

**STATE OF ALASKA
invitation to bid (ITB)**

**TITLE OF ITB**

ITB **NUMBER**

Issued DATE

BRIEF HIGH-LEVEL SUMMARY OF THE ITB PURPOSE.

**IMPORTANT NOTICE:** If you received this solicitation from the State of Alaska’s “Online Public Notice” web site, you must register with the procurement officer listed below if you desire to receive notification of subsequent amendments to the solicitation.

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

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

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

|  |  |
| --- | --- |
| DEPARTMENT OF NAME |  |
| DIVISION OF NAME | COMPANY SUBMITTING BID |
|  |  |
|  | AUTHORIZED SIGNATURE |
| PROCUREMENT OFFICER: |  |
| YOUR NAME | PRINTED NAME |
| PHONE: (907) 555-5555 |  |
| EMAIL: YOUR.EMAIL@alaska.gov | DATE |

**TABLE OF CONTENTS**

[Section 1. INTRODUCTION & INSTRUCTIONS 4](#_Toc159399540)

[Sec. 1.01 purpose of the itb 4](#_Toc159399541)

[Sec. 1.02 Budget 4](#_Toc159399542)

[Sec. 1.03 deadline for receipt of bids 4](#_Toc159399543)

[Sec. 1.04 prior experience 4](#_Toc159399544)

[Sec. 1.05 Required review 4](#_Toc159399545)

[Sec. 1.06 questions prior to deadline for receipt of bids 4](#_Toc159399546)

[Sec. 1.07 site inspection 5](#_Toc159399547)

[Sec. 1.08 return instructions 5](#_Toc159399548)

[Sec. 1.09 assistance to bidders with a disability 6](#_Toc159399549)

[Sec. 1.10 amendments to bids 6](#_Toc159399550)

[Sec. 1.11 amendments to the itb 6](#_Toc159399551)

[Sec. 1.12 itb schedule 6](#_Toc159399552)

[Sec. 1.13 pre-bid CONFERENCE/TELECONFERENCE 6](#_Toc159399553)

[Sec. 1.14 alternate bids 7](#_Toc159399554)

[Sec. 1.15 supporting information 7](#_Toc159399555)

[Sec. 1.16 firm, unqualified, and unconditional offer 7](#_Toc159399556)

[Section 2. SCOPE OF WORK AND contract information 8](#_Toc159399557)

[Sec. 2.01 scope of work 8](#_Toc159399558)

[Sec. 2.02 contract term 8](#_Toc159399559)

[Sec. 2.03 CONTRACT TYPE 8](#_Toc159399560)

[Sec. 2.04 payment for state purchases 8](#_Toc159399561)

[Sec. 2.05 prompt payment for state purchases 8](#_Toc159399562)

[Sec. 2.06 contract administration 9](#_Toc159399563)

[Sec. 2.07 contract price adjustments 9](#_Toc159399564)

[Sec. 2.08 contract performance location 10](#_Toc159399565)

[Sec. 2.09 third-party financing agreements not allowed 10](#_Toc159399566)

[Sec. 2.10 subcontractors 10](#_Toc159399567)

[Sec. 2.11 joint ventures 11](#_Toc159399568)

[Sec. 2.12 right to inspect place of business 11](#_Toc159399569)

[Sec. 2.13 f.o.b. point 11](#_Toc159399570)

[Sec. 2.14 inspection & modification - reimbursement for unacceptable deliverables 11](#_Toc159399571)

[Sec. 2.15 equipment inspection 12](#_Toc159399572)

[Sec. 2.16 new equipment 12](#_Toc159399573)

[Sec. 2.17 remanufactured/reconditioned equipment 12](#_Toc159399574)

[Sec. 2.18 lemon clause 12](#_Toc159399575)

[Sec. 2.19 discontinued items 13](#_Toc159399576)

[Sec. 2.20 liquidated damages 13](#_Toc159399577)

[Sec. 2.21 shipping damage 13](#_Toc159399578)

[Sec. 2.22 contract changes – unanticipated amendments 13](#_Toc159399579)

[Sec. 2.23 continuing obligation of contractor 13](#_Toc159399580)

[Sec. 2.24 billing instructions 13](#_Toc159399581)

