

# STATE OF ALASKA REQUEST FOR PROPOSALS



## LEGAL COUNSEL FOR ALASKA HOUSING FINANCE CORPORATION RFP 2024-0300-0228

ISSUED 1/17/2024

LEGAL COUNSEL FOR THE ALASKA HOUSING FINANCE CORPORATION AND ITS SUBSIDIARY THE ALASKA CORPORATION FOR AFFORDABLE HOUSING.

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ISSUED BY:

DEPARTMENT OF LAW  
DIVISION OF ADMINISTRATIVE SERVICES

PRIMARY CONTACT:

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**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.

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## SECTION 1.INTRODUCTION & INSTRUCTIONS

### SEC. 1.01 PURPOSE OF THE RFP

The Department of Law, Division of Administrative Services is soliciting proposals on behalf of our client agencies, the Alaska Housing Finance Corporation (AHFC) and the Alaska Corporation for Affordable Housing (ACAH), to procure multiple contracts to provide legal counsel concerning real estate matters. The top ranked firm will be designated primary, and the next ranked firm will be secondary. The secondary firm will be assigned only those projects the primary firm declines due to conflict of interest.

Approval or continuation of a contract resulting from this is contingent upon fund availability.

### SEC. 1.02 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **14:00** prevailing Alaska Standard Time on **Wednesday, February 7, 2024** as indicated by postmark or email timestamp and late proposals will not be considered.

### SEC. 1.03 PRIOR EXPERIENCE

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

- 1) A firm (or at least one member of a joint venture) must have an office located in Anchorage, Alaska at the time designated for submission of the proposals. This is due to the consultative nature of much of the services to be provided and to minimize associated travel costs with having counsel present at regular meetings.
- 2) The principal attorney assigned to the contract must have no less than five years of experience in commercial real estate law and lending practices with demonstrated in-depth experience with and understanding of the Fair Housing Act, low-income housing tax credit program, tax-exempt bonds, and other residential housing development programs.

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

### SEC. 1.04 REQUIRED REVIEW

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

## SEC. 1.05 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

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

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

PROCUREMENT OFFICER: Matt Meienberg – PHONE 907-419-7335 – [matt.meienberg@alaska.gov](mailto:matt.meienberg@alaska.gov)

## SEC. 1.06 RETURN INSTRUCTIONS

Offerors must submit a proposal via email. The technical proposal and cost proposal must be saved as separate PDF documents and emailed to [matt.meienberg@alaska.gov](mailto:matt.meienberg@alaska.gov) as separate, clearly labeled attachments, such as “Vendor A – Technical Proposal.pdf” and “Vendor A – Cost Proposal.pdf” (Vendor A is the name of the offeror). The email must contain the RFP number 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. Like sending a hard copy proposal, if you are emailing your proposal, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of proposals.

It is the offeror’s responsibility to contact the issuing agency at 907-419-7335 to confirm that the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

## SEC. 1.07 ASSISTANCE TO OFFERORS WITH A DISABILITY

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

## SEC. 1.08 AMENDMENTS TO PROPOSALS

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

## SEC. 1.09 AMENDMENTS TO THE RFP

If an amendment is issued before the deadline for receipt of proposals, 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. 1.10 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.

ACTIVITY	TIME	DATE
Issue Date / RFP Released		1/17/2024
Deadline for Receipt of Proposals / Proposal Due Date	1400	2/7/2024

Proposal Evaluations Complete		2/14/2024
Notice of Intent to Award		2/19/2024
Contract Issued		3/1/2024

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

### **SEC. 1.11 PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will not be held for this solicitation.

### **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

**A. The Alaska Housing Finance Corporation (AHFC)** AHFC is a self-supporting public corporation with three subsidiaries and offices in 16 communities statewide. AHFC subsidiaries are: The Alaska Corporation for Affordable Housing; the Alaska Housing Capital Corporation (AHCC); and the Northern Tobacco Securitization Corporation (NTSC). To date, AHFC has contributed more than \$1.9 billion to the state in the form of direct dividends going into the General Fund (the state's funding source for all services and programs), providing funds to the state for capital (building and equipment) improvements; bonding for projects such as university student housing; purchasing state assets, such as the Robert B. Atwood Building; and deferred maintenance of state-owned property. See more at: <https://www.ahfc.us/>

