

# STATE OF ALASKA REQUEST FOR PROPOSALS



## INSTITUTIONAL INVESTING LEGAL SERVICES REAL ESTATE

RFP APFC-FY24-009

ISSUED OCTOBER 25, 2023

The State of Alaska, Alaska Permanent Fund Corporation ("APFC") is seeking proposals from experienced and well-qualified law firms to advise the APFC on legal matters that are directly or indirectly related to the Corporation's institutional investment activities related to real estate.

---

ISSUED BY:

ALASKA PERMANENT FUND CORPORATION

PRIMARY CONTACT:

JEDEDIAH SMITH  
PROCUREMENT OFFICER  
PROCUREMENT@APFC.ORG  
(907) 796-1527

---

### **OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.**

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

# TABLE OF CONTENTS

<b>SECTION 1.</b>	<b>INTRODUCTION &amp; INSTRUCTIONS.....</b>	<b>3</b>
SEC. 1.01	PURPOSE OF THE RFP .....	3
SEC. 1.02	BUDGET .....	3
SEC. 1.03	DEADLINE FOR RECEIPT OF PROPOSALS .....	3
SEC. 1.04	PRIOR EXPERIENCE.....	3
SEC. 1.05	REQUIRED REVIEW .....	4
SEC. 1.06	QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS .....	4
SEC. 1.07	RETURN INSTRUCTIONS .....	4
SEC. 1.08	ASSISTANCE TO OFFERORS WITH A DISABILITY .....	5
SEC. 1.09	AMENDMENTS TO PROPOSALS .....	5
SEC. 1.10	AMENDMENTS TO THE RFP.....	5
SEC. 1.11	RFP SCHEDULE.....	5
SEC. 1.12	ALTERNATE PROPOSALS .....	6
SEC. 1.13	NEWS RELEASES.....	6
<b>SECTION 2.</b>	<b>BACKGROUND INFORMATION.....</b>	<b>7</b>
SEC. 2.01	BACKGROUND INFORMATION .....	7
<b>SECTION 3.</b>	<b>SCOPE OF WORK &amp; CONTRACT INFORMATION.....</b>	<b>9</b>
SEC. 3.01	SCOPE OF WORK.....	9
SEC. 3.02	CONTRACT TERM AND WORK SCHEDULE .....	9
SEC. 3.03	CONTRACT TYPE .....	10
SEC. 3.04	PROPOSED PAYMENT PROCEDURES .....	10
SEC. 3.05	CONTRACT PAYMENT .....	10
SEC. 3.06	CONTRACT PRICE ADJUSTMENTS.....	10
SEC. 3.07	LOCATION OF WORK.....	11
SEC. 3.08	SUBCONTRACTORS.....	11
SEC. 3.09	JOINT VENTURES .....	11
SEC. 3.10	CONTRACT PERSONNEL .....	11
SEC. 3.11	INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES .....	11
SEC. 3.12	CONTRACT CHANGES - UNANTICIPATED AMENDMENTS .....	12
SEC. 3.13	NONDISCLOSURE AND CONFIDENTIALITY .....	12
SEC. 3.14	INDEMNIFICATION.....	13
SEC. 3.15	INSURANCE REQUIREMENTS .....	13
SEC. 3.16	TERMINATION FOR DEFAULT .....	14
<b>SECTION 4.</b>	<b>PROPOSAL FORMAT AND CONTENT.....</b>	<b>15</b>
SEC. 4.01	RFP SUBMITTAL FORMS .....	15
SEC. 4.02	SPECIAL FORMATTING REQUIREMENTS .....	15
SEC. 4.03	OFFEROR INFORMATION AND CERTIFICATIONS (SUBMITTAL FORM A).....	17
<b>SECTION 5.</b>	<b>EVALUATION CRITERIA AND CONTRACTOR SELECTION .....</b>	<b>19</b>
SEC. 5.01	SUMMARY OF EVALUATION PROCESS.....	19
SEC. 5.02	EVALUATION CRITERIA .....	19
SEC. 5.03	SCORING METHOD.....	20
SEC. 5.04	FIRM ORGANIZATION, QUALIFICATIONS, & MANAGEMENT PLAN .....	20
SEC. 5.05	CONTRACT COST (COST PROPOSAL) .....	20
SEC. 5.06	ALASKA OFFEROR PREFERENCE .....	21
<b>SECTION 6.</b>	<b>GENERAL PROCESS AND LEGAL INFORMATION .....</b>	<b>23</b>
SEC. 6.01	INFORMAL DEBRIEFING .....	23
SEC. 6.02	ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES .....	23
SEC. 6.03	CLARIFICATION OF OFFERS .....	24
SEC. 6.04	DISCUSSIONS WITH OFFERORS .....	24
SEC. 6.05	EVALUATION OF PROPOSALS .....	24
SEC. 6.06	CONTRACT NEGOTIATION .....	24
SEC. 6.07	FAILURE TO NEGOTIATE .....	25
SEC. 6.08	OFFEROR NOTIFICATION OF SELECTION.....	25
SEC. 6.09	PROTEST .....	25
SEC. 6.10	APPLICATION OF PREFERENCES.....	26
SEC. 6.11	ALASKA BIDDER PREFERENCE .....	26
SEC. 6.12	ALASKA VETERAN PREFERENCE.....	27
SEC. 6.13	STANDARD CONTRACT PROVISIONS .....	27