[Sec. 2.25 estimated quantities 14](#_Toc159399582)

[Sec. 2.26 warranty 14](#_Toc159399583)

[Sec. 2.27 nondisclosure and confidentiality 14](#_Toc159399584)

[Sec. 2.28 indemnification 15](#_Toc159399585)

[Sec. 2.29 insurance 16](#_Toc159399586)

[Section 3. BID FORMAT AND CONTENT 17](#_Toc159399587)

[Sec. 3.01 bid forms 17](#_Toc159399588)

[Sec. 3.02 bid bond – performance bond – surety deposit 17](#_Toc159399589)

[Sec. 3.03 prices 18](#_Toc159399590)

[Section 4. evaluation and contractor selection 19](#_Toc159399591)

[Sec. 4.01 evaluation of bids 19](#_Toc159399592)

[Sec. 4.02 application of preferences 19](#_Toc159399593)

[Sec. 4.03 alaska bidder preference 19](#_Toc159399594)

[Sec. 4.04 alaska veteran preference 20](#_Toc159399595)

[Sec. 4.05 use of local forest products 20](#_Toc159399596)

[Sec. 4.06 local agricultural and fisheries product preference 20](#_Toc159399597)

[Sec. 4.07 alaska product preference 20](#_Toc159399598)

[Sec. 4.08 employment program preference 21](#_Toc159399599)

[Sec. 4.09 alaskans with disabilities preference 22](#_Toc159399600)

[Sec. 4.10 preference qualification letter 22](#_Toc159399601)

[Sec. 4.11 extension of prices 22](#_Toc159399602)

[Sec. 4.12 method of award 22](#_Toc159399603)

[Sec. 4.13 contractor selection process 23](#_Toc159399604)

[Sec. 4.14 notice of intent to award 23](#_Toc159399605)

[Section 5. GENERAL PROCESS and legal INFORMATION 24](#_Toc159399606)

[Sec. 5.01 informal debriefing 24](#_Toc159399607)

[Sec. 5.02 alaska business license and other required licenses 24](#_Toc159399608)

[Sec. 5.03 authority 24](#_Toc159399609)

[Sec. 5.04 compliance 25](#_Toc159399610)

[Sec. 5.05 suitable materials, etc. 25](#_Toc159399611)

[Sec. 5.06 specifications 25](#_Toc159399612)

[Sec. 5.07 brand specific 25](#_Toc159399613)

[Sec. 5.08 item upgrades 25](#_Toc159399614)

[Sec. 5.09 workmanship and materials 25](#_Toc159399615)

[Sec. 5.10 contractor site inspection 25](#_Toc159399616)

[Sec. 5.11 order documents 26](#_Toc159399617)

[Sec. 5.12 human trafficking 26](#_Toc159399618)

[Sec. 5.13 right of rejection 26](#_Toc159399619)

[Sec. 5.14 state not responsible for preparation costs 27](#_Toc159399620)

[Sec. 5.15 disclosure of bid contents 27](#_Toc159399621)

[Sec. 5.16 assignments 27](#_Toc159399622)

[Sec. 5.17 force majeure (impossibility to perform) 27](#_Toc159399623)

[Sec. 5.18 default 27](#_Toc159399624)

[Sec. 5.19 disputes 28](#_Toc159399625)

[Sec. 5.20 severability 28](#_Toc159399626)

[Sec. 5.21 contract cancellation 28](#_Toc159399627)

[Sec. 5.22 governing law; forum selection 28](#_Toc159399628)

[Sec. 5.23 qualified bidders 28](#_Toc159399629)

[Sec. 5.24 federally imposed tariffs 28](#_Toc159399630)

[Sec. 5.25 protest 29](#_Toc159399631)

[Section 6. attachments 31](#_Toc159399632)

[Sec. 6.01 Attachments 31](#_Toc159399633)

# INTRODUCTION & INSTRUCTIONS

## purpose of the itb

The Department of NAME, Division of NAME, is soliciting bids for INSERT A DESCRIPTION OF THE PURPOSE OF THE itb CONSISTENT WITH COVER PAGE.

## Budget

Department of NAME, Division of NAME, estimates a budget of between LOW RANGE and HIGH RANGEdollars for this contract. Bids priced at more than DOLLARS will be considered non-responsive.