**B. The Alaska Corporation for Affordable Housing (ACAH)** ACAH was formed to develop, manage, and operate affordable housing and provide supportive and related services to support the mission of AHFC. ACAH's mission is to be involved in affordable housing and services through developing, financing, or participation in ownership structures that are not open to AHFC directly, but which support AHFC's mission of providing affordable housing and services to individuals and groups in need. See more at: <https://www.ahfc.us/about-us/subsidiaries/alaska-corporation-affordable-housing-acah/>

## SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

### SEC. 3.01 SCOPE OF WORK

The Department of Law, Civil Division, is soliciting proposals for

Legal counsel will advise on a variety of real-estate related questions and issues as well as the drafting of loan or development related documents including, but not limited to:

- Deed of Trust;
  - Promissory Note;
  - Security Agreement;
  - Assignment of Rents;
  - Senior Restrictive Covenant;
  - Low Income Housing Tax Credit Covenant (when applicable);
  - Land or Property Lease (when applicable);
  - Assignment of Lease for Collateral Purposes (when applicable);
  - Grant Restrictive Covenants (when applicable);
  - HOME Restrictive Covenants (when applicable);
  - Loan Agreement;
  - Property Management or Use Agreement, and
  - UCC forms for recording and filing.
- Legal counsel will work with and draft the closing instruction letter to the title company;
  - Work directly with borrower's or the developer's legal counsel on behalf of AHFC or ACAH;
  - Review and approve of the borrower's or developer's legal opinion letter verifying such matters as their legal entity, ability to enter into closing documentation, zoning compliance, permitting and licensing requirements, etc.;
  - Provide preliminary title report interpretation and clearing;
  - Advise on any other legal matters or questions of law pertaining to closing any AHFC or ACAH loan or development transaction in accordance with the statutes, regulations, policies, guidelines, and practices of AHFC or ACAH, including loan consideration memorandums and/or Board consideration memorandums and resolutions.
  - Advise on any other legal matters or questions of law pertaining to ACAH acquiring, developing, managing, or operating affordable housing properties and to related or supportive services in accordance with the statutes, regulations, policies, guidelines, and practices of ACAH, including Board consideration memorandums and resolutions.

#### **Terms and conditions of Performance**

- A.** The contracts awarded under this RFP will be for a three-year term (3) with the state's option to renew for two (2) additional one-year periods. The contracts will take effect as soon as approved and executed by the Attorney General.
- B.** Proposals must be submitted with the understanding that they may form a material part of any subsequent contract. Proposals should be complete as to all terms and conditions. All terms and conditions must be

guaranteed by the respondent for the full period of the contract and any optional renewal periods. The successful proposals or provisions thereof, which are consistent with the contract, shall become incorporated in the contract by reference and constitute binding obligations of the parties.

- C. Other terms and conditions are set out in Appendices A, B, C, and D of the "Standard Agreement Form for Professional Services Contracts."

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

The length of the contract will be from the date of award, for approximately three (3) years with two (2) renewal option in the length of two (2) years each, to be exercised at the sole discretion of the state, until completion.

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 professional services contract.

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

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

## **SEC. 3.05 CONTRACT PAYMENT**

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

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 LOCATION OF WORK**

The location(s) the work is to be performed, completed, and managed shall be within the borders of the United States of America.

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

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

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

## **SEC. 3.07 SUBCONTRACTORS**

Subcontractors will not be allowed.

### **SEC. 3.08 JOINT VENTURES**

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

### **SEC. 3.09 RIGHT TO INSPECT PLACE OF BUSINESS**

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

### **SEC. 3.10 F.O.B. POINT**

All goods purchased through this contract will be F.O.B. final destination. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the State of Alaska.

### **SEC. 3.11 CONTRACT PERSONNEL**

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

### **SEC. 3.12 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. 3.13 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS**

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

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

### **SEC. 3.14 NONDISCLOSURE AND CONFIDENTIALITY**

Contractor shall abide by the confidentiality requirements of the Rules of Professional Conduct and preserve the confidences and secrets of AHFC and ACAH.

