution of any individual is effected, the State must approve the extent to which transitional time will be billed.

Article 2.3 At the discretion of the Project Director, the Contractor may be required to prepare an estimate of the time and costs necessary to complete any matter assigned under this contract.

Article 2.4 The contractor agrees to closely monitor costs incurred and fees to be charged for services provided under this agreement and to alert the Project Director *before* such costs and fees exceed the authorized contract amount. In the event the Contractor fails to notify the Project Director prior to incurring a cost overrun, *the contractor shall assume liability for any excess costs and fees incurred* up until the time at which the contractor notifies the project director of the overrun.

Article 2.5 The period of performance, scope, and amount of this agreement may be amended in writing at the discretion of the State. In addition, the parties to this agreement acknowledge that work may begin on the date shown in Article 3. ("Period of Performance") and that the foregoing date may precede the date of execution of this agreement because immediate performance is required to serve the best interest of the state.

Article 2.6 The Attorney General's Office shall be the primary point of contact for all substantive dealings with the media. In the event the Contractor is contacted by media representatives concerning this or other cases being handled on behalf of the state, the Contractor should decline any comment beyond confirming factual matters that are already a matter of public record and refer the individuals to the Project Director.

Article 2.7 **FOREIGN CONTRACTING:** By signature on this Contract, the Contractor certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. Failure to comply with this requirement will cause the state to reject the bid or proposal as non-responsive, or cancel the contract.

Article 2.8 **HUMAN TRAFFICKING:** By signature on this contract, the contractor certifies that:

- 1) the contractor 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; or 2) if the contractor is 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, a certified copy of the contractor's policy against human trafficking must be submitted to the State of Alaska prior to contract award.

Article 3. General Litigation Policies

Article 3.1 The Contractor shall represent the State in a manner that is consistent with the State's philosophy of pursuing litigation in an aggressive and forthright manner while maintaining the overall objective of resolving litigation in the most expeditious and cost-effective manner.

The Contractor shall avoid taking extreme advocacy positions that are not likely to have a substantive impact on the litigation. Coercive, delaying or obstructive tactics are also to be avoided. In addition, the State discourages engaging in motion practice unless there is some clear, strategic advantage to be gained. Where appropriate, however, motions for judgment on the pleadings or for summary judgement pursuant to applicable rules should be employed to resolve or refine as many issues in dispute as possible.

Lengthy interrogatories or requests for extensive document production solely for the purpose of burdening another party are to be avoided. It is generally recognized that costly delays frequently result from abuses of the discovery process. The Contractor, in consultation with the Project Director, should consider available remedies when another party appears to be abusing the discovery process.

Article 3.2 The Contractor shall identify and consider early in the proceedings, and at each stage thereafter, the settlement possibilities of the dispute in order to achieve the greatest degree of cost-effectiveness. The Contractor should promptly report any and all settlement overtures received to the Project Director to permit his or her involvement in planning and negotiations.

Article 3.3 The Department of Law, Civil Division does not normally have the authority or responsibility for instituting, conducting or disposing of criminal proceedings. The department's policy is that the settlement of civil litigation may not, expressly or by implication, extend to the disposition of any criminal charges or recommendations with respect to such charges. In undertaking any settlement negotiations the Contractor shall not agree either to not disclose or not refer to law enforcement authorities any information relating to a possible criminal violation or investigation.

Article 3.4 The Contractor should be alert to and apprise the State of any opportunities for utilizing non-judicial dispute resolution approaches. Generally speaking, the State does not favor the use of arbitration or other forms of binding alternative dispute resolution; however, certain non-binding approaches, such as mediation or mini-trials, may result in a faster, less expensive resolution of disputes.

Article 3.5 In the event of any adverse ruling, the Contractor must notify the Project Director promptly in order that a decision may be made regarding possible appeals. No appeal may be taken without the prior approval of the Project Director, but the Contractor should protect the state's appeal rights pending a decision to appeal.

Article 3.6 The Project Director or the Attorney General's Office shall be the primary points of contact for all substantive dealings with the media. In the event the Contractor is contacted by media representatives concerning this or other cases being handled on behalf of the state, the Contractor should decline any comment beyond confirming factual matters that are already a matter of public record and refer the individuals to the Project Director.

Article 3.7 Prior to approaching employees of other government agencies for any purpose, including scheduling depositions or requesting documents, the Contractor shall notify the Project Director. In the event that such a contact or request for information is deemed to be of a sensitive nature, it may be coordinated directly by the Project Director.

