



Alaska Railroad Corporation
327 W. Ship Creek Avenue, Anchorage, AK 99501
P.O. Box 107500, Anchorage, AK 99510-7500
Telephone 907.265.2481 Facsimile 907.265.2439

December 17, 2015

REQUEST FOR PROPOSALS

15-64-204431

The Alaska Railroad Corporation (ARRC) is soliciting proposals from interested concerns for the following:

Inspection, Maintenance and Repair Services Wheel Shop Equipment

Sealed proposals in one (1) original and two (2) copies will be received until 3:00 p.m. Alaska time, January 15, 2016 at:

Alaska Railroad Corporation
Supply Management Department
327 W. Ship Creek Avenue, 2nd Floor
Anchorage, AK 99501

The envelope used for the submittal of your proposal shall be plainly marked with the following information:

1. Proposer's name
2. RFP No. 15-64-204431
3. Date and time scheduled for the receipt of proposals
4. Sealed Proposal: Inspection, Maintenance & Repair Services

This Request for Proposals is not to be construed as a commitment of any kind nor does it commit the ARRC to pay for any cost incurred in the submission of an offer or for any other cost incurred prior to the execution of a formal contract. Any contract resulting from this solicitation shall incorporate the Standard Terms and Conditions contained in this solicitation package.

Please direct all responses and/or questions concerning this Request for Proposals to Robert Gonzalez, Alaska Railroad Corporation, Supply Management, 327 Ship Creek Avenue, Anchorage, AK 99501, telephone number (907) 265-2481, fax number (907) 265-2439, email gonzalezr@akrr.com.

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SECTION A

SCOPE OF WORK

The Alaska Railroad Corporation (ARRC) is soliciting proposals from interested concerns to perform O.E.M. inspections, maintenance, repairs and on-call services for the following ARRC owned equipment. All services shall comply with O.E.M. standards and specifications, contractor must be knowledgeable and familiar with the Association of American Railroads (AAR) rules, regulations, and certifications for fully certified AAR applicable railroad wheel and bearing shop overhaul and remanufacture facilities.

- a- Sellars wheel lathe with Comac upgrade-wheel profiling lathe
- b- CM&ES automatic bearing press
- c- Comac wheel boring mill
- d- Magnaflux machine
- e- Farrel combination wheel mounting and dismount press
- f- Comac upgraded Niles boring mill
- g- Stanray wheel truing machine-underfloor wheel truing mill
- h- Comac-Mateq ultrasonic testing machine
- i- Comac axle cleaning rotator
- j- Standard type dual head bearing puller

Any contract resulting from this solicitation will include but will not be limited to the following maintenance activities;

- a- Corrective maintenance
- b- Installation of equipment upgrades
- c- Preventive maintenance program development including all forms and instructions
- d- Extensive machinery and equipment inspections and audits to ensure the correct preventive maintenance work is being performed, including the replacement of equipment, parts and components proactively
- e- Electrical and mechanical design support
- f- Operator and maintenance personnel training
- g- Software upgrades installation and checkout.

Contractor will be required to examine the mechanical needs of the equipment, warranty concerns, implement/upgrade and keep current the preventative maintenance system. Contractor shall make bi-annual on-site inspections each year and if necessary, up to three inspections per year based on determined necessity and approval of the ARRC.

SECTION B

PROPOSAL INFORMATION, CONDITIONS & INSTRUCTIONS

1. Pre-Submission Proposal Inquires

Proposers shall promptly notify ARRC of any ambiguity, inconsistency, conflict, or error which they may discover upon examination of the solicitation documents. Verbal inquiries regarding this RFP are not permitted. All inquiries must be made in writing and received at ARRC's offices prior to January 8, 2016 and the written inquiries must be submitted as follows:

Robert González
Director, Supply Management
Alaska Railroad Corporation
327 W. Ship Creek Avenue, 2nd Floor
Anchorage, AK 99501
Fax 907-265-2439
Email: gonzalezr@akrr.com

ARRC will respond to all or part of the written inquiries received through the issuance of a written Addendum to the RFP, if in the opinion of ARRC, such information is deemed necessary to submit proposals or if the lack of it would be prejudicial to other prospective proposers. Oral and all other non-written responses, interpretations and clarifications shall not be legally effective or binding. Any Proposer who attempts to use or uses any means or method other than those set forth above to communicate with ARRC or any director, officer, employee or agent thereof, regarding this RFP shall be subject to disqualification.