In addition, 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. 3.15 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. 3.16 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. 3.17 TERMINATION FOR DEFAULT

If the project director or procurement determines that the contractor has refused to perform the work, has failed to perform the work with such diligence as to ensure its timely and accurate completion, or has performed the work in a negligent or inappropriate manner, 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 INTRODUCTION

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

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

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

### SEC. 4.02 PROPOSAL CONTENTS

The following information must be included in all proposals.

#### (a) AUTHORIZED SIGNATURE

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

#### (b) OFFEROR'S CERTIFICATION

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

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- E. all terms and conditions set out in this RFP;
- F. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; 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.

#### (c) VENDOR TAX ID

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

#### (d) CONFLICT OF INTEREST

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The procurement officer reserves the right to **consider a proposal non-responsive and reject it** or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the contract to be performed by the offeror.

#### (e) FEDERAL REQUIREMENTS

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

### SEC. 4.03 FIRM ORGANIZATION & RESOURCES

- (1) A detailed discussion of the firm's ownership, headquarters, branch or affiliate offices. If the firm has done business in Alaska, discuss how that would be of benefit to the State and AHFC.

- (2) A detailed discussion of the firm's structure, size and capabilities/quantities available in terms of personnel and equipment.
- (3) Discuss the firm's work plan for organizing responsibilities, lines of authority, and communication, and describe the firm's approach to performing the services.
- (4) Discuss the firm's ability to evaluate the effectiveness of its service and monitor its cumulative costs and fees associated with each matter assigned to the firm under the contract.
- (5) Describe the potential impacts or benefits of distinct and substantive qualifications for undertaking the proposed contract, such as the availability of specialized staff, or other access to other resources relevant to the required services.

#### **SEC. 4.04 EXPERIENCE AND QUALIFICATIONS**

- (1) Describe the firm's experience with residential real estate law, lending practices, and financing, including related to single family, multi-family, public housing, and affordable housing.
- (2) Describe the firm's experience with providing legal advice regarding acquiring, developing, managing, or operating public housing or affordable housing properties, and regarding related or supportive services.
- (3) Describe the firm's experience with the Fair Housing Act, low-income housing tax credit program, and other residential housing development programs.
- (4) Describe the firm's current commitment to maintaining and methods of achieving thorough and up to date understanding of the laws, regulations, and rulings pertaining to residential housing, public housing, and affordable housing.
- (5) Provide resumes for all individuals who will bill under the contract. Attorney resumes must include education, qualifications, and experience with relevant or similar projects to those undertaken by AHFC. Lists of projects are not useful unless the individual's specific and relevant duties and responsibilities are identified. For the Lead Attorney, also provide at least three references with phone numbers.

#### **SEC. 4.05 COST PROPOSAL**

Offerors must complete and submit this Submittal Form. Proposed costs must all direct and indirect costs associated with the performance of the contract, including, but not limited to, total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit. The costs identified on the cost proposal are the total amount of costs to be paid by the state. No additional charges shall be allowed.

#### **SEC. 4.06 EVALUATION CRITERIA**

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

# SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 1000

## 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) Each responsive Technical 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 proposals 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.

<b>Overall Criteria</b>	<b>Weight</b>
Responsiveness	Pass/Fail

<b>Qualifications Criteria</b>	<b>Weight</b>
Firm Organization & Resources	250
Experience and Qualifications	250
Total	500

<b>Cost Criteria</b>	<b>Weight</b>
Costs and Fee's	400
Total	400

<b>Preference Criteria</b>	<b>Weight</b>
Alaska Offeror Preference (if applicable)	100
Total	100

**TOTAL EVALUATION POINTS AVAILABLE: 1000**

## SEC. 5.03 SCORING METHOD AND CALCULATION

Each Proposal Evaluation Committee (PEC) member will individually evaluate and score each responsive proposal using the criteria set out in Sections 5.04 through 5.07 and assign a single score of 1 through 10, with 10 representing the highest score and 1 representing the lowest score. Using only whole numbers, PEC members should start with a score of 5 on each section. 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.

