

INVITATION TO BID PACKAGE



RETURN THIS BID TO THE ISSUING OFFICE:

LEGISLATIVE AFFAIRS AGENCY
Procurement and Supply Section

Issuing Office Mailing Address: State Capitol, 120 4th Street, Room 3, Juneau, AK 99801-1182

Issuing Office Hand Delivery Address: Terry Miller Legislative Office Building, 129 6th Street, Room 222, Juneau, Alaska

ITB NO. 686

CARPET REMOVAL AND INSTALLATION AT THE ALASKA STATE CAPITOL

SEALED BIDS MUST BE RECEIVED AT THE ABOVE ADDRESS BY 2:00 P.M. ALASKA TIME ON WEDNESDAY, MARCH 11, 2026. EMAILED OR FAXED BIDS ARE NOT ALLOWED.

Bidders are not required to return this Invitation To Bid (ITB) package with the Bid submission

Under AS 36.30.020, the Alaska Legislative Council adopted procurement procedures that were based on competitive principles consistent with AS 36.30 and adapted to the special needs of the Legislative Branch. Therefore, the Legislative Branch follows its own procurement procedures and is not subject to the procurement procedures of the Executive Branch. However, if the contract falls into an exemption under sec. 002 of the Alaska Legislative Procurement Procedures, the procedures will also not apply, unless and except as provided in this ITB. Copies of the Alaska Legislative Procurement Procedures are available upon request or at <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=137335>

IMPORTANT NOTICE: YOU MUST REGISTER WITH THE PROCUREMENT MANAGER LISTED IN THIS DOCUMENT TO RECEIVE SUBSEQUENT AMENDMENTS, WHETHER YOU RECEIVED THIS ITB FROM THE STATE OF ALASKA'S "ONLINE PUBLIC NOTICE" WEBSITE, VIA THE MAIL, OR FROM ANOTHER SOURCE. FAILURE TO CONTACT THE PROCUREMENT MANAGER MAY RESULT IN THE REJECTION OF YOUR BID. BIDDERS SHALL THOROUGHLY REVIEW ALL THE REQUIREMENTS OF THE ITB WHEN SUBMITTING THEIR BIDS.

JC Kestel, Procurement Manager

PH: 907-465-6705

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SECTION ONE - NOTICES TO BIDDERS

1.01 RIGHT OF REJECTION

A Bid may be rejected if the bid contains a material alteration or erasure that is not initialed by the signer of the bid.

The Procurement Manager may waive minor informalities that:

- a) do not affect responsiveness;
- b) are merely a matter of form or format;
- c) do not change the relative standing of or otherwise prejudice other offers;
- d) do not change the meaning or scope of the ITB;
- e) are trivial, negligible, or immaterial in nature;
- f) do not reflect a material change in the work, services, or products requested; or
- g) do not constitute a substantial reservation against a requirement or provision.

1.02 PHOTOCOPIES

Photocopied bids may be submitted.

If the Bidder chooses to submit their bid through email, a scanned copy of the original signed document, submitted by email, is sufficient to meet the requirement of this section. However, at any time, the Procurement Manager may request that a Bidder provide the Procurement Manager with the original signed document. If requested by the Procurement Manager, the Bidder shall deliver the original signed document to the Procurement Manager within five (5) business days of the request. Failure to provide the Procurement Manager with an original signed document under this paragraph may result in an Offer being determined to be unresponsive or termination of a contract resulting from this ITB.

1.03 ALASKA BUSINESS LICENSE AND LEGAL ENTITY

The Bidder must have a current, valid Alaska business license when the bid is submitted. The Bidder must include the business license number on the bid form in sec. 4.01 (ITB BID SUBMISSION FORM) of this ITB when the bid is submitted. If the Bidder is a corporation or a limited liability company, the business entity must be in good standing with the State of Alaska Department of Commerce, Community, and Economic Development at the time of bid submission. **For more information regarding an Alaska business license or legal entity's status, please contact the Division of Corporations, Business, and Professional Licensing in the Department of Commerce, Community, and Economic Development at (907) 465-2550 or visit: <https://www.commerce.alaska.gov/web/cbpl>.** If a Bidder fails to comply with this paragraph, the Legislative Affairs Agency (Agency) reserves the right to disregard the bid.

1.04 U.S. FUNDS

Prices quoted shall be in U.S. funds.

1.05 TAXES

All bids shall be submitted exclusive of federal, state, and municipal taxes.

1.06 CONTACTS / ITB QUESTIONS / CONTACT PERSON

Bidders or their agents may not contact any member of the Legislature or their staff regarding this ITB. All questions concerning this ITB must be directed to the Procurement Manager of the Legislative Affairs Agency.

There are generally two types of questions:

- (1) A question which can be answered by directing the Bidder to the specific section of the Invitation to Bid where the information is found. Response to these questions may be given over the phone but are limited to directing the Bidder to a portion of the ITB which can then be read by the Bidder.
- (2) A question that would require the Procurement Manager to clarify or interpret part of the Invitation to Bid or its intent. Response to this type of question will not be given except in writing via amendment to the ITB, and Bidders must put these questions in writing; "writing" includes, but is not limited to, email; these questions should be received by the Procurement Manager at least ten (10) business days prior to the deadline for receipt of Bids.

The Procurement Manager is JC Kestel, Legislative Affairs Agency, State Capitol, 120 4th Street, Room 3, Juneau, Alaska. EMAIL: LAA.Procurement@AKLeg.gov, PH: 907-465-6705, TDD: 907-465- 4980.

1.07 REVIEW OF ITB

Bidders shall carefully review this ITB, without delay, for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material must be made in writing and should be received by the Procurement Manager at least ten (10) days before the deadline for receipt of Bids. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of a Bidder's quotation upon which award could not be made.

1.08 PROTEST

If a Bidder wishes to protest a solicitation, the award of a contract, or the proposed award of a contract, the protest must be filed as required by secs. 230 and 240 of the Alaska Legislative Procurement Procedures.

1.09 BID SUBMISSION, DELIVERY, AND ACCEPTANCE

A Bidder must submit and deliver its bid in one sealed package to the issuing office identified on Page 1 of this ITB no later than the date and time listed on Page 1 of this ITB as the deadline for receipt of bids. The package must be marked on the outside to identify the ITB and the Bidder. Bidders must use the form in sec. 4.01 (ITB BID SUBMISSION FORM) of this ITB for submitting bids.

A Bidder must complete and submit One (1) original hard copy and a USB flash drive, both containing the forms in paragraphs 4.01 (ITB BID SUBMISSION FORM), form 4.02 (CONTRACTORS QUESTIONNAIRE FORM), and if applicable form 4.03 (SUBCONTRACTOR LIST) of this ITB should be submitted in a sealed envelope marked with the ITB number on the outside of the envelope or container that the bid is sent in.

Failure to follow the above instructions may result in the bid being found non-responsive and rejected.

It is the responsibility of the Bidder to ensure that their bid and any Agency-issued ITB amendments (signed by the Bidder) are in the issuing office of the Agency prior to the scheduled bid closing time. A bid will be rejected if the bid and any signed forms, attachments, or amendments are not received prior to the closing date and time.

1.10 DISCUSSIONS WITH BIDDERS

This paragraph is removed for purposes of this ITB.

1.11 AMERICANS WITH DISABILITIES ACT

The Alaska State Legislature complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a bid should contact JC Kestel, Procurement Manager, Legislative Affairs Agency, (907) 465-6705 - Voice, (907) 465-4980 - TDD within a reasonable time, as determined by the Agency, before the bids are due, to make any necessary arrangements.

1.12 PREFERENCE FOR ALASKA BIDDER

In addition to other preferences allowed the bidder under this ITB, an Alaska bidder will receive a five percent (5%) preference. An Alaska bidder is a bidder who: (a) holds a current Alaska business license; (b) submits a bid for the contract under the name as appearing on the person's current Alaska business license; (c) has maintained a place of business in the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the opening date of this bid; (d) 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 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 (e) if a joint venture, is composed entirely of ventures that qualify under (a) - (d) of this paragraph. Check the box on the Bid Form to indicate your eligibility.

1.13 FUND OBLIGATIONS

The availability of funds to pay for the Agency's monetary obligations under the contract is contingent upon appropriation of funds for the particular fiscal year involved. In addition to any other right of the Agency under this contract to terminate the contract, if, in the judgment of the Executive Director of the Agency, sufficient funds are not appropriated, the contract will be terminated by the Executive Director or amended, without liability of the Agency for the termination or amendment. To terminate under this section, the Agency or Project Director shall provide written notice of the termination to the Successful Bidder.

1.14 CANCELLATION; REJECTION OF ALL BIDS; PREPARATION COSTS

This ITB does not obligate the Agency or the Alaska Legislative Council to award a contract or to pay any costs incurred in the preparation of the bid if a contract is not awarded. This ITB may be cancelled, or all bids rejected, as provided in sec. 120 of the Alaska Legislative Procurement Procedures. Among the reasons that justify cancellation is that all of the responsive bids exceed the funds available for the contract.

1.15 REJECTION OF INDIVIDUAL BIDS

A bid may be rejected in whole or in part when in the best interest of the Agency, as provided in sec. 130 of the Alaska Legislative Procurement Procedures.

1.16 PROCUREMENT PROCEDURES

If applicable, a website link to the Alaska Legislative Procurement Procedures may be found on page 1 of this ITB.

1.17 ADDITIONAL TERMS AND CONDITIONS

The Agency reserves the right to include additional terms and conditions in the contract. However, these terms and conditions must be within the scope of the ITB and may not amount to a material modification of this ITB.

1.18 COVENANT AGAINST CONTINGENT FEES

The Bidder warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business. For breach or violation of this warranty, the Agency shall have the right to cancel this contract without liability or, in its discretion, to deduct price of consideration from the contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

1.19 JOINT VENTURES

Joint ventures are acceptable if one party is designated as the primary point of contact. If submitting a Bid as a joint venture, the Bidder must submit a copy of the joint venture agreement which identifies the principals involved and their rights and responsibilities regarding performance of the Contract and payment.

1.20 FORMAT OF CONTRACT

The contract entered into as a result of this ITB will be in the contract format desired by the Agency and will include the provisions of the ITB that apply to the contract.

1.21 CONTRACT NEGOTIATIONS

After issuing the NIA, the Agency may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the Agency. If the Agency elects to initiate contract negotiations, these negotiations cannot involve changes in the Agency's requirements or the Bidder's bid that would, by their nature, affect the basis of the source selection and the competition previously conducted.

1.22 FAILURE TO NEGOTIATE

The Agency may terminate negotiations under paragraph 1.21 (Contract Negotiations) of these Notices to Bidder's and negotiate with the next highest ranked Offeror if:

- a) the selected Offeror fails to provide the necessary information required to begin negotiations in a timely manner;
- b) the selected Offeror fails to negotiate in good faith;
- c) the selected Offeror indicates it cannot perform the contract within the budgeted funds available

- for the project;
- d) or the selected Offeror and OVR, after a good faith effort, simply cannot come to terms.

1.23 FIRM OFFER

For the purpose of award, bids made in accordance with this ITB shall be good and firm for a period of ninety (90) days from the deadline for receipt of quotation in response to the ITB.

1.24 AWARD OF CONTRACT

Award of this ITB may be subject to approval by the Alaska State Legislature Legislative Council.

1.25 AWARD CRITERIA

All Bidders should note that final award of a contract based on this ITB is solely based on the price. The responsive and responsible Bidder with the lowest total bid price will be recommended for contract award.

1.26 NOTICE OF INTENT TO AWARD

Upon selection of an apparent Successful Bidder, the Procurement Manager will issue a written Notice of Intent to Award (NIA) and send copies to all Bidders. The NIA will list the names and addresses of all Bidders and identify the bid selected for award.

1.27 CONTRACT AMENDMENTS

In addition to any other amendment the parties may be allowed to make under the contract, the terms of the contract entered into as a result of this ITB may be amended by mutual agreement of the parties if the Agency determines that the amendment is in the best interests of the Agency.

1.28 CONTRACT ASSIGNMENT/TRANSFER

Assignment or transfer of the contract entered into as a result of this ITB is subject to sec. 160 of the Alaska Legislative Procurement Procedures.

1.29 TERMINATION OF CONTRACT

Upon delivery of written notice to the Successful Bidder, the contract may be terminated by the Agency or Project Director with or without cause. To terminate, the Agency or Project Director shall provide notice by email or delivery of a hard copy to the Successful Bidder, whichever method is selected in the sole discretion of the Agency or Project Director. If this contract is so terminated and the termination is not based on a breach by the Successful Bidder, the Agency shall compensate the Successful Bidder for services and/or products provided under the terms of the contract up to the date the termination notice is delivered, provided the Successful Bidder provides the Agency with a statement in writing containing a description of the services and/or products provided prior to contract termination and a copy of all documents, reports, material, and other items required to be delivered to the Project Director by this ITB.

1.30 BINDING ON SUCCESSORS

The contract issued as a result of this ITB and all the covenants, provisions, and conditions contained in the contract shall inure to the benefit of and be binding upon the successors and assigns of the Successful Bidder and the Agency.

1.31 BREACH OF CONTRACT

In case of a breach of the contract, for whatever reason, by the Contractor, the Agency may procure the services from other sources and hold the Contractor responsible for damages resulting from the breach.

1.32 APPLICABLE LAWS

The Successful Bidder and its offer must comply with all applicable federal, state, and municipal labor, wage/hour, safety, and any other laws which have a bearing on the contract, and the Successful Bidder must have all licenses, registrations, permits, and certifications required by the Agency and state and municipal law for performance of the contract covered by this ITB.

1.33 VENUE AND APPLICABLE LAW

If the parties find it necessary to litigate the terms of the contract, the venue shall be the State of Alaska, First Judicial District at Juneau, and the contract shall be interpreted according to the laws of Alaska.

1.34 RECORDS; AUDIT

These requirements are in addition to any other records required by this ITB. Unless the resulting contract will be primarily for products, the Contractor shall accurately maintain detailed daily records that state the date of the service, the start and finish times of the service for each day, and describe the service done during the day. For all types of contracts, the Contractor shall also keep any other records that are required by the Agency or Project Director. The records required by this paragraph are subject to inspection by the Agency or the Project Director at all reasonable times.

1.35 OWNERSHIP AND REUSE OF DOCUMENTS

Unless an ITB is soliciting primarily for products; all documents, reports, material, and other items generated as a consequence of service done under this contract are the property of the Agency. To the extent the Bidder has any interest in the copyright for these items under the copyright laws of the United States, the Bidder transfers any and all interest the Bidder has in the copyright for these items to the Agency, and the Agency will be the owner of the copyright for these items. Upon completion of the service or termination of the contract, the items shall be delivered to the Project Director. Bidder acknowledges that all the items are Agency records and, as a result, are public records.

1.36 MATERIALS AND PROCESSES COVERED BY PATENTS, TRADEMARKS, OR COPYRIGHTS

If the Bidder employs any design, device, material, or process covered by a patent, trademark or copyright, the Bidder shall provide for the use by suitable legal agreement with the owner. The Bidder shall indemnify and hold harmless the Legislature of the State of Alaska, the Agency and their officers, agents, and employees, and any affected third party from any and all claims for infringement by reason of the use of the patented design, device, material or process, or any trademark or copyright, and shall indemnify the Agency for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement at any time during the contract or after the completion of the contract.