2. Proposal Submission Deadline

Sealed proposals must be received by ARRC no later than 3:00 p.m., Alaska time, on January 15, 2016 at:

Alaska Railroad Corporation
Supply Management Department
327 W. Ship Creek Avenue, 2nd Floor
Anchorage, AK 99501

One (1) original and four (4) copies of each proposal must be submitted. The sealed envelope or package used in submitting a proposal shall be clearly marked with the following information:

1. Proposer's Name
2. RFP No. 15-64-204431
3. Date and Time Scheduled for Receipt of Proposals: 01/15/2016; 3:00pm
4. Sealed Proposal: Wheel Shop Equipment Inspection, Maintenance & Repairs

Proposals received after the time and date set forth above shall be rejected. All proposals submitted in response to this solicitation must be signed by an individual with the legal authority to submit the offer on behalf of the company. ARRC will post any Addenda to this solicitation on its website at www.alaskarailroad.com, select Suppliers, and then Solicitations. **It is the responsibility of prospective proposers to visit ARRC's website prior to submitting a proposal to ensure that they are aware of all Addenda issued relative to this solicitation.**

3. Proposal Open and Subject to Acceptance

All proposals shall remain open and subject to acceptance by ARRC for ninety (90) days after the deadline for proposal submission.

4. Proposal Opening

Proposals will be opened privately at ARRC's convenience on or after the proposal due date.

5. Reserved Rights

In addition to other rights in this RFP, ARRC reserves, holds and may exercise at its sole discretion, the following rights and options:

- (a) To supplement, amend, or otherwise modify or cancel this RFP with or without substitution of another RFP.
- (b) To issue additional or subsequent solicitations for proposals.
- (c) To conduct investigations of the Proposers and their proposals.
- (d) To clarify the information provided pursuant to this RFP.
- (e) To request additional evidence or documentation to support the information included in any proposal.
- (f) To reject any and all proposals, or parts thereof, and/or to waive any informality or informalities in any of the proposals or the proposal process for the RFP, if such rejection or waiver is deemed in the best interest of ARRC.
- (g) To award a contract or contracts resulting from this solicitation to the responsible Proposer whose proposal conforming to this solicitation will be most advantageous to ARRC.
- (h) To negotiate any rate/fee offered by a Proposer. ARRC shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Proposer does not accept ARRC's final offer, ARRC may, in its sole discretion, reject the proposal and start negotiations with the next highest ranked Proposer.
- (i) If an award is made and, prior to entering into a contract, subsequent information indicates that such award was not in the best interest of ARRC, ARRC may rescind the award without prior notice to proposers and either award to another proposer or reject all proposals or cancel the RFP.
- (k) To terminate the contractor at any point in the evaluation process or after award if the approved personnel become unavailable, are switched off project by the firm, or the qualifications are generally found to be inadequate. All personnel reassignments to and from the project will be approved by ARRC.

6. Proposal Costs

Each Proposer shall be solely responsible for all costs and expenses associated with the preparation and/or submission of its proposal, and ARRC shall have no responsibility or liability whatsoever for any such costs and expenses. Neither ARRC nor any of its directors, officers, employees or authorized agents shall be liable for any claims or damages resulting from the solicitation or collection of proposals. By submitting a proposal, Proposer expressly waives (i) any claim(s) for such costs and expenses, and (ii) any other related claims or damages.

7. Taxes

Pursuant to AS 42.40.910, ARRC is exempt from all forms of state or local sales, property and other taxes. Accordingly, any Proposer who submits a proposal shall not include any such tax in any of its proposal prices or in any calculation thereof.

8. Proposal Format

Interested firms shall submit one (1) original proposal and two (2) copies, containing a statement of qualifications and a concise narrative that fully addresses each evaluation criteria stated in Section C. Proposals shall have a maximum of thirty (30) pages, exclusive of resumes and exhibits. A signed cover letter of a maximum two (2) pages should introduce the proposed firm, summarize the main qualifications of the firm, and include any other information the Contractor deems will emphasize the Contractor's ability to successfully perform the services required and demonstrate why selection of Contractor would be advantageous to ARRC. A limited number of larger (11x17) sheets are acceptable for graphics or charts. The page limit excludes cover sheets, cover letter, table of contents, forms required by ARRC, resumes or other attachments required herein.

Important Instructions: To be considered responsive, Proposers must submit the Questionnaire in Section D. Pricing shall be submitted in a separate envelope labeled "Pricing" (no copies required).

9. Capacity to Perform

Any Proposer considered for award as a result of this solicitation may be required to make assurance to the Contract Administrator concerning the Proposer's capacity and capability to perform. Previous contracts of a like nature, financial solvency, and other information may be requested of the considered Proposer. Failure to provide assurances requested in a timely manner may be cause for rejection of the Proposal.

