

# STATE OF ALASKA

## INVITATION TO BID (ITB)



**TITLE OF ITB:** Traffic Marking Paint, Solvent and Paint Beads  
Lot One-State Funded / Lot Two-FHWA Funded for several locations  
in the Central and Southcoast Regions.

ITB NUMBER: 2523H055  
ISSUE DATE: FEBRUARY 3, 2023

**IMPORTANT:** 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 #	

## SECTION 1 INTRODUCTION & INSTRUCTIONS

### SEC. 1.01 PURPOSE OF THE ITB

The Department of Transportation and Public Facilities, Statewide Contracting and Procurement, is soliciting bids for State and Federally Funded Traffic Marking Paint and Reflective beads to be delivered to various locations in the Central and Southcoast regions of Alaska.

### SEC. 1.02 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **2:00pm Prevailing Alaska Time on February 17, 2023**, at which time they will be publicly opened. Late bids or amendments will be disqualified and not opened or accepted for evaluation. To participate in the Bid Opening, please call the following:

**Number:** 1-907-202-7104

**Access Code:** 911 685 603#

### SEC. 1.03 LATE BIDS

Late bids are bids received after the time and date set for receipt of bids. Late bids will not be accepted.

### SEC. 1.04 PRIOR EXPERIENCE

In order for a bid to be considered responsive the bidder must have:

1. Sold traffic marking paint and reflective beads for at least three years.

**BIDDERS RESPONSE:** Bidders must submit a short narrative statement that defines and describes specifically how the bidder meets or exceeds the above minimum prior experience requirement.

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

### 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 SUBMITTING BIDS

**BIDDERS RESPONSE:** When submitting via U.S. Mail or Courier Delivery Service, Offerors must submit:

One original hard copy of their bid in writing, 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 documents and must be clearly identified.

A separate electronic copy of both the bid documents and **Attachment A, Bid Schedule** must be submitted on a thumb drive with the proposal.

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

Submitting by US Mail:	Submitting by Courier Delivery Service
Department of Transportation and Public Facilities Division of Administrative Services Attn: Tom Mayer ITB: 2523H055 Statewide Traffic Marking Paint and Reflective Beads P.O. Box 112500 Juneau, AK 99811-2500	Department of Transportation and Public Facilities Division of Administrative Services Attn: Tom Mayer ITB: 2523H055 Statewide Traffic Marking Paint and Reflective Beads 3132 Channel Drive, Suite 350 Juneau, AK 99801

**IMPORTANT NOTE:** There are no overnight express mail or courier delivery services to Anchorage, 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.

It is the bidder's responsibility to contact the issuing agency at 907-465-8949 to confirm the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

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

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

## SEC. 1.08 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.

### BIDDER'S CERTIFICATION

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.

#### CONFLICT OF INTEREST

**BIDDER 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. 1.09 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. 1.10 PRE-BID CONFERENCE

A pre-bid conference will not be held for this project.

### SEC. 1.11 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. 1.12 BIDDERS WITH DISABILITIES

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Statewide Contracting and Procurement office at one of the following numbers no later than ten days prior to bid opening to make any necessary arrangements.

Telephone: (907) 465-8855  
Fax: (907) 465-3124

Callers with telephone accessibility needs are encouraged to call the Alaska Relay Service. The Alaska Relay Service provides telephone accessibility to people who are deaf, hard-of-hearing or speech disabled. Callers should be prepared to provide the specific phone number at the Department of Transportation & Public Facilities that they wish to call:

Alaska Relay Service Phone Numbers and websites:

Voice or TTY: dial 711 (if voice, wait on line for representative to answer)  
TTY: 1-800-770-8973 (text only)  
Voice: 1-800-770-8255  
VCO Direct: 1-800-770-6108 (Voice Carry Over)  
ASCII: 1-800-770-3919  
STS: 1-866-355-6198 (Speech to Speech)  
Spanish: 1-866-355-6199  
IP Relay: [www.sprintrelayonline.com](http://www.sprintrelayonline.com) (Internet Relay)  
Website: [www.AlaskaRelay.com](http://www.AlaskaRelay.com)

### SEC. 1.13 COMPLIANCE WITH ADA

By signature of their bid the bidder certifies that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.

Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance with 28 CFR Part 35 Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

### SEC. 1.14 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. 1.15 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. 1.16 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		2/3/2023
Deadline for Receipt of Bids / Bid Due Date	2:00PM	2/17/2023
Bid Evaluations Complete		2/22/2023
Notice of Intent to Award		2/23/2023
Contract Issued		2/24/2023

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. 1.17 ALTERNATE BIDS**

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

#### **SEC. 1.18 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. 1.19 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 INTENT

This Invitation to Bid (ITB) is intended to result in a fixed price contract for the purchase of Lot One – State Funded and Lot Two - FHWA Funded traffic paint, paint solvent, and reflective beads to be delivered to various locations for the Alaska Department of Transportation & Public Facilities.

### SEC. 2.02 CONTRACT PROVISIONS

For purposes of this bid, the following contract provisions apply based on the applicable funding source:

#### **STATE CONTRACT PROVISIONS: The following provisions apply to Lot One (State Funded)**

**ALASKA BIDDER PREFERENCE:** An Alaska Bidder Preference of five percent will be applied prior to evaluation. The preference will be given to a bidder who:

- (1) holds a current Alaska business license at the time designated for bid opening;
- (2) submits a proposal 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.

#### **Alaska Bidder Preference Certification Form**

In order to receive the Alaska Bidder Preference, the bid must include **Attachment K, 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.

**ALASKA VETERAN PREFERENCE:** If a bidder qualifies for the Alaska bidder preference under AS 36.30.321(a) and AS 36.30.990(2) and is a qualifying entity as defined in AS 36.30.321(f), they will be awarded an Alaska veteran preference of five percent (5%). The preference will be given to a (1) sole proprietorship owned by an Alaska veteran; (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans; (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or (4) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans, and may not exceed \$5,000.