SEC. 6.14 QUALIFIED OFFERORS ..... 28  
 SEC. 6.15 PROPOSAL AS PART OF THE CONTRACT ..... 28  
 SEC. 6.16 ADDITIONAL TERMS AND CONDITIONS ..... 28  
 SEC. 6.17 HUMAN TRAFFICKING ..... 28  
 SEC. 6.18 RIGHT OF REJECTION ..... 28  
 SEC. 6.19 STATE NOT RESPONSIBLE FOR PREPARATION COSTS ..... 29  
 SEC. 6.20 DISCLOSURE OF PROPOSAL CONTENTS ..... 29  
 SEC. 6.21 ASSIGNMENT ..... 30  
 SEC. 6.22 DISPUTES ..... 30  
 SEC. 6.23 SEVERABILITY ..... 30  
 SEC. 6.24 SUPPLEMENTAL TERMS AND CONDITIONS ..... 30  
 SEC. 6.25 SOLICITATION ADVERTISING ..... 30  
 SEC. 6.26 FEDERALLY IMPOSED TARIFFS ..... 30  
**SECTION 7. ATTACHMENTS .....32**  
 SEC. 7.01 ATTACHMENTS ..... 32

**SECTION 1. INTRODUCTION & INSTRUCTIONS**

**SEC. 1.01 PURPOSE OF THE RFP**

Through this RFP, the Alaska Permanent Fund Corporation (APFC) is seeking to secure legal counsel to assist the Corporation’s in-house legal staff and real estate investment staff on legal matters that arise in connection with its real estate investment portfolio and managing the APFC’s relationships with its external real estate investment advisors. APFC may award multiple contracts as a result of this solicitation. Work will be assigned based on APFC’s assessment of the individual firm’s ability to provide the services required in an efficient manner and at the time needed.

**SEC. 1.02 BUDGET**

Proposed responses to this RFP shall be priced in an hourly rate for each of the member of the legal team that will be providing the legal services under this contract.

Annual approval or continuation of a contract resulting from this RFP is contingent upon legislative appropriation.

**SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS**

Proposals must be received no later than 4:00 PM prevailing Alaska Standard Time on November 30, 2023 as indicated by postmark or email timestamp and late proposals will not be considered.

**SEC. 1.04 PRIOR EXPERIENCE**

In order for offers to be considered responsive, offerors (1) meet the minimum qualification requirements set forth below and (2) describe with specificity in the proposal how your firm satisfies such requirements.

- The proposer must have been in business at least five (5) years.
- The proposer must have at least five (5) years’ experience in representing large institutional fund investors in direct and fund investing in real estate, including the tax consequences of such investments.
- The proposer must have at least five (5) years’ experience in representing large institutional fund investors in contracting with independent real estate advisors to manage direct real estate investments.

