

STATE OF ALASKA

INVITATION TO BID (ITB)



ITB NUMBER: 2523S062
ISSUE DATE: JANUARY 20, 2023

THE STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, ALASKA MARINE HIGHWAY SYSTEM, IS SEEKING ENTITIES CAPABLE OF PROVIDING SUPPLEMENTAL PASSENGER AND VEHICLE TRANSPORTATION SERVICES BETWEEN HOMER AND SELDOVIA, ALASKA.

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 below in order to receive notification of subsequent amendments to the solicitation. Failure to register with the procurement officer may result in the rejection of your offer.

BIDDER'S NOTICE: By signature on this form, the bidder certifies that they comply with the following:

- (1) the bidder has a valid Alaska business license or will obtain one prior to award of any contract resulting from this ITB. If the bidder possesses a valid Alaska business license, the license number must be written below or one of the following forms of evidence submitted with the bid:
 - a canceled check for the business license fee;
 - a copy of the business license application with a receipt date stamp from the State's business license office;
 - a receipt from the State's business license office for the license fee;
 - a copy of the bidder's valid business license;
 - a sworn notarized affidavit that the bidder has applied and paid for a business license;
- (2) the price(s) submitted was arrived at independently and without collusion, under penalty of perjury, and that the bidder is complying with:
 - the laws of the State of Alaska;
 - the applicable portion of the Federal Civil Rights Act of 1964;
 - the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
 - the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
 - the bid will remain open and valid for at least 90 days;
 - all terms and conditions set out in this Invitation to Bid (ITB).

If a bidder does not hold an Alaska Business License (1) at the time designated in the ITB for opening the state will disallow the Alaska Bidder Preference. Bids must also be submitted under the name as appearing on the bidder's current Alaska business license in order to receive the Alaska Bidder Preference. If a bidder fails to comply with (2) of this paragraph, the state may reject the bid, terminate the contract, or consider the contractor in default.

Tom Mayer, Procurement Specialist	Company Submitting Bid	
Telephone: 907-465-8855	Printed Name	
Fax: 907-465-3124	Authorized Signature	
Email: tom.mayer@alaska.gov	Date	
	Federal Tax ID Number	
	Telephone Number	
	Email Address	
	Alaska Business License #	

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DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
SUPPLEMENTAL TRANSPORTATION SERVICES
HOMER AND SELDOVIA, ALASKA**

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ALASKA MARINE HIGHWAY SYSTEM**

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE ITB

The Department of Transportation and Public Facilities, Alaska Marine Highway System is soliciting bids for the provision of supplemental passenger and vehicle transportation services between Homer and Seldovia, Alaska. Specifically, the following communities are in need of supplemental services:

1. Homer-Homeport
2. Seldovia

There are three lots in this bid. Please see Section 2.10 for additional information.

SEC. 1.02 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **2:00PM Prevailing Alaska Time on February 6, 2023** at which time they will be publicly opened. Late bids or amendments will be disqualified and not opened or accepted for evaluation.

Call in number to participate in bid opening: 1-907-202-7104 **Access Code:** 464 159 835#

SEC. 1.03 PRIOR EXPERIENCE

In order for a bid to be considered responsive the bidder must meet or exceed the following minimum prior experience requirements:

Lot One: Passenger Only Transportation Services

Bidder:

1. The Bidder must have at least two years of experience managing, operating, and providing marine passenger transportation services.
2. The Vessel(s) offered by the Bidder must be USCG Certified and licensed to transport passengers in the waters of Cook Inlet, Alaska.

Vessel Captains:

1. Each Vessel Captain offered by the Bidder must have at least two years of experience as a Captain operating vessels.
2. Each vessel Captain offered by the Bidder must be USCG certified and licensed.

Lot Two: Vehicle Only Transportation Services

Bidder:

1. The Bidder must have at least two years of experience managing, operating, and providing overwater transportation of passengers and vehicles.
2. The Vessel(s) offered by the Bidder must be USCG Certified and licensed to transport vehicles in the waters of Cook Inlet, Alaska.

Vessel Captains:

1. Each Vessel Captain offered by the Bidder must have at least two years of experience as a Captain operating vessels transporting passengers and vehicles.
2. Each vessel Captain offered by the Bidder must be USCG certified and licensed.

Lot Three: Passenger and Vehicle Transportation Services

Bidder:

1. The Bidder must have at least two years of experience managing, operating, and providing marine passenger and vehicle transportation services.
2. The Vessel(s) offered by the Bidder must be USCG Certified and licensed to transport passengers and vehicles in the waters of Cook Inlet, Alaska.