**NOTE:** It is critical to note that 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 governments, or the general public - AS 36.30.321(i).

#### **Alaska Veteran Preference Certification**

In order to receive the Alaska Veteran Preference, the bid must include **Attachment K, 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.

**EMPLOYMENT PROGRAM PREFERENCE:** If a bidder qualifies for the Alaska bidder preference under AS 36.30.321(a) and AS 36.30.990(2), and is offering goods or services through an employment program as defined under 36.30.990(12), they will be awarded an Employment Program Preference of fifteen percent (15%) in accordance with AS 36.30.321(b).

**ALASKANS WITH DISABILITIES PREFERENCE:** If a bidder qualifies for the Alaska bidder preference under AS 36.30.321(a) and AS 36.30.990(2), and is a qualifying entity as defined in AS 36.30.321(d), they will be awarded an Alaskans with Disabilities Preference of ten percent (10%) in accordance with AS 36.30.321(d). A bidder may not receive both an Employment Program Preference and an Alaskans with Disabilities Preference.

#### **EMPLOYMENT PROGRAM AND ALASKANS WITH DISABILITIES PREFERENCE QUALIFICATION**

**LETTER:** As evidence of an individual's or a business' right to the Employment Program or the Alaskan with Disabilities Preferences, the Division of Vocational Rehabilitation will issue a certification letter as the Division of Vocational Rehabilitation in the Department of Labor and Workforce Development maintains lists of Alaskan; [1] employment programs that qualify for preference, and [2] individuals who qualify for preference as Alaskan's with disabilities.

To take advantage of one of these preferences, an individual or business 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.

**NOTE:** It is critical to note that in accordance with AS 36.30.321(i), in order to qualify for one of these preferences, a bidder must add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, a bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

**USE OF LOCAL FOREST PRODUCTS:** In a project financed by state money in which the use of timber, lumber and manufactured lumber is required, only timber, lumber and manufactured lumber products originating in this state from Alaska forests shall be used unless the use of those products has been determined to be impractical, in accordance with AS 36.15.010 and AS 36.30.322.

**LOCAL AGRICULTURAL AND FISHERIES PRODUCTS PREFERENCE:** When agricultural, dairy, timber, lumber, or fisheries products are purchased using state money, a seven percent (7%) preference shall be applied to the price of the products harvested in Alaska, or in the case of fisheries products, the products harvested or processed within the jurisdiction of Alaska, in accordance with AS 36.15.050.

**ALASKA PRODUCT PREFERENCE:** A bidder that designates the use of an Alaska Product which meets the requirements of the ITB specification and is designated as a Class I, Class II or Class III Alaska Product by the Department of Community & Economic Development shall receive a preference in the bid evaluation in accordance with AS 36.30.332 and 3 AAC 92.010.



**END OF LOT ONE STATE FUNDED SPECIFIC CONTRACT PROVISIONS**

**FEDERAL CONTRACT PROVISIONS: The following provisions apply to Lot Two (FHWA Funded):**

**REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS:** Form Fed-Aid (09/11) pages 1 through 7 is attached to this document. This contract incorporates the provisions by reference, with the same force and effect as if they were given in full text. The contractor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

**CONTRACT FUNDING:** The funding of the resultant contract will be provided by the U.S. Federal Highways Administration (FHWA) and the Federal Aviation Administration (FAA). Federal funds are identified and appropriated for the term of the contract. Payment and performance obligations for additional terms of the contract are subject to the availability and appropriation of funds.

**STATEMENT OF FINANCIAL ASSISTANCE:** Statement of Financial Assistance: This procurement is subject in part to financial assistance grants agreement between the State of Alaska and both the U.S. Department of Transportation and the Federal Aviation Administration.

**FEDERAL FUNDS OR ASSISTANCE:** Per AS36.30.890, if a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

**FEDERAL FUNDS OR ASSISTANCE:** Per 2 AAC 12.730, if a procurement involves the expenditure or federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. Authority: AS 36.30.040; AS 36.30.890.

This contract incorporates the Required Contract Provisions for Federal-Aid (FHWA) Contracts, Form 25D-55 H (02/16), attached to this ITB.

**Reference:** Alaska Department of Transportation and Public Facilities Standard Specifications for Highway Construction –2017 Edition as seen at the link below:

<http://www.dot.state.ak.us/stwddes/dcscsspecs/assets/pdf/hwyspecs/sshc2017.pdf>

**NOTE:** In order to be responsive, bidders must complete, sign, date and return the following forms with their bid:

(1) **Attachment E** - Certificate of Buy America Act Compliance Form 25D-62

(2) **Attachment H** - Material Origin Certificate, Form 25D-60

Failure to return the completed forms with your bid may cause the bid to be deemed non-responsive and rejected.

**Section 106 – Control of Material, Section 106.101 Source of Supply and Quality Requirements**

**BUY AMERICA PROVISION:** On projects using federal funds, the Contractor shall comply with the requirements of 23 CFR 635.410, Buy America requirements, and shall submit a completed Material Origin Certificate, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate (Form 25D-60), the Contractor

shall submit an updated Material Origin Certificate (Form 25D-60). All steel and iron products which are incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project including freight.

**If the product contains a portion of iron or steel and meets this criteria, the bidder's completion and return of Forms 25D-60 and 25D-62 (above) is required. Bidders must explain on the forms (or as an attachment) how their product meets 23 CFR 635.410, sign and date the forms and submit with their bid.**

"Manufactured in the United States" means all manufacturing processes starting with the initial mixing and melting through the final shaping, welding, and coating processes must be undertaken in the United States.