- The proposer must designate, as a member of the team proposed for this representation, a lead attorney and a lead tax attorney, both licensed to practice law with at least seven (7) years of experience in the structuring, negotiation, and review of real estate investment transactions in excess of \$25 million on behalf of institutional investors.

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

### **SEC. 1.05 REQUIRED REVIEW**

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should be made in writing and received by the procurement officer at least ten days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective proposal and exposure of offeror's proposals upon which award could not be made.

### **SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS**

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

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

Procurement Officer: Jedediah Smith – Phone: 907-796-1527 – Email: [procurement@apfc.org](mailto:procurement@apfc.org)

### **SEC. 1.07 RETURN INSTRUCTIONS**

If submitting a hard copy proposal, Offerors must submit one hard copy of their proposal to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified. The sealed proposal package(s) must be addressed as follows:

Alaska Permanent Fund Corporation  
Attention: Jedediah Smith  
RFP Number: APFC-FY24-009  
801 W. 10<sup>TH</sup> STE 302  
Juneau, AK 99801

If submitting a proposal via email, the submittal forms must be saved as separate PDF documents and emailed to **PROCUREMENT@APFC.ORG** as separate, clearly labeled attachments, such as “Vendor A – Submittal Form A.pdf” and “Vendor A – Submittal Form B.pdf” (Vendor A is the name of the offeror). The email must contain the RFP number in the subject line.

The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in

multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

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

It is the offeror's responsibility to contact the issuing agency at **907-796-1527** to confirm that the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

### **SEC. 1.08 ASSISTANCE TO OFFERORS WITH A DISABILITY**

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

### **SEC. 1.09 AMENDMENTS TO PROPOSALS**

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

### **SEC. 1.10 AMENDMENTS TO THE RFP**

If an amendment is issued before the deadline for receipt of proposals, the amendment will be posted on the State of Alaska Online Public Notice (OPN) website. The link to the posting of the amendment will be provided to all who were notified of the RFP and to those who have registered with the procurement officer after receiving the RFP from the OPN.

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

### **SEC. 1.11 RFP SCHEDULE**

RFP schedule set out herein represents the state's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Standard Time.

<b>ACTIVITY</b>	<b>TIME</b>	<b>DATE</b>
Issue Date / RFP Released		October 25, 2023
Deadline for Receipt of Proposals / Proposal Due Date	4:00 p.m.	November 30, 2023
Proposal Evaluations Complete		December 14, 2023
Notice of Intent to Award		December 26, 2023
Contract Issued		January 10, 2024

This RFP does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Executive Director of APFC, 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. 1.12 ALTERNATE PROPOSALS**

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

### **SEC. 1.13 NEWS RELEASES**

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

## **SECTION 2. BACKGROUND INFORMATION**

### **SEC. 2.01 BACKGROUND INFORMATION**

The State of Alaska, Alaska Permanent Fund Corporation ("APFC") is seeking proposals from experienced and well-qualified law firms to advise the APFC on legal matters that are directly or indirectly related to the Corporation's institutional investment activities related to real estate.

The APFC is a public corporation and State of Alaska governmental instrumentality responsible for the investment of the assets of the Permanent Fund, currently valued at approximately \$78 billion (see [www.apfc.org](http://www.apfc.org)). The APFC has an in-house staff of 56 employees (including 23 investment professionals, four of whom are solely dedicated to investing in real estate). The staff is led by an Executive Director who reports to a six-member board of trustees. The section of the Alaska constitution and most of the Alaska statutory provisions that apply to the APFC and the Permanent Fund can be found on APFC's website at <http://www.apfc.org/home/Content/aboutAPFC/constAndLaw.cfm>.

The Permanent Fund's current investments or investment strategies include US government bonds; international and emerging markets government bonds; global corporate and high yield bonds; U.S., international and emerging markets equities; private equity; real estate; global infrastructure; US Treasury inflation-protected securities; structured credit securities; absolute and real return investment strategies; distressed and mezzanine debt; and cash.

Through this RFP, the APFC is seeking to secure legal counsel to assist the Corporation's in-house legal staff and real estate investment staff on legal matters that arise in connection with its real estate investment portfolio and managing the APFC's relationships with its external real estate investment advisors. APFC may award multiple contracts as a result of this solicitation. Work will be assigned based on APFC's assessment of the individual firm's ability to provide the services required in an efficient manner and at the time needed.