Vessel Captains:

1. Each Vessel Captain offered by the Bidder must have at least two years of experience as a Captain operating vessels.
2. Each vessel Captain offered by the Bidder must be USCG certified and licensed.

BIDDERS RESPONSE: Regardless of the Lot(s) being bid, Bidders must submit **Attachment D - Prior Experience Verification Form**. The completed form will be used to determine if the bidder meets or exceeds the above prior experience requirements for each lot. **Attachment D contains three tabs, bidders should only complete the tab for the lots being bid upon.**

*In addition to Attachment D, bidders **must also** submit **Attachment G - Vessel Captain Qualification Form** and a short narrative that describes and defines the qualifications of each offered Vessel Captain.*

*Bidders **must also** submit copies of each offered **Vessel Captains' USCG License** indicating they are properly licensed and authorized to operate the offered vessels with passengers.*

A bidder's failure to meet these minimum prior experience requirements will cause their bid to be considered non-responsive and rejected.

SEC. 1.04 CONTRACT PERSONNEL

Any change to Vessel Captains must be approved, in advance and in writing, by the project director or procurement officer. Alternate Vessel Captains must meet or exceed the minimum prior experience requirements as defined in Section 1.03. Changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 1.05 INVITATION TO BID (ITB) REVIEW

Bidders shall carefully review this ITB for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material in the ITB should be made in writing and received by the procurement officer at least ten days before the bid opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices.

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS

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 ITB. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the ITB. The procurement officer will make that decision.

SEC. 1.07 SITE INSPECTION

Potential bidders are encouraged to visit the work site so that they can see the conditions under which the work described in this ITB will be performed. The bidder's failure to visit the work site will in no way relieve the bidder of the responsibility of performing the work in strict compliance with the true intent and meaning of the terms, conditions and specifications of this ITB. The site may be inspected by contacting Tom Mayer 907-465-8855.

This contact person is only empowered to allow potential bidders to view the work site. The contact person cannot and will not answer potential bidder questions regarding the work to be performed under this ITB or the terms, conditions and specifications of this ITB. Any questions potential bidders have must be directed to the procurement officer as required in Section 1.04.

SEC. 1.08 SUBMITTING BIDS

BIDDERS RESPONSE: If submitting via U.S. Mail or Delivery Service, Bidders must submit:

One original hard copy of the bid and all other required documentation to the procurement officer in a sealed package

One original hard copy of **Attachment A, Bid Schedule**. **Attachment A, Bid Schedule** must be included with the package and must be in a separately sealed envelope from the rest of the bid and must be clearly identified.

Note: Attachment A includes three tabs: Please fill out the correct tabs for the lot being bid

Tab One is titled: **Lot One** **Cook Inlet - Passengers**

Tab Two is titled: **Lot Two** **Cook Inlet - Vehicles**

Tab Three is titled: **Lot Three** **Ck Inlet - Passengers and Veh.**

An electronic copy of the bid and all other required documentation and **Attachment A, Bid Schedule** should also be submitted on a thumb drive with the bid if submitted via USPS or courier service.

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SUPPLEMENTAL TRANSPORTATION SERVICES
HOMER AND SELDOVIA, ALASKA

ITB 2523S062
ALASKA MARINE HIGHWAY SYSTEM

The sealed bid package(s) must be addressed as follows:

Submitting by US Mail:	Submitting by Courier Service
Department of Transportation and Public Facilities Division of Administrative Services Attn: Tom Mayer ITB: 2523S062 AMHS Supplemental Transportation Services Cook Inlet: Homer and Seldovia P.O. Box 112500 Juneau, AK 99811-2500	Department of Transportation and Public Facilities Division of Administrative Services Attn: Tom Mayer ITB: 2523S062 AMHS Supplemental Transportation Services Cook Inlet: Homer and Seldovia 3132 Channel Drive, Suite 350 Juneau, AK 99801

IMPORTANT NOTE: There are no overnight express mail or courier delivery services to Juneau, Alaska. All expedited mail or courier services take at least 2 nights. This is true for other courier vendors as well such as Federal Express.

ELECTRONIC SUBMISSION

If submitting electronically, Please see electronic submission guidance provided below.

ELECTRONIC SUBMISSION GUIDANCE: If submitting a bid via email, the bid must be emailed to:

Bid Submission Email Address: dotstatewideprocurement@alaska.gov

Subject Line for Email Submission: ITB 2523S062 – AMHS Supplemental Transportation Services – Cook Inlet.

NOTE: The Bid, all other required documentation, and Attachment A, Bid Schedule, must be submitted as separate attached documents when submitting by email.