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

OR

Approval or continuation of a contract resulting from this ITB is contingent upon legislative appropriation.

## deadline for receipt of bids

Bids must be received no later than **TIME** Alaska Time on **DATE**, at which time they will be publicly opened. Late bids or amendments will be considered non-responsive and will not be opened or accepted for evaluation.

## prior experience

No specific minimums have been set for this ITB.

OR

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

* **MINIMUM REQUIREMENT 1.**
* **MINIMUM REQUIREMENT 2.**
* **MINIMUM REQUIREMENT 3.**

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

## Required review

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

## questions prior to deadline for receipt of bids

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing. Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the ITB. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the ITB. The procurement officer will make that decision.

## site inspection

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

This contact person is only empowered to allow potential bidders to view the work site. The contact person cannot and will not answer potential bidder questions regarding the work to be performed under this ITB or the terms, conditions, and specifications of this ITB. Any questions potential bidders have must be directed to the procurement officer as required in Section 1.05.

## return instructions

If you are submitting a response through IRIS Vendor Self-Service (VSS), you may ignore the following return instructions.

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

Department of NAMEDivision of NAMEAttention: PROCUREMENT OFFICER NAMEInvitation to Bid (ITB) Number: NUMBER

ITB Title: NAME

MAILING ADDRESS
CITY, AK, ZIP CODE

If using U.S. mail, please use the following address:

MAILING ADDRESS
CITY, AK, ZIP CODE

If using a delivery service, please use the following address:

MAILING ADDRESS
CITY, AK, ZIP CODE

If submitting your bid via email, the entire bid may be emailed to **EMAIL ADDRESS** and must contain the ITB number in the subject line of the email. The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

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

It is the bidder’s responsibility to contact the issuing agency at PHONE NUMBER to confirm that the entire bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

## assistance to bidders with a disability

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

## amendments to bids

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

## amendments to the itb

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

## itb schedule

The ITB schedule below represents the State of Alaska’s best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of bids, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Standard Time (AST).

|  |  |  |
| --- | --- | --- |
| **ACTIVITY** | **TIME** | **DATE** |
| Issue Date / ITB Released  |  |  |
| Pre-Bid Conference |  |  |
| Deadline for Receipt of Bids / Bid Due Date |  |  |
| Bid Evaluations Complete |  |  |
| Notice of Intent to Award  |  |  |
| Contract Issued |  |  |

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

## pre-bid **CONFERENCE/TELECONFERENCE**

A pre-bid conference/teleconference will be held at TIME, Alaska Time, on DATE (if holding a teleconference, the following information may be deleted) in the PLACE conference room on the NUMBER floor of the NAME building in CITY, Alaska. The purpose of the conference/teleconference is to discuss the work to be performed with prospective bidders and allow them to ask questions concerning the ITB. Bidders should read the ITB in full and come to the meeting prepared to discuss any questions or concerns.

Bidders with a disability needing accommodation should contact the procurement officer prior to the date set for the pre-bid conference so that reasonable accommodation can be made. Participants may dial into the meeting using the following number:

number, access code, etc.

## alternate bids

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

## supporting information

Provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the state reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products or services offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

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

## firm, unqualified, and unconditional offer

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

# SCOPE OF WORK AND contract information

## scope of work

**PROVIDE SCOPE OF WORK AND SPECIFICATIONS HERE.**

## contract term

The length of the contract will be from the date of award, approximately **DATE**, for approximately **NUMBER/DAYS/MONTHS/YEARS** until completion.

**OR**

The length of the contract will be from the date of award, approximately **DATE**, through **DATE**, with the option to renew for **NUMBER** additional **LENGTH** terms under the same terms and conditions as the original contract. Renewals will be exercised at the sole discretion of the state.

Unless otherwise provided in this ITB, the State and the successful bidder/contractor agree: (1) that any extension of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) the procurement officer will provide notice to the contractor of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

## CONTRACT TYPE

This contract is an ENTER NAME OF TYPE contract.

## payment for state purchases

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

Payment for agreements under $500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

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

## prompt payment for state purchases

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

## contract administration

The administration of this contract is the responsibility of the procurement officer or person appointed by the Department of **NAME**, Division of **NAME**.