Additional information about the Permanent Fund's real estate investment portfolio is set forth below.

- The portfolio primarily consists of direct investments in real property including retail, residential, office buildings and industrial parks. APFC's website at <http://www.apfc.org/home/Content/investments/realEstate2009.cfm> contains a listing and description of the properties and their locations. Many of the properties are wholly owned by the Permanent Fund through tax exempt title holding companies. Some are owned through a joint venture relationship with another institutional investor.
- The APFC contracts with external investment advisors who manage portfolios of holdings and the title holding companies. The managers are compensated through base and incentive compensation arrangements.
- With various joint venture partners, the Permanent Fund also invests into build-to-core real estate assets that involve developing, acquiring, managing and operating multi-family, industrial and office real estate assets.
- A portion of the portfolio consists of ownership interests in publicly traded REITs through a separate account managed by an external manager with a global mandate.

- 
- Permanent Fund assets also have been invested (and may be invested in the future) in other real estate holdings, including commingled funds.
  - The APFC’s current Fund investment policy can be found on the website under the resources tab/report archive/governance and corporate policies.
  - State regulations applicable to Permanent Fund investments, as set forth in the Alaska Administrative Code, are available on the APFC’s website at the same location.

---

## **SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION**

### **SEC. 3.01 SCOPE OF WORK**

A proposing law firm shall be capable of providing the following services described below. At present there is no estimate of the specific number of hours of legal services that may be needed.

This RFP seeks to retain qualified law firms to provide real estate legal counsel. The successful proposer will be expected, without cost to the APFC, to familiarize itself with the APFC's real estate investment portfolio, real estate investment policy, and the fiduciary duties and responsibilities of the APFC's board of trustees.

With respect to the solicited legal services regarding the Permanent Fund's real estate portfolio, set forth below is a non-exhaustive description of the scope of work solicited by this RFP.

- A. Negotiate/draft/amend investment advisory agreements between the APFC and discretionary and non-discretionary external real estate managers/advisors (including designing incentive compensation arrangements) who serve in a fiduciary capacity, and agreements with independent fiduciaries for real estate transactions.
- B. Review/draft governance and related documents/contracts involving limited partnerships, limited liability companies, holding corporations, and private REITs.
- C. Provide advice on real estate operating companies (including reviewing employment contracts) and investing through joint ventures.
- D. Due diligence, advice and document drafting on investments in commingled funds (including negotiating and drafting side letters) and investments in publicly traded REITs.
- E. Form, seek federal/state tax exemptions for, and maintain title-holding entities, with emphasis on limitation of liability and income tax considerations (including structuring investments to address concerns regarding unrelated business taxable income).
- F. Non-transaction-related investment matters and insurance for investment activities.
- G. Transaction-related work (real estate, tax, environmental, insurance coverage) for real estate transactions (including purchases and sales, joint ventures, debt financings, mezzanine financings and acquisitions of real estate operating companies) where external investment manager lacks discretion.
- H. Design and/or review of lease and sub-lease agreements.
- I. Monitor and provide advice on litigation.
- J. Provide advice regarding entitlements, permitting procedures, and developmental rights.

### **SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE**

The length of the contract will be from the date of award, approximately January 10, 2024, for an initial term of three (3) years, with two (2), three (3) year optional renewals.

Unless otherwise provided in this RFP, the State and the successful offeror/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 notice to the contractor of the intent to cancel such month-to-month extension at least

30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

### **SEC. 3.03 CONTRACT TYPE**

This contract is a time and materials contract.

### **SEC. 3.04 PROPOSED PAYMENT PROCEDURES**

The state will make payments based upon receipt of an invoice. Invoices should be submitted monthly for on-going work. Payment will not be processed until the invoice has been approved by the project director.