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

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

It is the bidder's responsibility to contact the issuing agency at 907-465-8855 to confirm that the bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

The State of Alaska provides one Invitation to Bid (ITB). Additional RFPs may be purchased for the cost of reproduction, \$.25 per page.

A Bidders failure to submit its bid prior to the deadline will cause the bid to be disqualified. Late bids or amendments will not be opened or accepted for evaluation.

Bidders must submit one hard copy of their bid, in writing, to the procurement officer in a sealed package. The sealed bid package must be addressed as follows:

SEC. 1.09 BID FORMS

Bidders shall use the front page of this ITB and any other forms identified in this ITB for submitting bids. All bids must be signed by an individual authorized to bind the bidder to the provisions of the ITB.

SEC. 1.10 BIDDER'S CERTIFICATIONS

By signature on the bid, the bidder certifies that they comply with the following:

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the state and federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the state and federal government;
- E. all terms and conditions set out in this ITB;
- F. the price(s) submitted was arrived at independently arrived and without collusion, under penalty of perjury; and
- G. that the bid will remain open and valid for at least 90 days.

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

SEC. 1.11 CONFLICT OF INTEREST

BIDDERS RESPONSE: Each bid shall include a statement indicating whether or not the company 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. The procurement officer reserves the right to **consider a bid non-responsive and reject it** or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the contract to be performed by the bidder.

SEC. 1.12 PRICES

The bidder shall state prices in the units of issue on this ITB. Prices quoted in bids must be exclusive of federal, state, and local taxes. If the bidder believes that certain taxes are payable by the state, the bidder may list such taxes separately, directly below the bid price for the affected item.

SEC. 1.13 PRE-BID CONFERENCE

There will not be a pre-bid conference for this project.

SEC. 1.14 ASSISTANCE TO BIDDERS WITH A DISABILITY

Bidders with a disability may receive accommodation regarding the means of communicating this ITB 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 bids.

SEC. 1.15 AMENDMENTS TO BIDS

Amendments to or withdrawals of bids will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of bids, in accordance with 2 AAC 12.140. No amendments or withdrawals will be accepted after the deadline unless the delay is due to an error of the contracting agency, in accordance with 2 AAC 12.160.

SEC. 1.16 AMENDMENTS TO THE ITB

If an amendment is issued, it will be provided to all who were notified of the ITB and to those who have registered with the procurement officer after receiving the ITB from the State of Alaska Online Public Notice website.

SEC. 1.17 ITB SCHEDULE

The ITB 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 bids, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Time.

ACTIVITY	TIME	DATE
Issue Date / ITB Released	NA	January 20, 2023
Deadline for Receipt of Bids / Bid Due Date	2:00pm	February 6, 2023
Bid Evaluations Complete		February 7, 2023
Notice of Intent to Award		February 7, 2023
Contract Issued		February 21, 2023

This ITB does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Transportation and Public Facilities, or the Commissioner'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. 1.18 ALTERNATE BIDS

Bidders may only submit one bid for evaluation. In accordance with 2AAC 12.830 alternate bids (bids that offer something different than what is asked for) will be rejected.

SEC. 1.19 SUPPORTING INFORMATION

Bidders shall submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the procurement officer that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the state reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products or services offered completely meet the ITB requirements. The requirement for such supplemental information will

be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

SEC. 1.20 FIRM, UNQUALIFIED, AND UNCONDITIONAL OFFER

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

SECTION 2. CONTRACT INFORMATION

SEC. 2.01 CONTRACT TERM

For all Lots the length of the contract(s) will be from the date of award through December 31, 2023. There is one, one-year renewal option available under the contract(s) to be exercised solely by the State. Services will be provided on an as needed basis to be determined cooperatively with the State Project Manager after award. As needed services may be required from contract award through December 31, 2024, including all contract renewal options.

As needed sailings will be formally incorporated via a contract amendment issued by the procurement officer of record. There is no minimum or maximum number of trips that will occur.

SEC. 2.02 CONTRACT ADMINISTRATION

The administration of this contract is the responsibility of the procurement officer or person appointed by the Department of Transportation and Public Facilities, Statewide Procurement and Contracting.

SEC. 2.03 CONTRACT FUNDING

Payment for the contract is subject to funds already appropriated and identified. Approval or continuation of a contract resulting from this ITB is contingent upon legislative appropriation.

SEC. 2.04 CONTRACT EXTENSION

Unless otherwise provided in this ITB, the state and the successful bidder/contractor agree: (1) that 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 written notice to the contractor of the intent to cancel the month-to-month extension at least thirty (30) days before the date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

SEC. 2.05 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 state 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 required state approvals necessary for the amendment and issued a written contract amendment.