## contract price adjustments

A contract resulting from this ITB will include the following price adjustment clause:

**Consumer Price Index (CPI):** Contract prices will remain firm through **DATE**.

The Contractor or State may request price adjustments, no sooner than 12 months from the Contract execution date, and no more than once per contract year. Contractors must submit a request to the State at least thirty (30) days prior to the end of the current term. All Requests must be in writing and must be received 30 days prior to the Contract renewal date.

* + - 1. If the Contractor or State fail to request a CPI price adjustment 30 days prior to the Contract renewal date, the adjustment will be effective 30 days after the State or Contractor receives their written request.
			2. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor, Bureau of Labor and Statistics, Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Urban Alaska.
			3. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year reported HALF1 (January through June 2023) (depends on the timing, may be HALF2 for July-December); and each HALF1 (or HALF2) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed. All price adjustments must be approved by the Procurement Officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a Contract Amendment issued by the Procurement Officer.
			4. Approval for all price increases is dependent upon full compliance with the terms of the Contract including reporting requirements.

**OR**

**Producer Price Index (PPI):** Contract prices will remain firm through **DATE**.

The Contractor or State may request price adjustments, in writing, 30 days prior to the contract renewal date. Requests must be in writing and must be received thirty (30) days prior to the contract renewal date. If the contractor or state fails to request a PPI price adjustment 30 days prior to the contract renewal date, the adjustment will be effective 30 days after the written request is received.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Producer Price Index (PPI), Commodity Group \_\_\_\_ Item Code \_\_\_\_ for \_\_\_\_\_\_\_\_\_, issued for \_\_\_\_\_\_\_\_\_ of each contract term. The percentage difference between the PPI issued for \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, and the PPI issued for each \_\_\_\_\_\_\_\_\_ of the year of adjustment will determine the maximum allowable adjustment of original contract prices. No retroactive contract price adjustments will be allowed. Only final PPI data will be used to adjust contract pricing.

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

## contract performance location

The location(s) the work is to be performed, completed, and managed IS / AREat LOCATION (S).

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

The contractor should include in their bid price: transportation, lodging, and per diem costs sufficient to pay for NUMBER person(s) to make NUMBER trip(s) to LOCATION. Travel to other locations will not be required.

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

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

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

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

## third-party financing agreements not allowed

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

## subcontractors

Subcontractors will not be allowed.

**OR**

Subcontractors may be used to perform work under this contract. If a bidder intends to use subcontractors, the bidder must identify in the bids the names of the subcontractors and the portions of the work the subcontractors will perform.

Subcontractor experience **SHALL / SHALL NOT** be considered in determining whether the bidder meets the requirements set forth in **SEC. 2.01 PRIOR EXPERIENCE**.

If a bid with subcontractors is selected, the bidder must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

* + complete name of the subcontractor;
	+ complete address of the subcontractor;
	+ type of work the subcontractor will be performing;
	+ percentage of work the subcontractor will be providing;
	+ evidence that the subcontractor holds a valid Alaska business license; and
	+ a written statement signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

A bidder's failure to provide this information, within the time set, may cause the state to consider their bid non-responsive and reject it.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

## joint ventures

Joint ventures will not be allowed.

**OR**

Joint ventures are acceptable. 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 and payment.

## right to inspect place of business

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

## f.o.b. point

The F.O.B. point for all items purchased under this contract is the final destination anywhere within the State of Alaska. Ownership of and title to the ordered items remains with the contractor until the items have been delivered to their final destination and are accepted by the state.

The cost of shipping and delivery within LOCATION is to be included in the bid price. There will be no additional charge for shipping and delivery within LOCATION.

OR

The cost of shipping and delivery for orders beyond the limits of LOCATION will be handled as follows. The contractor will prepay the shipping and delivery charges to any destination named by the state in its order. The contractor will charge-back those shipping and delivery charges to the state as a separate item on the state's invoice. These charges must be billed as a pass-through charge.

## inspection & modification - reimbursement for unacceptable deliverables

The contractor is responsible for providing all products or the completion of all work set out in the contract. All products or work is subject to inspection, evaluation, and approval by the state. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The state may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract’s intent. The contractor will not unreasonably withhold such changes.