### **SEC. 3.05 CONTRACT PAYMENT**

No payment will be made until the contract is approved by the Executive Director of APFC or the Executive Director's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. The state is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

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

### **SEC. 3.06 CONTRACT PRICE ADJUSTMENTS**

**Consumer Price Index (CPI):** Contract prices will remain firm through January 1, 2025.

The Contractor or State may request price adjustments, no sooner than 12 months from the Contract execution date, and no more than once per contract year (i.e. January 1<sup>st</sup> of each year). Contractors must submit a request to the State at least thirty (30) days prior to the start of each contract year. All Requests must be in writing and must be received 30 days prior to the contract year.

- a. If the Contractor or State fail to request a CPI price adjustment 30 days prior to the contract year, the contract rate will remain the same for the remainder of the contract year.
- b. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor, Bureau of Labor and Statistics, Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Urban Alaska.
- c. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year reported HALF1 (January through June 2023) (depends on the timing, may be HALF2 for July-December); and each HALF1 (or HALF2) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No

retroactive contract price adjustments will be allowed. All price adjustments must be approved by the Procurement Officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a Contract Amendment issued by the Procurement Officer.

- d. Approval for all price increases is dependent upon full compliance with the terms of the Contract including reporting requirements.

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

### **SEC. 3.07 LOCATION OF WORK**

The state **WILL NOT** provide workspace for the contractor. The contractor must provide its own workspace.

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

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

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

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

### **SEC. 3.08 SUBCONTRACTORS**

Subcontractors will be allowed for bespoke legal work that is not traditionally a part of a real estate investment transaction. The Project Director must approve the use of subcontractors in writing in advance.

### **SEC. 3.09 JOINT VENTURES**

Joint ventures will not be allowed.

### **SEC. 3.10 CONTRACT PERSONNEL**

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

### **SEC. 3.11 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES**

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means

to ensure that the work is progressing and being performed in compliance with the contract. The project director or procurement officer may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

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

### **SEC. 3.12 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS**

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

The contractor will not commence additional work until the procurement officer has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Executive Director of APFC or the Executive Director's designee.

### **SEC. 3.13 NONDISCLOSURE AND CONFIDENTIALITY**

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure ( to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request.

If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor's receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

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

### **SEC. 3.14 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. 3.15 INSURANCE REQUIREMENTS**

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

Certificates of Insurance must be furnished to the procurement officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

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

---

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

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

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

### **SEC. 3.16 TERMINATION FOR DEFAULT**

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

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in **SECTION 7. ATTACHMENTS**.

## SECTION 4. PROPOSAL FORMAT AND CONTENT

### SEC. 4.01 RFP SUBMITTAL FORMS

This RFP contains Submittal Forms, which must be completed by the offeror and submitted as part of their proposal. An electronic copy of the forms is posted along with this RFP.

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

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

### SEC. 4.02 SPECIAL FORMATTING REQUIREMENTS

The APFC discourages overly lengthy and costly proposals, however, in order for the APFC to evaluate proposals fairly and completely, Proposers must follow the format set out in this RFP and provide all information requested. The proposal shall include a Table of Contents and pages in the proposal shall be numbered. A proposer not following these instructions or failing to include complete information as requested may result in a lower evaluation score or the proposal being declared non-responsive.

In this RFP, Submittal Forms A, B and C mean specific template documents with their attendant instructions issued with this RFP. The templates may be downloaded from the State's Online Public Notice site or obtained from [procurement@apfc.org](mailto:procurement@apfc.org).

**Required Proposal Content and Order: Items #1-#7 should be saved as a separate PDF from #8 the cost proposal.**

- 1) **Submittal Form A - Administrative Requirements Form:** This form should be completed and signed. The form can be either downloaded from the State's On-line Public Notice site or obtained from [procurement@apfc.org](mailto:procurement@apfc.org). An individual who is authorized to bind the proposer contractually must sign it. Immediately following the Submittal Form A template, please also attach all Supplemental Response Documents (described on the bottom of page A-3 of Submittal Form A).
- 2) **Cover Letter and Executive Summary:** Proposals should include a cover letter (not to exceed two pages) that sets forth a high level introduction of your firm.
- 3) **Proposal Narrative – Firm Organization, Qualifications, and Management Plan:**
  - (a) Provide a general discussion of the firm's history, experience, and practice areas. Identify any distinct and substantive qualifications for undertaking the proposed contract, such as the availability of specialized equipment, awards and recognition received for similar services or special approaches or concepts relevant to the required services.
  - (b) Provide a detailed discussion of the firm's ownership, headquarters, branch or affiliate offices and length of time in business.
  - (c) Provide a detailed discussion of the firm's structure, size and capabilities and numbers of licensed lawyers (partners/principals/shareholders, associates, of counsel, etc.) available in terms of personnel.
  - (d) Describe your firm's proposed organization of responsibilities, management plan, and approach in providing investment counsel services (see Section IV) to the APFC. Provide specific information with regard to your firm's understanding, knowledge of, and experience