SEC. 2.06 SUBCONTRACTORS

Subcontractors will not be allowed.

SEC. 2.07 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 2.08 CONTRACT PERFORMANCE LOCATION

The location(s) the work is to be performed, completed and managed is in waters of Cook Inlet Alaska.

The state will not provide workspace for the contractor. The contractor must provide its own workspace.

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

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

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

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

SEC. 2.09 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. 2.10 LOT DEFINITION

The following Lots are included with this ITB:

Lot One: Lot One is for providing supplemental **passenger only transportation** between Homer and Seldovia, Alaska.

Lot Two: Lot Two is for providing supplemental **vehicle only transportation** between Homer and Seldovia, Alaska.

Lot Three: Lot Three is for providing supplemental **passenger and vehicle only transportation** between Homer and Seldovia, Alaska. Homer - Homeport

NOTE: There is an individual tab for each lot described above on **Attachment A – Bid Schedule**.

When completing **Attachment A – Bid Schedule**, Bidders are required to enter the following for each lot bid:

1. Bidder Point of Contact Information and Vessel Name

2. **Hourly Running Rate:** The hourly running rate must be a fully loaded and all-inclusive hourly rate that includes, but is not limited to, labor, fuel, insurance, docking fees, taxes, profit, overhead, and all other costs required to operate the offered vessel when running between ports to include all vessel crew.

The Running Rate is defined as: The time the vessel initially departs port until the vessel returns to the initial departure port.

3. **Hourly Ready Rate:** The hourly ready rate must be a fully loaded and all-inclusive hourly rate that includes, but is not limited to, labor, fuel, insurance, docking fees, taxes, profit, overhead and all other costs required to ensure the vessel is ready for departure.

The Ready Rate is defined as:

1. One hour before scheduled departure from the Homeport
 2. One hour after scheduled arrival back at the Homeport.
 3. Time spent during a weather or other unforeseen delay while at the port and in ready status.
4. **Homeport Location:** The Homeport for this project must be Homer, Alaska when completing **Attachment A – Bid Schedule**.
 5. **Homeport Travel Time:** Bidders must enter the amount to one way Running Time from the Homeport in Homer to Seldovia for each lot being bid.
 6. **Docking Location:** Bidders must indicate the docking location in each port on **Attachment A – Bid Schedule**.
 7. **Vessel and Crew Availability:** Bidders must indicate if the vessel and crews are available during January, February, and March 2023 by entering “**Yes**” on **Attachment A – Bid Schedule**. Attachment A provides space to enter specifically when the vessel and crew are, and are not available.

Failure to fully complete **Attachment A - Bid Schedule(s)** shall result in the bid(s) being found non-responsive. Non-responsive bids shall be rejected and will not be considered for award.

SEC. 2.11 VESSEL SIZE CATEGORIES

Vessel Size

Lot One: Passenger Transportation Only: Vessels must be at least 60 feet long and be capable of carrying at least 20 passengers.

Lot Two: Vehicle Transportation Only: Vessels must be able to carry at least 4 vehicles.

Lot Three: Passenger and Vehicle Transportation Only: Vessels must be at least 60 feet long and capable of carrying at least 4 vehicles and no less than 6 passengers.

SEC. 2.12 VESSEL SPECIFICATIONS

For Lot One: Passengers Transportation Only, the following vessel specifications must be met.

1. Must be at least have the ability to dock, load, and unload at a location in each of the required ports identified in Section 1.01.
2. Must meet the requirements for vessel size category as seen in Section 2.11.
3. Vessels must be US Coast Guard Licensed.

For Lot Two: Vehicle Transportation Only, the following vessel specifications must be met.

1. Must be at least have the ability to dock, load, and unload at a location in each of the required ports identified in Section 1.01.

2. Must be meet the requirements for vessel size category as seen in Section 2.11.
3. Must be US Coast Guard Licensed.

For Lot Three: Passenger and Vehicle Transportation, the following vessel specifications must be met.

1. Must be at least have the ability to dock, load, and unload at a location in each of the required ports identified in Section 1.01.
2. Must be meet the requirements for vessel size category as seen in Section 2.11.
3. Must be US Coast Guard Licensed.

BIDDERS RESPONSE: Regardless of the Vessel Size Category bid, Bidders are required to complete **Attachment E, - Vessel Specification Verification Form** for each vessel offered. Failure to complete and submit **Attachment E - Vessel Specification Verification Form** shall result in the bid being found non-responsive. Non-responsive bids shall be rejected and will not be considered for award.