1.37 INDEMNIFICATION

The Successful Bidder shall indemnify, hold harmless, and defend the Agency and the Agency's

officers, agents, and employees from liability of any nature or kind, including, but not limited to, costs, attorney fees, and expenses, for or on account of any and all legal actions or claims of any character whatsoever resulting from injuries or damages sustained by any person or persons or property as a result of any error, omission, or negligence of the Successful Bidder that occurs on or about the Agency's premises or that relates to the Successful Bidder's performance of its contract obligations.

1.38 FORCE MAJEURE

The Successful Bidder is not liable for the consequences of any delay or failure to perform, or default in performing, any of its 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 Successful Bidder. For the purposes of this section, "Force Majeure" means war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; drought; flood; earthquake; epidemic; quarantine; or strike.

1.39 INSURANCE

Without limiting the Successful Bidder's indemnification responsibilities under paragraph 1.38 (Indemnification) of these Scope of Service and Services of this ITB, it is agreed that the Successful Bidder shall purchase at its own expense and maintain in force at all times during the contract the following insurance:

1. workers' compensation insurance as required by AS 23.30.045(d) for all employees engaged in work and services under the contract and as required by any other applicable law; the Successful Bidder will be responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under this contract; the coverage under this paragraph must include a waiver of subrogation against the State of Alaska;
2. comprehensive general liability insurance covering all business premises of, and operations by or on behalf of, the Successful Bidder in the performance of the contract, including, but not limited to, blanket contractual coverage, products coverage, premises and operations coverage, independent contractors coverage, broad form property damage endorsement, and personal injury endorsement; the policy must have minimum coverage limits of \$1,000,000 combined single limit per occurrence and annual aggregates where generally applicable; unless waived by the Agency, the insurance policy shall name the Agency as an additional insured;
3. commercial automobile liability insurance covering all vehicles used by the Successful Bidder or any subcontractor who directly or indirectly provides services under this contract in the performance of the contract, with minimum coverage limits of \$500,000 combined single limit per occurrence;

Certificates of Insurance must be furnished to the Procurement Manager before a contract is entered into. Each of the required insurance policies must provide for the Agency to receive a 30-day prior notice of any cancellation. Where specific limits are shown above, it is understood that

they are the minimum acceptable limits. If a policy contains higher limits, the Agency will be entitled to coverage to the extent of the higher limits. All insurance policies must comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska or in another state.

All insurance shall be considered to be primary and non-contributory to any other insurance carried by the Agency through self-insurance or otherwise.

In addition to providing the above coverages, the Contractor shall require that all indemnities obtained from any subcontractors be extended to include the Agency as an additional named indemnitee. The Contractor shall further require that the Agency be named as an additional insured on all liability insurance policies maintained by all subcontractors under their contracts with the Contractor, and that an appropriate waiver of subrogation in favor of the Agency be obtained with respect to all other insurance policies.

1.40 TIME

Time is of the essence.

1.41 HUMAN TRAFFICKING

By the Bidder's signature on their Bid, the Bidder certifies that the Bidder is not headquartered in a country recognized as Tier 3 in the most recent U.S. Department of State's Trafficking in Persons Report.

In addition, if the Bidder conducts business in but is not headquartered in a country recognized as Tier 3 in the most recent U.S. Department of State's Trafficking in Persons Report, a certified copy of the Bidder's policy against human trafficking must be submitted to the Agency prior to contract award.

The most recent U.S. Department of State's Trafficking in Persons Report can be found at the following website: <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-to-monitor-and-combat-trafficking-in-persons/>

If a Bidder fails to comply with this sec. 1.41 (Human Trafficking), the Agency may, without liability, reject the Bidder's bid as non-responsive, cancel an intent to award to the Bidder, or cancel the resulting contract to the Bidder.

1.42 COVERAGE UNDER ETHICS LAW

Certain provisions of the Legislative Ethics Act (AS 24.60) apply to legislative consultants, legislative independent contractors, and their employees. It is the responsibility of the Contractor to review AS 24.60 and determine whether the Contractor is in compliance with AS 24.60.

1.43 LIQUIDATED DAMAGES

Liquidated Damages as noted in the General Terms and Conditions and in this paragraph 1.43 (Liquidated Damages) shall be applicable to the Project because damages resulting from lost production time, as well as other damages for late completion of the overall Work and Services, will be difficult to estimate. The liquidated damages are established in the schedule listed below.

If an extension of time has not been granted by the Agency, for each calendar day that the Work and Services remains incomplete after the expiration of the contract time, the sum per day given in the following schedule shall be deducted from any monies due the Contractor. If no money is due the Contractor, the Agency shall have the right to recover said sum from the Contractor. Such amounts are liquidated damages and are not to be considered as penalties.

Daily Charge for Liquidated Damages for each Calendar Day of Delay

<u>Over</u>	<u>Original Contract Amount</u> <u>But Not Over</u>	<u>Daily Charge</u>
\$0	\$100,000	\$1,300.00
\$100,000	\$500,000	\$1,550.00
\$500,000	\$1,000,000	\$1,750.00
\$1,000,000	\$2,000,000	\$3,000.00
\$2,000,000	\$5,000,000	\$3,500.00
\$5,000,000	\$10,000,000	\$4,500.00
\$10,000,000	-	\$6,000.00

1.44 COMPLIANCE OF SPECIFICATIONS AND DRAWINGS

If the Successful Bidder observes that the Work and Service Specifications and Drawings supplied by the Agency are at variance with any Regulatory Requirements, the Successful Bidder shall give the Project Director named in paragraph 2.04 (Project Director) of the Scope of Work and Products of this ITB or the resulting contract, prompt written notice of the variance. Any necessary changes will be authorized by one of the methods indicated in paragraph 3.06.b. (Authorization of Changes within the General Scope) of the General Conditions and Requirements of this ITB, as supplemented by paragraph 2.06 (Change Order) of the Scope of Work and Products of this ITB, as determined appropriate by the Project Director. If the Successful Bidder performs any Work knowing or having reason to know that it is contrary to the Regulatory Requirements, and without giving the notice to the Project Director, the Successful Bidder shall bear all costs arising from the situation.

1.45 PREVAILING WAGE

The Contract may be subject to the minimum wage and other requirements of AS 36.05. It is the responsibility of the Successful Bidder to check with Department of Labor and Workforce Development to determine if the Contract will require the prevailing wage. The current minimum wages for various classes of laborers, mechanics, and field surveyors (as these terms are defined in AS 36.95.010) are listed in the Laborers’ and Mechanics’ Minimum Rates of Pay Pamphlet No. 600, included with this ITB as Attachment 3, and the rate of wages paid by the Successful Bidder during the Contract shall be adjusted to the wage rate under AS 36.05. The Successful Bidder and any subcontractor shall pay all employees unconditionally and not less than once a week. Wages may not be less than those required by AS 36.05 regardless of the contractual relationship between the Successful Bidder or subcontractors and laborers, mechanics, or field surveyors. The scale of wages to be paid shall be posted by the Successful Bidder in a prominent and easily accessible place at the site of the Work. The Agency may withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the Successful Bidder or subcontractors the difference between (1) the rates of wages required by the Contract to be paid

laborers, mechanics, or field surveyors on the Work, and (2) the rates of wages in fact received by laborers, mechanics, or field surveyors. Before commencing work, the Successful Bidder is required to designate a primary contractor under AS 36.05.045, and the primary contractor is required to file a notice of work with the Department of Labor and Workforce Development, to pay certain filing fees, and to comply with certain other requirements involving the Department of Labor and Workforce Development after the Work is completed and before final payment can be made. Before final payment of the Contract is made, it is the responsibility of the Successful Bidder to submit a Notice of Completion form signed off by the Department of Labor and Workforce Development, wage and hour section, to the Agency. The final payment of the Contract may be affected by the Successful Bidder's compliance with the requirements. The Successful Bidder is encouraged to contact the wage and hour section of the Department of Labor and Workforce Development for more information.

With regard to overtime work hours and compensation, pursuant to 40 U.S.C. 3701 – 3703 or AS 23.10.060, the Successful Bidder may not require or permit any laborer or mechanic in any work week in which the laborer or mechanic is employed on any Work under this Contract to work in excess of eight hours in any calendar day or in excess of forty hours in such work week on work subject to 40 U.S.C. 3701 – 3703 or AS 23.10.060 unless such laborer or mechanic receives compensation at a rate not less than one and one half times the basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such work week, whichever is the greater number of overtime hours. In the event of any violation of this provision, the Successful Bidder shall be liable to any affected employee for any amounts due, liquidated damages, and penalties and to the Agency for liquidated damages. Such liquidated damages to the Agency shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such Work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages.

If it is found that a laborer, mechanic, or field surveyor employed by the Successful Bidder has been or is being paid a rate of wages less than the rate of wages required by law, the Agency may, by written notice to the Successful Bidder, terminate the Successful Bidder's right to proceed with the work or the part of the work for which there is a failure to pay the required wages and may proceed with the work to ensure its timely completion, by contract with a third party or otherwise. The Successful Bidder and the Successful Bidder's sureties are liable to the Agency for excess costs for completing the work under this paragraph.

1.46 BID SECURITY

All Bids shall be accompanied by a Bid Security in the form of an acceptable Bid Bond, or a certified check, cashier's check, or money order made payable to the State of Alaska, Legislative Affairs Agency. The Bid Security is required in the amount of five (5) percent of the amount of the Bid amount.

If the Bidder fails to furnish an acceptable Bid Security with the Bid, the Bid will be rejected as non-responsive. An individual surety will not be accepted as a Bid Security. The Bid Securities of the two lowest priced Bidders that are considered responsive to the ITB will be held by the Agency until the Contract has been executed, after which such Bid Securities will be returned. All other

Bid Securities will be returned as soon as practicable. If all Bids are rejected, all Bid Securities will be returned as soon as practicable. (Bid Bond Form is attached in Section Four (ITB and Contract Forms) of this ITB for the Bidder's use).

1.47 MANDATORY PRE-BID MEETING AND SITE VISIT

All prospective Bidders are required to schedule a pre-bid meeting and site visit that will be offered by the Agency. The pre-bid meetings and site-visits will be offered on Saturday, February 14, and Saturday, February 21, 2026, between the hours of 10:00 a.m. and 3:00 p.m., Alaska Time. To attend, Bidders must email the Procurement Manager listed on page one (1) of this ITB at least twenty four (24) hours ahead of the dates offered to schedule a time on February 14th or February 21st to attend in person at the Alaska State Capitol Building, 120 4th Street, Ground Floor Lobby, Juneau, Alaska. The Procurement Manager will provide the potential Bidder with their scheduled time for the meeting and site-visit based upon availability of the time slots.

The purpose of the pre-bid meeting and site-visit is to discuss details of the ITB with the prospective Bidders and allow them to ask questions concerning the ITB. Scheduling a time for in person attendance for a pre-bid meeting is mandatory. The Agency will not provide any information on what information was given or details that were discussed during the meeting or site-visit to potential Bidders that do not attend a scheduled meeting or site-visit. Participants should read the ITB and attend the meeting prepared to discuss any concerns and ask questions.

Following the meeting, the Procurement Manager and Project Director will coordinate a site-visit of the Work areas inside the Capitol for the purpose of planning and preparing the Bidders Bid for this ITB. It is the responsibility of the Bidder to take any measurements of the project Work areas during their scheduled site-visit that are needed by the Bidder for the preparation of their Bid submission.

The site visit will be limited to thirty (90) minutes for each potential Bidder and all visitors attending will be required to follow current legislative building policies while on site.

Bidders with a disability needing accommodation should contact the Procurement Manager prior to the date set for the pre-Bid meeting and site-visit so that reasonable accommodation can be made.

1.48 SCHEDULE OF EVENTS

This schedule represents the Agency's best estimate. If one component is delayed, the remainder of the schedule may be shifted an equivalent number of days.

ITB Issue Date	February 9, 2026
Mandatory Pre-bid Meetings and site-visits (must be scheduled)	February 14 & 21, 2026
Deadline for Written Questions	February 27, 2026
Deadline for Receipt of Bids – Bids Opened	March 10, 2026
Notice of Intent to Award Contract Issued (NIA)	March 18, 2026
State Signs Contract	April 2026

1.49 DEFINITIONS

Wherever used, in this ITB, the following meanings are listed below.

- **Agency** means Legislative Affairs Agency
- **Business Day** means a standard weekday that the Agency is open for business and excludes weekends and holidays
- **Calendar Day** means a day shown on the calendar, beginning and ending at midnight.
- **Contract** means the written agreement between the Agency and the Contractor stating the obligations of the Agency and the Contractor and covering the Work and Services to be performed.
- **Contract Documents** means the Contract form; the clarifications, corrections, and changes issued graphically or in writing by the Agency after the advertisement but prior to the opening of bids; the bidding requirements and Contractor's bid (including, but not limited to, all appropriate bid tender forms); the conditions and requirements of the contract, including, but not limited to, the General Conditions and Requirements, the Supplementary Conditions and Requirements, the Notices to Bidders; and all contract amendments and other documents approved by the Agency for inclusions, modifications, and supplements issued on or after the effective date of the contract.
- **Project** means the process of removing old carpet, repairing and leveling subfloors, and installation of new carpet at the Capitol.
- **Regulatory Requirements** means laws, regulations, ordinances, codes and orders.
- **Specifications** means the written technical descriptions of materials, equipment, tools, standards, supplies, and workmanship that apply to the services and the administrative and procedural details that apply to them.
- **Supplemental Agreement** means a written agreement between the Agency and the Contractor covering Work and Services that is not within the general scope of the contract.
- **Work and Services** is the act of, and the result of, performing services, furnishing labor, furnishing tools, furnishing equipment and incorporating supplies and materials into the Project and performing other duties and obligations, all as required by the Contract Documents, culminating in the entire Project, or the various separately identifiable parts of the Project.

SECTION TWO - ITB SPECIFICATIONS

2.01 PURPOSE OF ITB

The Agency is soliciting bids from qualified Contractors (“Contractor”) to remove and install carpet at the Alaska State Capitol (Capitol) that is located at 120 4th Street in Juneau, Alaska. This ITB is intended to provide all necessary Work and Services needed to remove existing carpet, repair and prepare subflooring, and install new carpet in designated areas of the Capitol.

2.02 SCOPE OF WORK AND SERVICES

The Contractor shall provide commercial quality Work and Services to the Agency to remove existing carpet, repair and prepare subfloors, and install new carpet in accordance with this ITB, product manufacture specifications, Attachment 1 (Carpet Selected), Attachment 2 (Floor Plans for ITB 686), and Attachment 3 (Alaska Minimum Rates of Pay Pamphlet No. 600). The Contractor shall perform all the Work and Services as described in this ITB in a manner consistent with best practices and regulatory requirements of city, state, and federal requirements.

A. Carpet, Materials, and Supplies:

The Agency is sourcing genuine woven Axminster carpet made by Brintons Carpets and Wilton Carpets for replacement in the House and Senate Chambers on the 2nd floor, the 2nd floor corridors, the Senate and House Finance committee rooms on the 5th floor, and the offices directly adjacent to or accessible from the Senate and House Finance committee rooms on the 5th floor (rooms 516, 516A, 516B, 518, 518A, 518B, 519A, 519B, and 520) as shown on Attachment 2 (Floor Plans for ITB 686). Attachment 1 (Carpet Selected) includes information about the carpets selected for the project and the quantity of each carpet that was sourced for this project. All other materials, supplies, tools, and equipment that is required to complete the Work must be provided by the Contractor and approved by the Project Director before installation. Materials and supplies that must be provided by the Contractor at no extra cost shall include but are not limited to materials needed for removal of existing adhesives, repair of subfloors, leveling compounds, cleaners, sealers, glues or adhesives, heat tape, and seam sealers that are required to properly complete the Work.