in the specific areas of expertise solicited. Please include information regarding major clients, major transactions and dollars associated with those transactions.

- (e) Describe any client newsletters/alerts (or other types of client communications, including the frequency of distribution) regarding specific developments that your firm can provide that are or may be relevant to the solicited services or generally to topics of interest to institutional investors who are subject to fiduciary standards. Describe your firm's commitment to monitoring state and federal regulatory and legislative developments (and case law) that have the potential to affect institutional investors (especially public funds or other governmental institutional investors).
- (f) Provide a minimum of three (3) firm references for whom your firm has provided the types of legal services sought in this RFP within the last eighteen months. Please do not identify current employees of the APFC as references.

4) **Lead Attorney and Key Project Personnel:**

- (a) Describe the responsibilities of, percentage of time, and the individual who will be the lead attorney (i.e., that individual who will be working most directly with the Alaska Permanent Fund Corporation and will have overall responsibility for the assignments).
- (b) Attach résumés for all attorneys who will have major responsibilities for the performance of the services required. At least three references with phone numbers shall be included for each. Please provide information regarding specific and relevant duties and assignments on similar past projects and the extent of responsibilities for each personnel proposed. Lists of projects are not useful unless the individual's specific and relevant duties and responsibilities are identified.

5) **Contract Issues:**

- (a) State whether you accept the Appendix A, General Provisions (see Attachment 2, Sample Contract, Appendix A). If you object or would like to propose modifications to any of these provisions, describe your objections and the reasons therefore, and set forth your proposed edits (see Section 6.14 above of this RFP).
- (b) State whether you accept the Appendix B2 Indemnity and Insurance provisions (see Section 7, Attachment 2, Sample Contract, Appendix B2). If you object or would like to propose modifications to any of these provisions, describe your objections and the reasons therefore, and set forth your proposed edits (see Section 3.16 above of this RFP).
- (c) State whether your firm intends to propose an Appendix E to the contract. If you do, please include a copy of your proposed Appendix E.

- 6) **Conflicts of Interest:** Proposers must identify the existence of any potential conflicts of interest, including any lawsuits and disputes in which the proposer represents parties whose interests may be adverse to the State of Alaska, the APFC, or the Permanent Fund. Generally, the Attorney General waives conflicts for matters unrelated to the services to be performed by external legal counsel, except if doing so would be contrary to the best interests of the State, or prohibited by the Rules of Professional Conduct. The Attorney General's determination regarding conflict of interest issues is final. Please note that the Attorney General will *not* waive *future* conflicts (i.e., potential conflicts that may arise later in connection with the proposer's possible *future* representations of existing or new clients). Hence, proposers should *not* request a waiver of *future* conflicts, and any law firm that may require a waiver of *future* conflicts should *not* respond to this RFP.

- 7) **Other Pertinent Information:** Include any other information you feel is pertinent in responding to this RFP.
- 8) **Submittal Form C – Cost Proposal:** The Cost Proposal captures the firm's proposed hourly billing rate for the Lead Attorney and each of the key project personnel listed in Section 4.02 4)(b). The rates submitted in the Submittal Form C - Cost Proposal will be utilized to determine the points allocated for cost in the evaluation of the proposal. There are three categories to which hours will be applied to evaluate the proposal cost: 1) Lead Attorney; 2) Senior Attorney and Partners; and 3) Junior Attorneys, Associates and other Attorneys. If no personnel are proposed in a category, then the highest average hourly rate derived in a listed category will be applied to that category where no personnel were proposed.
- Hourly rates must remain fixed for the first year of the contract. The hourly rate may be increased each year thereafter at a rate no more than three percent of the then-current base rate for that attorney.