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

## equipment inspection

Equipment offered (including for lease) may be subject to inspection and approval by the state prior to the award of the ITB. The equipment and attachments must be in good repair and capable of performing the work for which they were designed.

## new equipment

Equipment offered in response to this ITB must be new equipment. New equipment means equipment that is currently in production by the manufacturer and is still the latest model, edition or version generally offered. The equipment must be warranted as new by the manufacturer and may not have been used for any purpose, other than display (not demonstration), prior to its sale to the state. The state will not accept remanufactured, used, or reconditioned equipment. It is the contractor's responsibility to ensure that each piece of equipment delivered to the state complies with this requirement. A contractor's failure to comply with this requirement will cause the state to seek remedies under breach of contract.

## remanufactured/reconditioned equipment

Remanufactured/reconditioned is acceptable provided it meets the requirements of this clause and the requirements of the rest of this ITB. Remanufactured/reconditioned equipment is defined as used equipment that has been remanufactured/reconditioned and restored to new condition. All remanufactured/reconditioned equipment must have the same warranty as new equipment and be certified as maintainable by its manufacturer. Bidders should attach a copy of this certification to their bid. A bidder's failure to provide the document(s) mentioned above, within the time required by the state, will cause the state to consider the bid non-responsive and reject the bid.

**OR**

Remanufactured/reconditioned is acceptable provided it meets the requirements of this clause and the requirements of the rest of this ITB. Remanufactured/reconditioned equipment is defined as used equipment that has been remanufactured/ reconditioned and restored to new condition. All remanufactured/reconditioned equipment must have the same warranty as new equipment.

## lemon clause

This clause applies to all equipment purchased through this contract. The application period is LENGTHfrom the date of purchase. This clause takes precedence over any other warranty or service maintenance clauses associated with this contract.

Any equipment that fails (except due to operator error) to operate according to the manufacturer's published performance specifications and/or is subject to recurring related problems must be replaced with the same make and model of new equipment at no cost to the state.

## discontinued items

In the event an item is discontinued by the manufacturer during the life of the contract, another item may be substituted, provided that the procurement officer makes a written determination that it is equal to or better than the discontinued item and provided that it is sold at the same price or less than the discontinued item.

## liquidated damages

The state will include liquidated damages in this contract to assure its timely completion. The amount of actual damages will be difficult to determine. For the purposes of this contract the state has set the rate of liquidated damages at DOLLARSperday. This amount is based on PROVIDE BACKGROUND INFORMATION ON HOW YOU ARRIVED AT THAT NUMBER***.*** If the contractor fails to DO SOMETHING, the state will begin to collect liquidated damages on DATE and will continue to collect them until SOMETHING ELSE HAPPENS.

## shipping damage

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

## contract changes – unanticipated amendments

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

The contractor will not commence additional work until the procurement officer has secured required state approvals necessary and issued a written contract amendment.

## continuing obligation of contractor

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

## billing instructions

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

Invoices must be billed to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order. The state will make payment after it receives the goods or services and the invoice. Questions concerning payment must be addressed to the ordering agency.

## estimated quantities

The quantities referenced in this ITB are estimated requirements and may vary more or less from the quantities actually purchased. The State does not guarantee any minimum or maximum purchase. Orders will be issued throughout the contract period on an as-needed basis.

**OR**

The estimated annual use quantities referenced in this ITB are only estimates and may vary more or less from the quantities actually purchased. The state will use the estimated annual use numbers for the evaluation and award of the ITB, but the state does not guarantee any minimum purchase. Orders will be issued throughout the contract period by various state agencies on an as-needed basis.

or

The quantities referenced in this ITB are an estimate of the of the state's initial purchase. The state expects to make this purchase approximately **DATE**. The state does not guarantee any minimum or maximum purchase.

## warranty

The contractor warrants every unit purchased against faulty materials and workmanship for a minimum period of at least **LENGTH**. If, during this period, faults develop with the unit or components of the unit, they will be repaired or replaced without any cost, including any transportation or freight cost, to the state. Bids, which include supplemental warranties, will be accepted, but supplemental warranties that conflict with or diminish the state's rights under this warranty clause will be considered null and void. The state is not responsible for identifying conflicting warranty conditions before issuing a contract award. After award of the contract:

1. if a conflict arises between the supplemental warranty and the warranty in this ITB, the warranty in the ITB will prevail; and
2. if the state's rights are diminished as a result of application of the supplemental warranty, the supplemental warranty will be considered null and void and the ITB warranty will prevail.