B. Project Sequencing:

Attachment 2 (Floor Plans for ITB 686) shows the areas that are included in the Work and services for the ensuing Contract. The Work areas labeled as Senate Chambers (Rm 217) and House Chambers (Rm 220) will need to have coordinated installation of the carpet, another project will be performed by another Contractor in the same areas. The Contractor shall coordinate with the Project Director and the other Contractor working in those areas in accordance with paragraph 3.05(D.) (Coordination) of this ITB. The Work on the Senate Chambers (Rm 217), House Chambers (Rm 220), Senate Finance committee room (Rm 532), and House Finance committee room (Rm 519) can begin after adjournment of the 34th Legislative session and once coordinated with the Project Director. The Work on the second (2nd) floor corridor and fifth (5th) floor offices that are adjacent or accessible from within the Senate and House Finance committee rooms (rooms 516, 516A, 516B, 518, 518A, 518B, 519A, 519B, and 520) as shown on Attachment 2 (Floor Plans for ITB 686) shall not begin before October 1, 2026. All Work must be completed in all areas of the project no later than November 30, 2026.

C. Carpet Removal and Floor Preparation:

The Contractor will be responsible for removing all existing carpet, minor floor repairs, and

any prep work needed before installation of the new carpets. The Project Director will provide an area on each floor of the project work areas that the Contractor can use to neatly roll and stack any old carpet that is removed or any new carpet scraps that are generated during the installation. Minor floor repairs for this project includes but is not limited to cracks and holes that are equal to or less than one inch in width or twelve inches in length, removal of existing adhesives and surface irregularities, patching and leveling of surfaces, cleaning any foreign substances or materials, and priming or sealing of any adsorbent surfaces that may prevent the new carpet adhesive from properly adhering to the surface.

D. Installation:

Installation of carpet must be the glue down method - no cushion will be used. The carpet must be installed in accordance with the manufacture's specifications and the Carpet and Rug Institute standard for installation of commercial carpet CRI 104. The carpet to be installed has a lot of patterns and the Contractor must match all the patterns at seams, transitions, and connecting boarders. The Project Director must approve the layout that will be used prior to the Contractor cutting carpet and beginning installation. The Contractor will be responsible for measuring and cutting all carpet. The Agency will provide space at the Agency's off-site facility for the measuring and cutting process. The direction of the carpet must be maintained throughout the project with no head seams. Accurate cutting is required as there is no space to tuck or finish the edges. Any exposed edges and seams that must be sealed will require a profile to be fitted to prevent edge damage and fiber loss.

E. Adhesive:

Premium grade adhesive for the glue down must be used by the Contractor and the Project Director must approve the glue that will be used prior to the Contractor beginning installation. The adhesive manufacturer's recommendations should always be followed. All pressure sensitive adhesives must be applied with V1 / 1.6mm notched trowel in accordance with adhesive manufacturers guidelines and accepted industry best practice. The application of adhesive using rollers will void our carpet warranty.

F. Carpet Positioning:

It is good practice to mark out position datum lines on the subfloor. This will help position all lengths of carpet before adhesive is applied. Ensure that the carpet is pattern matched and the design is straight. All seams and cross-joins must be joined using an appropriate double-stick heat tape and the Project Director must approve the heat tape that will be used prior to the Contractor beginning installation. Once positioned roll or fold back the carpet and apply adhesive to the subfloor using a notch size as recommended by the adhesive manufacturer. The adhesive must be applied evenly and tight up against the walls to prevent bubbling. After allowing the appropriate open time, place the carpet onto the adhesive smoothing out any air bubbles or creases with a glider (or similar). Heavy rollers should not be used as they may temporarily stretch the carpet which may lead to gaps after final cutting. Always glide the width before the length to minimize stretching the carpet. Ensure edges are pressed firmly onto the adhesive during the adhesive's open time. Once the adhesive has grabbed the carpet sufficiently, cut the edges, allowing 5-6mm to tuck into the gap. It is strongly recommended that traffic is restricted or eliminated for a minimum of 24-48 hours following installation to allow the adhesive to reach its full cure strength. Premature trafficking can cause installation failure.

G. Completion:

Following installation, the Contractor should clear all working areas of tools, waste, and left clean and tidy. The carpet should be carefully inspected to ensure it is totally flat and free from blemishes. Any loose fibers should be removed by the Contractor using sharp napping scissors if required. The Contractor shall thoroughly vacuum the carpet to remove any debris and lift the pile. We strongly recommend that newly installed carpet is protected against any damage which may be caused by other trades. However, we do not recommend covering the installed carpet with impermeable materials such as sticky back plastic sheeting or proprietary carpet protection materials. Moisture in the adhesive or carpet pile will become trapped under the impermeable layer which may severely affect the carpet's appearance or performance in use. If covering protection is required use breathable materials and remove as soon as possible.

H. Optional Carpet Haul Away Work:

During the project and following the completion of the installation, the Agency may request the Contractor to haul away and dispose of the carpet that is removed during performance of the Work and any excess new carpet scraps that are not reusable by the Agency. The haul away and disposal Work if requested by the Agency must be completed by the Contractor throughout the entire project from the Capitol and off-site storage facility. The removed carpet and excess scraps that are not reusable by the Agency must be disposed of in accordance with city, state, and federal requirements. If the optional haul away and disposal Work is selected by the Agency, the Agency will notify the Contractor upon contract execution and the Contractor will be compensated for the amount shown on line seven (7.) of form 4.01 (Bidders Submission Form) of this ITB.

2.03 CONTRACTOR'S RESPONSIBILITIES

- A. As required by paragraph 3.04.b. (Project Supervision by Contractor) of the General Conditions and Requirements of this ITB, the Contractor is required to provide a competent Project Supervisor at the Project Site at all times during Work in progress. In addition to the requirements of paragraph 3.04.b. (Project Management by Contractor) of the General Conditions and Requirements of this ITB, the Contractor must provide the Project Supervisor's name, email address, and telephone number on the Bidder Questionnaire included in paragraph 4.02 (Bidder Questionnaire) of this ITB.
- B. In addition to the requirements of paragraphs under 3.04 (Contractor's Responsibilities) of the General Conditions and Requirements of this ITB, the Contractor shall take all precautions necessary to protect the building and all areas affected by the Work, which include, but are not limited to, windows, fixtures, landscaping, exterior walkways, and parking lots.
- C. In addition to the requirements of paragraphs under 3.04 (Contractor's Responsibilities) of the General Conditions and Requirements of this ITB, the Contractor shall maintain the building affected by the Work in a safe and operable condition, including, but not limited to protecting the work areas, throughout the project and take all precautions necessary to protect the building and the Agency's equipment during the Work.
- D. In addition to the requirements of paragraphs under 3.04 (Contractor's Responsibilities) of the General Conditions and Requirements of this ITB, the Contractor shall clean up any area affected by the Work or the Contractor.

- E. As required by paragraph 3.04.o. (Use of Premises) of the General Conditions and Requirements of this ITB, the Contractor shall assume full responsibility for any damage done to the Agency's property resulting from the performance of the Work.
- F. The Work shall be performed in a professional, skilled manner and must comply with the best practices of the trade.

2.04 PROJECT DIRECTOR

The Project Director for this project is the Agency's Facilities Manager or his designee. The Project Director's office is located in Juneau, Alaska at the Capitol, 120 4th Street, telephone number (907) 465-3708.

2.05 BUIDLING PERMIT

The Contractor shall determine whether the City and Borough of Juneau or State of Alaska requires any permits for the Work and Services. The Contractor shall advise the Project Director what permit or permits are required. If a permit is required for this project, the Contractor shall obtain and pay for the permit without reimbursement from the Agency and shall provide evidence to the Agency that the permit has been obtained before commencement of Work and Services.

2.06 CHANGE ORDER

In addition to the requirements in accordance with paragraphs under 3.06 (Changes) of the General Conditions and Requirements of this ITB, the Contractor must submit any change order requests to the Project Director on the Agency's Change Order Form. Change orders will be strictly reviewed and may require the Legislative Council Committee's approval. Change Order Forms may be obtained from the Project Director. A Change Order request is not considered granted until all required Agency-authorized signatures have been obtained by the Agency and a copy of the approved Change Order has been given to the Contractor.

2.07 GENERAL TERMS AND CONDITIONS OF ENSUING CONTRACT

- A. Term: The Contract will not take effect until signed by the Executive Director or her designee. Upon execution of the Contract, the Contractor shall begin planning the work and services with the Project Director. The Contractor must complete all work and services described in this ITB no later than November 30, 2026.
- B. Progress Payments: The Contractor may request progress payments in accordance with the Contract compensation terms as the Contractor completes various parts of the project. The progress payments must be submitted in the form of an invoice and must be approved by the Project Director.
- C. Invoices: Contractor will verify invoices for accuracy before submission to the Agency for payment. The Contractor will submit invoices to the Agency's Contracting Officer at LAA.Contracts@AKLeg.gov. Payment will be made after delivery and acceptance of the Work and Services rendered as described by the invoice received.

2.08 MINIMUM QUALIFICATIONS

- A. The Contractor must have a minimum of three (3) years of experience in providing similar work and services for commercial buildings or government facilities. The Agency's Procurement Manager may request references from the Contractor to verify this minimum qualification.

- B. The Contractor, Contractor's staff, and any Subcontractors must possess all legally required licenses, certificates, permits, and experience necessary to operate the vehicles, equipment, and tools, to provide the work and services required by this ITB. The Agency's Procurement Manager may request documentation from the Contractor to verify that this minimum qualification is met by the Contractor.

2.09 ADDITIONAL SAFETY AND PROTECTION REQUIREMENTS

- A. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and safety programs related to the Work and Services of this ITB. The Contractor shall take all necessary precautions for the safety of, and shall provide the protections necessary to prevent damage, injury, or loss to:
- 1) all employees providing the Work and Services and other persons and organizations who may be affected by the Work and Services;
 - 2) other property located at the sites or on property adjacent to or near the Work and Service sites, including but not limited to, equipment, fixtures, interior finishes, exterior finishes, landscaping, windows, and existing utility connections of the building.
- B. All damage, injury, or loss to any property or person caused directly or indirectly, in whole or in part, by the Contractor or any subcontractor employed by the Contractor to perform any of the Services shall be remedied by the Contractor with no change in contract price, except for damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including, but not limited to, acts of God, of the public enemy, or governmental authorities.
- C. In addition to the provisions of paragraph 1.39 (Indemnification), the Contractor shall assume full responsibility for, and pay for any and all damage that results from the performance of Services by the Contractor including, but not limited to, damage to the Agency's buildings including existing network equipment; damage to real property within, adjacent to, or near the buildings; and, damage to property located on real property adjacent to or near the buildings. This requirement applies to damage of real or personal property that belongs to the Agency or to another person. Any damages must be repaired or replaced within sixty (60) days of occurrence of damage.

2.10 PROJECT MEETINGS

- A. **Pre-Project Conference:** Prior to the commencement of Work at the site, a Pre-Project Conference will be held at the Capitol which shall be attended by the Project Director, Procurement Manager, the Contracting Officer, the Contractor, the Contractor's subcontractors as the Contractor considers appropriate, and any other attendees the Agency considers appropriate. Unless previously submitted to the Procurement Manager, the Contractor shall bring to the Pre-Installation Conference four copies of each of the following:
1. the plan of operation;
 2. the anticipated progress schedule;
 3. the procurement schedule for major equipment/materials or items requiring a long lead time;
 4. the shop drawing/sample/substitute or "Or Equal" submittal schedule; and
 5. the name, email address, and telephone number of Contractor's on-site Project

Supervisor.

The purpose of the Pre-Project Conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The Contractor should be prepared to discuss all of the following items:

1. status of Contractor's insurance;
2. Contractor's initial progress schedule;
3. transmittal, review, and distribution of Contractor's submittals;
4. processing applications for payment (the Contractor may submit billings on a monthly basis; the Project Director must approve a billing before it may be paid.);
5. maintaining record documents;
6. critical Work sequencing;
7. field decisions and Change Orders;
8. use of the project site, office and storage areas, security, housekeeping, and Agency's needs;
9. major equipment deliveries and priorities; and
10. Contractor's provisions for safety and first aid.

- B. Progress Meetings During Site Work and Services: During the project, at the request of the Project Director the Contractor shall schedule and hold Work and Services progress meetings at a mutually agreed upon time and place which shall be attended by the Project Director and the Contractor, and the Contractor's subcontractors as the Contractor considers appropriate. Other Agency personnel may attend. The Contractor may, at its discretion, request attendance by representatives of its suppliers, manufacturers, or other subcontractors.

The purpose of the as needed progress meetings will be to review the progress of the Work and Services as compared to the Contractor's current progress schedule, maintain coordination of effort, discuss changes in scheduling, and resolve other problems which may develop. During each meeting the Contractor shall present any issues which may impact the scheduling or progress of the Work, with a view toward resolving these issues expeditiously.

2.11 SPECIAL REQUIREMENTS

- A. During the Project, limited parking may be available for the Contractor as assigned by the Project Director.
- B. During the Project, the Contractor shall have coordinated access to the Capitol premises as necessary to perform the Work and Services.
- C. During the Project, the Contractor shall maintain emergency access points of the Capitol with safe access into or out of the Capitol for staff and visitors. The Successful Bidder shall coordinate any limited shut down of the entry points with the Project Director prior to blocking or limiting access to or from the entry points of the Capitol.
- D. The Agency will supply electricity and water services for the Work and Services, and the Contractor's employees may use the restrooms of the Capitol during the performance of the Work and Services.

- E. The Agency may be able to accommodate some storage of materials and equipment on-site or at an off-site storage facility; however, it will be the responsibility of the Contractor to make its own arrangements for most of its storage needs.
- F. The Agency is not responsible for loss or damage to the Contractor's vehicles, equipment, tools, materials, or other property. The Agency advises the Contractor to take reasonable precautions to prevent losses.
- G. The Agency will provide the Contractor with an area at the Agency's off-site storage facility and at the Capitol for the Contractor to roll out and cut carpet as needed. The rolls of carpet will be stored at the Agency's off-site storage facility that is located at 5322 Shaune Drive, Ste. B, Juneau, Alaska. The Contractor will be responsible for cutting the carpet and transporting the carpet from the Agency's storage facility to the Capitol.
- H. The Agency will relocate all furnishings and other Agency owned equipment that must be moved from the Work areas as a result of the Work. The Contractor must notify the Agency at least 48 hours in advance when furnishings and equipment must be moved for the Work. Furnishings and equipment in the Senate and House Finance committee rooms will be moved and stored within the committee rooms by the Agency. The Contractor must complete half of the rooms carpet removal, floor repair, and new carpet installation before the Agency will move the rooms equipment and furnishings to the other half of the room for the Contractor to complete the other half of the rooms carpet removal, floor repair, and new carpet installation.

2.12 WORK SITE LOCATION OF WORK AND SERVICES

The work site location that the Work and Services are to be performed, managed, and completed, is listed below:

Alaska State Capitol
120 4th Street
Juneau, Alaska 99801

SECTION THREE – GENERAL TERMS AND CONDITIONS

3.01 AUTHORITIES AND LIMITATIONS

The Contractor shall perform the Work in accordance with any written order (including, but not limited to, instruction, direction, interpretation, or determination) issued by an authorized representative of the Agency in accordance with the authorized representative's authority to act for the Project Director. The Contractor assumes all the risk and consequences of performing the Work and Services in accordance with any order (including, but not limited to, instruction, direction, interpretation, or determination) of anyone not authorized to issue such order, and of any order not in writing.