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

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

**Example (Max Points for the Section = 100):**

	PEC Member 1 Score	PEC Member 2 Score	PEC Member 3 Score	PEC Member 4 Score	Combined Total Score	Points Awarded
<b>Offeror 1</b>	10	5	5	10	30	75
<b>Offeror 2</b>	5	5	5	5	20	50
<b>Offeror 3</b>	10	10	10	10	40	100

**Offeror 1** was awarded 75 points:

$$\frac{\text{Offeror Total Score (30)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (75)}$$

**Offeror 2** was awarded 50 points:

$$\frac{\text{Offeror Total Score (20)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (50)}$$

**Offeror 3** was awarded 100 points:

$$\frac{\text{Offeror Total Score (40)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (100)}$$

## SEC. 5.04 FIRM ORGANIZATION & RESOURCES ( 20%)

**Proposals will be evaluated against the questions set out below:**

- 1) Does the firm have stability ownership, headquarters, branch or affiliate offices and length of time in business?
- 2) Does the firm have adequate capacity in terms of structure, size and capabilities to serve the contract?
- 3) Does the firm's proposed organization of responsibilities, work plan, and approach in providing real estate legal services on behalf of AHFC and ACAH meet the Corporations' expectations?
- 4) Does the firm demonstrate its ability to evaluate the effectiveness of its service and monitor its cumulative costs and fees associated with each matter assigned to the firm under the contract?
- 5) Does the firm have any distinct and substantive qualifications for undertaking the proposed contract?

## SEC. 5.05 EXPERIENCE AND QUALIFICATIONS ( 30%)

Proposals will be evaluated against the questions set out below:

### 1) Questions regarding the personnel:

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

## SEC. 5.06 CONTRACT COST ( 40%)

Overall, a minimum of 40% 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. 5.07 ALASKA OFFEROR PREFERENCE (10%)

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</b>	<b>(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 SITE INSPECTION

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

### SEC. 6.04 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. 6.05 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. 6.06 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. 6.07 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 via teleconference.

## **SEC. 6.08 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. 6.09 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. 6.10 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. 6.11 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. 6.12 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. 6.13 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. 6.14 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. 6.15 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. 6.16 PROPOSAL AS PART OF THE CONTRACT

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

## SEC. 6.17 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. 6.18 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. 6.19 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. 6.20 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. 6.21 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. 6.22 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. 6.23 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. 6.24 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. 6.25 SUPPLEMENTAL TERMS AND CONDITIONS**

Proposals must comply with Section 6.19 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. 6.26 SOLICITATION ADVERTISING**

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

## SEC. 6.27 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.

## SECTION 7.ATTACHMENTS

### SEC. 7.01 ATTACHMENTS

#### **Attachments:**

- 1) Cost Proposal
- 2) Standard Agreement Form with Appendix A
- 3) Alaska Bidder Preference Certification
- 4) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
- 5) Department of Law Conflict Policy

# ATTACHMENT 1: COST PROPOSAL

Proposer: \_\_\_\_\_

Costs and Fees (billable rates): Provide the firm's hourly billing rates for each attorney (or specified rates for specific groups of personnel - e.g. partners/associates/paralegals) that may be called upon to provide services under the contract (the hourly rate for the designated lead attorney(s) must be clearly highlighted);

<b>Cost Items</b>	<b>Hourly Cost</b>	<b>Total</b>
Hourly billing rate for Lead Attorney (400 Hours)		
Average hourly rate for all other Attorneys (300 Hours)		
<b>Total Evaluated Cost</b>		

