

STATE OF ALASKA REQUEST FOR PROPOSALS



BOND COUNSEL - ALASKA MUNICIPAL BOND BANK AUTHORITY RFP 2023-0300-0068

ISSUED OCTOBER 25, 2022

TO PROVIDE BOND AND DISCLOSURE COUNSEL TO THE ALASKA MUNICIPAL BOND BANK AUTHORITY AND TO
ADVISE ON FEDERAL AND STATE STATUTES IMPACTING THE AUTHORITY

ISSUED BY:

DEPARTMENT OF LAW

PRIMARY CONTACT:

PATRICIA HULL

PROCUREMENT OFFICER

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(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 NOTIFICATION OF SUBSEQUENT AMENDMENTS. FAILURE TO CONTACT THE PROCUREMENT OFFICER MAY RESULT IN THE REJECTION OF YOUR OFFER.

TABLE OF CONTENTS

SECTION 1. INTRODUCTION & INSTRUCTIONS	4
SEC. 1.01 PURPOSE OF THE RFP	4
SEC. 1.02 DEADLINE FOR RECEIPT OF PROPOSALS	4
SEC. 1.03 PRIOR EXPERIENCE	4
SEC. 1.04 REQUIRED REVIEW	4
SEC. 1.05 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS.....	4
SEC. 1.06 RETURN INSTRUCTIONS	5
SEC. 1.07 ASSISTANCE TO OFFERORS WITH A DISABILITY	5
SEC. 1.08 AMENDMENTS TO PROPOSALS	5
SEC. 1.09 AMENDMENTS TO THE RFP	5
SEC. 1.10 RFP SCHEDULE.....	5
SEC. 1.11 ALTERNATE PROPOSALS	6
SEC. 1.12 NEWS RELEASES.....	6
SECTION 2. BACKGROUND INFORMATION.....	7
SEC. 2.01 BACKGROUND INFORMATION	7
SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION.....	8
SEC. 3.01 SCOPE OF WORK	8
SEC. 3.02 CONTRACT TERM	9
SEC. 3.03 CONTRACT TYPE	9
SEC. 3.04 CONTRACT PAYMENT.....	9
SEC. 3.05 CONTRACT PRICE ADJUSTMENTS	9
SEC. 3.06 LOCATION OF WORK.....	10
SEC. 3.07 SUBCONTRACTORS	10
SEC. 3.08 JOINT VENTURES.....	10
SEC. 3.09 RIGHT TO INSPECT PLACE OF BUSINESS.....	10
SEC. 3.10 CONTRACT PERSONNEL	10
SEC. 3.11 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES	10
SEC. 3.12 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS.....	11
SEC. 3.13 NONDISCLOSURE AND CONFIDENTIALITY	11
SEC. 3.14 INSURANCE REQUIREMENTS	11
SEC. 3.15 TERMINATION FOR DEFAULT	12
SECTION 4. PROPOSAL FORMAT AND CONTENT	13
SEC. 4.01 RFP SUBMITTAL FORMS.....	13
SEC. 4.02 CERTIFICATIONS, ORGANIZATION CAPACITY 20% ALASKA OFFEROR 10% (SUBMITTAL FORM A)	13
SEC. 4.03 DEPARTMENT OF LAW CONFLICTS FORM (SUBMITTAL FORM B)	14
SEC. 4.04 COST PROPOSAL 20% (SUBMITTAL FORM C)	14
SEC. 4.05 EXPERIENCE & QUALIFICATIONS 50% (SUBMITTAL FORM D)	14
SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION.....	15
SEC. 5.01 SUMMARY OF EVALUATION PROCESS.....	15
SEC. 5.02 EVALUATION CRITERIA	15
SEC. 5.03 SCORING METHOD AND CALCULATION.....	16
SEC. 5.04 EXPERIENCE AND QUALIFICATIONS	16
SEC. 5.05 CONTRACT COST (COST PROPOSAL).....	17
SEC. 5.06 APPLICATION OF PREFERENCES	17
SEC. 5.07 ALASKA BIDDER PREFERENCE.....	17
SEC. 5.08 ALASKA VETERAN PREFERENCE	18
SEC. 5.09 ALASKA OFFEROR PREFERENCE	18
SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION.....	20