- A. The Project Director will decide all questions which may arise as to;
- i. Quality and acceptability of the supplies and materials furnished;
 - ii. Quality and acceptability of Work and Services performed;
 - iii. Compliance with the schedule of progress;
 - iv. Interpretation of contract documents;
 - v. Acceptable fulfillment of the contract on the part of the Contractor.
- B. Means & Methods: The means, methods, techniques, sequences or procedures of work and services, or safety precautions and the program incident to these items, and the duty to perform or furnish the Work and Services in accordance with the contract documents are the sole responsibility of the Contractor.
- C. Visits to Sites by Project Director: The Project Director will make visits to the work sites at intervals appropriate to the various stages of the project to observe the progress and quality of the executed Work and Services and to determine, in general, if the Work and Services are proceeding in accordance with the contract documents

3.02 BID DOCUMENTS: INTENT, AMENDING, REUSE

- A. Incomplete Bid Documents: The submission of a bid by the bidder is considered a representation that the bidder examined the bid documents to make certain that all sheets and pages were provided, and that the bidder is satisfied as to the conditions to be encountered in performing the Work and providing the Services. The Agency expressly denies any responsibility or liability for a bid submitted on the basis of an incomplete set of bid documents.
- B. Copies of Bid Documents: The Agency shall furnish to the Contractor up to five copies of the bid documents. Upon request, additional copies will be furnished to the Contractor at the price of the cost of reproduction.
- C. Scope of Work and Services: The contract documents will contain the entire contract between the Agency and the Contractor concerning the Work and Services. The contract documents are complementary; what is called for by one is as binding as if called for by all. The contract documents will be construed in accordance with the Regulatory Requirements of the place of the Project. It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of the contract to create in the public or any member thereof a third-party benefit, or to authorize anyone not a party to the contract to maintain a suit pursuant to the terms or provisions of the contract.

- D. Intent of Contract Documents: It is the intent of the contract documents to describe a functionally complete Project. Any Work and Services, supplies, materials, tools, or equipment that may reasonably be inferred from the contract documents as being required to produce the intended result will be supplied, without any adjustment in contract price or contract time, whether or not specifically called for.

Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the regulatory requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the contract documents or, if not stated, the latest standard specification, manual, code or regulatory requirements in effect at the time of advertisement for the Project (or, on the effective date of the contract if there was no advertisement). However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall be effective to change the duties and responsibilities of the Agency and the Contractor, or any of their consultants, agents or employees from those set forth in the contract documents, nor shall it be effective to assign to the Agency or any of the Agency's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work and Services, or any duty or authority to undertake responsibility contrary to the provisions of paragraphs under sec. 3.01 (Authorities and Limitations) above.

- E. Discrepancy in Contract Documents: Before undertaking the Work and Services, the Contractor shall carefully study and compare the contract documents and check and verify pertinent figures, and specifications shown thereon and all applicable field conditions at each location. Work and Services in the area by the Contractor shall imply verification of figures, specifications, and field conditions. If, during the above study or during the performance of the Work and Services, the Contractor finds a conflict, error, discrepancy or omission in the contract documents, or a discrepancy between the contract documents and any standard specification, manual, code, or regulatory requirement which affects the Work and Services, the Contractor shall promptly report such discrepancy in writing to the Project Director. The Contractor shall obtain a written interpretation or clarification from the Project Director before proceeding with any Work and Services affected thereby. Any adjustment made by the Contractor without this written interpretation or clarification from the Project Director shall be at the Contractor's own risk and expense. However, the Contractor shall not be liable to the Agency for failure to report any conflict, error, or discrepancy in the contract documents unless the Contractor should reasonably have known of the conflict, error, or discrepancy in the contract documents.

- F. Discrepancy - Order of Precedence: When conflicts, errors, or discrepancies within the contract documents exist, the order of precedence from most governing to least governing will be as follows:

- i. Amendment to contract
- ii. Contract
- iii. Amendments issued by the Agency for the ITB
- iv. Notices to Bidders
- v. ITB Specifications
- vi. General Terms and Conditions
- vii. Written Technical Specifications
- viii. General Notes on Drawings
- ix. Drawings

- G. Clarifications and Interpretations: The Project Director will issue with reasonable promptness such written clarifications or interpretations of the requirements of the contract documents as the Project Director may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the contract documents.
- H. Reuse of documents: Neither the Contractor nor any Subcontractor, Supplier or other person or organization performing or furnishing any of the Work and Services under a direct or indirect contract with the Agency shall have or acquire any title to or ownership rights in any of the contract documents (or copies of them) prepared by or for the Agency and they shall not reuse any of the contract documents on extensions of the Project or any other project without written consent of the Procurement Manager. Contract documents prepared by the Contractor in connection with the Work and Services shall become the property of the Agency.

3.03 LANDS AND PHYSICAL CONDITIONS

- A. Availability of Site: The Agency shall furnish as indicated in the contract documents, the site upon which the Work is to be performed and Services are to be provided.
- B. Visit to Site: The submission of a bid by the Contractor is considered a representation that the Contractor has visited and carefully examined the site and is satisfied as to the conditions to be encountered in performing the Work and Services and as to the requirements of the contract documents.
- C. Explorations and Reports: If reference is made in the Supplementary Conditions and Requirements to any reports of explorations and tests of subsurface conditions at the site that have been utilized by the Agency in preparation of the contract documents, then the Contractor may for the Contractor's purposes rely upon the accuracy of the factual data contained in such reports, but not upon interpretations or opinions drawn from such factual data contained therein or for the completeness or sufficiency thereof. Except as indicated in the immediately preceding sentence and in paragraph 3.03. D. (Utilities) and paragraph 3.06. N. (Differing Work Site Conditions), Contractor shall have full responsibility with respect to surface and subsurface conditions at the work sites.
- D. Utilities: The horizontal and vertical locations of known underground utilities as shown or indicated by the contract documents are approximate and are based on information and data furnished to the Agency by the owners of such underground utilities.

The Contractor shall have full responsibility for:

- i. Reviewing and checking all information and data concerning utilities.
- ii. Locating all underground utilities which are affected by the Work and Services.
- iii. Coordination of the Work and Services with the owners of all utilities during the project.
- iv. Safety and protection of all utilities as provided in paragraph 3.04. R. (Safety and Protection).
- v. Repair of any damage to utilities resulting from the Work and Services in accordance with this paragraph 3.03. D. (Utilities) and paragraph 3.03. E. (Damaged Utilities).

If work is to be performed by any utility owner, the Contractor shall cooperate with such owners to facilitate the Work and Services.

In the event of interruption to any utility service as a result of accidental breakage or as result of being exposed or unsupported, the Contractor shall promptly notify the utility owner and the Project Director. If service is interrupted, repair work shall be continuous until the service is restored. No Work or Services shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

- E. Damaged Utilities: When utilities are damaged by the Contractor, the utility owner shall have the choice of repairing the utility or having the Contractor repair the utility. In the following circumstances, the Contractor shall reimburse the utility owner for repair costs or provide at no cost to the utility owner or the Agency, all supplies, materials, tools, equipment, and labor necessary to complete repair of the damage:
- i. When the utility is shown or indicated in the contract documents;
 - ii. When the utility has been located by the utility owner;
 - iii. When no locate was requested by the Contractor for utilities shown or indicated in the contract documents;
 - iv. When the utilities are visible; or
 - v. When the Contractor could have, otherwise, reasonably been expected to be aware of such utility.
- F. Utilities Not Shown or Indicated: If, while directly performing the Work and Services, an underground utility is uncovered or revealed at the site which was not shown or not indicated in the contract documents and which the Contractor could not reasonably have been expected to be aware of, the Contractor shall, promptly after becoming aware thereof and before performing any Work and Services affected thereby (except in an emergency as permitted by paragraph 3.04. T. (Emergencies) identify the owner of such underground utility and give written notice thereof to that owner and to the Project Director. The Project Director will promptly review the underground utility to determine the extent to which the contract documents and the Work and Services should be modified to reflect the impacts of the discovered utility. The contract documents will be amended or supplemented in accordance with the paragraph 3.06. B. (Authorization of Changes within the General Scope of Work and Services) and to the extent necessary through the issuance of a change document by the Project Director. During such time, the Contractor shall be responsible for the safety and protection of such underground utility as provided in the paragraph 3.04. R. (Safety and Protection). The Contractor may be allowed an increase in the contract price or an extension of the contract time, or both, to the extent that they are directly attributable to the existence of any underground utility that was not shown or indicated in the contract documents and which the Contractor could not reasonably have been expected to be aware of.

3.04 CONTRACTOR'S RESPONSIBILITIES

- A. Supervision of Work and Services: The Contractor shall supervise and direct the Work and Services competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work and Services in accordance with the

contract documents. All Work and Services under the contract shall be performed and provided in a skillful manner. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the installations and ongoing service requirements.

- B. Superintendence or Lead by Contractor: The Contractor shall keep a competent project superintendent or lead present at the work site locations, at all times during the Work's progress. The Project Director shall be advised in writing of the project superintendent's or lead's full name and telephone number. This written advice is to be kept current until final acceptance by the Agency. The project superintendent or lead will be the Contractor's representative at the Work site locations and shall have full authority to act and sign documents on behalf of the Contractor. All communications given to the project superintendent or lead shall be as binding as if given to the Contractor. The Contractor and project superintendent or lead shall cooperate with the Project Director.
- C. Character of Workers: The Contractor shall provide a sufficient number of competent, suitably qualified personnel to perform and provide the Work and Services as required by the contract documents. The Contractor shall at all times maintain good discipline and order at the site locations. The Project Director has the right to require, in writing, the Contractor to remove from the site location any employee the Project Director deems incompetent, careless, or otherwise detrimental to the progress of the Work and Services, but the Project Director shall have no requirement to exercise this right.
- D. Contractor to Furnish: The Contractor shall maintain neat and sanitary work areas within each work site location. The Contractor shall furnish and assume full responsibility for all supplies, materials, tools, and equipment, (including, but not limited to, machinery and appliances) and incidentals necessary for performance and completion of the Work and Services listed in this ITB.
- E. Supplies, and materials: All supplies, and materials shall be of specified quality and new, except as otherwise provided in the contract documents. If required by the Project Director, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of supplies and materials. All supplies and materials shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the contract documents. But provision of any such instructions will not be effective to assign to the Agency or any of the Agency's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work and Services or any duty or authority to undertake responsibility contrary to the provisions of paragraph 3.04. K. (Substitute Means & Methods) and paragraph 3.01. C. (Visits to Site by Project Director).
- F. Anticipated Schedules: Within a reasonable time after the Agency provides the Contractor a notice to proceed or contract, the Contractor shall submit to the Procurement Manager for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work and Services that will be performed or provided.
- G. Project Schedules: Within ten days after the date of the Notice to Proceed, the Contractor shall submit to the Procurement Manager for review:

- i. Anticipated schedule of the Project; and
 - ii. Anticipated Schedule of Values for all of the Work and Services; the schedule will include quantities and prices of items aggregating the contract price and will subdivide the Work and Services into component parts in sufficient detail to serve as the basis for progress payments during the Project. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work and Services.
- H. Finalizing Schedules: Prior to processing the first Application for Payment, the Project Director and the Contractor will finalize schedules required by paragraph 3.04. F. (Anticipated Schedules). The finalized progress schedule will be acceptable to the Agency as providing information related to the orderly progression of the Work and Services to completion within the contract time; but such acceptance will neither impose on the Agency nor relieve the Contractor from full responsibility for the progress or scheduling of the Work and Services. If accepted, the finalized Schedule of Work and Services, Drawings, and other required submissions will be acceptable to the Agency as providing a workable arrangement for processing the submissions. If accepted, the finalized Schedule of Values will be acceptable to the Agency as an approximation of anticipated value of Work and Services to be accomplished over the anticipated contract time. Receipt and acceptance of a schedule submitted by the Contractor shall not be construed to assign responsibility for performance or contingencies to the Agency or relieve the Contractor of its responsibility to adjust its forces, equipment, and work schedules as may be necessary to insure completion of the Work and Services within prescribed contract time. Should the performance of the Work and Services be discontinued for any reason, the Contractor shall notify the Project Director at least 24 hours in advance of resuming operations.
- I. Adjusting Schedules: Upon substantial changes to the schedule, or upon request, the Contractor shall submit to the Project Director for acceptance (to the extent indicated in paragraph 3.04. H. (Finalizing Schedules), and the General Conditions and Requirements) adjustments in the schedules to reflect the actual present and anticipated progress of the Work and Services.
- J. Substitutes or "Or-Equal" Items: Whenever supplies and materials are specified or described in the contract documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, supplies and materials of other Suppliers may be accepted by the Project Director only if sufficient information is submitted by the Contractor which clearly demonstrates to the Project Director that the material or equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Project Director will include the following provisions as supplemented in these General Conditions and Requirements:
- i. Requests for review of substitute items of material and equipment will not be accepted by the Project Director from anyone other than the Contractor.
 - ii. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Project Director for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not delay the Contractor's

achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work and Services will require a change in any of the contract documents (or in the provisions of any other direct contract with the Agency for Work and Services on the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work and Services is subject to payment of any license fee or royalty.

- iii. All variations of the proposed substitute from that specified will be identified in the application, and available maintenance, repair, and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including, but not limited to, costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Agency in evaluating the proposed substitute. The Agency may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute. The Project Director may reject any substitution request which the Project Director determines is not in the best interest of the Agency.
- K. Substitute Means and Methods: If a specific means, method, technique, sequence or procedure of the project is indicated in or required by the contract documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of the project acceptable to the Project Director, if the Contractor submits sufficient information to allow the Project Director to determine that the substitute proposed is equivalent to that indicated or required by the contract documents. The procedure for review by the Project Director will be similar to that provided in paragraph 3.04. J. (Substitutes” or “Or-Equal” Items) as applied by the Project Director and as may be supplemented in the General Conditions and Requirements.
- L. Evaluation of Substitution: The Project Director will be allowed a reasonable time within which to evaluate each proposed substitute. The Project Director will be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without the Project Director's prior written acceptance which will be provided in writing by the Project Director once approved in accordance with paragraph 3.04. U. (Drawings and Samples) and paragraph 3.04. V. (Drawing and Sample Review). The Project Director may require the Contractor to furnish at the Contractor's expense a special performance guarantee with respect to any substitute.
- M. Dividing the Work and Services: The divisions and sections of the specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work and Services among subcontractors or Suppliers or delineating the Work and Services to be performed by any specific trade.
- N. Subcontractors: The Contractor may utilize the services of licensed specialty subcontractors on those parts of the Work and Services which, under normal contracting practices, are performed by licensed specialty subcontractors, in accordance with the following conditions:
- i. The Contractor shall not award any Work and Services to any Subcontractor without prior written approval of the Project Director. This approval will not be given until the Contractor submits to the Project Director a written statement concerning the proposed award to the Subcontractor which shall contain required Equal Employment Opportunity documents, evidence of workers' compensation and other insurance whose limits are acceptable to the Contractor, and an executed copy of the subcontract. All subcontracts submitted for approval must contain provisions for payment for Work and Services done by the

Subcontractor that comply with AS 36.90.210. The acceptance by the Project Director of any such Subcontractor does not constitute a waiver of any right of the Agency to reject defective Work and Services.