## ATTACHMENT 2: EXAMPLE STANDARD AGREEMENT FORM

**The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices**

1. Agency Contract Number	2. Contract Title	3. Agency Fund Code	4. Agency Appropriation Code
5. Vendor Number	6. IRIS GAE Number (if used)	7. Alaska Business License Number	
<b>This contract is between the State of Alaska,</b>			
8. Department of	Division		hereafter the State, and
9. Contractor			hereafter the contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>10.</p> <p><b>ARTICLE 1. Appendices:</b> Appendices referred to in this contract and attached to it are considered part of it.</p> <p><b>ARTICLE 2. Performance of Service:</b></p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.</p> <p>2.2 Appendix B sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p><b>ARTICLE 3. Period of Performance:</b> The period of performance for this contract begins _____, and ends _____.</p> <p><b>ARTICLE 4. Considerations:</b></p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$_____ in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:</p>			
11. Department of	Attention: Division of		
Mailing Address	Attention:		
<b>12. CONTRACTOR</b>			
Name of Firm		<p>14. <b>CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove, or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.</p>	
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative			
Title			
<b>13. CONTRACTING AGENCY</b>			
Department/Division	Date	Signature of Head of Contracting Agency or Designee	Date
Signature of Procurement Officer		Typed or Printed Name	
Typed or Printed Name of Procurement Officer		Title	
Title			

**NOTICE!** This contract has no effect until signed by the head of the contracting agency, procurement officer or designee.

# APPENDIX A

## GENERAL PROVISIONS

### Article 1. Definitions.

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

### Article 2. Inspections and Reports.

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

### Article 3. Disputes.

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

### Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

**Article 5. Termination.**

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

**Article 6. No Assignment or Delegation.**

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

**Article 7. No Additional Work or Material.**

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

**Article 8. Independent Contractor.**

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

**Article 9. Payment of Taxes.**

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

**Article 10. Ownership of Documents.**

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

**Article 11. Governing Law; Forum Selection**

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

**Article 12. Conflicting Provisions.**

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

**Article 13. Officials Not to Benefit.**

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

**Article 14. Covenant Against Contingent Fees.**

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

**Article 15. Compliance.**

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

**Article 16. Force Majeure:**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.



ATTACHMENT 3: ALASKA BIDDER PREFERENCE CERTIFICATION  
[AS 36.30.321\(A\)](#) / [AS 36.30.990\(2\)](#)

BUSINESS NAME: [CLICK OR TAP HERE TO ENTER TEXT.](#)

<b>Alaska Bidder Preference:</b> Do you believe that your firm qualifies for the Alaska Bidder Preference?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Alaska Veteran Preference:</b> Do you believe that your firm qualifies for the Alaska Veteran Preference?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please list any additional Alaska Preferences below that you believe your firm qualifies for.	
<b>1.</b>	<b>2.</b>
<b>3.</b>	<b>4.</b>
<b>5.</b>	<b>6.</b>

To qualify for and claim the Alaska Bidder Preference you must answer **YES** to all questions below in the Alaska Bidder Preference Questions section. To qualify for and claim the Alaska Veteran Preference, you must answer **YES** to these questions as well as answer **YES** to all the questions in the Alaska Veteran Preference section. A signed copy of this form must be included with your bid or proposal no later than the deadline set for receipt of bids or proposals.

If you are submitting a bid or proposal as a **JOINT VENTURE**, all members of the joint venture must complete and submit this form before the deadline set for receipt of bids or proposals. [AS 36.30.990\(2\)\(E\)](#)

**If the procuring agency is unable to verify a response, the preference may not be applied.** Knowingly or intentionally making false or misleading statements on this form, whether it succeeds in deceiving or misleading, constitutes misrepresentation per [AS 36.30.687](#) and may result in criminal penalties.

**Alaska Bidder Preference Questions:**

1) Does your business hold a current Alaska business license per [AS 36.30.990\(2\)\(A\)](#)?

YES  NO

If **YES**, enter your current **Alaska business license number**: [Click or tap here to enter text.](#)

2) Is your business submitting a bid or proposal under the name appearing on the Alaska business license noted in **Question 1** per [AS 36.30.990\(2\)\(B\)](#)?

YES       NO

3) Has your business maintained a **place of business** within the state **staffed by the bidder or offeror** or an employee of the bidder or offeror for a period of six months immediately preceding the date of the bid or proposal per [AS 36.30.990\(2\)\(C\)](#)?