SEC. 6.01	INFORMAL DEBRIEFING	20
SEC. 6.02	ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES.....	20
SEC. 6.03	STANDARD CONTRACT PROVISIONS	20
SEC. 6.04	QUALIFIED OFFERORS	21
SEC. 6.05	PROPOSAL AS PART OF THE CONTRACT.....	21
SEC. 6.06	ADDITIONAL TERMS AND CONDITIONS	21
SEC. 6.07	HUMAN TRAFFICKING	21
SEC. 6.08	RIGHT OF REJECTION	21
SEC. 6.09	STATE NOT RESPONSIBLE FOR PREPARATION COSTS.....	22
SEC. 6.10	DISCLOSURE OF PROPOSAL CONTENTS	22
SEC. 6.11	ASSIGNMENT	22
SEC. 6.12	DISPUTES	22
SEC. 6.13	SEVERABILITY	23
SEC. 6.14	SUPPLEMENTAL TERMS AND CONDITIONS	23
SEC. 6.15	SOLICITATION ADVERTISING	23
SEC. 6.16	SITE INSPECTION	23
SEC. 6.17	CLARIFICATION OF OFFERS	23
SEC. 6.18	DISCUSSIONS WITH OFFERORS.....	23
SEC. 6.19	CONTRACT NEGOTIATION	24
SEC. 6.20	FEDERALLY IMPOSED TARIFFS	24
SEC. 6.21	PROTEST	25
SECTION 7.	ATTACHMENTS	26
SEC. 7.01	ATTACHMENTS.....	26

SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Law is soliciting proposals for legal services to provide Bond and Disclosure counsel for the Alaska Municipal Bond Bank Authority (AMBBA) and advise the authority on federal and state statutes affecting its interests.

SEC. 1.02 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **10AM** prevailing Alaska Time on **DECEMBER 5TH, 2022** . Late proposals or amendments will be disqualified and not opened or accepted for evaluation.

SEC. 1.03 PRIOR EXPERIENCE

In order for offers to be considered responsive, offerors must meet all of these minimum prior experience requirements:

- Lead attorney being proposed must have least five (5) years experience with the issuance of tax exempt bonds.
- Firm must be listed in the Bond Buyers Municipal Market Place or meet the qualifications for listing (see “attorney firm application – qualifications and documentation” at www.munimarketplace.com).
- Firm must currently provide bond and disclosure counsel services to a state or municipal client similar to AMBBA and provide confirmation of same, including experience with tax-exempt revenue bonds, arbitrage and associated US Treasury regulations

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

SEC. 1.04 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should 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 proposal and exposure of offeror's proposals upon which award could not be made.

SEC. 1.05 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** - TTY **800-770-8255**

SEC. 1.06 RETURN INSTRUCTIONS

Preference is for response via email. Submit the technical proposal and cost proposals as separate PDF documents and emailed to **03PROCUREMENT@ALASKA.GOV** clearly labeled, such as “Vendor A – Technical Proposal.pdf” and “Vendor A – Cost Proposal.pdf”. The emails must contain the RFP number 2023-0300-0068 and the vendor’s name in the subject line.

NOTE: The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above with the addition of the descriptor (“1 of X, 2 of X”)

Please note that email transmission is not instantaneous. Similar to sending a hard copy proposal, if you are emailing your proposal, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of proposals.

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.

SEC. 1.07 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. 1.08 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. 1.09 AMENDMENTS TO THE RFP

If an amendment is issued before the deadline for receipt of proposals, it will be provided to all who were notified 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 website.