- ii. The Contractor shall be fully responsible to the Agency for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work and Services under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions.
 - iii. All Work and Services performed for the Contractor by a Subcontractor will be pursuant to an appropriate written agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the contract documents for the benefit of the Agency and contains waiver provisions as required by paragraph 3.10. Q. (Waiver of Claims by Contractor) and termination provisions as required by sec. 3.11 (Suspension of Work and Services, Default and Termination).
 - iv. Nothing in the contract documents shall create any contractual relationship between the Agency and any Subcontractor, Supplier, or other person or organization, nor shall it create any obligation on the part of the Agency to pay or to see to the payment of any moneys due any Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The Agency will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.
 - v. The Contractor and subcontractors shall coordinate their work and services and cooperate with other trades so to facilitate general progress of the Work and Services. Each trade shall afford other trades every reasonable opportunity for installation of their work and services and storage of supplies, materials, tools, and equipment. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, such conditions shall be remedied by the Contractor with no change in contract price or contract time.
 - vi. The Contractor shall include on his own payrolls any person or persons working on the contract who are not covered by written subcontract and shall ensure that all Subcontractors include on their payrolls all persons performing work and services under the direction of the Subcontractors.
- O. Use of Premises: The Contractor shall confine project equipment, the storage of supplies and materials and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits, and easements, and shall not unreasonably encumber the premises with project equipment or other supplies, materials, tools, or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant of the land or area or of any contiguous land or areas, resulting from the performance of the Work. Should any claim be made against the Agency by any such owner or occupant because of the performance of the Work, the Contractor shall hold the Agency harmless.
- P. Structural Loading: The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

- Q. Record Documents: The Contractor shall maintain in a safe place one record copy of all Drawings, Specifications, Amendments, Directives, Changes, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to paragraph 3.02. G. (Clarifications and Interpretations)), in good order and annotated to show all changes made during the Project. These record documents together with all approved Samples and a counterpart of all approved Drawings will be available to the Project Director for reference and copying. Upon completion of the Work and Services, the annotated record documents, Samples and Drawings will be delivered to the Project Director. Record documents shall accurately record variations in the Work and Services which vary from requirements shown or indicated in the contract documents.
- R. Safety and Protection: In addition to the other safety requirements of the contract, the Contractor must comply with AS 18.60.075 (safe employment) and all pertinent provisions of 8 AAC 61 (Occupational Safety and Health). The Contractor alone shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and Services. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- i. All employees at the work site locations and other persons and organizations who may be affected by the Work and Services;
 - ii. All the Work and Services, and the supplies and materials to be incorporated in the Work and Services, whether in storage on or off the work site locations; and
 - iii. Other property at the work site locations or adjacent to the work site locations, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of the project.

The Contractor shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utility owners when performance of the Work and Services may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work and Services or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. No change in contract price or contract time will be allowed except as stated in paragraph 3.03. F. (Utilities Not Shown or Indicated), except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not limited to, acts of God, the public enemy, or governmental authorities. The Contractor's duties and responsibilities for the safety and protection of the Work and Services shall continue until final acceptance (except as otherwise expressly provided in connection with substantial completion).

- S. Safety Representative: The Contractor shall designate a responsible safety representative at the site. This person shall be the Contractor's project superintendent or lead unless otherwise designated in writing by the Contractor to the Project Director.

- T. Emergencies: In emergencies affecting the safety or protection of persons or the Work and Services or property at the work site locations or adjacent to the work site locations, the Contractor, without special instruction or authorization from the Agency, is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Project Director prompt written notice if the Contractor believes that any significant changes in the Work and Services or variations from the contract documents have been caused thereby. If the Agency determines that a change in the contract is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in paragraph 3.06. B. (Authorization of Changes within the General Scope of Work and Services), as determined appropriate by the Project Director.
- U. Drawings and Samples: After checking and verifying all field conditions and after complying with applicable procedures, the Contractor shall submit to the Project Director for review and approval of Drawing submissions. All submissions will be identified as the Project Director may require. The data shown on the Drawings will be complete with all the data required to enable the Project Director to review the information as needed.

The Contractor shall also submit to the Project Director for review and approval with such promptness as to cause no delay in Work and Services, all Samples required by the contract documents. All Samples will have been checked by and accompanied by a specific written indication that the Contractor has satisfied Contractor's responsibilities under the contract documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended.

Before submission of each Drawing or sample, the Contractor shall have determined and verified all quantities, specified performance criteria, installation requirements, supplies, materials, tools, and equipment, catalog numbers and similar data with respect to the Drawing or sample and reviewed or coordinated each Drawing or sample with other Drawings and Samples and with the requirements of the Work and Services and the contract documents.

At the time of each submission, the Contractor shall give the Project Director specific written notice of each variation that the Drawings or Samples may have from the requirements of the contract documents, and, in addition, shall cause a specific notation to be made on each Drawing submitted to the Project Director for review and approval of each such variation. All variations of the proposed drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including, but not limited to, costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Agency in evaluating the proposed variation. If the variation may result in a change of contract time or price, or contract responsibility, and is not minor in nature, the Contractor must submit a written request for Change with the variation to notify the Agency of the Contractor's intent. The Agency may require the Contractor to furnish at the Contractor's expense additional data about the proposed variation. The Project Director may reject any variation request which the Project Director determines is not in the best interest of the Agency.

- V. Drawing and Sample Review: The Project Director will review with reasonable promptness any Drawings and Samples, but the Project Director's review will be only for conformance with the design concept of the Project and for compliance with the information given in the contract documents and shall not extend to means, methods, techniques, sequences

or procedures of the project (except where a specific means, method, technique, sequence, or procedure of installation is indicated in or required by the contract documents) or to safety precautions or programs incident to the Drawings or Samples. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The Contractor shall make corrections required by the Project Director and shall return the required number of corrected copies of Drawings and submit as required new Samples for review. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Project Director on previous submittals.

The Project Director's review of Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the contract documents unless the Contractor has in writing advised the Project Director of each such variation at the time of submission as required by the paragraphs under paragraph 3.04. U. (Drawings and Samples). The Project Director, in the Project Director's sole discretion, may give written approval of each such variation, except that, if the variation is minor and no Change has been requested, a specific written notation thereof incorporated in or accompanying the Drawing or sample review comments shall suffice as a modification. No approval by the Project Director will relieve the Contractor from responsibility for errors or omissions in the Drawings or from responsibility for having complied with the provisions of paragraphs listed under paragraph 3.04. U. (Drawings and Samples).

Where a Drawing or sample is required by the specifications, any related Work and Services performed prior to the Project Director's review of the pertinent submission will be the sole expense and responsibility of the Contractor.

- W. Maintenance During the Project: The Contractor shall maintain the Work and Services during the project and until Substantial Completion.
- X. Continuing the Work and Services: The Contractor shall carry on the Work and Services and adhere to the progress schedule during all disputes or disagreements with the Agency. No Work and Services shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the Contractor and the Project Director may otherwise agree in writing.
- Y. Use of Explosives: This section has been removed from the ITB.
- Z. Contractor's Records: Records of the Contractor and subcontractors relating to personnel, payrolls, invoices of supplies and materials, and any and all other data relevant to the performance of the contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Project Director, and Agency Personnel, for purposes of investigation to ascertain compliance with Regulatory Requirements and provisions of the contract documents.

Records of all written communications, including, but not limited to, emails between the Agency and the Contractor and other parties, where such communications affected performance of the contract, must be kept by the Contractor and maintained for a period of three years from Final Acceptance. The Agency or its assigned representative may perform an audit of these records during normal work hours after written notice to the Contractor.

3.05 OTHER WORK AND SERVICES

- A. Related Work and Services at Work Site Locations: The Agency reserves the right at any time to contract for and/or perform other or additional work on or near the Work and Services covered by the contract.

When separate contracts occur within the limits of the Project, the Contractor shall conduct the Work and Services so as not to interfere with or hinder the work being performed by other contractors or by Agency employees. The Contractor, when working on the same Project with other contractors, shall cooperate with such other contractors. The Contractor shall join the Contractor's Work and Services with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

If the fact that other such work or services to be performed is identified or shown in the contract documents the Contractor shall assume all liability, financial or otherwise, in connection with the contract and indemnify and save harmless the Agency from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor because of the presence and operations of other contractors.

If the fact that such other work or services is to be performed was not identified or shown in the contract documents, written notice thereof will be given to the Contractor prior to starting any such other work or services. If the Contractor believes that such performance will require an increase in contract price or contract time, the Contractor shall notify the Project Director of such required increase within ten (10) calendar days following receipt of the Project Director's notice. Should the Project Director find such increase(s) to be justified, a Contract Amendment will be executed.

- B. Access, Cutting, and Patching: The Contractor shall afford each utility owner and any other Contractor who is a party to such a direct contract with the Agency (or the Agency, if the Agency is performing the additional work or services with the Agency's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of supplies and materials and the execution of such work or services, and shall properly connect and coordinate the Work and Services with the work of others. The Contractor shall do all cutting, fitting, and patching of the Work and Services that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter such other work with the written consent of the Project Director. The duties and responsibilities of the Contractor under this paragraph are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the Agency and other contractors.
- C. Defective Work and Services by Others: If any part of the Contractor's Work and Services depends for proper execution or results upon the work of any such other Contractor, utility owner, or the Agency, the Contractor shall inspect and promptly report to the Project Director in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure to so report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work and Services except for latent or nonapparent defects and deficiencies in the other work or services.

- D. Coordination: If the Agency contracts with others for the performance of other work or services at the work site locations, the Project Director will have authority and responsibility for coordination of the activities among the various prime contractors.

3.06 CHANGES OR AMENDMENTS

- A. Agency's Right to Change or Amend: The Agency may, at any time, order additions, deletions, or revisions in the Work and Services within the general scope of the contract, including but not limited to, changes and amendments:
- i. In the contract documents;
 - ii. In the method or manner of performance of the Work and Services;
 - iii. In State-furnished facilities, supplies and materials services, or sites;
 - iv. Directing acceleration in the performance of the Work and Services.
- B. Authorization of Changes within the General Scope of Work and Services: Additions, deletions, or revisions in the Work and Services within the general scope of the contract as specified in paragraph 3.06. A. (Agency's Right to Change or Amend) shall be authorized by one or more of following ways:
- i. Directive (pursuant to paragraph 3.06. C. (Directive))
 - ii. A Contract Amendment (pursuant to paragraph 3.06. I. (Contract Amendment))
 - iii. Agency's acceptance of Drawing variations from the contract documents as specifically identified by the Contractor as required by paragraph 3.04. U. (Drawings and Samples).
- C. Directive: The Project Director shall provide written clarification or interpretation of the contract documents (pursuant to paragraph 3.02. G. (Clarifications and Interpretations)).
- D. The Project Director may authorize minor variations in the Work and Services from the requirements of the contract documents which do not involve an adjustment in the contract price or the contract time and are consistent with the overall intent of the contract documents.
- E. The Project Director may order the Contractor to correct defective Work and Services or methods which do not conform to the contract documents.
- F. The Project Director may direct the commencement or suspension of Work and Services or emergency related Work and Services (as provided in paragraph 3.04. T. (Emergencies)).
- G. Upon the issuance of a Directive to the Contractor by the Project Director, the Contractor shall proceed with the performance of the Work and Services as prescribed by such Directive.
- H. If the Contractor believes that the changes noted in a Directive may cause an increase in the contract price or an extension of contract time, the Contractor shall immediately provide written notice to the Project Director depicting such increases before proceeding with the

Directive, except in the case of an emergency. If the Project Director finds the increase in contract price or the extension of contract time justified, a Contract Amendment will be requested. If, however, the Project Director does not find that a Contract Amendment is justified, the Project Director may direct the Contractor to proceed with the Work and Services as Contracted. The Contractor shall cooperate with the Project Director in keeping complete daily records of the cost of such Work and Services. If a Contract Amendment is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such Work and Services will be made on a cost of the work basis as provided in paragraph 3.07. D. (Cost of the Work and Services).

- I. Contract Amendment: A change in contract time, contract price, or responsibility may be made within the scope of the Work and Services only by Contract Amendment. Upon receipt of an executed Contract Amendment, the Contractor shall promptly proceed with the work or services involved which will be performed under the applicable conditions of the contract documents except as otherwise specifically provided. Changes in contract price and contract time shall be made in accordance with secs. 3.06 (Changes or Amendments), 3.07 (Contract Price: Computation and Change), and 3.08 (Contract Time: Computation and Change).
- J. Drawing Variations: Variations by Drawings shall only be eligible for consideration under the above paragraph 3.06. I. (Contract Amendment) when the conditions affecting the price, time, or responsibility are identified by the Contractor in writing and a request for a Change is submitted as per paragraph 3.04. U. (Drawings and Samples).
- K. Changes Outside the General Scope; Supplemental Agreement: Any change which is outside the general scope of the contract, as determined by the Project Director, must be authorized and signed by the authorized representatives of the Agency and the Contractor.
- L. Unauthorized Work and Services: The Contractor shall not be entitled to an increase in the contract price or an extension of the contract time with respect to any work or services performed that is not required by the contract documents as amended, modified, and supplemented as provided in this section, except in the case of an emergency as provided in paragraph 3.04. T. (Emergencies) and except in the case of uncovering Work as provided in 3.09. D. (Uncovering Work and Services).
- M. Notification of Surety: If notice of any change affecting the general scope of the Work and Services or the provisions of the contract documents (including, but not limited to, contract price or contract time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice will be the Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.
- N. Differing Work Site Conditions: The Contractor shall promptly, and before such conditions are disturbed (except in an emergency as permitted by paragraph 3.04. T. (Emergencies), notify the Project Director in writing of:
 - i. Subsurface or latent physical conditions at the work site locations differing materially from those indicated in the contract, and which could not have been discovered by a careful examination of the work site locations; or
 - ii. Unknown physical conditions at the work site locations, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character provided for in the contract. The Project Director shall

promptly investigate the conditions, and if the Project Director finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, an equitable adjustment shall be made and the contract modified in writing accordingly.

- O. Claims for Compensation: Any claim for additional compensation by the Contractor under this sec. 3.06 (Changes or Amendments) shall be made in accordance with sec. 3.12 (Claims and Disputes) and shall not be allowed unless the Contractor has first given the notice required by the contract. In the event that the Project Director and the Contractor are unable to reach an agreement concerning an alleged differing work site condition, the Contractor will be required to keep an accurate and detailed record which will indicate the actual cost of the work or services done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing work site conditions. The Project Director shall be given the opportunity to supervise and check the keeping of such records.