SEC. 2.13 SCOPE OF WORK

Passenger Transportation Only

For Lot One, the State of Alaska, Department of Transportation & Public Facilities, is seeking to contract with vendor(s) capable of providing passenger transportation services from award through the full term of the contract. The Vessel Captain has the sole authority to determine how many passengers may be transported during a single sailing.

The contract(s) for each of these lots will be for the sole purpose of transporting passengers on marine charter vessels to the locations identified in Section 1.01. All trips will depart and terminate in Homer with a stop in Seldovia.

No more than 50 pounds of Carry-on Luggage per passenger is acceptable. At award, AMHS will provide a cost table for items that could exceed the 50-pound carry-on luggage requirements. Payment for such items will be in accordance with Section 2.18. The Vessel Captain has the sole authority to determine how much Carry-on luggage may be transported during a single sailing.

Vehicle Transportation Only

For Lot Two, the State of Alaska, Department of Transportation & Public Facilities, is seeking to contract with vendor(s) capable of providing vehicle transportation services from award through the full term of the contract. The Vessel Captain has the sole authority to determine how many vehicles may be transported during a single sailing.

The contract(s) for these lots will be for the sole purpose of transporting vehicles on marine charter vessels to the locations identified in Section 1.01. All trips will depart and terminate in Homer with a stop in Seldovia.

Passengers and Vehicle Transportation

For Lot Three, the State of Alaska, Department of Transportation & Public Facilities, is seeking to contract with vendor(s) capable of providing passenger and vehicle transportation services from award through the

full term of the contract. The Vessel Captain has the sole authority to determine how many passengers and vehicles may be transported during a single sailing.

The contract(s) for these lots will be for the sole purpose of transporting passengers and vehicles on marine charter vessels to the locations identified in Section 1.01. All trips will depart and terminate in Homer with a stop in Seldovia.

No more than 50 pounds of Carry-on Luggage per passenger is acceptable. At award, AMHS will provide a cost table for items that could exceed the 50-pound carry-on luggage requirements. Payment for such items will be in accordance with Section 2.18. The Vessel Captain has the sole authority to determine how much Carry-on luggage or additional items may be transported during a single sailing.

As required under Section 2.11, Bidders must complete **Attachment E - Vessel Specification Verification Form** and indicate the number of days required to mobilize a vessel for as needed services upon notice by the state.

Mobilization Time is defined as: The number of days after being contacted by the state to have the vessel and crew ready to sail.

SEC. 2.14 PORT OF ORIGIN

Depending on the contract award, the Port of Origin shall be Homer unless the State and the Contractor agree to an alternate port.

SEC. 2.15 SHIPPING DAMAGE

Does not apply to this project.

SEC. 2.16 SAILING SCHEDULE

At, or after award, the State shall analyze the contracts awarded and the AMHS operational needs to establish sailing dates cooperatively with the contractor and the State Project Manager. The agreed upon sailing dates shall be incorporated into the contract via an amendment issued by the procurement officer of record. The contract analysis shall be based on the States' estimated passenger and vehicle traffic volume for the locations seen in Section 1.01 and the contractor ranking process as defined in Section 3.13.

In the event weather or other unforeseen issues result in a sailing being cancelled, the sailing will be rescheduled to the next day or until the sailing can take place.

SEC. 2.17 SAILING SCHEDULE ALTERATIONS AND CANCELLED SAILINGS

Sailing Schedule Alterations: If weather, mechanical issue, or any other unforeseen issue results in the need to modify a sailing schedule, the contractor shall reschedule the sailing for the next window in cooperation with the state project manager. The state project manager shall make the final determination on a rescheduled sailing.

Cancelled Sailings: In the event a sailing cannot be rescheduled as described above, and the state cancels the sailing, the state shall compensate the contractor in accordance with Section 2.22 – Compensation.

SEC. 2.18 PASSENGER TICKETING PROCESS

Passenger ticketing will be provided by AMHS. AMHS will provide up to date ticketing information to the contractor 24 hours prior to sailing and as needed thereafter. In the event of walk-on or drive up traffic, the contractor shall accept payment and remit funds to AMHS. Ticketing prices for walk up passengers shall be provided to the contractor by AMHS upon contract award.

SEC. 2.19 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for proving all products or the completion of all work set out in the contract. All products or work is subject to inspection, evaluation, and approval by the state. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The state 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 products or work received) and may seek associated damages.