The definition of "manufacturing process" is smelting or any subsequent process that alters the material's physical form, shape or chemical composition. These processes include rolling, extruding, machining, bending, grinding, drilling, etc. The application of coatings, such as epoxy coating, galvanizing, painting or any other coating that protects or enhances the value of steel or iron materials shall also be considered a manufacturing process subject to the requirements of Section 106-1.01, Buy America Provision and of the Buy America Act.

Buy America does not apply to raw materials (iron ore), pig iron, and processed, pelletized and reduced iron ore. It also does not apply to temporary steel items (e.g., temporary sheet piling, temporary bridges, steel scaffolding, and falsework). Further, it does not apply to materials which remain in place at the Contractor's convenience (e.g., sheet pilings, and forms).

The United States-Mexico-Canada Trade Agreement (USMCA) does not apply to the Buy America requirement. There is a specific exemption within USMCA (USMCA Chapter 13) for grant programs such as the Federal-aid highway program.

When steel and iron products manufactured in the United States are shipped to a foreign country where non steel or iron products are installed on or in them (e.g., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this subsection.

The Contractor shall ensure that all manufacturing processes for each covered product comply with this provision. Non-conforming products shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

Provide a Certificate of Buy America Act Compliance Form 25D-62 from the supplier for each steel or iron product and each component that is manufactured predominantly of steel or iron, prior to incorporating any steel or iron products or any components manufactured predominantly of steel or iron into the project. The supplier certifying Form 25D-62 may be the original manufacturer, fabricator, vendor, or subcontractor; provided the supplier has sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 CFR 635.410. Provide mill certificates when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 US Code Section 1001 and 1020.

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**END OF FEDERAL SPECIFIC CONTRACT PROVISIONS**

**SEC. 2.03 CONTRACT TERM**

The length of the contract will be from the date of award through February 28, 2024.

**SEC. 2.04 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 Contracting and Procurement.

**SEC. 2.05 CONTRACT FUNDING**

Payment for the contract is subject to funds already appropriated and identified.

**SEC. 2.06 CONTRACT PRICING**

The total product price per gallon or pound, as appropriate, plus the total shipping cost per gallon or pound, as appropriate, shall be added together to equal the total price per gallon or pound offered in response to this ITB for Traffic Paint, Solvent, Airport Beads, and Highway Beads shall remain firm through the end of the contract.

**SEC. 2.07 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. 2.08 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. 2.09 SUBCONTRACTORS**

Subcontractors will not be allowed.

**SEC. 2.10 JOINT VENTURES**

Joint ventures will not be allowed.

**SEC. 2.11 CONTRACT PERFORMANCE LOCATION**

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. 2.12 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. 2.13 WORKMANSHIP AND MATERIALS**

All work must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the finished item. The state will reject any item that does not meet the specifications of the ITB. Rejected items will be returned to the contractor at the contractor's risk and expense.

#### **SEC. 2.14 ORDER PLACEMENT**

The states traffic paint, solvent, highway and airport bead quantities as seen on Attachment A, Bid Schedule are the states firm order quantities for this contract. Upon contract award, a purchase order will be issued to the contractor by each regional procurement office, for each location. It is the Department's intent to place orders within seven working days following the award of the contract. Some purchase orders may be issued out of the states' procurement systems, IRIS.

#### **SEC. 2.15 AS NEEDED ORDERS**

In the event the state requires additional products, the state reserves the right to place "As Needed" orders at the price per gallon or pound, as appropriate, offered in response to this ITB.

#### **SEC. 2.16 AS NEEDED ORDER SHIPPING COSTS**

The state shall pay actual shipping costs for all As Needed Orders placed during the term of this contract.

#### **SEC. 2.17 ALTERATIONS**

The contractor must obtain the written approval from the procurement officer of record prior to making any alterations to the specifications contained in this ITB. The state will not pay for alterations that are not approved in advance and in writing by the procurement officer via a contract amendment.

#### **SEC. 2.18 F.O.B. POINT**

The F.O.B. point for all items purchased under this contract is the final destination anywhere within the State of Alaska as stated on Attachment A or Purchase Order. Ownership of, and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the state. All orders shall be F.O.B. Destination.

#### **SEC. 2.19 PACKAGING**

The cost of all packaging must be included in the price bid. All packaging must meet specifications and be suitable for shipment and warehouse storage.

## SEC. 2.20 SHIPPING CHARGES

Shipments to all locations for all products types shall be F.O.B. Destination. Shipping is considered a pass-through cost and as such, the state shall only pay actual shipping costs. For the firm order quantities and locations seen on **Attachment A, Bid Schedule**, the state shall pay the shipping cost per gallon or pound (as appropriate) offered in response to this ITB for each location.

## SEC. 2.21 SHIPPING DAMAGE

The state will not accept or pay for damaged goods. The contractor must file all claims against the carrier(s) for damages incurred to items in transit from the point of origin to the ultimate destination. The state will provide the contractor with written notice when damaged goods are received. The state will deduct the cost of the damaged goods from the invoice prior to payment. The contractor must file all claims against the carrier(s) for reimbursement of the loss.

## SEC. 2.22 ADVANCE NOTICE OF DELIVERY

The contractor must notify and inform the delivering freight company of the state's advance notice of delivery requirement to ensure the freight company is fully aware that each state facility receiving an order requires 48 hours advance notice of delivery.

## SEC. 2.23 DELIVERY

The following applies to deliveries under the contract intended to result from this ITB. **Attachment A, "Bid Schedule"**, identifies a delivery date for each F.O.B. Destination delivery location. In most cases, this date represents a "no sooner than" or "no later than" date for delivery. However, the "Bid Schedule" may also simply identify a targeted barge sailing for some of the more remote areas of Alaska. Deliveries shall be made by the date specified on the Bid Schedule for each specific location. Please see **Attachment C** for ship to addresses and points of contact for each lot and location.