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. 1.10 RFP SCHEDULE

RFP schedule set out herein represents **the state’s best estimate** of the schedule that will be followed. If any component of this schedule, is delayed, the rest of the schedule may be shifted accordingly. All times are prevailing Alaska Time.

ACTIVITY	TIME	DATE
Issue Date / RFP Released		10/25/2022
Deadline for Receipt of Proposals / Proposal Due Date	10:00am	12/05/2022
Proposal Evaluations Complete		12/09/2022
Notice of Intent to Award		12/09/2022
Contract Issued		12/20/2022

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. 1.11 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. 1.12 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

The Alaska Municipal Bond Bank Authority MBBA is a public corporation established to aid authorized Alaskan borrowers in financing capital improvement projects such as schools, water and sewer systems, public buildings, harbors, and docks ([AS 44.85.005 through 44.85.420](#)) ([AK Admin Code ch. 144](#)). AMBBA generates funding by selling bonds on the national market, and using the proceeds to purchase bonds from authorized borrowers within the State. Administratively supported by Department of Revenue staff, a board of five directors determines the Bond Bank's actions such as setting interest rates and approving loans.

The Bond Bank has an excellent loan record and has received an 'A1' credit rating from Moody's Investors Service, Inc., and an 'A+' rating from S&P Global Ratings. With these ratings, it is able to borrow money at favorable interest rates. From inception in 1975, all Bond Bank debt service has been paid by borrowers, but the amount of interest they paid was significantly reduced. Some smaller communities are at a disadvantage in the financial markets. They may have lower bond ratings, and although credit worthy, have not issued bonds or notes, have little outstanding debt, or lack investor familiarity. The Bond Bank is able to borrow money at favorable interest rates to purchase the bonds of Alaskan municipalities and authorized borrowers. These municipalities and authorized borrowers then pay principal and interest to the Bond Bank on their debt.

In 2015, a bill was signed into law to authorize the Bond Bank to make loans to Joint Action Agencies and Regional Health Organizations. Joint Action Agency lending is now part of the main political subdivision program. Regional Health Organization lending is limited to no more than \$205 million in total, no more than 49% of any single project where the other 51% of the project's funding is in place, and not more than \$102.5 million for any single project. Two years later, AMBBA provided a \$102.5 million loan to partially fund the Yukon-Kuskokwim Health Corporation's Paul John Callicarag Project, which includes constructing and equipping the expansion of an existing hospital and a new primary care clinic in Bethel, Alaska. This loan represents the largest single loan issued by the Bond Bank since inception.

During fiscal year 2020, the Bond Bank issued approximately \$22.2 million in bonds that generated approximately \$25.5 million to fund five loan agreements with two communities resulting in an estimated \$1 million in savings.

During fiscal year 2019, the Bond Bank entered into nine loan agreements to fund approximately \$50.4 million in loans resulting in an estimated \$4.3 million in savings. In fiscal year 2019, Bond Bank loans funded eight projects located in seven communities and refinanced one loan for savings. The Bond Bank issued approximately \$44.2 million in bonds that generated \$49.8 million and provided a \$0.6 million direct loan, providing a total of \$50.4 million in funding during the fiscal year.

During fiscal year 2018, the Bond Bank entered into one loan agreement to fund a \$31.2 million loan resulting in an estimated \$3.4 million in savings.

During fiscal year 2017 the Bond Bank entered into 27 loan agreements to fund \$280.7 million of loans (including the Callicarag Project) resulting in an estimated \$41.2 million in savings. The projects included 8 new construction projects located in 7 communities and refinancing of 19 existing loans in 15 communities for savings. Bond Bank activity resulted in \$162.6 million in loans for new capital projects, and \$118.1 million to refinance loans for savings.