YES       NO

If **YES**, please complete the following information:

**A. Place of Business**

Street Address: [Click or tap here to enter text.](#)

City: [Click or tap here to enter text.](#)

ZIP: [Click or tap here to enter text.](#)

“**Place of business**” is defined as a location at which normal business activities are conducted, services are rendered, or goods are made, stored, or processed; a post office box, mail drop, telephone, or answering service does not, by itself, constitute a place of business per [2 AAC 12.990\(b\)\(3\)](#).

Do you certify that the **Place of Business** described in **Question 3A** meets this definition?

YES       NO

**B.** The bidder or offeror, or at least one employee of the bidder or offeror, must be a resident of the state under [AS 16.05.415\(a\)](#) per [2 AAC 12.990\(b\)\(7\)](#).

1) Do you certify that the bidder or offeror OR at least one employee of the bidder or offeror is physically present in the state with the intent to remain in Alaska indefinitely and to make a home in the state per [AS 16.05.415\(a\)\(1\)](#)?

YES       NO

2) Do you certify that that the resident(s) used to meet this requirement has maintained their domicile in Alaska for the 12 consecutive months immediately preceding the deadline set for receipt of bids or proposals per [AS 16.05.415\(a\)\(2\)](#)?

YES       NO

3) Do you certify that the resident(s) used to meet this requirement is claiming residency ONLY in the state of Alaska per [AS 16.05.415\(a\)\(3\)](#)?

YES       NO

4) Do you certify that the resident(s) used to meet this requirement is NOT obtaining benefits under a claim of residency in another state, territory, or country per [AS 16.05.415\(a\)\(4\)](#)?

YES       NO

4) Per [AS 36.30.990\(2\)\(D\)](#), is your business (**CHOOSE ONE**):

- A. **Incorporated or qualified to do business under the laws of the state?**  
 YES       NO  
If **YES**, enter your current **Alaska corporate entity number**: [Click or tap here to enter text.](#)
- B. **A sole proprietorship AND the proprietor is a resident of the state?**  
 YES       NO
- C. **A limited liability company organized under AS 10.50 AND all members are residents of the state?**  
 YES       NO  
Please identify each member by name: [Click or tap here to enter text.](#)
- D. **A partnership under former AS 32.05, AS 32.06, or AS 32.11 AND all partners are residents of the state?**  
 YES       NO  
Please identify each partner by name: [Click or tap here to enter text.](#)

**Alaska Veteran Preference Questions:**

1) Per [AS 36.30.321\(F\)](#), is your business (**CHOOSE ONE**):

- A. **A sole proprietorship** owned by an Alaska veteran?  
 YES       NO
- B. **A partnership** under AS 32.06 or AS 32.11 **AND** a majority of the partners are Alaska veterans?  
 YES       NO
- C. **A limited liability company** organized under AS 10.50 **AND** a majority of the members are Alaska veterans?  
 YES       NO
- D. **A corporation** that is wholly owned by individuals, **AND** a majority of the individuals are Alaska veterans?  
 YES       NO

Per [AS 36.30.321\(F\)\(3\)](#) “**Alaska veteran**” is defined as an individual who:

- (A) Served in the
- (i) Armed forces of the United States, including a reserve unit of the United States armed forces; or
  - (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and
- (B) Was separated from service under a condition that was not dishonorable.

Do you certify that the individual(s) indicated in **Question 1A, 1B, 1C, or 1D** meet this definition and can provide documentation of their service and discharge if necessary?

YES       NO

**SIGNATURE**

By signature below, I certify under penalty of law that I am an authorized representative of [Click or tap here to enter text.](#) and all information on this form is true and correct to the best of my knowledge.