By signature on page one of this ITB, the bidder guarantees delivery to each location within the timeframe set forth in the Bid Schedule.

## SEC. 2.24 DELIVERY REQUIREMENTS

Deliveries shall comply with the following:

- Deliveries will only be accepted at the final destination during normal State working hours (8am – 4:30pm), Monday through Friday.
- Deliveries shall be made to the State's maintenance yards on open flat-bed trailers only. **Deliveries made in enclosed vans shall be refused.**
- During the full term of the contract, including all renewals, **delivery of products** ordered for **Unalaska** **may be made** in an enclosed container van. **This only applies to Unalaska.**
- Drums of paint and palletized beads shall be loaded on open flat-bed trailers in a single tier ONLY. There shall be no double stacking of product.
- Any additional costs to re-deliver products to meet the above requirements shall be the sole responsibility of the contractor.

## SEC. 2.25 DETAILED SHIPPING MANIFEST REQUIRED PRIOR TO DELIVERY

The contractor must submit a detailed shipping manifest in a Microsoft Excel format to the Procurement Specialist prior to each shipment. Failure to provide the manifest in advance of delivery may result in refusal of the shipment at the F.O.B. destination.

The manifests must include a header with the contract number and manifest submission date and have separate columns for each of the following items for each returnable bulk container:

1. F.O.B. Point(s)
2. Region (Southcoast, Northern or Central)
3. State Purchase Order Number
4. Container ID Number
5. Color of Paint
6. Size of Container
7. Sailing date (or indicate if shipment is pending)

Weekly, starting within 15 days of contract award and until all orders have been scheduled for shipment, the contractor must update the manifests and submit electronically to the Procurement Specialist at:

[tom.mayer@alaska.gov](mailto:tom.mayer@alaska.gov)

### EXAMPLE OF SHIPPING MANIFESTS:

Contract Number: 2521H028

Date Submitted: 3/23/21

F.O.B. Point	Region	State PO #	Container # or PS=Pending Shipment	Paint Color	Container Size	Sailing Date or PS=Pending Shipment
Haines	Southcoast	1600005506	5555	Yellow	345 gal.	3/17/2017
Haines	Southcoast	1600005503	29305	White	345 gal	3/29/2017
Haines	Southcoast	1600005510	PS	Black	345 gal	PS
Fairbanks	Northern	1600006841	PS	White	345 gal	PS
Nome	Northern	1600008420	7582	Yellow	345 gal	4/1/2017
Deadhorse	Northern	1600008532	PS	Yellow	345 gal	PS
Anchorage	Central	1600005462	85621	White	345 gal	4/15/2017
Soldotna	Central	1600004989	PS	Yellow	345 gal	PS

## SEC. 2.26 LIQUIDATED DAMAGES FOR LATE DELIVERY

Late delivery will cause the State to suffer damages. Actual damages will be difficult to assess; therefore, it is mutually agreed that the contractor will pay the state damages at the rate of \$100 dollars per occurrence for each calendar day beyond the delivery date called for in the ITB.

## SEC. 2.27 REPORTING, TRACKING, AND INVENTORY OF RETURNABLE BULK CONTAINERS

This section applies to returnable containers only. Reporting, tracking and inventory of bulk steel containers is required for northbound and southbound shipments for the purpose of ensuring each container is returned to the contractor per the terms of the contract.

The following containers shall be returnable

Specification	Product Description	Packaging Identifier Number	Packaging Definition
One	Solvent Based Paint	2	250 or 345-Gallon Steel Reusable and Returnable Bulk Container
One	Solvent Based Paint	3	345-Gallon Steel Round Reusable and Returnable Bulk Container with a 48" x 48" Square Bottom
One	Solvent Based Paint	4	345-Gallon Steel Square Reusable and Returnable Bulk Container
Three	Waterborne Paint	2	250-Gallon Stainless Steel Reusable and Returnable Bulk Container

All other types of containers shall be non-returnable and disposable.

## SEC. 2.28 RELOCATION OF BULK CONTAINERS

If the State exercises its right to relocate a bulk container from the original ship F.O.B. to destination, the location of the container must be reported to the contractor on a Container Relocation Form. The contractor and the Procurement Specialist shall develop the form cooperatively.

## SEC. 2.29 RETURN OF BULK CONTAINERS

The return of bulk containers shall proceed as follows:

1. State maintenance station personnel will provide notice to the contractor and identify the container number(s) for return; and,
2. The contractor shall provide instructions and a written Return Authorization (RA) number that identifies all containers being returned under that RA.

## SEC. 2.30 CONTAINER INVENTORY

The contractor must maintain a current inventory of all bulk containers shipped and returned by the State under this contract. Upon the State's written request, the contractor must submit the most current inventory within 20 business days.

### Example of Contractor's Inventory:

CA 2521H028

Southeast Region:

Date: 12/1/21

F.O.B	State PO #	Container # or PS=Pending Shipment	Paint Color	Container Size	Sailing Date or PS=Pending Shipment	Relocate to City/RA#	Return to FOB/RA	RA#	Date Rcvd
Haines	1600005842	55852	White	345 gal	5/1/2017	Skagway/175	187	175	6/5/2017
Haines	1600005843	25652	Yellow	345 gal	4/15/2017	Skagway/175	190	175	7/1/2017
Haines	1600005895	15584	Black	345 gal	5/29/2017	Wrangell/164	160	164	5/25/2017
Skagway	1600006952	PS	Blue	345 gal	PS	Haines/174	170	174	5/15/2017



Juneau	1600009052	14852	Yellow	250 gal	PS	Hoonah/184	180	184	6/20/2017
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All correspondence related to the tracking of returned containers must be directed through the following:

Southeast Region: Spencer Gates [spencer.gates@alaska.gov](mailto:spencer.gates@alaska.gov) 907 465-1014

Central Region: Frank Coppa [frank.coppa@alaska.gov](mailto:frank.coppa@alaska.gov) 907 269-0858

Central Region: Dan Trubiano [daniel.trubiano@alaska.gov](mailto:daniel.trubiano@alaska.gov) 907-269-0862

### SEC. 2.31 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. 2.32 BID GUARANTEE

Bids must be accompanied by a bid guarantee in the form of a Certified or Cashier's check in the amount of \$10,000 made payable to the State of Alaska. Bonds will not be accepted as a bid guarantee. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond or Individual Surety. If the successful bidder fails to deliver the required Performance Bond or Individual Surety within the time required, the bid guarantee will be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

Failure to submit a bid guarantee in the proper form and amount, by the time set for the opening of bids, will cause the State to determine the bid non-responsive and reject the bid.