For more information, visit <https://treasury.dor.alaska.gov/ambba>

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

The Department of **LAW IS SOLICITING FOR BOND AND DISCLOSURE COUNSEL ON BEHALF OF ITS CLIENT AGENCY THE ALASKA MUNICIPAL BOND BANK AUTHORITY.**

The Contractor shall act as bond counsel for the Alaska Municipal Bond Bank Authority (AMBBA) with respect to the preparation and/or review of documents for and proceedings related to the authorization, issuance, sale and delivery of bonds or other financing instruments and shall perform with respect thereto (i) all services normally provided by bond counsel with respect to said authorization, issuance, sale and delivery; and (ii) all services as requested in connection with the exercise by the Agency of its purpose and powers in connection with the ultimate financing of its programs. The said services shall include but not be limited to the following:

- a. Conferences with the AMBBA's financial advisor, underwriter, underwriter's counsel, Executive Director and staff, and with each applicant municipality and its counsel as may be necessary in connection with the authorization, issuance and sale of said bonds.
- b. Conferences with the AMBBA's Board of Directors and other AMBBA representatives for the purpose of informing members of the Board as to the contents of, and requirements to adopt, all legal documents necessary in connection with the authorization, sale, and delivery of said bonds.
- c. Conferences, negotiation sessions and drafting of related documents pertaining to bond issues.

The items referred to under subparagraphs (a) (b) and (c) above, shall constitute "work directly related to a particular bond issue" as hereinafter defined and amplified.

"Work directly related to a particular bond issue" shall include, in addition to the items mentioned above:

1. drafting and review of the Bond Resolution, Trust Indenture or Trust Agreement necessary to secure the bonds, drafting and review of other security documents such as Investment Agreements;
2. drafting and review of any documents necessary to establish the tax exempt status of the bonds, including without limitation review of the Official Statement or other statement of the AMBBA issued to describe the bonds and the programs to be financed and (if required) due diligence with respect thereto, drafting and review of all documents necessary to sell the bonds whether at public or private sale
3. preparation of documents necessary in connection with delivery of the bonds
4. and the issuance of the final approving opinions with respect thereto and any other opinions called for in connection therewith and
5. all conference meetings with the Board, the staff, the financial advisor and others in connection therewith.

Unless otherwise addressed below, compensation for such services shall be billed hourly with caps on certain bond issuances according to the schedule contained in Appendix D of this agreement.

Article 1.2 The Contractor shall also provide bond counsel services that may not be related to a particular bond issue. Compensation for such services shall be made on an hourly fee basis contained in Appendix D, of this agreement and shall include, but not necessarily be limited to:

- a. activities related to the preparation of various agreements and documents related to bond issues; review of such documents for their impact on the financing; and consulting with local government representatives regarding such documents.
- b. legal interpretation and guidance regarding compliance with Bond Resolutions and agreements and the resolution of related issues that may arise.
- c. advice or representation for the AMBBA in regard to federal or State legislation, regulation, program modification, litigation, administrative proceedings, or other matters related to the issuance of debt by AMBBA or revenue issuance by AMBBA for loan issues.

SEC. 3.02 CONTRACT TERM

Procurement Officer Note: Enter Appropriate Information.

The length of the contract will be from the date of award, approximately December 20, 2022 for a three (3)-year period through December 1st, 2025, with the state reserving the option to renew for two (2) additional one-year periods (potentially through December 1st, 2027).

Unless otherwise provided in this RFP, the State and the successful offeror agree that: (1) any extension 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) the procurement officer will provide notice to the contractor of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

SEC. 3.03 CONTRACT TYPE

This contract is for professional services. The state will make payments based on itemized invoices 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 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.

Any single contract payment of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

SEC. 3.05 CONTRACT PRICE ADJUSTMENTS

Consumer Price Index (CPI): Contract prices will remain firm through **December 20, 2025**.

The contractor may then request price adjustments, in writing, 30 days prior to the contract renewal date. Requests must be in writing and must be received 30 days prior to the contract renewal date. If the contractor fails to request a CPI price adjustment 30 days prior to the contract renewal date, the adjustment will be effective 30 days after the state receives their written request.

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

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June 2025); and each (January through June) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed.

All price adjustments must be approved by the procurement officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the procurement officer.