APPENDIX D

Article 1. Consideration

Article 1.1 In full consideration of the Contractor's performance under this agreement, the State shall pay the Contractor for the professional services of ____ at the hourly rate of \$__

In addition, the State will reimburse the Contractor for the services of other consulting professionals or temporary personnel that may be employed to provide services under this agreement so long as the use of such additional personnel and their rates are approved in advance by the State's project director.

Article 1.2 The State agrees to reimburse the Contractor on a monthly or other periodic basis for reasonable and necessary out-of-pocket expenses incurred under this contract. No reimbursement shall be made for any administrative, surcharge, or other overhead recovery fee. **Unless otherwise noted**, reimbursement for out-of-pocket expenses shall be limited to actual costs except that reimbursement for those specific services or expenses listed below shall be limited as follows:

<u>Service or Expense</u>	<u>Charge/Rate</u>
Reproduction	\$0.10 per page
Computerized Database Research	At cost as invoiced
Courier Services	
Automobile Messenger Deliveries	At cost as invoiced
Overnight Deliveries (such as UPS, Federal Express, Express Mail, DHL)	At cost as invoiced
Postage	At cost
Telephone	At cost as invoiced
Telecopier	\$0.75(local), \$1.50(domestic), \$2.25(international)
Travel and Lodging	
Hotel Accommodations	Not to exceed \$300.00/night
Air Fare	Not to exceed coach class
Cab Fare	At cost as invoiced
Meals & Incidental Expenses	Flat rate payment of \$60.00/day for each full day (midnight to midnight) of travel.

Reimbursement for any of the above shall be limited to actual costs. No reimbursement shall be made for any administrative, surcharge, or other overhead recovery fee. Reimbursement shall not be made for the purchase or lease of office space, furnishings, equipment, or software unless approved in advance by the Deputy Attorney General. Upon conclusion of this agreement, unless the Deputy Attorney General approves other arrangements, the ownership of any furnishings, equipment, or software purchased under this contract shall revert back to the State and those items returned to the Department of Law.

Reimbursement for secretarial overtime or other temporary administrative or clerical assistance may be authorized but only if required by the nature or timing of assignments made under this contract (e.g. large projects or court imposed deadlines) and not because of other client work or firm priorities.

Unless otherwise approved by the Project Director, reimbursement for airline travel costs under this contract shall be limited to coach class fares. Contractor will not bill the State for time in travel status, except for that time during which the individual has performed work on the State's matter while in travel status; in that situation the Contractor shall adhere to billing rates provided in Article 1.1 of this appendix.

Reimbursement of hotel costs shall be limited to a maximum of \$300.00 per night unless otherwise approved by the Project Director. The Contractor shall, when possible, use moderately priced hotels comparable to those used by Department of Law employees. Reimbursement for meals and other incidental expenses shall be made at the flat rate of \$60.00 per day for each full day (midnight to midnight) of travel along with partial payment of \$45.00 for the day of departure and \$45.00 for the day of return.

Article 1.3 Unless the contract is amended in writing, the total sum expended under this agreement shall not exceed \$TBD including all out-of-pocket expenses.

Article 2. Billing Procedures

SEC. 8.05 EXHIBIT 5: PRICE PROPOSAL

The price proposal is comprised of two documents:

(A) a comprehensive roster of attorneys featured in the narrative proposal including their titles and hourly rates. Rates should reflect the firm’s standard market rate and a proposed reduced rate offered to the State of Alaska.

(B) For the purposes of proposal evaluation, the offeror will provide a price based on the following formula which shows all details for how the amount was derived

(Hourly rate of Lead attorney X 200) +

(Average Hourly Rate of Senior Attorneys or Of Counsel x 100) +

(Average Hourly Rate of Attorneys/Associates x 100) = Proposal Price

Example

Name	Title	Proposed Hourly Rate	Average	Multiplier	Subtotal
A. Smith	Lead Attorney	\$410		X 200	\$ 82,000.00
B. Jones	Senior Attorney	\$350	\$408.33	X 100	\$ 40,833.33
C. White	Of Counsel	\$500			
D. Black	Senior Attorney	\$375			
E. Gray	Attorney	\$250	\$193.33	X100	\$ 19,333.33
F. Green	Attorney	\$275			
G. Smith	Attorney	\$225			
H. Jones	Associate	\$150			
I. Black	Associate	\$135			
J. Gray	Associate	\$125			

TOTAL OF ABOVE: \$142,166.67