### SEC. 2.33 PERFORMANCE BOND

A posted performance bond will ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly perform and complete all obligations and work under said contract in accordance with the terms of the performance bond. The performance bond is to be in the amount of 100 percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000.00).

### SEC. 2.34 PAYMENT BOND

A Payment Bond in the amount of 100% of the total contract must be submitted. A posted payment bond guarantees the successful payment to all subcontractors and suppliers during the performance of this contract over the entire term of the contract. If the contractor fails to provide payment for labor performed and materials and supplies furnished during the performance of this contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly complete all payment obligations



under said contract in accordance with the terms of the payment bond. A payment bond is to be in the amount of 100 percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

## SEC. 2.35 INDIVIDUAL SURETY

In lieu of a performance bond, a successful bidder may post an individual surety to ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the individual surety will be declared as liquidated damages and become due and payable to the state. By signature on this ITB, the bidder acknowledges this condition and voluntarily relinquishes any and all claims to the entire individual surety. The individual surety may be in any of the following forms:

- **CERTIFIED OR CASHIER'S CHECK:** A certified or cashier's check, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

OR

- **SPECIAL NOTICE ACCOUNT OR CERTIFICATE OF DEPOSIT:** A special notice account book or certificate of deposit, made payable to the State of Alaska in the amount of one hundred percent (100%) of the total bid amount (applicable only to bids in excess of \$250,000).

Failure to provide the Performance Bond or Individual Surety within the time required will cause the State to declare the bidder non-responsible and reject the bid.

## SEC. 2.36 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. 2.37 ESTIMATED QUANTITIES

The quantities referenced in this ITB are firm for the initial term of the contract. As seen on **Attachment A, Bid Schedule**, the following firm quantities are required during the initial term of the contract for the following product categories by Lot:

Product	Lot One-State Funded	Lot Two-FHWA Funded
Solvent Based Traffic Paint (gallons)	0	2,695
Acrylic Waterborne Traffic Paint (gallons)	2,055	0
Paint Solvent (gallons)	0	220
Highway Beads (pounds)	0	19,200
Airport Beads (pounds)	9,600	0

## SEC. 2.38 CONTRACT PRICE ADJUSTMENTS

Does not apply to this project.

## SEC. 2.39 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. 2.40 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. 2.41 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.

### **Proof of insurance is required for the following:**

- **Workers' Compensation Insurance:** The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS23.30.045, 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 occurrence.
- **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 occurrence.

Failure to supply satisfactory proof of insurance within the time required will cause the state to declare the bidder non-responsible and to reject the bid.

## SEC. 2.42 MANDATORY REPORTING

Does not apply to this project.

## SECTION 3. SPECIFICATIONS

### SEC. 3.01 POINTS OF CONTACT

Please see **Attachment C, Contact Information by Lot**, for detailed Point of Contact information for each lot and location.

### SEC. 3.02 BRAND AND MODEL OFFERED

Unless otherwise specified, when brand names and model numbers are used to specify the type and quality of the goods desired, bidders must clearly indicate the brand names and model numbers they intend to provide. The bidder's failure to identify the brand and model offered will cause the state to consider the offer non-responsive and reject the bid.

### SEC. 3.03 ANNOTATED LITERATURE

Bidders must annotate their product literature to identify for the state the location of the supporting information regarding each product specification set out in this ITB. A bidder's failure to comply with this clause, within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

### SEC. 3.04 GENERAL PRODUCT STANDARDS

**HIGHWAY STANDARDS:** The following sections of the Alaska DOT&PF Standard Specifications for Highways, 2017 apply to this project.

- Section 643-2.01-8: Traffic Maintenance – Materials – Interim Pavement Markings;
- Section 670: Traffic Markings;
- Section 708-2.03: Paints – Paint for Traffic Marking;
- Section 712: Miscellaneous, as cited herein;
- Section 712.08: Glass Beads; and,
- Section 106-1.05: Certificates of Compliance.

**SECTION 643-2.01, TRAFFIC MAINTENANCE - MATERIALS:** In accordance with this section, the contractor shall provide materials for traffic control devices conforming to the following requirements:

- **Per section 643.2.01.8, Traffic Maintenance – Materials - Interim Pavement Markings**, the contractor shall apply markings according to **Section 670** and the manufacturer's recommendations. Use:
  - a) Paint meeting **Subsection 708-2.03** with glass beads meeting **Subsection 712-2.08**

**SECTION 708-2.03, PAINTS - PAINT FOR TRAFFIC MARKING:** In accordance with this section, the contractor shall use the following:

- **Per section 708-2.03.3, Paint for Traffic Marking**, the contractor shall use a product that meets “The current State of Alaska DOT&PF maintenance specification for pavement marking paint”. Please see page 24 of this ITB for additional information regarding this specification.

**SECTION 712-2.08, GLASS BEADS:** In accordance with this section, **bidders must** submit certifications of compliance as specified in Section 106-1.05 for each lot of glass beads used on the contract.