SEC. 3.06 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. 3.07 SUBCONTRACTORS

Subcontractors will not be allowed.

SEC. 3.08 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. 3.09 RIGHT TO INSPECT PLACE OF BUSINESS

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

SEC. 3.10 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 or procurement officer. Changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 3.11 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 or procurement

officer 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. 3.12 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 procurement officer has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Attorney General of the Department of Law or the Attorney General's designee.

SEC. 3.13 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section.

The contractor shall 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.

SEC. 3.14 INSURANCE REQUIREMENTS

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 procurement 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.

Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other

statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

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

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

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

SEC. 3.15 TERMINATION FOR DEFAULT

If the project director or procurement officer 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 contained in Attachment 5, *Standard AMBBA Bond Counsel Contract* **SECTION 7. ATTACHMENTS.**

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 RFP SUBMITTAL FORMS

This RFP contains Submittal Forms, which must be completed by the offeror and submitted as their proposal. An electronic copy of the forms is posted along with this RFP. Offerors shall not re-create these forms, create their own forms, or edit the format structure of the forms unless permitted to do so.

Unless otherwise specified in this RFP, the Submittal Forms shall be the offeror's entire proposal. Do not include any marketing information in the proposal.

Any proposal that does not follow these requirements may be deemed non-responsive and rejected.

SEC. 4.02 CERTIFICATIONS, ORGANIZATION CAPACITY 20% ALASKA OFFEROR 10% (SUBMITTAL FORM A)

The offeror must complete and submit this Submittal Form. The form must be signed by an individual authorized to bind the offeror to the provisions of the RFP.

By signature on the form, the offeror certifies 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; and
- g) that the offers will remain open and valid for at least 90 days.

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

The Submittal Form also requests the following information:

- a) The complete name and address of offeror's firm along with the offeror's Tax ID.
- b) Information on the person the state should contact regarding the proposal.
- c) Names of critical team members/personnel.
- d) Addenda acknowledgement.
- e) Conflict of interest statement.
- f) Federal requirements.
- g) Alaska preference qualifications.
- h) Length of time firm has been in business
- i) Headquarters and locations of other offices
- j) Number of attorneys overall
- k) Areas of legal specialization
- l) Names and contact information of three current bond counsel clients

An offeror's failure to address/respond/include these items may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

SEC. 4.03 DEPARTMENT OF LAW CONFLICTS FORM (SUBMITTAL FORM B)

Complete the form to list all matters in which your firm represents a client adverse to the state. For purposes of this request, "the state" includes all state departments, agencies, public corporations, boards, commissions, and the University of Alaska. It is essential to know conflicts so ethics walls can be erected, as needed.

SEC. 4.04 COST PROPOSAL 20% (SUBMITTAL FORM C)

The cost proposal is comprised of a completed Submittal form C. and a roster of individuals who will bill under the contract with their hourly rates. For the purposes of proposal evaluation, the cost of the proposal is the sum of the maximum caps described on form C.

SEC. 4.05 EXPERIENCE & QUALIFICATIONS 50% (SUBMITTAL FORM D)

Offerors must complete Form D and provide required supporting documentation: a resume for each of the personnel assigned to the contract, and an organizational chart with names and titles.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

SEC. 5.01 SUMMARY OF EVALUATION PROCESS

The state will use the following steps to evaluate and prioritize proposals:

- 1) Proposals will be assessed for overall responsiveness. Proposals deemed non-responsive will be eliminated from further consideration.
- 2) A proposal evaluation committee (PEC), made up of at least five state employees or public officials, will evaluate specific parts of the responsive proposals.
- 3) The Submittal Forms, from each responsive proposal, will be sent to the PEC. No cost information will be shared or provided to the PEC.
- 4) The PEC will independently evaluate and score the documents based on the degree to which they meet the stated evaluation criteria.
- 5) After independent scoring, the PEC will have a meeting, chaired by the procurement officer, where the PEC may have a group discussion prior to finalizing their scores.
- 6) The evaluators will submit their final individual scores to the procurement officer, who will then compile the scores and calculate awarded points as set out in Section 5.03.
- 7) The procurement officer will calculate scores for cost proposals as set out in Section 5.08 and add those scores to the awarded points along with factoring in any Alaska preferences.
- 8) The procurement officer may ask for best and final offers from offerors susceptible for award and revise the cost scores accordingly.
- 9) The state will then conduct any necessary negotiations with the highest scoring offeror and award a contract if the negotiations are successful.