APFC will not reimburse for work done by summer associates, law clerks, or librarians, meals or entertainment expenses, work done by attorneys to stay up to speed, billing work, surcharges, or other overhead recovery fees.

APFC will reimburse for actual out-of-pocket expenses limited to reproduction, computerized database research, courier service, postage, telephone, and necessary travel and lodging costs per the State of Alaska's guidelines.

Please indicate any discounts that the firm can offer on the billing rates (e.g., preferred client rates, broken transaction discounts).

### **SEC. 4.03 OFFEROR INFORMATION AND CERTIFICATIONS (SUBMITTAL FORM A)**

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

By signature on the form, the offeror certifies they comply with the following:

- a) the laws of the State of Alaska;
- b) the applicable portion of the Federal Civil Rights Act of 1964;
- c) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- d) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- e) all terms and conditions set out in this RFP;
- f) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and

g) that the offers will remain open and valid for at least 90 days.

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

The Submittal Form also requests the following information:

- a) The complete name and address of offeror's firm along with the offeror's Tax ID.
- b) Information on the person the state should contact regarding the proposal.
- c) Names of critical team members/personnel.
- d) Addenda acknowledgement.
- e) Conflict of interest statement.
- f) Federal requirements.
- g) Alaska preference qualifications.

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

## SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

### SEC. 5.01 SUMMARY OF EVALUATION PROCESS

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

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

### SEC. 5.02 EVALUATION CRITERIA

Proposals will be evaluated based on their overall value to state, considering both cost and non-cost factors as described below. Note: An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

Overall Criteria	Weight
Responsiveness	Pass/Fail

Qualifications Criteria	Weight
Firm Organization, Qualifications, and Management Plan (Submittal Form A-B)	700
Cost Criteria	Weight
Cost Proposal (Submittal Form C)	200
Preference Criteria	Weight
Alaska Offeror Preference (if applicable)	100

**TOTAL EVALUATION POINTS AVAILABLE: 1000**

### SEC. 5.03 SCORING METHOD

Each Proposal Evaluation Committee (PEC) member will individually evaluate and score each responsive proposal using the criteria set out in Section 5.04 and assign a single score of 1 through 700, with 700 representing the highest score and 1 representing the lowest score. Using only whole numbers, PEC members should start with a score of 350. The score may either increase or decrease depending on the offeror's response to each question for that section. As an example, if the Offeror provided responses over and above the evaluation questions in a section, they would receive a higher score. However, if the Offeror's response fails to address all questions of a section or demonstrates some lack of understanding or competency as it relates to a question for that section, the Offeror would then receive a lower score. The individual PEC scores will then be averaged and added to the scores assigned to the Cost Proposals as per Sec. 5.05

### SEC. 5.04 FIRM ORGANIZATION, QUALIFICATIONS, & MANAGEMENT PLAN

The offeror's proposal will be evaluated against the following questions:

- a. How experienced is the firm in providing investment legal services for real estate transactions similar to those required by APFC?
- b. How well does the size of the firm, number of licensed lawyers, and other resources fit with the legal needs of the APFC?
- c. How relevant is the lead attorney's experience to the work required by APFC?
- d. How relevant is the other proposed project personnel's experience to the work required by APFC?
- e. Is the organization of the project team clear?
- f. How well does the firm's management approach match the objectives set forth in the RFP?
- g. How well has the Proposer demonstrated a thorough understanding of the purpose and scope of the work?
- h. How well has the Proposer demonstrated their commitment to monitoring potential developments that could impact institutional investors?
- i. Has the firm provided letters of reference from previous clients?

### SEC. 5.05 CONTRACT COST (COST PROPOSAL)

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

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

**Example (Max Points for Contract Cost = 400):**

**Step 1**

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

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

**Step 2**

In this example, the RFP allotted 40% of the available 1,000 points to cost. This means that the lowest cost will receive the maximum number of points.

**Offeror #1 receives 400 points.**

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 400 points.