- **Per section 106-1.05, Certificates of Compliance**, the contractor shall submit with the bid certifications of compliance that verifies the glass beads contain no more than 200 ppm of lead or 200 ppm of arsenic when tested in accordance with EPA testing methods 3062, 6010B, or 6010C. Glass Beads shall meet AASHTO M 247, Type 1, with a moisture resistant coating when tested in accordance with AASHTO T346.

The Alaska DOT&PF Standard Specifications for Highways, 2017 edition may be found at the following link:

<http://www.dot.state.ak.us/stwddes/dcspsecs/index.shtml>

Please see the specification sections of this ITB sections for information regarding specifications for each type of product.

**AIRPORT STANDARDS:** The following sections of the Alaska DOT&PF Standard Specifications for Highways, 2017 apply to this project.

- Section P-620: Runway and Taxiway Painting as cited herein.

**SECTION 620-2.2 MATERIALS – PAINT:** In accordance with this section, the paint provided by the contractor shall be:

1. Waterborne or solvent base according to the requirements of Subsection 620-2.2, a. or b.
  - a. **Waterborne:** Paint shall meet the requirements of Federal Specification TT-P1952F, Type II.
  - b. **Solvent Base:** Paint shall meet the requirements of Federal Specification A-A-2886B, Type II, or the State of Alaska DOT&PF maintenance specification for "Traffic Paint - No-Heat Instant Dry Pavement Marking Material".
2. Paint shall be furnished in white (37925), yellow (33538 or 33655), red (31136) and black (37038) according to Federal Standard No 595.
3. Paint shall be furnished in Type II (fast drying time for no-pick-up) when tested according to ASTM D 711.

**SECTION 620-2.3 REFLECTIVE MEDIA:** In accordance with this section, all glass beads provided by the contractor shall meet the requirements of Fed. Spec. TT-B-1325D, Type I, gradation A. Glass beads shall be treated with adhesion promoting and/or flotation coatings as specified by the manufacturer of the paint. The Alaska DOT&PF Standard Specifications for Airports may be found at the following link:

<http://www.dot.state.ak.us/stwddes/dcspsecs/index.shtml>

### SEC. 3.05 INDEPENDENT LAB TEST RESULTS

Bidders must submit with their bid, certified test results performed by independent lab certifying that all products offered are in compliance with the State's paint and reflective glass bead specifications. The test results submitted must be signed by the independent lab and the testing must have been performed and certified no more than 180 days prior to the bid opening date.

Certified test results for each type and color of paint must be submitted. In addition, both airport and highway reflective glass beads must be tested individually. Failure to submit the required certified test results with the bid may cause the State to determine the bid non-responsive and reject the bid.

The contractor shall bear all costs associated with the independent laboratory acceptance testing of the material and such testing costs shall be considered subsidiary to the product's unit price.

### SEC. 3.06 PRODUCT SAMPLES

The contractor is required to submit samples of the products offered for inspection and evaluation to the department or its designated agent, as specified under Product Testing. The contractor's failure to submit the samples may cause the State to consider the contractor in default.

### SEC. 3.07 PRE SHIPPING PRODUCT TESTING

**After award, but prior to shipping,** the Department, or its designated agent, will be given safe access to the plant to inspect and randomly sample all products being offered for shipment. Samples obtained for Quality Assurance purposes will be tested by an independent laboratory for compliance with the State's paint and reflective glass bead specifications.

Product testing shall be arranged by the contractor in cooperation with the states Welding and Coatings Inspection Consultant as identified below.

Testing will be performed by the Alaska DOT&PF's, Welding and Coatings Inspection Consultant Mayes Testing Engineers Inc. Mayes Testing Engineers, Inc. will act as DOT&PF's Agent to randomly select bulk paint containers for sampling, witness the sampling by the paint manufacturer, secure the sample(s) and ensure delivery to a qualified paint testing laboratory for the performance of DOT&PF selected test procedures.

The contractor shall bear all costs associated with quality assurance and independent laboratory acceptance testing of the material and such testing costs shall be considered subsidiary to the product's unit price.

The Department will reject materials when the samples do not meet product quality specifications. If the product does not pass the acceptance testing, the contractor will have 72 hours to correct the product before shipment.

#### **Process to Arrange Product Testing:**

1. Upon award, the contractor shall contact Mayes Testing Engineers, Inc. by phone to inform them of the contract award and to provide anticipated testing windows. The state Procurement Officer of Record and the DOT&PF Materials Lab must be notified via email that contact has been made with Mayes Testing Engineers, Inc. **This contact must occur within 14 days of contract award.**

Mayes Testing Engineers Inc.  
20225 Cedar Valley Road, Suite 110  
Lynnwood, WA 98036  
425-742-9360

2. Once testing windows are determined, the contractor shall notify the Procurement Officer of Record via email of the testing window when sampling will be witnessed by Mayes Testing Engineers, Inc. If testing windows change, the state must be notified of the new testing window.
3. Upon the collection of samples, the contractor shall notify the Procurement Officer of Record via email that samples taken were witnessed by Mayes Testing Engineers, Inc. The samples shall be shipped by the contractor to the paint testing laboratory for testing.
4. Upon completion of the testing, the independent lab will email copies of the final test results to:  
[tom.mayer@alaska.gov](mailto:tom.mayer@alaska.gov)

## SEC. 3.08 GENERAL REQUIREMENTS

By signature of the bid, the bidder certifies that they comply or shall comply with the following general requirements:

- A. **FEDERAL COMPLIANCE:** Throughout the execution of this contract, the contractor must adhere to the Code of Federal Regulations, Title 49, Part 180.605
- B. **SILENCE OF SPECIFICATION:** The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail, and that only materials and workmanship of first quality are to be used. **ANY** exception to this specification may be cause for rejection of the bid.
- C. **MANUFACTURE:** The ingredient materials shall be mixed and ground to produce a homogeneous paint free of foreign material, which will not thicken, liver, gel, curdle, or settle during storage of up to six months. The paint must dry to an elastic adherent finish and show no appreciable discoloration when a thin section is exposed to sunlight. The contractor shall replace any paint which has become unfit for use, either due to leakage of containers or any other reason not due to handling by user.
- D. **FORMULATION:** The manufacturer who furnishes paint under this specification **must supply the formulation of their product with their bid** and no deviation from this formulation will be permitted without authorization from the State of Alaska. Samples of ingredient materials may be required at any time. The manufacturer's formulation will be treated as a confidential matter and will not be divulged without their consent.
- E. **TEST RESULTS:** All State decisions related to product acceptability shall be considered final.
- F. **FRESH PAINT ONLY:** All paint supplied under this contract must be fresh. The paint may not be re-manufactured, reconditioned or made in part using any components extracted from previous batches. Paint must be clean, bright and mixed no more than 60 days prior to shipment. All paint containers shall clearly show the date of manufacture on the outside of the drum. Paint received in non-compliance will be refused at the contractor's expense.

It is the contractor's responsibility to ensure that each container of paint delivered is compliant to State specifications. A contractor's failure to comply with this requirement will cause the State to seek remedies under breach of contract.

- G. **PROCESS:** The manufacturer shall assume all costs arising from the use of patented materials, equipment, devices or processes used on, or incorporated in the work, and agrees to indemnify and save harmless the Department and its duly authorized agents from suits of law, or actions of any nature for, or on account of the use of any patented materials equipment, devices, or processes.
- H. **SUITABILITY:** All paints supplied under this contract must be suitable for application using standard or airless traffic painting equipment. All paints supplied shall provide durable pavement markings, primarily on asphalt concrete surfaces but must also be suitable for Portland cement concrete applications. All paints supplied shall be of the fast-dry type, suitable for lowest temperature and highest humidity applications.

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Bidders must submit any and all paint limitations, recommended storage, as well as recommended equipment and methods of application with the Compliance with Specifications section included under each specification below.

- I. **PRODUCT SUPPORT:** The contractor must email and telephonic support for users to contact with any questions or comments about the use and storage of the materials provided herein. The contractor agrees to respond to all email and telephone inquiries from Alaska DOT&PF personnel within 1 business day. If at all possible, to help ensure a timely response to DOT&PF inquiries, the contractor should provide personnel living in Alaska for product support inquiries.

### SEC. 3.09 PRODUCT SPECIFICATIONS

Please see Attachment B-Product Specifications.



## SECTION 4. CONTRACT INVOICING AND PAYMENTS

### SEC. 4.01 INVOICING

Upon completion of delivery to each location, the contractor shall issue a single invoice per lot. The invoice submitted for each lot must:

1. Clearly identify the Purchase Order number, Lot, Location, product description(s), quantity(s), price per gallon or pound, and the extended price; and,
2. Include a Proof of Delivery (POD) receipt signed by a state employee to include a legible printed name for the state employee accepting the delivery.
3. The invoice must also include a copy of the actual freight bill for the specific location to allow for shipping cost validation.

### SEC. 4.02 INVOICE SUBMISSION

Invoices must be submitted to the regional office identified below. All invoices and any questions regarding payment should be directed to the appropriate region as seen below.

Southcoast Region	Central Region
DOT&PF	DOT&PF
Southcoast Region Finance Office	Central Region Procurement Office
P.O. Box 112500	2200 E. 42 <sup>nd</sup> Ave.
Juneau, AK 99811-2500	Anchorage, AK 99508
907-465-8830	907-269-0837
vicky.roberts@alaska.gov	teri.janis@alaska.gov
tom.mayer@alaska.gov	frank.coppa@alaska.gov
<a href="mailto:dot.sr.accounting@alaska.gov">dot.sr.accounting@alaska.gov</a>	daniel.trubiano@alaska.gov

Invoices may be submitted to the regional office as described above upon the complete delivery and acceptance at each specific location.

Each invoice must have individual lines for each product type and shipping. Shipping costs shall be reimbursed at the actual cost and a shipping invoice shall be included as verification of the shipping cost as seen on the invoice.

Invoices for partial deliveries to a location will not be accepted. Partial payments for individual locations will not be made. Regions will not make payment until after the receipt of the products and the proper submission of an invoice for each individual location.

### SEC. 4.03 PROOF OF DELIVERY RECEIPT

When shipments are delivered to their final destination, a Proof of Delivery (POD) receipt must be signed by a state employee on site at the time of delivery. Each POD must include the following:

- Signature and printed name of the state employee on site at the time of delivery.

- Date of Delivery, description of item to include paint color, container number(s), and total quantity.
- The Contractor's Delivery agent is responsible for ensuring the printed name is legible on the POD.

#### **SEC. 4.04 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. 4.05 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. 4.06 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 5. EVALUATION AND CONTRACTOR SELECTION

### SEC. 5.01 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 to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder.

### SEC. 5.02 APPLICATION OF PREFERENCES

**Applies only to Lot 1-State Funded.**

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

### SEC. 5.03 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.

#### SEC. 5.04 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.

#### SEC. 5.05 USE OF LOCAL FOREST PRODUCTS PREFERENCE

Does not apply to this project.

#### SEC. 5.06 LOCAL AGRICULTURAL AND FISHERIES PRODUCT PREFERENCE

Does not apply to this project

#### SEC. 5.07 ALASKA PRODUCT PREFERENCE

A bidder that designates the use of an Alaska Product which meets the requirements of the ITB specifications and is designated as a Class I, Class II or Class III Alaska Product by the Department of Community & Economic Development (DCCED) may receive a preference in the bid evaluation in accordance with AS 36.30.332 and 3 AAC 92.010.