3.07 CONTRACT PRICE: COMPUTATION AND CHANGE

- A. Contract Price: The contract price constitutes the total compensation (subject to authorized adjustments) payable to the Contractor for performing the Work and Services. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at the Contractor's expense without change in the contract price. The contract price may only be changed by a Contract Amendment.
- B. Claim for Price Change: Any claim for an increase or decrease in the contract price shall be submitted in accordance with the terms of sec. 3.12, (Claims and Disputes), and shall not be allowed unless notice requirements of the contract have been met.
- C. Contract Amendment Price Determination: The value of any work covered by an amendment to the contract for an increase or decrease in the contract price shall be determined in one of the following ways:
- i. Where the Work or Services involved is covered by unit prices contained in the contract documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs under paragraph 3.07. H. (Unit Price Work and Services).
 - ii. By mutual acceptance of a lump sum price which includes overhead and profit.
 - iii. When i. and ii. of this paragraph 3.07. C. (Contract Amendment Price Determination) are inapplicable, on the basis of the "Cost of the Work and Services" (determined as provided in paragraph 3.07. D. (Cost of the Work and Services) and paragraph 3.07. E. (Excluded Costs) plus a Contractor's fee for overhead and profit (determined as provided in paragraphs under paragraph 3.07. F. (Contractor's Fee)).
 - iv. Before a Contract Amendment is approved, the Contractor shall submit pricing data regarding the changed or extra Work and Services. The Contractor shall certify that the data submitted is, to the Contractor's best knowledge and belief, accurate, complete and current as of a mutually determined specified date and that such data will continue to be accurate and complete during the performance of the changed or extra Work and Services.

all costs necessarily incurred and paid by the Contractor in the proper performance of the Work and Services. Except as otherwise may be agreed to in writing by the Agency, such costs shall be an amount no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 3.07. E. (Excluded Costs):

- i. Payroll costs for employees in the direct employ of the Contractor in the performance of the Work and Services under schedules of job classifications agreed upon by the Agency and the Contractor. Payroll costs for employees not employed full time on the Work and Services shall be apportioned on the basis of their time spent on the Work and Services. Payroll costs shall mean salaries and wages plus the cost of fringe benefits that include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and Holiday pay applicable to the employees. Such employees shall include project superintendents or leads and forepersons at the site. The expenses of performing Work and Services after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the Agency.
- ii. Cost of all supplies and materials furnished and incorporated in the Work and Services, including, but not limited to, costs of transportation and storage of the supplies and materials, and Suppliers' field services required in connection with the supplies and materials. All cash discounts shall accrue to the Contractor unless the Agency deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Agency. All trade discounts, rebates, and refunds and all returns from sale of surplus supplies and materials shall accrue to the Agency, and the Contractor shall make provisions so that they may be obtained.
- iii. Payments made by the Contractor to subcontractors for Work and Services performed by subcontractors. If required by the Agency, Contractor shall obtain competitive quotes from subcontractors or Suppliers acceptable to the Contractor and shall deliver such quotes to the Agency who will then determine which quotes will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of "cost of the work and services" plus a fee, the Subcontractor's "cost of the work and services" shall be determined in the same manner as the Contractor's "cost of the work and services" as described in paragraph 3.07. D. (Cost of the Work and Services) and paragraph 3.07. E. (Excluded Costs); and the Subcontractor's fee shall be established as provided for under paragraph 3.07. F. (Contractor's Fee). All subcontracts shall be subject to the other provisions of the contract documents insofar as applicable.
- iv. Costs of special consultants (including, but not limited to electricians, and network engineers) employed for services necessary for the completion of the Work and Services.
- v. Supplemental costs as follows:
 1. The proportion of necessary transportation, travel, per-diem, housing, and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work and Services.
 2. Cost, including, but not limited to, transportation and maintenance, of all supplies and materials, appliances, at the work site

locations and hand tools not owned by the workers, which are used in the performance of the Work and Services, less market value of such items used but not consumed which remain the property of the Contractor.

3. Rentals of all equipment and machinery and the parts thereof, whether rented from the Contractor or others, in accordance with rental agreements approved by the Agency, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work and Services.
4. Sales, consumer, use, or similar taxes related to the Work and Services, and for which the Contractor is liable, imposed by Regulatory Requirements.
5. Deposits lost for causes other than negligence of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work and Services or otherwise sustained by the Contractor in connection with the performance and furnishing of the Work and Services provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include, but are not limited to, settlements made with the written consent and approval of the Agency. No such losses, damages and expenses shall be included in the "cost of the work and services" for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reinstallation and the Contractor is placed in charge thereof, the Contractor shall be paid for services a fee proportionate to that stated in paragraphs under paragraph 3.07. F. (Contractor's Fee).
7. Minor expenses such as long-distance telephone calls, telephone service at the work site locations, courier costs, and similar petty cash items in connection with the Work and Services.
8. Cost of premiums for additional bonds and insurance required because of changes in the Work and Services and premiums for property insurance coverage within the limit of the amount established by the Agency in accordance with paragraph 1.41 (Insurance) of the Notices to Bidders section.

E. Excluded Costs: The term "Cost of the Work and Services" shall not include any of the following:

- i. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agency, expeditors, timekeepers, clerks, or other personnel employed by Contractor whether at the work site locations or in Contractor's principal or a branch office for general administration of the Work and Services and not specifically included in the agreed upon schedule of job classifications referred to in paragraphs covered under paragraph 3.07. D. (Cost of the Work and Services) or specifically covered by paragraphs under (Cost of the

and Services) – all of which are to be considered administrative costs covered by the Contractor's fee.

- ii. Expenses of Contractor's principal and branch office.
 - iii. Any part of Contractor's capital expenses including, but not limited to, interest on Contractor's capital employed for the Work and Services and charges against Contractor for delinquent payments.
 - iv. Cost of premiums for all bonds and insurance whether or not Contractor is required by the contract documents to purchase and maintain the same (except for the cost of premiums covered by above paragraphs under paragraph 3.07. D. (Cost of the Work and Services).
 - v. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work and Services, disposal of supplies, materials, tools, or equipment wrongly supplied and making good any damage to property.
 - vi. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 3.07. D. (Cost of the Work and Services).
- F. Contractor's Fee: A mutually acceptable fixed fee; or if a fixed fee cannot be agreed upon, a fee based on the following percentages of the various portions of paragraph 3.07. D. (Cost of the Work and Services). The Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:
- i. For costs incurred under i. and ii. of paragraph 3.07. D. (Cost of the Work and Services), the Contractor's fee shall be twenty percent (20%);
 - ii. For costs incurred under iii. of paragraph 3.07. D. (Cost of the Work and Services), the Contractor's fee shall be ten percent (10%); and if a subcontract is on the basis of "Cost of the Work and Services" plus a fee, the maximum allowable to Contractor on account of overhead and profit of all subcontractors and multiple tiers thereof shall be fifteen percent (15%);
 - iii. No fee shall be payable on the basis of costs itemized under iv. and v. of paragraph 3.07. D. (Cost of the Work and Services) and under any provision of paragraph 3.07. E. (Excluded Costs);
 - iv. The amount of credit to be allowed by the Contractor to the Agency for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Contractor's fee by an amount equal to ten percent of the net decrease; and
 - v. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with the provision under this paragraph 3.07. F. (Contractor's Fee).

G. Cost Breakdown: Whenever the cost of any Work and Services is to be determined pursuant to paragraphs under paragraph 3.07. D. (Cost of the Work and Services) and paragraph 3.07. E. (Excluded Costs), the Contractor will submit, in a form acceptable to the Agency, an itemized cost breakdown together with supporting data.

H. Unit Price Work and Services: Where the contract documents provide that all or part of the Work and Services is to be unit price Work and Services, initially the contract price will be deemed to include, for all unit price Work and Services, an amount equal to the sum of the established unit prices for each separately identified item of unit price Work and Services times the estimated quantity of each item as indicated in the contract. The estimated quantities of items of unit price Work and Services are not guaranteed and are solely for the purpose of comparison of bids and determining an initial contract price. Determinations of the actual quantities and classifications of unit price Work and Services performed by the Contractor will be made by the Agency in accordance with paragraph 3.07. I. (Determinations for Unit Prices).

Each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item. If the contract documents relating to any unit price in the Bid Form require that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work and services or material will not also be measured or paid for under any other pay item which may appear elsewhere in the contract documents.

Payment to the Contractor shall be made only for the actual quantities of Work and Services performed and accepted, or supplies, materials, tools, or equipment furnished, in conformance with the contract documents. When the accepted quantities of Work and Services or supplies, materials, tools, or equipment vary from the quantities stated in the Bid Form or change documents, the Contractor shall accept as payment in full, payment at the stated unit prices for the accepted quantities of Work and Services and supplies, materials, tools, or equipment furnished, completed, and accepted, except as provided below:

- i. When the quantity of Work and Services to be done or material to be furnished under any item, for which the total cost of the item exceeds ten percent (10%) of the total contract price, is increased by more than twenty-five percent (25%) of the quantity stated in the Bid Form, or change documents, either party to the contract, upon demand, shall be entitled to an equitable unit price adjustment on that portion of the Work and Services above one hundred twenty-five percent (125%) of the quantity stated in the Bid Form.
- ii. When the quantity of Work and Services to be done or supplies, materials, tools, and equipment to be furnished under any major item, for which the total cost of the item exceeds ten percent (10%) of the total contract price, is decreased by more than twenty-five percent (25%) of the quantity stated in the Bid Form, or change documents, either party to the contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of Work and Services performed or supplies, materials, tools, and equipment furnished, limited to a total payment of not more than seventy-five percent (75%) of the amount originally bid for the item.

I. Determinations for Unit Prices: The Project Director will determine the actual quantities and classifications of Unit price Work and Services performed by the Contractor. The Project Director will review with the Contractor preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Project

Director's acknowledgment thereof will be final and binding on the Contractor unless, within ten (10) days after the date of any such decisions, the Contractor delivers to the Project Director written notice of intention to appeal from such a decision.

3.08 CONTRACT TIME: COMPUTATION AND CHANGE

- A. Commencement of Contract Time; Notice to Proceed: The contract time will commence to run on the day indicated in the Notice to Proceed.
- B. Starting the Work and Services: No Work and Services on contract items shall be performed before the effective date of the Notice to Proceed. The Contractor shall notify the Project Director at least 72 hours in advance of the time actual project installation operations will begin. The Contractor may request a limited Notice to Proceed after Award has been made, to permit the Contractor to order long lead supplies, materials, tools, or equipment which could cause delays in project completion. However, granting the request is within the sole discretion of the Project Director, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.
- C. Computation of Contract Time: When the contract time is specified on a calendar days basis, all Work and Services under the contract shall be completed within the number of calendar days specified. The count of contract time begins on the day following receipt of the Notice to Proceed by the Contractor, if no starting day is stipulated therein.

Calendar days shall continue to be counted against contract time until and including the day of final completion of the Work and Services.

When the contract completion time is specified as a fixed calendar date, it shall be the date of final completion.

- D. Time Change: The contract time may only be changed by a Contract Amendment.
- E. Extension Due to Delays: The right of the Contractor to proceed shall not be terminated nor the Contractor charged with liquidated or actual damages because of any delays to the completion of the Work and Services due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to the following: acts of God or of the public enemy, acts of another Contractor in the performance of a contract with the Agency, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of subcontractors or Suppliers due to such causes. Any delay in receipt of supplies, materials, tools, or equipment at the work site locations, caused by other than one of the unforeseeable causes specifically mentioned in the previous sentence, does not of itself justify a time extension. The Contractor shall, within twenty-four (24) hours from the beginning of any such delay (unless the Project Director shall grant a further period of the time prior to the date of final settlement of the contract), notify the Project Director in writing of the cause of delay. The Project Director shall ascertain the facts and the extent of the delay and extend the time for completing the Work and Services when the findings of fact justify such an extension.
- F. Essence of Contract: All time limits stated in the contract documents are of the essence in this contract.

- G. Reasonable Completion time: It is expressly understood and agreed by and between the Contractor and the Agency that the date of beginning and the time for final completion of the Work and Services described herein are reasonable times for the completion of the Work and Services.
- H. Delay Damages: Whether or not the Contractor's right to proceed with the Work and Services is terminated, the Contractor and the Contractor's Sureties shall be liable for damages resulting from the refusal or failure to complete the Work and Services within the specified time.

Liquidated and actual damages for delay shall be paid by the Contractor to the Agency in the amount as specified in the Supplementary Conditions and Requirements for each calendar day the completion of the Work and Services or any part thereof is delayed beyond the time required by the contract, or any extension thereof. If a listing of incidents resulting from a delay and expected to give rise to actual or liquidated damages is not established by the contract documents, then the Contractor shall be liable to the Agency for any actual damages occasioned by such delay. The Contractor acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the Agency will sustain by reason of delayed completion. These liquidated and actual damages are intended as compensation for losses anticipated to arise, and include those items enumerated in paragraph 1.45 (Liquidated Damages).

These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or Agency costs, fees, and charges related to re-solicitation. If a default termination occurs, the Contractor shall pay in addition to these damages, all excess costs and expenses related to completion as provided by paragraph 3.11. B. (Default of Contract).

3.09 QUALITY ASSURANCE

- A. Warranty and Guaranty: The Contractor warrants and guarantees to the Agency that all Work and Services will be in accordance with the contract documents and will not be defective. Prompt notice of all defects shall be given to the Contractor. All defective Work and Services, whether or not in place, may be rejected, corrected or accepted as provided for in this section 3.09 (Quality Assurance).
- B. Access to Work and Services: The Agency and the Agency's representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work and Services at reasonable times for their observation, inspecting and testing. The Contractor shall provide proper and safe conditions for such access.
- C. Tests and Inspections: The Contractor shall give the Project Director timely notice of readiness of the Work and Services for all required inspections, test, or approvals.

If regulatory requirements of any public body having jurisdiction require any Work and Services (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the Project Director the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with Agency's acceptance of a Supplier of supplies, materials, tools, and equipment proposed to be incorporated in the Work and Services, or of supplies, materials, tools, and equipment submitted for approval prior to

the Contractor's purchase thereof for incorporation in the Work and Services. The cost of all inspections, tests, and approvals in addition to the above which are required by the contract documents shall be paid by the Contractor. The Agency may perform additional tests and inspections which it deems necessary to ensure quality control. All such failed tests or inspections shall be at the Contractor's expense.

If any Work and Services (including the work and services of others) that is to be inspected, tested, or approved is covered without written concurrence of the Project Director, it must, if requested by the Project Director, be uncovered for observation. Such uncovering shall be at the Contractor's expense unless the Contractor has given the Project Director timely notice of Contractor's intention to cover the same and the Project Director has not acted with reasonable promptness in response to such notice.

Observations, inspections, tests, or approvals by the Agency or others will not relieve the Contractor from the Contractor's obligations to perform the Work and Services in accordance with the contract documents.

- D. Uncovering Work and Services: If any Work and Services is covered contrary to the written request of the Project Director, it must, if requested by the Project Director, be uncovered for the Project Director's observation, and replaced at the Contractor's expense.

If the Project Director considers it necessary or advisable that covered Work and Services be observed, inspected, or tested, the Contractor, at the Project Director's request, shall uncover, expose, or otherwise make available for observation, inspection or testing as the Project Director may require, that portion of the Work and Services in question, furnishing all necessary labor, material, and equipment. If it is found that such Work and Services is defective, the Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory re-installation, (including but not limited to, fees and charges of electrical engineers, attorneys and other professionals) and the Agency shall be entitled to an appropriate decrease in the contract price. If, however, such Work and Services is not found to be defective, the Contractor shall be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reinstallation.

- E. Agency May Stop the Work and Services: The Project Director may order the Contractor to stop the Work and Services, or any portion thereof, until the cause for such order has been eliminated or perform the Work and Services in such a way that the completed Work and Services will conform to the contract documents; however, this right of the Project Director to stop the Work and Services shall not give rise to any duty on the part of the Project Director to exercise this right for the benefit of the Contractor or any other party.
- F. Correction or Removal of Defective Work and Services: If required and as directed by the Project Director, the Contractor shall promptly either correct all defective Work and Services, whether or not fabricated, installed or completed, or, if the Work and Services has been rejected by the Project Director, remove it from the site and replace it with Work and Services which conforms to the requirements of the contract documents. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to, fees and charges of electrical engineers, attorneys and other professionals) made necessary thereby.