**Offeror #2 receives 374.3 points.**

$\$40,000 \text{ lowest cost} \times 400 \text{ maximum points for cost} = 16,000,000 \div \$42,750 \text{ cost of Offeror \#2's proposal} = 374.3$

**Offeror #3 receives 336.8 points.**

$\$40,000 \text{ lowest cost} \times 400 \text{ maximum points for cost} = 16,000,000 \div \$47,500 \text{ cost of Offeror \#3's proposal} = 336.8$

**SEC. 5.06 ALASKA OFFEROR PREFERENCE**

Per 2 AAC 12.260, if an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10% of the total available points, which will be added to the offeror's overall evaluation score.

**Example:****Step 1**

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

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

**Step 2**

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

---

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

**Step 3**

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

Offeror #1	830 points
Offeror #2	840 points (740 points + 100 points)
<b>Offeror #3</b>	<b>900 points (800 points + 100 points)</b>

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

---

## SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION

### SEC. 6.01 INFORMAL DEBRIEFING

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

### SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

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

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

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

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

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

---

### **SEC. 6.03 CLARIFICATION OF OFFERS**

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

### **SEC. 6.04 DISCUSSIONS WITH OFFERORS**

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

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

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

### **SEC. 6.05 EVALUATION OF PROPOSALS**

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

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

### **SEC. 6.06 CONTRACT NEGOTIATION**

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

---

**SEC. 6.07 FAILURE TO NEGOTIATE**

If the selected offeror

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

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

**SEC. 6.08 OFFEROR NOTIFICATION OF SELECTION**

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

**SEC. 6.09 PROTEST**

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

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

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

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

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

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

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

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

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

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

## **SEC. 6.10 APPLICATION OF PREFERENCES**

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the RFP process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the following website:

### [Application Of Preferences](#)

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

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

## **SEC. 6.11 ALASKA BIDDER PREFERENCE**

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

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;
- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;

- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

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

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

### **SEC. 6.12 ALASKA VETERAN PREFERENCE**

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

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

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

### **Alaska Veteran Preference Certification**

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

### **SEC. 6.13 STANDARD CONTRACT PROVISIONS**

The contractor will be required to sign the state's Standard Agreement Form for Professional Services Contracts (form SAF.DOC/Appendix A). This form is attached with the RFP for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law, and the state reserves the right to reject a proposal that is non-compliant or takes exception with the contract terms and conditions stated in the Agreement. Any requests to change language in this document (adjust, modify,

add, delete, etc.), must be set out in the offeror’s proposal in a separate document. Please include the following information with any change that you are proposing:

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

#### **SEC. 6.14 QUALIFIED OFFERORS**

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

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

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

#### **SEC. 6.15 PROPOSAL AS PART OF THE CONTRACT**

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

#### **SEC. 6.16 ADDITIONAL TERMS AND CONDITIONS**

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

#### **SEC. 6.17 HUMAN TRAFFICKING**

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

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

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

#### **SEC. 6.18 RIGHT OF REJECTION**

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

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

Minor informalities that:

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

may be waived by the procurement officer.

The State reserves the right to refrain from making an award if it determines that it is not in the best interest of the State.

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

## **SEC. 6.19 STATE NOT RESPONSIBLE FOR PREPARATION COSTS**

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

## **SEC. 6.20 DISCLOSURE OF PROPOSAL CONTENTS**

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

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

undertake reasonable measures to give the offeror an opportunity to object to the disclosure of the information.

### **SEC. 6.21 ASSIGNMENT**

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

### **SEC. 6.22 DISPUTES**

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

### **SEC. 6.23 SEVERABILITY**

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

### **SEC. 6.24 SUPPLEMENTAL TERMS AND CONDITIONS**

Proposals must comply with Section 6.08 Right of Rejection. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

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

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

### **SEC. 6.25 SOLICITATION ADVERTISING**

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

### **SEC. 6.26 FEDERALLY IMPOSED TARIFFS**

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

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.

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

## **SECTION 7. ATTACHMENTS**

### **SEC. 7.01 ATTACHMENTS**

**Attachments:**

- 1) Submittal Forms A, B, & C
- 2) Standard Agreement Form for Professional Services with Appendices A & B