SEC. 2.20 CONTINUING OBLIGATION OF CONTRACTOR

Notwithstanding the expiration date of a contract resulting from this ITB, the contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

SEC. 2.21 ESTIMATED QUANTITIES

For all Lots, the state intends to establish a schedule. The schedule to the communities identified in Section 1.01 will be based on the following:

1. Section 3.13 – Contractor Selection Process
2. Operational Need
3. Budget availability

During schedule development, sailing routes will be developed and estimated per route rates shall be established based on the estimated hourly running and ready rates offered by each contractor. There is no minimum or maximum number of trips that will occur.

The estimated hours referenced on **Attachment A – Bid Schedule** are for evaluation purposes only. Contract usage shall be based on the firm schedule established at, or after award.

SEC. 2.22 COMPENSATION

Compensation under the contracts shall be based on the following:

Sailing Days Running Rate: During a sailing day, a contractor sailing a route shall be paid the Hourly Running Rate for the actual number of hours at sea or in port at a destination that is not the Homeport location.

Sailing Day Ready Rate: During a sailing day, a contractor sailing a route shall be paid the Ready Rate for the hour prior to the scheduled departure time and for an hour after arriving back at the initial departure port at the end of the route. The ready rate is to provide the contractor an hour to prep the vessel for a route and an hour to secure the vessel at the end of a route.

SEC. 2.23 CONTRACT PRICE ADJUSTMENTS

For all Lots, the price offered and awarded by Lot shall remain firm through the contract term. No price adjustments shall be permitted under the contracts awarded as a result of this ITB.

SEC. 2.24 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer. If performed, the scope of the debriefing will be limited to the products provided or work performed by the contractor.

SEC. 2.25 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.

SEC. 2.26 INSURANCE

Without limiting the contractor's indemnification, it is agreed that the 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 contract approval 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.

NOTE: As experts in the provision of Passenger, Vehicle, and Passenger/Vehicle Transportation Services, Bidders are aware of their individual insurance costs. These costs must be included in the hourly rates offered on

Attachment A – Bid Schedule. Please see **Attachment B – Insurance Requirements** for information related to the required insurance coverage.

Note: The state will reimburse each contractor up to \$40,000.00 for insurance costs. When submitted for reimbursement of insurance costs, contractors must include the invoice for the insurance provider illustrating the cost to be reimbursed.

SEC. 2.27 MANDATORY REPORTING

For all lots, the contractor must provide an annual usage report to the procurement officer in an electronic format (Excel).

Volume Reports shall be submitted annually no later than November 30, of each year.

The report must contain at least the following information:

- Number of Running Hours
- Number of Ready Hours
- Number of sailings by month
- Number of passengers or vehicles per sailing by month
- Date of each sailing by month
- Total amount billed to the state for each month

SEC. 2.28 BILLING INSTRUCTIONS

All invoices produced by the contractor must contain the following information at a minimum:

1. Number of Running and Ready Hours during billing period
2. Trip Number as identified in the associated contract award or amendment
3. Dates of sailings
4. Number of Passengers and Vehicles transported
5. Amount billed for each sailing
6. Total amount billed during the billing period.

Invoices to be sent to the following:

1. dot.amhs.kco.accting@alaska.gov
2. matt.mclaren@alaska.gov
3. tom.mayer@alaska.gov cc only

The state will make payment after it receives the goods or services and the invoice. Questions concerning payment must be addressed to the ordering agency.

SEC. 2.29 PAYMENT FOR STATE PURCHASES

Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month

on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

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

SEC. 2.30 PROMPT PAYMENT FOR STATE PURCHASES

The state is eligible to receive a **5%** discount for all invoices paid within **15** business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated.

SEC. 2.31 THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED

Because of the additional administrative and accounting time required of the state when third party financing agreements are permitted, they will not be allowed under this contract.

SECTION 3. EVALUATION AND CONTRACTOR SELECTION

SEC. 3.01 EVALUATION OF BIDS

After bid opening, the procurement officer will evaluate the bids for responsiveness. Bids deemed non-responsive will be eliminated from further consideration. An evaluation may not be based on discrimination due the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder.

SEC. 3.02 APPLICATION OF PREFERENCES

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder and Alaska Veteran preferences are the most common preferences involved in the ITB 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)

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 bids. Bidders must attach a copy of their certification letter to the bid. **A bidder's failure to provide this certification letter with their bid will cause the state to disallow the preference.**

SEC. 3.03 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the total bid price. The preference will be given to a bidder who:

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

- 4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

OFFERORS RESPONSE: Attachment C-Alaska Bidder Preference Certification Form

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

SEC. 3.04 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the total bid price. The preference will be given to a bidder 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.