By signature on the face page of this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this warranty clause.

## nondisclosure and confidentiality

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

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

Additional information that the contractor shall hold as confidential during the performance of services under this contract include:

XXXXXXX

XXXXXXX

XXXXXXX

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure ( to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor’s receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

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

## indemnification

The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis.

“Contractor” and “contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the contracting agency’s selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor’s work.

## insurance

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

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

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

* Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the state.
* Commercial General Liability Insurance: covering all business premises and operations used by the contractor in the performance of services under this agreement with minimum coverage limits of $300,000 combined single limit per occurrence.
* Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of $300,000 combined single limit per occurrence.

# BID FORMAT AND CONTENT

## bid forms

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

### bidder's certification

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

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

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

### conflict of interest

Each bid shall include a statement indicating whether the company or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The procurement officer reserves the right to **consider a bid non-responsive and reject it** or cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the contract to be performed by the bidder.

## bid bond – performance bond – surety deposit

Bid Bond

Bidders must obtain a bid bond and submit it with the bid. The amount of the bid bond for this contract is DOLLARS***.*** If a bidder is selected to receive the contract and fails to negotiate or fails to deliver a fully executed contract after negotiation, the bid bond will be immediately forfeited to the state. The time limit for negotiation or delivery of a contract is 14-days from the date the bidder receives notice from the procurement officer. bids submitted without a bid bond will be rejected.

Performance Bond

Bidders must obtain a letter of commitment for a performance bond from a bonding company and submit it with the bid. The amount of the performance bond must be equal to the entire dollar value of a bidder's offer, for the full term of the contract. If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to obtain timely performance of the contract. The actual performance bond must be obtained from the bonding company and provided to the state within 30-days of the date of award of the contract. A bidder's failure to provide the performance bond, within the required time, will cause the state to reject the bid or cancel the contract.

Surety Deposit

In lieu of a performance bond, an irrevocable letter of credit, or cash, may be substituted. The amount of the surety deposit must be LIST DOLLAR AMOUNT OR PERCENTAGE OF bid PRICE***.*** Substitution of a surety deposit must be approved by the Commissioner of the Department of NAME prior to its submittal. A bidder's failure to provide the surety deposit, within the required time, will cause the state to reject the bid.

## prices

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

# evaluation and contractor selection

evaluation of bids

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

application of preferences

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

<https://oppm.doa.alaska.gov/policy-oversight/policy-resources/user-guide-matrixes/>

• Alaska Products Preference - AS 36.30.332

• Recycled Products Preference - AS 36.30.337

• Local Agriculture and Fisheries Products Preference - AS 36.15.050

• Employment Program Preference - AS 36.30.321(b)

• Alaskans with Disabilities Preference - AS 36.30.321(d)

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

alaska bidder preference

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

1. holds a current Alaska business license prior to the deadline for receipt of bids;
2. submits a bid for goods or services under the name appearing on the bidder’s current Alaska business license;
3. has maintained a place of business within the state staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid;
4. is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
5. if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

**Alaska Bidder Preference Certification Form**

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

alaska veteran preference

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

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

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

**Alaska Veteran Preference Certification**

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

use of local forest products

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

## local agricultural and fisheries product preference

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

## alaska product preference

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

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

Products are classified in one of three categories:

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

When the bids are evaluated, the preference percentage will be deducted from the product price. If a bidder fails to specify the brand being offered, no preference will be given. For more information on the Alaska Product Preference and to see the list of products currently on the Alaska Product Preference List, use the following web link:

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

**Brand Offered**

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

**Brand of Product Changes**

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

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

## employment program preference

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

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

## alaskans with disabilities preference

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

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

## preference qualification letter

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

## extension of prices

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

## method of award

Award will be made to the lowest responsive and responsible bidder. To be considered responsive, bidders must bid on all items.

**OR**

Award will be made as one lot to the lowest responsive and responsible bidder. To be considered responsive, bidders must bid on all items.

**OR**

Award will be made by line item to the lowest responsive and responsible bidder.