SEC. 5.02 EVALUATION CRITERIA

Proposals will be evaluated based on their overall value to state, considering both cost and non-cost factors as described below. Note: 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.

- 1) Analyze the firm's ownership, headquarters, branch or affiliate offices and length of time in business and how that would be of benefit the State and AMBBA. Does the firm have the capacity to serve the needs of AMMBA?
- 2) Availability of specialized staff, or other access to other resources relevant to the required services.
- 3) Analyze the firm's understanding, knowledge of, and experience with the various funding mechanisms listed in the contract's Scope of Work.
- 4) Analyze the listing of current and past clients for whom similar work was performed. How extensive is the applicable experience of the personnel designated?

- 5) If needed, contact the current clients to clarify if there is administrative capacity to monitor costs and fees; if communication with clients is clear and responsive, and if lines of authority work effectively.
- 6) Analyze resumes to consider the education, experience, and capabilities of all individuals who will be designated to provide services.
- 7) In particular, study the lead attorney who will be working directly with the Client and have overall responsibility. Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?

Overall Criteria		Weight
Responsiveness		Pass/Fail
Qualifications Criteria		
Organization and Resources	(Submittal Form A)	200
Experience and Qualifications	(Submittal Form D)	500
Cost Criteria		
Cost Proposal	(Submittal Form C)	200
Preference Criteria		
Alaska Offeror Preference (if applicable)		100
Total		1000

TOTAL EVALUATION POINTS AVAILABLE: 1000

SEC. 5.03 SCORING METHOD AND CALCULATION

The PEC will evaluate responses against the questions set out in Sections 5.04 through 5.07 and assign a single score for each section. Offerors' responses for each section will be rated comparatively against one another with each PEC member

After the PEC has scored each section, the scores for each section will be totaled and the following formula will be used to calculate the amount of points awarded for that section:

$$\frac{\text{Offeror Total Score}}{\text{Highest Total Score Possible}} \times \text{Max Points} = \text{Points Awarded}$$

SEC 5.04 EXPERIENCE AND QUALIFICATIONS

This portion of the offeror's proposal will be evaluated against the following questions:

1) Questions regarding the personnel:

- a) Do the individuals assigned to the project have experience on projects similar to those required by AMBBA?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in work the scope requires?

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

SEC 5.05 CONTRACT COST (COST PROPOSAL)

Overall, a minimum of **20%** of the total evaluation points for this RFP will be assigned to cost. After the procurement officer applies any applicable preferences, the offeror with the lowest total cost will receive the maximum number of points allocated to cost per 2 AAC 12.260(c). The point allocations for cost on the other proposals will be determined using the following formula:

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

SEC 5.06 APPLICATION OF PREFERENCES

Certain preferences apply to all state contracts, 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 following website:

<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 5.07 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 Certification Form

In order to receive the Alaska Bidder Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC 5.08 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.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Veteran Preference Certification

In order to receive the Alaska Veteran Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC 5.09 ALASKA OFFEROR PREFERENCE

Per 2 AAC 12.260, 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, which will be added to the offeror's overall evaluation score.