OFFERORS RESPONSE: Attachment C-Alaska Veteran Preference Certification

In order to receive the Alaska Veteran Preference, the bid must include the Alaska Bidder Preference Certification Form attached to this ITB. A bidder's failure to provide this completed form with their bid will cause the state to disallow the preference.

SEC. 3.05 USE OF LOCAL FOREST PRODUCTS

Does not apply to this project.

SEC. 3.06 LOCAL AGRICULTURAL AND FISHERIES PRODUCT PREFERENCE

Does not apply to this project.

SEC. 3.07 ALASKA PRODUCT PREFERENCE

Does not apply to this project.

SEC. 3.08 EMPLOYMENT PROGRAM PREFERENCE

If a bidder qualifies for the Alaska Bidder Preference and is offering goods or services through an employment program as defined under AS 36.30.990(12), an Employment Program Preference of 15% will be applied to the total bid price.

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.

SEC. 3.09 ALASKANS WITH DISABILITIES PREFERENCE

If a bidder qualifies for the Alaska Bidder Preference and is a qualifying entity as defined in AS 36.30.321(d), an Alaskans with Disabilities Preference of 10% will be applied to the total bid price.

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.

SEC. 3.10 PREFERENCE QUALIFICATION LETTER

Regarding the Employment Program Preference and the Alaskans with Disabilities Preference, the Division of Vocational Rehabilitation in the Department of Labor and Workforce Development maintains lists companies who qualify for those preferences. As evidence of a company's right to the preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of the preferences, a bidder must be on the appropriate Division of Vocational Rehabilitation list at the time the bid is opened and must attach a copy of their certification letter to their bid. The bidder's failure to provide this certification letter with their bid will cause the state to disallow the preference.

SEC. 3.11 EXTENSION OF PRICES

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

SEC. 3.12 METHOD OF AWARD

For all Lots, award will be made by Lot and to all responsive and responsible bidders. The state reserves the sole right to reject a bid if the price offered exceeds the available budget. In order to be considered responsive, bidders must fully complete and submit the following:

1. **Attachment A** - Bid Schedule for Lots being bid upon
2. **Attachment C** - Alaska Bidder Preference Certification Form (if applicable)
3. **Attachment D** – Prior Experience Verification Form – See Section 1.03 for requirements
4. **Attachment E** – Vessel Specification Form – One form per Vessel
5. **Attachment G** – Vessel Captain Qualification Form

The estimated hours of Running and Ready Time referenced on **Attachment A – Bid Schedule** are for evaluation purposes only.

Contractor Ranking: For each Lot, after the application of preferences, contractors will be ranked with the lowest offered evaluated cost per lot being the number one ranked contractor. The contractor with the next lowest cost in each lot shall be ranked number two. This process will continue until there are no further contractors to rank.

Please see **Section 3.13, Contractor Selection Process** for additional information on specifically how the state intends to utilize the contracts awarded.

SEC. 3.13 CONTRACTOR SELECTION PROCESS

Upon award, a number of sailings may be established. If multiple contracts are awarded for any lot, the contractor selection for scheduling shall be based on **Section 3.13, Contractor Selection Process**.

If additional services are required, **Section 3.13 – Contractor Selection Process** shall be used to establish the additional services. All additional services will be confirmed with the issuance of a contract amendment.

The following section describes the Contractor Selection Process that will be used for all services provided under the contracts awarded as a result of this ITB.

If multiple contracts are awarded for any lot, the contracts shall use the following contractor selection process.

1. If, and when, the state requires “As Needed” Supplemental Passenger, Vehicle, or Passenger/Vehicle Transportation Services, the contractor that is ranked number one in a lot as described in Section 3.12 – Method of Award shall be contacted to perform the trip on a specific date.
2. If, for any reason, the number one ranked contractor is not available to perform a trip on the specific date the state requests, the state will contact the next highest ranked contractor to determine if that contractor is available to perform the trip on the specific date. This process shall continue until the state determines if a contractor is available to perform the trip on the required date.

In the event no contractor is available to perform a trip on the required date, the state reserves the right alter the date of service for the trip. If, after adjusting the trip date, and after following the process outlined in this section, a contractor is still not available to perform the trip, the state reserves the right to competitively procure the trip.

SEC. 3.14 NOTICE OF INTENT TO AWARD

After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. This tabulation, called a Notice of Intent to Award, serves two purposes. It lists the name of each company or person that offered a bid and the price they bid. It also provides notice of the state's intent to award a contract(s) to the bidder(s) indicated. A copy of the Notice of Intent will be mailed to each company or person who responded to the ITB. Bidders identified as the apparent low responsive bidders are instructed not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the procurement officer. A company or person who proceeds prior to receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the procurement officer does so without a contract and at their own risk.