- G. One Year Correction Period: If, within one year after the date of final completion, or such longer period of time as may be prescribed by regulatory requirements, or by the terms of any applicable special guarantee required by the contract documents, or by any specific provision of the contract documents, any Work and Services is found to be defective, the Contractor shall promptly, without cost to the Agency and in accordance with the Project Director's written instructions, either correct such defective Work and Services, or, if it has been rejected by the Project Director, remove it from the work site locations and replace it with conforming Work and Services. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Agency may have the defective Work and Services corrected or the rejected Work and Services removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement (including but not limited to fees and charges of electrical engineers, attorneys and other professionals) will be paid by the Contractor. In special circumstances where a particular item of supplies, materials, tools, and equipment is placed in continuous service for the benefit of the Agency before substantial completion of all the Work and Services, the correction period for that Item may begin on an earlier date if so provided in the Specifications or by Contract Amendment. Provisions of this paragraph are not intended to shorten the statute of limitations for bringing an action.
- H. Acceptance of Defective Work and Services: Instead of requiring correction or removal and replacement of defective Work and Services, the Project Director may accept defective Work and Services. The Contractor shall bear all direct, indirect, and consequential costs attributable to the Project Director's evaluation of and determination to accept such defective Work and Services (costs to include, but not be limited to, fees and charges of electrical engineers, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Contract Amendment will be issued incorporating the necessary revisions in the contract documents with respect to the Work and Services; and the Agency shall be entitled to an appropriate decrease in the contract price. If the Agency has already made final payment to the Contractor, an appropriate amount shall be paid by the Contractor to the Agency.
- I. Agency May Correct Defective Work and Services: If the Contractor fails within a reasonable time after written notice from the Project Director to proceed to correct defective Work and Services or to remove and replace rejected Work and Services as required by the Project Director in accordance with paragraph 3.09. F. (Correction or Removal of Defective Work and Services), or if the Contractor fails to perform the Work and Services in accordance with the contract documents, or if the Contractor fails to comply with any other provision of the contract documents, the Agency may, after five (5) days' written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the Agency shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Project Director may exclude the Contractor from all or part of the work site locations, take possession of all or part of the Work and Services, and suspend the Contractor's services related to the Work and Services, take possession of the Contractor's tools, appliances, project equipment and machinery at the work site locations, and incorporate in the Work and Services all supplies and materials stored at the work site locations or approved remote storage sites or for which the Agency has paid the Contractor, but which are stored elsewhere. The Contractor shall allow the Project Director and his authorized representatives such access to the site as may be necessary to enable the Project Director to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the Agency in exercising such rights and remedies will be charged against the Contractor, and a Contract Amendment will be issued incorporating the necessary revisions in the contract documents with respect to the Work and Services; and the Agency shall be entitled to

an appropriate decrease in the contract price. Such direct, indirect, and consequential costs will include, but not be limited to, fees and charges of electrical engineers, attorneys and other professionals, all court and arbitration costs, and all costs of repair and replacement of work and services of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work and Services. The Contractor shall not be allowed an extension of the contract time because of any delay in performance of the Work and Services attributable to the exercise by the Project Director of the Agency's rights and remedies hereunder.

3.10 PAYMENTS TO CONTRACTOR AND COMPLETION

- A. Schedule of Values: The Schedule of Values established as provided in paragraph 3.04. G. (Project Schedules) will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to the Agency. Progress payments on account of unit price Work and Services will be based on the number of units completed.
- B. Preliminary Payments: Upon approval of the Schedule of Values, the Contractor may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Terms and Conditions of this ITB. Direct costs shall include, but are not limited to, the cost of insurance, approved supplies and materials stored at the work site locations or at approved remote storage sites, deposits required by a Supplier prior to fabricating supplies, materials, tools, or equipment, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total contract price as stated in the contract.
- C. Application for Progress Payment: The Contractor shall submit to the Project Director for review an application for payment filled out and signed by the Contractor covering the Work and Services completed as of the date of the application for payment and accompanied by such supporting documentation as is required by the contract documents. Progress payments will be made as the Work and Services progresses on a monthly basis, or twice a month when requested by the Contractor, but only when the approved invoice exceeds \$10,000.00.
- D. Review of Applications for Progress Payment: Project Director will either indicate in writing a recommendation of payment or return the Application for Payment to the Contractor indicating in writing the Project Director's reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the application for payment.
- E. Stored Supplies and Materials: If payment is requested on the basis of supplies and materials not incorporated in the Work and Services but delivered and suitably stored at the work site locations or at another location agreed to in writing, the application for payment shall also be accompanied by a bill of sale, paid invoice, or other documentation satisfactory to the Project Director warranting (1) that the Agency has received the supplies and materials free and clear of all charges, security interests, and encumbrances, and (2) that the supplies and materials are covered by appropriate property insurance and other arrangements to protect the Agency's interest therein. No payment will be made for perishable supplies, materials, tools, or equipment that could be rendered useless because of long storage periods.

- F. Contractor's Warranty of Title: The Contractor warrants and guarantees that title to all Work and Services, supplies and materials covered by any application for payment, whether incorporated in the Project or not, will pass to the Agency, no later than the time of payment, free and clear of any claims, liens, security interests and further obligations.
- G. Withholding of Payments: The Agency may withhold or refuse payment for any of the reasons listed below, provided it gives written notice of its intent to withhold and of the basis for withholding:
- i. The Work and Services is defective, Work and Services has been damaged requiring correction or replacement, Work and Services has been installed without approval of drawings or by an unapproved Subcontractor, or supplies and materials have been unsuitably stored.
 - ii. The contract price has been reduced by Contract Amendment.
 - iii. The Agency has been required to correct defective Work and Services or complete Work and Services in accordance with paragraph 3.09. I. (Agency May Correct Defective Work and Services).
 - iv. The Agency's actual knowledge of the occurrence of any of the events enumerated in paragraphs under 3.11. B. (Default of Contract), i. through xi.
 - v. Claims have been made against the Agency or against the funds held by the Agency on account of the Contractor's actions or inaction in performing contract, or there are other items entitling the Agency to a set off.
 - vi. Subsequently discovered evidence or the results of subsequent inspections or tests nullify any previous payments for reasons stated in paragraphs under i. through v. and vii of this paragraph 3.10. G. (Withholding of Payments).
 - vii. The Contractor has failed to fulfill or is in violation of any of the Contractor's obligations under any provision of the contract.
- H. Retainage: At any time, the Agency finds that satisfactory progress is not being made, it may, in addition to the amounts withheld under paragraph 3.10. G. (Withholding of Payments), retain a maximum amount equal to ten percent (10%) of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Project Director finds that satisfactory progress is being made.
- I. Request for Release of Funds: If the Contractor believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and contract provisions on which the Contractor relies, shall be given to the Agency, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. Following such submittal by the Contractor, the Agency shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.
- J. Substantial Completion: When the Contractor considers the Work and Services ready for its intended use the Contractor shall notify the Project Director in writing that the Work and

Services or a portion of Work and Services which has been specifically identified in the contract documents is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Agency issue a certificate of substantial completion. Within a reasonable time thereafter, the Project Director, the Contractor, and appropriate Consultant(s) shall make an inspection of the Work and Services to determine the status of completion. If the Project Director does not consider the Work and Services substantially complete, the Project Director will notify the Contractor in writing giving the reasons therefore. If the Project Director considers the Work and Services substantially complete, the Project Director will, within fourteen (14) days of the completion of the inspection, execute and deliver to the Contractor a certificate of substantial completion with a tentative list of items to be completed or corrected. At the time of delivery of the certificate of substantial completion, the Project Director will deliver to the Contractor a written division of responsibilities pending final completion with respect to security, operation, safety, insurance, and warranties which shall be consistent with the terms of the contract documents. The Agency shall be responsible for all Agency costs resulting from the initial inspection and the first re-inspection, and the Contractor shall pay all costs incurred by the Agency resulting from subsequent re-inspections.

- K. Access Following Substantial Completion: The Agency shall have the right to exclude the Contractor from the Work and Services after the date of substantial completion, but the Agency shall allow Contractor reasonable access to complete or correct items on the tentative list.
- L. Final Inspection: Upon written notice from the Contractor that the entire Work and Services or an agreed portion thereof is complete, the Project Director will make a final inspection with the Contractor and appropriate Consultants and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work and Services is incomplete or defective. The Contractor shall immediately take such measures as are necessary to remedy such deficiencies. The Contractor shall pay for all costs incurred by the Agency resulting from re-inspections.
- M. Final Completion and Application for Payment: After the Contractor has completed all corrections and measures to the satisfaction of the Project Director, provided all training and delivered all maintenance and operating instructions, schedules, guarantees, certificates of payment to all subcontractors and suppliers, certificates of inspection, marked-up record documents and other documents (as required by the contract documents), and after the Project Director has indicated in writing that the Work and Services has met the requirements for final completion, subject to the provisions of paragraph 3.10. Q. (Waiver of Claims by Contractor), the Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by all certificates, warranties, guarantees, releases, affidavits, and other documentation required by the contract documents.
- N. Final Payment: If, on the basis of the Project Director's observation of the Work and Services during the project and final inspection and the Project Director's review of the final application for payment and accompanying documentation, all as required by the contract documents, the Project Director is satisfied that the Work and Services has been completed and the Contractor's other obligations under the contract documents have been fulfilled, the Agency will process final Application for Payment. Otherwise, the Project Director will return the Application for Payment to the Contractor, indicating in writing the reasons for refusing to approve final payment, in which case the Contractor shall make the necessary corrections and resubmit the final application for payment.

If, through no fault of the Contractor, final completion of the Work and Services is significantly delayed, the Project Director shall, upon receipt of the Contractor's final application for payment, and without terminating the contract, make payment of the balance due for that portion of the Work and Services fully completed and accepted. If the remaining balance to be held by the Agency for Work and Services not fully completed or corrected is less than retainage under paragraph 3.10. H. (Retainage), and the payment of the balance due for that portion of the Work and Services fully completed and accepted shall be submitted by the Contractor to the Agency with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- O. Final Acceptance: Following certification of the final payment to the Contractor, the Agency will issue a letter of final acceptance, releasing the Contractor from further obligations under the contract, except as provided in paragraph 3.10. P. (Contractor's Continuing Obligation).
- P. Contractor's Continuing Obligation: The Contractor's obligation to perform and complete the Work and Services and pay all laborers, subcontractors, and all supplies, materials, tools, and equipment suppliers in accordance with the contract documents shall be absolute. Neither: (1) the progress or final payment by the Agency, (2) the issuance of a certificate of substantial completion, (3) any use or occupancy of the Work and Services or any part thereof by the Agency or using Agency, (4) any act of acceptance by the Agency nor any failure to do so, (5) any review and approval of a Drawing or sample submission, nor (6) any correction of defective Work and Services by the Agency, will constitute an acceptance of Work and Services not in accordance with the contract documents or a release of the Contractor's obligation to perform the Work in accordance with the contract documents.
- Q. Waiver of Claims by Contractor: The making of final payment will constitute a waiver of all claims by the Contractor against the Agency other than those previously made in writing and still unsettled.
- R. No Waiver of Legal Rights: The Agency shall not be precluded or be stopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and Services and payment therefore, from showing the true amount and character of the Work and Services performed and supplies and materials furnished by the Contractor, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work and Services or supplies and materials are defective. The Agency shall not be precluded or be stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's Sureties, or both, such damages as it may sustain by reason of the failure to comply with the requirements of the contract documents. Neither the acceptance by the Agency, or any representative of the Agency, nor any payment for or acceptance of the whole or any part of the Work and Services, nor any extension of the contract time, nor any possession taken by the Agency, shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages. A waiver by the Agency of any breach of the contract shall not be held to be a waiver of any other subsequent breach.

3.11 SUSPENSION OF WORK AND SERVICES, DEFAULT AND TERMINATION

- A. Agency May Suspend Work and Services: The Agency may, at any time, suspend the Work and Services or any portion thereof by notice in writing to the Contractor. If the Work and Services is suspended without cause, the Contractor shall be allowed an increase in the contract

price or an extension of the contract time, or both, in an amount, or for a length of time, directly attributable to any suspension if the Contractor makes an approved claim therefore as provided in sec. 3.12 (Claims and Disputes). However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the Contractor, or that suspension is necessary for contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor.

In case of suspension of Work and Services, the Contractor shall be responsible for preventing damage to or loss of any of the Work and Services already performed and of all supplies and materials whether stored on or off the work site locations or approved remote storage sites.

- B. Default of Contract: The Project Director may give notice in writing to the Contractor of delay, neglect, or default, if the Contractor:
- i. Fails to begin the Work and Services under the contract within the time specified in the contract documents;
 - ii. Fails to perform the Work and Services in accordance with the contract documents (including, but not limited to, fails to supply sufficiently skilled workers, suitable supplies, materials, tools, or equipment, or fails to adhere to the progress schedule established under paragraph 3.04. F. (Anticipated Schedules) as revised from time to time);
 - iii. Performs the Work and Services unsuitably or neglects or refuses to remove supplies and materials or to correct defective Work and Services;
 - iv. Discontinues the prosecution of the Work and Services;
 - v. Fails to resume Work and Services which have been discontinued within a reasonable time after notice to do so;
 - vi. Becomes insolvent, except that, if the Contractor declares bankruptcy, termination shall be in accordance with 11 U.S.C. 362 and/or 11 U.S.C. 365; in the event the Contractor declares bankruptcy, the Contractor will work with the bankruptcy trustee to assume or reject the contract in a timely manner so that the contract will be completed by the date specified in the contract;
 - vii. Allows any final judgment to stand against the Contractor unsatisfied for period of 60 days;
 - viii. Makes an assignment for the benefit of creditors without the consent of the Project Director;
 - ix. Disregards regulatory requirements of any public body having jurisdiction;

- x. Violates in any substantial way any provisions of the contract documents; or
- xi. For any cause whatsoever, fails to carry on the Work and Services in an acceptable manner.

If the Contractor, within the time specified in the above notice of default, does not proceed in accordance therewith, then the Agency, upon written notification from the Project Director of the fact of such delay, neglect, or default and the Contractor's failure to comply with such notice, has full power and authority without violating the contract, to take the prosecution of the Work and Services out of the hands of the Contractor. The Agency may terminate the services of the Contractor, exclude the Contractor from the site, and take possession of the Work and Services and of all the Contractor's tools, appliances, equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work and Services all supplies and materials stored at the work site locations or for which the Agency has paid the Contractor but which are stored elsewhere, and finish the Work and Services as the Agency may deem expedient. The Agency may enter into an agreement for the completion of said contract according to the terms and provisions thereof or use such other methods that in the opinion of the Project Director are required for the completion of said contract in an acceptable manner.

The Project Director may, by written notice to the Contractor or the Contractor's representative transfer the employment of the Work and Services from the Contractor to the Agency, or, if the Contractor abandons the Work and Services undertaken under the contract, the Project Director may at his option, without any written notice to the Contractor, transfer the employment for said Work and Services directly to the Agency or another Contractor.

Upon receipt of the notice terminating the services of the Contractor, the Agency shall enter upon the premises and take possession of all supplies, materials, tools, and equipment thereon for the purpose of completing the Work and Services included under the contract and employ by contract or otherwise any person or persons to finish the Work and Services and provide the supplies and materials therefore, without termination of the continuing full force and effect of the contract.

If the contract is terminated for default, the Contractor shall be liable for damages for delay as provided by paragraph 3.08. H. (Delay Damages), and for the excess cost of completion, and all costs and expenses incurred by the Agency in completing the Work and Services or arranging for completion of the Work and Services, including, but not limited to, costs of assessing the Work and Services to be done, costs associated with advertising, soliciting, or negotiating for bids or proposals for completion, and other re-solicitation costs. Following termination, the Contractor is not entitled to receive any further balance of the amount to be paid under the contract until the Work and Services are fully finished and accepted, at which time, if the unpaid balance exceeds the amount due the Agency and any amounts due to persons for whose benefit the Agency has withheld funds, such excess shall be paid by the Agency to the Contractor. If the damages, costs, and expenses due the Agency exceed the unpaid balance, the Contractor shall pay the difference.