To qualify for the preference, the product must have received certification from DCCED, be listed in the current published edition of the Alaska Products Preference List, and the bidder must provide the qualified product on a 100% basis. There are no provisions under Alaska Statutes or Regulations that allow for a product exchanges/substitutions or permit the product to be co-mingled with other products. Rather, AS 36.30.330 provides for a penalty for failing to use the designated Alaska products.

Products are classified in one of three categories:

- Class I products receive a 3% preference.
- Class II products receive a 5% preference.
- Class III products receive a 7% preference.

When the bids are evaluated, the preference percentage will be deducted from the product price. If a bidder fails to specify the brand being offered, no preference will be given. For more information on the Alaska Product

Preference and to see the list of products currently on the Alaska Product Preference List, use the following web link:

<https://www.commerce.alaska.gov/web/dcra/AlaskaProductPreferenceProgram.aspx>

#### **Brand Offered**

If offering a product that qualifies for the Alaska Product Preference, the bidder must indicate the brand of product they intent to provide. If a bidder is not offering a product that qualifies for the Alaska Product Preference, the bidder does not need to indicate a product brand.

#### **Brand of Product Changes**

During the course of the contract including all renewal options, a contractor that offered a product that qualified for the Alaska Product Preference wishes to change the product brand, the contractor must first provide a written request, along with evidence that the replacement brand also qualifies for the Alaska Product Preference, for approval by the procurement officer. A contract amendment must be issued by the procurement officer to authorize the change.

If a bidder offers a product brand in the original bid that does not qualify for the Alaska Product Preference, a change in the product brand may be made at any time during the course of the contract, including all renewals, as long as the product band continues to meet the required specifications. A contract amendment is not required if the product brand originally offered did not qualify for the Alaska Product Preference.

### **SEC. 5.08 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. 5.09 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. 5.10 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. 5.11 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. 5.12 METHOD OF AWARD

Award will be made by total bid price to the lowest responsive and responsible bidder. Total Bid Price is defined as the evaluated bid price for each lot added together to equal the total bid price. In order to be considered responsive, bidders must bid on all items within each lot. There are two lots as defined below.

**Lot One: State funded** paint requirements for locations in the Central, Northern, and Southcoast regions as seen in the table below:

Lot	Location	Region	Required Delivery Window
1A	King Salmon Airport	Southcoast	No later than 5/4/2023

**Lot Two: FHWA funded** paint requirements for locations in the Central and Southcoast Northern regions as seen in the table below:

Lot	Location	Region	Required Delivery Window
2A	Dillingham City Dock	Central	No later than 5/4/2023
2B	Soldotna Maintenance Station	Central	No later than 5/4/2023
2C	Gustavus Maintenance Station	Southcoast	No later than 5/4/2023
2D	Haines Maintenance Station	Southcoast	No later than 5/4/2023
2E	Hoonah Maintenance Station	Southcoast	No later than 5/4/2023
2F	Kake Maintenance Station	Southcoast	No later than 5/4/2023
2G	Kodiak Maintenance Station	Southcoast	No later than 5/4/2023
2H	Sitka Maintenance Station	Southcoast	No later than 5/4/2023

## SEC. 5.13 BID SCHEDULE

In order to be considered responsive, Bidders must complete and submit **Attachment A, Bid Schedule**. A printed hard copy of **Attachment A** must be submitted with the bid. In addition, an electronic file of Attachment A must also be submitted on a thumb drive or CD.

**Attachment A is a Microsoft Excel Spreadsheet.** The spreadsheet consists of four individual tabs as seen below:

- Tab 1: This tab contains State funded paint requirements in the Southcoast region.
- Tab 2: This tab contains FHWA funded paint requirements in Central and Southcoast regions.

The tab contains specific instructions for each location within the lot. While bidders may bid on one or any combination of lots, in order to be considered responsive for a lot, bidders must bid on all items within a lot.

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## SEC. 5.14 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 6. GENERAL PROCESS AND LEGAL INFORMATION

### SEC. 6.01 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder must hold a valid Alaska business license.

**However, if submitting a bid for LOT One, State Funded Paint, 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.

Website: <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing.aspx>

Phone: (907) 465-2550

Email: [license@alaska.gov](mailto:license@alaska.gov)

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. 6.02 AUTHORITY

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



### SEC. 6.03 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. 6.04 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. 6.05 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. 6.06 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. 6.07 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. 6.08 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. 6.09 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. 6.10 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. 6.11 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.

Trade secrets and other proprietary data contained in bids may be held confidential if the bidder requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. The bidder's request must be included with the bid, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

## SEC. 6.12 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. 6.13 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. 6.14 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. 6.15 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. 6.16 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. 6.17 CONTRACT CANCELLATION**

The state reserves the right to cancel the contract at its convenience upon thirty calendar days 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. 6.18 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 6.15 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. 6.19 SOLICITATION ADVERTISING**

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

#### **SEC. 6.20 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. 6.21 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. 6.22 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.

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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."

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## SECTION 7. ATTACHMENTS

### SEC. 7.01 ATTACHMENTS

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|------------------|--|
| 1) Attachment A  | ITB 2523H055 - Bid Schedule                              |
| 2) Attachment B  | Product Specifications                                   |
| 3) Attachment C  | Point of Contact and Ship to Information by Location/Lot |
| 4) Attachment D  | Bidder Questionnaire                                     |
| 5) Attachment E  | Certificate of Buy American Act Compliance Form 25D-62   |
| 6) Attachment F  | Federal Aid Contract Provisions (FHWA)                   |
| 7) Attachment G  | Federal Aid Provisions 04.13                             |
| 8) Attachment H  | Material Origin Certificate Form 25D-60                  |
| 9) Attachment I  | Bid Response Checklist                                   |
| 10) Attachment J | Alaska Bidder Preference Certification Form              |