SECTION 4. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 4.01 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder 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 Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license prior to the deadline for receipt of bids. Bidders 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 bidder possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid;
- 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 bidder has applied and paid for the Alaska business license.

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

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

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

SEC. 4.02 AUTHORITY

This ITB is written in accordance with AS 36.30 and 2 AAC 12.

SEC. 4.03 COMPLIANCE

In the performance of a contract that results from this ITB, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.

SEC. 4.04 SUITABLE MATERIALS, ETC.

Unless otherwise specified in this ITB, all materials, supplies or equipment offered by a bidder shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.

SEC. 4.05 SPECIFICATIONS

Unless otherwise specified in this ITB, product brand names or model numbers specified in this ITB are examples of the type and quality of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describing the item, the specifications govern. Reference to brand name or number does not preclude an offer of a comparable or better product, if full specifications and descriptive literature are provided for the product. Failure to provide such specifications and descriptive literature may be cause for rejection of the offer.

SEC. 4.06 CONTRACTOR SITE INSPECTION

The state may conduct on-site visits to evaluate the bidder's capacity to perform the contract. A bidder must agree, at risk of being found non-responsive and having its bid 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. 4.07 ORDER DOCUMENTS

Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The state is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the state under this ITB. Unless otherwise specified in this ITB, the State of Alaska Purchase Order, Contract Award and Delivery Order are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.

SEC. 4.08 HUMAN TRAFFICKING

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

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

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

SEC. 4.09 RIGHT OF REJECTION

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

Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the procurement officer may determine the bid to be a non-responsive counter-offer and the bid 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 bid from a debarred or suspended bidder shall be rejected.

SEC. 4.10 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

SEC. 4.11 DISCLOSURE OF BID CONTENTS

All bid prices become public information at the bid opening. After the deadline for receipt of bids, all other bid 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 other bid information will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, bids will become public information.

The Office of Procurement and Property Management (OPPM), or their designee recognizes that some information a bidder 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 a bidder submits with its bid as CBI, the bidder must do the following when submitting their bid: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the bidder asserts make the information CBI. If the bidder does not do these things, the information will become public after the Notice of Intent to Award is issued. If the bidder does these things, OPPM or their designee will evaluate the bidder'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 bidder an opportunity to object to the disclosure of the information.

SEC. 4.12 ASSIGNMENTS

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. Bids that are conditioned upon the state's approval of an assignment will be rejected as non-responsive.

SEC. 4.13 FORCE MAJEURE (IMPOSSIBILITY TO PERFORM)

The parties to a contract resulting from this ITB are not liable for the consequences of any failure to perform, or default in performing, any of its obligations under the contract, 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 ITB, 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.

SEC. 4.14 DEFAULT

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

SEC. 4.15 DISPUTES

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 – AS 36.30.632.

SEC. 4.16 SEVERABILITY

If any provision of the contract or agreement is found to be invalid or 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. 4.17 CONTRACT CANCELLATION

The state reserves the right to cancel the contract at its convenience upon 30 calendar day's written notice to the contractor. The state is only liable for payment in accordance with the payment provisions of this contract for supplies or services provide before the effective date termination.

SEC. 4.18 GOVERNING LAW; FORUM SELECTION

A contract resulting from this ITB is governed by the laws of the State of Alaska. To the extent not otherwise governed by Section 5.15 of this ITB, any claim concerning the contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 4.19 SOLICITATION ADVERTISING

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

SEC. 4.20 QUALIFIED BIDDERS

Per 2 AAC 12.875, unless provided for otherwise in the ITB, to qualify as a bidder for award of a contract issued under AS 36.30, the bidder 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 ITB.

If the bidder 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 bidder as a qualified bidder under AS 36.30.

SEC. 4.21 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. 4.22 PROTEST

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

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

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

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

If a bidder 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 bid 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 bidders 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 5. ATTACHMENTS

SEC. 5.01 ATTACHMENTS

Attachments:

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| 1) | Attachment A | Bid Schedule |
| 2) | Attachment B | Appendix B1 – Insurance Requirements |
| 3) | Attachment C | Alaska Bidder Preference Certification Form |
| 4) | Attachment D | Prior Experience Verification Form |
| 5) | Attachment E | Vessel Specification Verification Form |
| 6) | Attachment F | Standard Contract Form with Appendix A |
| 7) | Attachment G | Vessel Captain Qualification Form |
| 8) | Attachment H | Bid Submission Checklist |
| 9) | Attachment I | Notice of Intent to Award |