Example:

Step 1

Determine the number of points available to qualifying offerors under this preference:

1000 Total Points Available in RFP x 10% Alaska Offeror preference = 100 Points for the preference

Step 2

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

Offeror #1	830 points	No Preference	0 points
Offeror #2	740 points	Alaska Offeror Preference	100 points
Offeror #3	800 points	Alaska Offeror Preference	100 points

Step 3

Add the applicable Alaska Offeror preference amounts to the offerors' scores:

Offeror #1	830 points
Offeror #2	840 points (740 points + 100 points)
Offeror #3	900 points (800 points + 100 points)

Offeror #3 is the highest scoring offeror and would get the award, provided their proposal is responsive and responsible.

SEC 5.10 offeror notification of selection

After the completion of contract negotiation, the procurement officer will issue a written Notice of Intent to Award and send copies of that notice to all offerors who submitted proposals. The notice will list the names of all offerors and identify the offeror selected for award.

SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the project director or procurement officer. 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 Preference 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** 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 STANDARD CONTRACT PROVISIONS

The contractor will be required to sign the Department of Law's Standard Agreement Form for Legal Services (form SAF.DOC/Appendix A) This form is attached with the RFP 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, and the state reserves the right to reject a proposal that is non-compliant or takes exception with the contract terms and conditions stated in the Agreement. Any requests

to change language in this document (adjust, modify, add, delete, etc.), must be set out in the offeror's proposal in a separate document. Please include the following information with any change that you are proposing:

- 1) Identify the provision that the offeror takes exception with.
- 2) Identify why the provision is unjust, unreasonable, etc.
- 3) Identify exactly what suggested changes should be made.

SEC. 6.04 QUALIFIED OFFERORS

Per 2 AAC 12.875, unless provided for otherwise in the RFP, to qualify as an offeror for award of a contract issued under AS 36.30, the offeror must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the RFP.

If the offeror leases services or supplies or acts as a broker or agency in providing the services or supplies in order to meet these requirements, the procurement officer may not accept the offeror as a qualified offeror under AS 36.30.

SEC. 6.05 PROPOSAL AS PART OF THE CONTRACT

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

SEC. 6.06 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. 6.07 HUMAN TRAFFICKING

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

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <https://www.state.gov/trafficking-in-persons-report/>

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

SEC. 6.08 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 may be waived by the procurement officer. 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;

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. 6.09 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. 6.10 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.

The Office of Procurement and Property Management (OPPM), or their designee recognizes that some information an offeror submits might be confidential under the United States or the State of Alaska Constitution, a federal statute or regulation, or a State of Alaska statute: i.e., might be confidential business information (CBI). *See, e.g.,* article 1, section 1 of the Alaska Constitution; AS 45.50.910 – 45.50.945 (the Alaska Uniform Trade Secrets Act); *DNR v. Arctic Slope Regional Corp.*, 834 P.2d 134, 137-39 (Alaska 1991). For OPPM or their designee to treat information an offeror submits with its proposal as CBI, the offeror must do the following when submitting their proposal: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the offeror asserts make the information CBI. If the offeror does not do these things, the information will become public after the Notice of Intent to Award is issued. If the offeror does these things, OPPM or their designee will evaluate the offeror's assertion upon receiving a request for the information. If OPPM or their designee reject the assertion, they will, to the extent permitted by federal and State of Alaska law, undertake reasonable measures to give the offeror an opportunity to object to the disclosure of the information.

SEC. 6.11 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. 6.12 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. 6.13 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. 6.14 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with Section 6.08 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. 6.15 SOLICITATION ADVERTISING

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

SEC. 6.16 SITE INSPECTION

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

SEC. 6.17 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. 6.18 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. 6.19 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 will be held via video teleconference.

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. 6.20 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 contract 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.

SEC. 6.21 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."

SECTION 7. ATTACHMENTS

SEC. 7.01 ATTACHMENTS

- 1) RFP Submittal Form A – Certifications, Organizational Capacity, Alaska Bidder Questionnaire
- 2) RFP Submittal Form B – Department of Law conflicts Disclosure (not scored)
- 3) RFP Submittal Form C—Cost proposal
- 4) RFP Submittal Form D – Experience and Qualifications
- 5) Standard Department of Law Bond Counsel Contract for AMBBA