If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause,

or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with paragraph 3.11. D. (Convenience termination).

- C. Rights or Remedies: After the Contractor's services have been terminated by the Agency, the termination will not affect any rights or remedies of the Agency against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the Agency will not release the Contractor from liability.
- D. Convenience Termination: The performance of the Work and Services may be terminated by the Agency in accordance with this section in whole or in part, whenever, for any reason the Project Director shall determine that such termination is in the best interest of the Agency. Any such termination shall be effected by delivery to the Contractor of a "Notice of Termination," specifying termination is for the convenience of the Agency, the extent to which performance of Work and Services is terminated, and the date upon which such termination becomes effective. Immediately upon receipt of a "Notice of Termination," and except as otherwise directed by the Project Director, the Contractor shall:
- i. Stop Work and Services on the date and to the extent specified in the "Notice of Termination";
 - ii. Place no further orders or subcontracts for supplies, materials, tools, and equipment except as may be necessary for completion of such portion of the Work and Services that is not terminated;
 - iii. Terminate all orders and subcontracts to the extent that they relate to the performance of Work and Services terminated by the "Notice of Termination";
 - iv. With the written approval of the Project Director, to the extent the Project Director may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the contract;
 - v. Submit to the Project Director a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Project Director;
 - vi. Transfer to the Project Director the completed or partially completed Drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Agency;
 - vii. Take such action as may be necessary, or as the Project Director may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Agency has or may acquire any interest.

When the Agency orders termination of the Work and Services effective on a certain date, all Work and Services in place as of that date will be paid for in accordance with sec. 3.10, (Payments to Contractor and Completion). Supplies, materials, tools, equipment, and all other items required for completion and on hand but not incorporated in the Work and Services will be paid for at invoice cost plus 15 percent (15%), with supplies, materials, tools, equipment, and all other items becoming the property of the Agency. Supplies, materials, tools, equipment on order shall

be cancelled, and the Agency shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The Contractor shall be paid 10 percent (10%) of the cost, freight not included, of supplies, materials, tools, and equipment cancelled, and direct expenses only for Contractor chartered freight transport which cannot be cancelled without charges, to the extent that the Contractor can establish them. The extra costs due to cancellation of insurance, and that part of job start-up and phase-out costs not amortized by the amount of Work and Services accomplished, shall be paid by the Agency. Charges for loss of profit or consequential damages are not recoverable except as provided above.

A termination claim shall be submitted promptly, but in no event later than ninety (90) days from the effective date of termination, unless one or more extensions in writing are granted by the Project Director upon request of the Contractor made in writing within the ninety (90) day period. Upon failure of the Contractor to submit a termination claim within the time allowed, the Project Director may determine, on the basis of information available, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

The Contractor and the Project Director may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work and Services pursuant to this sec. 3.11 (Suspension of Work and Services, Default and Termination). The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. In the event of the failure of the Contractor and the Project Director to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of the Work and Services, the Project Director shall determine, on the basis of information available to the Project Director, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

- i. All costs and expenses reimbursable in accordance with the contract not previously paid to the Contractor for the performance of Work and Services prior to the effective date of the "Notice of Termination";
- ii. So far as not included under "i" of this paragraph 3.11. D. (Convenience Termination), the cost of settling and paying claims arising out of the termination of the Work and Services under subcontracts or orders which are properly chargeable to the terminated portions of the contract;
- iii. The reasonable costs of settlement with respect to a terminated portion of the contract, to the extent that these costs had not been covered under other payment provisions of the contract.

In arriving at the amount due the Contractor under this paragraph 3.11. D. (Convenience Termination), there shall be deducted:

- i. All previous payments made to the Contractor for the performance of Work and Services under the contract prior to termination;
- ii. Any claim the Agency may have against the Contractor;

- iii. The agreed price for, or the proceeds of sale of, any supplies, materials, tools, and equipment, or other things acquired by the Contractor or sold pursuant to the provisions of this paragraph 3.11. D. (Convenience Termination) and not otherwise recovered by or credited to the Agency; and
- iv. All progress payments made to the Contractor under the provisions of this paragraph 3.11. D. (Convenience Termination).

Where the Work and Services has been terminated by the Agency said termination shall not affect or terminate any of the rights of the Agency against the Contractor then existing or which may thereafter accrue because of default. Any retention or payment of monies by the Agency due to the Contractor under the terms of the contract shall not release the Contractor from liability. Unless otherwise provided for in the contract documents or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the contract, shall preserve and make available to the Agency at all reasonable times at the office of the Contractor, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under the contract and relating to the Work and Services terminated hereunder.

3.12 CLAIMS AND DISPUTES

The Contractor shall notify the Project Director as soon as the Contractor becomes aware of any act or occurrence that may form the basis of a claim for additional compensation, an extension of Contract time, or any dispute regarding the Contract. The Project Director has no obligation to investigate any fact or occurrence that might form the basis of a claim or to provide any additional compensation or extension of Contract time unless the Contractor notifies the Project Director in a timely manner of all facts the Contractor believes form the basis for the claim.

If the claim or dispute is not resolved by agreement within seven (7) days after the date the Project Director is notified by the Contractor, the Contractor shall within the next fourteen (14) days submit an Intent to Claim in writing to the Project Director if the Contractor chooses to pursue the claim.

If the Contractor believes additional compensation or an extension of time is warranted, the Contractor shall immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential claim, including, but not limited to, actual costs incurred, and shall give the Project Director access to any such records and furnish the Project Director copies, if requested. Equipment costs must be based on the Contractor's internal rates for ownership, depreciation, and operating expenses and not on published rental rates.

If the Contractor has submitted an Intent to Claim and wants to pursue the claim further, the Contractor shall submit a written full claim to the Project Director within ninety (90) days after the date the Contractor became aware of the basis of the claim or should have known of the basis of the claim, whichever is earlier. The Project Director will issue written acknowledgement of the receipt of the full claim.

The Contractor waives any right to a claim if the Project Director was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs, or if an Intent to Claim or a full claim was not filed on the date required.

A. The written full claim must include all of the following:

- 1. The act, event, or condition giving rise to the claim;

2. The Contract provisions that apply to the claim and that provide for the requested relief;
3. The item or items of Contract work affected and how they were affected;
4. The specific relief requested, including, but not limited to, Contract time if applicable, and the basis upon which it was calculated;
5. Revised progress schedules; and
6. A certification signed by the Contractor that the claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment that the Contractor believes is due.

B. To be considered, the written full claim must show:

1. That the Contractor suffered damages or delay;
2. The damages or delay were caused by the act, event, or condition listed in the claim; and
3. That the Contract entitled the Contractor to relief due to the act, event, or condition specified in the Claim.

The Agency may request the Contractor to provide additional information relating to the full claim at any time before issuing a decision. The Contractor shall provide the Agency with the requested additional information within thirty (30) days of receiving a request. Failure to furnish the additional information may be regarded as a waiver of the claim.

The Project Director will issue a decision within ninety (90) days after receipt of all information relating to the claim. The Project Director's decision is final and conclusive unless the Contractor files a claim under sec. 350 (Contract Controversies) of the Legislative Procurement Procedures.

SECTION FOUR – ITB AND CONTRACT FORMS

4.01 ITB BID SUBMISSION FORM

ITB Number: 686
ITB Title and Description: Carpet Installation and Removal at the Alaska State Capitol

BIDDER

Company Name: _____
Address: _____ City, State, Zip Code: _____
Telephone No.: _____ Email address: _____
Alaska Business License No.: _____ Alaska Entity No.: _____
Alaska Bidder (circle one)? Yes / No

BID FOR THE WORK AND SERVICES OF ITB 686

The Bidder hereby provides the price(s) listed below in accordance with the ITB as the Total Bid for the Work and Services listed in ITB 686. The Bid price provided shall include all costs associated with administration, travel, shipping, supplies, materials (except new carpet), tools, equipment, equipment rentals, repairs, personnel, labor, permits, per-diem, disposal fees, and all other necessary expenses to complete the Work and Services as required by this ITB. Bidder must submit a Bid price on all seven (7) lines of this Bid Submission Form to be considered responsive to the ITB and eligible for Contract Award.

Prices of Work and Services listed in this ITB:

1. Total Flat Rate Price for Senate and House Chambers: \$ _____ +
2. Total Flat Rate Price for Senate Finance Room and Offices: \$ _____ +
3. Total Flat Rate Price for House Finance Room and Offices: \$ _____ +
4. Total Flat Rate Price for 2nd Floor Hallway: \$ _____ +
5. Hourly Rate for Additional Subfloor Repairs Beyond Standard Preparation and Leveling Described in this ITB: \$ _____ per hr. times (X) 100 hrs. \$ _____ =
6. Total Proposed Contract Price for ITB 686: \$ _____ (Lines 1. + 2. + 3. + 4. + 5. = Line 6 to be used for bid evaluation purposes and contract)

OPTIONAL ADD-ON WORK AND SERVICES

7. Optional add-on Work to dispose of all carpet removed and unusable carpet scraps from newly installed carpet: \$ _____ The Agency will determine at time of award if the Agency proceeds with this optional add-on Work and Services for the Contractor to complete during the project.
--

By signature on this Bid Form, Bidders 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 ITB; (f) a condition that the Bid submitted was independently arrived at, without collusion, under penalty of perjury; (g) that the offers will remain open and valid for at least 120 days from date of submission of the bid to Agency; and (h) that programs, services, and activities provided to the general public under the resulting contract will conform to the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government. If a Bidder fails to comply with (a) through (h) of this paragraph, the Agency reserves the right to disregard the Bid.

AUTHORIZED SIGNATURE: _____
PRINTED NAME: _____ **DATE:** _____
TITLE: _____

4.02 BIDDER QUESTIONNAIRE (continued)

2. What percent of the total value of this contract do you intend to subcontract? _____

3. Do you propose to purchase any equipment for use on this project? If yes, Yes No
describe type, quantity, and approximate cost: _____

4. Do you propose to rent any equipment for this work?

If yes, describe type and quantity : _____

5. Is your Bid based on firm offers for all materials and supplies necessary for this project?

If No, please explain:

C. ON-SITE PROJECT SUPERVISOR / LEAD

1. Please provide the name, email address, and contact telephone number of the on-site Project Supervisor.

Name: _____

Email Address: _____

Contact Phone: _____

I hereby certify that the above statements are true and complete.

Company Name _____

Signature _____ Date _____

Name and Title of Person Signing _____

4.03 SUBCONTRACTOR LIST

**STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
SUBCONTRACTOR LIST**
(First tier subcontractors only)

The apparent low bidder shall complete this form and submit it so as to be received by the Contracting Officer prior to the close of business on the fifth working day after receipt of a written notice from the Agency.

Failure to submit this form with all required information by the due date may result in the bidder being declared nonresponsive and may result in the forfeiture of the Bid Security.

Scope of work must be clearly defined. If an item of work is to be performed by more than one subcontractor, indicate the portion or percent of work to be done by each.

Check as applicable: All work on the below-referenced project will be accomplished without subcontracts greater than 1/2 of 1% of the contract amount.
or
 Subcontractor List is as follows:

FIRM NAME, ADDRESS, PHONE No.	AK BUSINESS LICENSE No. & CONTRACTOR'S REGISTRATION No.	SCOPE OF WORK TO BE PERFORMED

CONTINUE SUBCONTRACTOR INFORMATION ON ADDITIONAL SHEETS AS NECESSARY

I hereby certify that the above listed licenses and registrations were valid at the time bids or proposals were received for this project.

_____ (authorized signature)

_____ DATE

_____ CONTRACTOR

_____ PROJECT NAME

_____ PROJECT NUMBER

4.04 BID BOND

<p>STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY</p> <p>BID BOND (See Instructions on following page)</p>				DATE BOND EXECUTED
PRINCIPAL (Legal name and business address)		TYPE OF ORGANIZATION <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> LIMITED PARTNERSHIP <input type="checkbox"/> LIMITED LIABILITY CO. <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> LIMITED LIABILITY PARTNERSHIP <input type="checkbox"/> OTHER _____		
		STATE OF INCORPORATION OR ORGANIZATION		
SURETIES (Name and business address)				
A.	B.	C.		
PENAL SUM OF BOND			DATE OF BID	
We, the PRINCIPAL and SURETY above named, are held and firmly bound to the Agency (Legislative Affairs Agency), in the penal sum stated above, for the payment of the penal sum; we bind ourselves and our legal representatives and successors, jointly and severally, by this instrument.				
THE CONDITION OF THE PRECEDING OBLIGATION is that the Principal has submitted the accompanying bid in writing, date as shown above, on Project _____				
in accordance with contract documents filed in the office of the Agency's Contracting Officer, and under the Invitation To Bid for the project, and is required to furnish a bond in the amount stated above.				
If the Principal's bid is accepted and the Principal is offered the proposed contract for award, and if Principal fails to enter into the contract, then the obligation to the Agency created by this bond shall be in full force and effect.				
If the Principal enters into the contract, then the foregoing obligation is null and void.				
PRINCIPAL				
Signature(s)	1.	2.	3.	Seal
Name(s) & Titles (Typed)	1.	2.	3.	
Bid Bond continued on following page				

BID BOND (continued)

SURETIES				
Surety A	Name		State of Organization	Liability Limit \$
	Signature(s)	1.	2.	Seal
	Titles (Typed)	1.	2.	
Surety B	Name		State of Organization	Liability Limit \$
	Signature(s)	1.	2.	Seal
	Titles (Typed)	1.	2.	
Surety C	Name		State of Organization	Liability Limit \$
	Signature(s)	1.	2.	Seal
	Titles (Typed)	1.	2.	

BID BOND INSTRUCTIONS

1. This form shall be used whenever a Bid bond is submitted.
2. Insert the full legal name and business address of the Principal in the space designated. If the Principal is a partnership, limited partnership, limited liability partnership, or joint venture, the names of all partners or principal parties must be included (e.g., "Smith Construction, Inc. and Jones Contracting Inc., DBA Smith/Jones Builders, a joint venture"). If the Principal is a corporation or a limited liability company, the name of the state in which incorporated or organized shall be inserted in the space provided.
3. Insert the full legal name and business address of the Surety in the space designated. The Surety on the bond may be any person, except an individual, authorized to do business in Alaska as an insurer under AS 21.09. Individual sureties will not be accepted.
4. The penal amount of the bond may be shown either as an amount (in words and figures) or as a percent of the contract Bid price (a not-to-exceed amount may be included).
5. The scheduled Bid opening date shall be entered in the space marked Date of Bid.
6. The bond shall be executed by authorized representatives of the Principal and Surety. Corporations executing the bond shall also affix their corporate seal.
7. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a general partner of the partnership, a member of the joint venture, an officer of the corporation, or a member or manager of the limited liability company, involved.
8. The state of organization and the limits of liability of each surety shall be indicated in the spaces provided.
9. The date that bond is executed must not be later than the Bid opening date.

4.05 BIDDERS CHECKLIST

Bidders may use boxes at left to check off items when completed.

If a Bidder fails to submit the following items in its Bid, the Agency may consider the Bid non-responsive.

This checklist is intended as a reminder of certain important items and is not intended to be a complete list of what must be included in the Bid.



TO INCLUDE:

- Completed and signed **Bid Submission Form** (sec 4.01)
- Completed and signed **Bidders Questionnaire Form** (sec 4.02)
- Completed and signed **Subcontractor List Form** (sec 4.03), if applicable
- Completed and signed copy of each **Amendment** issued by the Agency