**OR**

Award will be made by lot to the lowest responsive and responsible bidder. There are **NUMBER** lots. To be considered responsive for a lot, bidders must bid on all items within that lot.

**OR**

All respondents to this ITB will be awarded a contract provided they meet the specifications, terms, and conditions of this ITB and provided they are determined responsive and responsible bidders.

(Note: if using this option, you must include a method of contractor selection comparable to Sec 4.13. See hidden notes posted below)

## contractor selection process

Once the contracts are established this selection process will be used. When the state needs to order the product or service, the lowest priced contractor for that location will be contacted first. If, for any reason, the lowest contractor is not available to perform the needed service, the state will contact the next lowest priced contractor for that location. This process will continue until a contractor who can perform the service is located. The location of the contractor initially contacted will be determined by the starting location of the call-out. For example, if a there was a need to transport a person from Anchorage to Fairbanks and then guard the person for two days in Fairbanks, the agency would contact Anchorage contractors, even though a substantial portion of the actual service would be performed in Fairbanks.

## notice of intent to award

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

# GENERAL PROCESS and legal INFORMATION

## informal debriefing

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

alaska business license and other required licenses

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

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

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

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

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

## authority

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

## compliance

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

## suitable materials, etc.

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

## specifications

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

## brand specific

Certain items may be designated brand specific. When an item is designated no substitutions for the brand and model specified will be allowed. In this ITB, Lot **NUMBER**, Item **NUMBER**, is to be the brand and model specified, no substitutions will be allowed.

## item upgrades

The state reserves the right to accept upgrades to models on the basic contract when the upgrades improve the way the equipment operates or improve the accuracy of the equipment. Such upgraded items must be at the same price as the items in the basic contract.

## workmanship and materials

All work must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the service, maintenance, and inspections. Service, maintenance, and inspections that are improperly done will be redone, by the contractor, at the contractor's risk and expense.

**OR**

All work must be performed in a thorough and workmanlike manner. Unless otherwise specified, press work and composition will be of a medium quality as indicated in the Franklin Catalog, producing a clean, clear, sharp impression. The contractor will be held responsible for the quality of the finished work. If any job is rejected because of error attributable to the contractor or authorized subcontractor, the state may, at its option, receive a no cost reprint, negotiate a lower price, or hold the contractor in default.

## contractor site inspection

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

## order documents

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

## human trafficking

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

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

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

## right of rejection

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

Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the procurement officer may determine the bid to be a non-responsive counteroffer and the bid may be rejected.

Minor informalities that:

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

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it is determined to be in the state’s best interest.

**A bid from a debarred or suspended bidder shall be rejected.**

## state not responsible for preparation costs

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

## disclosure of bid contents

All bid prices become public information at the bid opening. After the deadline for receipt of bids, all other bid material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All other bid information will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, bids will become public information.

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

## assignments

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer. Bids that are conditioned upon the state’s approval of an assignment will be rejected as non-responsive.

## force majeure (impossibility to perform)

The parties to a contract resulting from this ITB are not liable for the consequences of any failure to perform, or default in performing, any of its obligations under the contract, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party.

For the purposes of this ITB, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

## default

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

## disputes

If the contractor has a claim arising in connection with the contract that it cannot resolve with the state by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632.

## severability

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

## contract cancellation

1. The state reserves the right to cancel the contract at its convenience upon **NUMBER** calendar days written notice to the contractor. The state is only liable for payment in accordance with the payment provisions of this contract for supplies or services provide before the effective date termination.
2. By signature on their bid, the bidder certifies that they will not support or participate in a boycott of the State of Israel. Failure to comply with this requirement may cause the state to reject the bid as non-responsive or cancel the contract.

governing law; forum selection

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

## qualified bidders

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

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

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

## federally imposed tariffs

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

* **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.
* **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
	1. The tax or duty takes effect after the contract award date and isn’t otherwise addressed by the contract.
	2. The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
* **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e7c3de2c69ecf724736be4cfdf5433ce&term_occur=7&term_src=Title:48:Chapter:1:Subchapter:H:Part:52:Subpart:52.2:52.229-3), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
* **State’s Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
* **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

## protest

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

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

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

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

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

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

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

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

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

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

# attachments

## Attachments

**Attachments:**