Printed Name

Title

Date

Signature

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## ATTACHMENT 4: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**Before completing certification, read the instructions on the following page, which are an integral part of the certification.**

1. The prospective recipient of Federal assistance funds certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

---

Name and Title of Authorized Representative

---

Signature

Date

## Instructions for Certification

1. By signing and submitting this Proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this Proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

## ATTACHMENT 5: DEPT. OF LAW CONFLICT POLICY

### Department of Law Conflict Policy for Private Attorneys Representing the State

#### 1. Purpose of Policy.

A private attorney who represents or seeks to represent the State of Alaska, an agency of the state, or an officer or employee of the state (collectively referred to as “the state”) must exercise independent judgment on the client’s behalf. In representing the state, an attorney must not be influenced by an interest that will adversely affect the attorney’s judgment or loyalty to the state. An attorney must refuse a matter that poses a conflict with existing clients, unless the attorney has disclosed the conflict and obtained waivers of the conflict. An attorney has a continuing duty to disclose any conflicts that may arise during representation of the state, consistent with the procedure below. The Attorney General expects attorneys representing the state or seeking to represent the state to abide by their obligations under the Alaska Rules of Professional Conduct (ARPC).

A private attorney has a duty to disclose any existing conflicts to the state. If the attorney is part of a firm, he or she must disclose conflicts arising from representations of all attorneys employed by the firm. The attorney may accompany the disclosure with a request for a waiver. The state may consent to representation of adverse interests, except as prohibited by the ARPC. Any such consent must be fully informed. Every effort must be made to identify conflicts or potential conflicts before an attorney takes on legal representation of the state. During the course of the attorney’s representation, previously unanticipated conflicts must be disclosed immediately so that the state may take appropriate action to either grant or deny a waiver request.

It is the position of DOL that counsel may engage in preliminary discussions with new or prospective clients, or with existing clients on a new matter, without seeking a waiver. Preliminary discussions are those which occur before the lawyer or firm decides (subject to obtaining any required conflict waiver), to represent a client or prospective client on a particular matter.

#### 2. Procedure.

A private attorney or law firm that already represents the state and wishes to represent a client with interests adverse to the state may request a conflict waiver from DOL by letter or electronic mail addressed to the ethics attorney. The request must describe in detail the subject matter and scope of the proposed representation and the matters on which the attorney or firm currently represents the state. If the request is from a firm, it shall include a discussion of measures to be taken within the firm to prevent the compromise of confidential information in the possession of the firm’s attorneys who are representing the state.

A private attorney or law firm that wishes to represent the state, generally in response to a state-issued request for proposals for the provision of legal services (RFP), and that currently represents a client or clients adverse to the state, must follow similar procedures. The attorney or firm must request a conflict waiver in a letter or electronic mail message addressed to the ethics attorney, and that request must describe in detail the matters on which the attorney or firm currently represents clients adverse to the state.

#### 3. Criteria for a Waiver Decision.

The ethics attorney will decide waiver requests, in consultation with the Deputy Attorney General, as appropriate, on a case-by-case basis by balancing the state’s interest in retaining the services of the particular attorney or firm against the problems posed by the conflict. While it is not possible to apply a mechanical formula to a waiver determination, the following questions may be helpful in analyzing the conflict:

- 
- a. Is the legal position taken or the outcome sought by private counsel in the conflicting matter related to the position taken by the state in the case that counsel has or will provide representation?
  - b. Will private counsel have access to client confidences or other confidential information gained in representing the state that could be used against the state in the conflicting matter?
  - c. Does the legal position advocated by private counsel in the conflicting matter contradict core state legal issues? (Examples of core legal issues include sovereign immunity, separation of powers, executive powers, state employment/personnel issues, state constitutional issues, and regulation authority.)
  - d. Has counsel represented, is counsel representing, or will counsel represent the same state agency/agencies that counsel would be opposing in the conflicting case? (Has private counsel represented the same state agency frequently, so that there is a perception by agency personnel of a continuing attorney/client relationship? Or, is counsel “institutionally recognized” as being the agency’s attorney?)
  - e. In the conflicting matter, will counsel be opposing assistant attorneys general counsel has worked with when representing the state?
  - f. Does private counsel have unique legal expertise difficult to obtain from other counsel or from assistant attorneys general?
  - g. Are other qualified attorneys available in the same geographic location to represent the state?
  - h. Are there particular aspects of the conflict that would create an appearance of impropriety?
  - i. Is it in the state’s best economic interest to grant the waiver?
  - j. Are there conditions that can be placed upon the waiver which will adequately protect the state?
  - k. Does the matter involve potential litigation against the state?