10. Costs

Other direct costs (ODC) on contracts incurred shall be billed at cost. Any travel and travel related expenses shall be billed at cost with coach airfare only, no first class or business class. Lodging and meal expenses must be reasonable. ARRC will not pay for alcohol, valet parking or other expenses it considers to be exorbitant.

11. Purchase Obligation

ARRC and responding firms expressly acknowledge and agree that ARRC has made no express or implied promises to expend any dollar amounts with respect to the services addressed by this RFP. By submitting a proposal in response to this RFP, each firm acknowledges and agrees that the provisions of this RFP, and/or any communication, statement, act or omission by representatives of ARRC (including consultants) in the selection process, shall not vest any right, privilege, or right of action in any Proposer.

12. Exceptions to Terms, Conditions and Specifications

Any contract resulting from this solicitation shall incorporate the General Terms and Conditions contained in this solicitation package. Each Proposer shall indicate all exceptions to terms, conditions, and specifications of this solicitation individually in its proposal. Exceptions received or placed after the proposal submission date will be considered as counter offers and as such will render the entire proposal non-responsive.

13. Public Information

All submitted proposals will be considered confidential until notice of intent to award is issued. After notice of intent to award is issued, all proposals will become public information.

14. Qualifications of Proposers

Proposers will be evaluated by ARRC based upon their experience in performing the services requested, financial stability, appropriate personnel, responsiveness, technical knowledge and general organization. ARRC reserves the right to take any actions it deems necessary to determine if Proposers have the ability to perform the services outlined in the Scope of Work in a satisfactory manner. Such actions will include an evaluation of the Proposer's qualifications and references prior to Contract Award. Proposers may be disqualified, and their Proposals rejected, for any reason deemed appropriate by ARRC including, but not limited to, the following:

- (a) Evidence of collusion between a Proposer and any other Proposer(s).
- (b) An unsatisfactory performance record on prior projects for ARRC, or any other organization.
- (c) The appearance of financial instability (in the opinion of ARRC) and/or evidence that Proposer may not be financially able to complete the work required by the Scope of Work in a satisfactory manner.
- (d) If Proposer has failed to complete one or more public contracts in the past.
- (e) If Proposer has been convicted of a crime arising from previous public contracts.
- (f) If Proposer is not authorized to perform work in the State of Alaska.

15. Contract Period

The ARRC anticipates awarding a contract for a two year period subject to acceptance by both parties. ARRC shall have the option to renew the contract for up to three (3) additional twelve (12) month periods by the mutual agreement of the parties.

16. Alaska Bidder's Preference

For the purposes of evaluating the price evaluation criteria, the proposed price of a Proposer who qualifies as an Alaska Bidder shall be reduced by 5%. The preference will be given to Proposers who:

- (a) hold a current Alaska business license;
- (b) submit a proposal for goods or services under the name on the Alaska business license;
- (c) have maintained a place of business within the state staffed by the Proposer, or an employee of the Proposer, for a period of six months immediately preceding the date of the proposal;
- (d) are incorporated or otherwise 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 32.05 or AS 32.11 and all partners are residents of the state; and
- (e) if a joint venture, are composed entirely of entities that qualify under (a)-(d) of this subsection.

Proposers seeking an Alaska Bidders Preference must include a statement certifying that the Proposer meets the above requirements and is eligible to receive the Alaska Bidder Preference. Copies of any relevant documentation should also be provided.

SECTION C

SELECTION PROCESS AND EVALUATION CRITERIA

The selection of a firm to perform the requested services will be made by an ARRC appointed committee which will evaluate the proposals in accordance with the evaluation criteria specified herein and establish a ranking. Proposals will be evaluated on the basis of advantages and disadvantages to ARRC using the criteria described in this Section. Please note, however, that a serious deficiency in any one criterion may be grounds for rejection and that the listing of pricing as an evaluation factor does not require ARRC to select the firm that submits the lowest price. ARRC shall have the right to obtain, from any and all sources, information concerning a Proposer, which is deemed pertinent to the RFP, and to consider such information in the evaluation of the Proposer's proposal.

ARRC reserves the right to select the top ranked firm based solely on the scoring of the written proposals and to enter directly into negotiations with said firm. Negotiations will be conducted with the highest ranked firm until a contract is awarded. If an agreement cannot be reached on contract terms, negotiations will be terminated and the next highest ranked firm will be contacted for negotiation. ARRC will release the name of the successful firm upon award of the contract.

Proposals shall at a minimum address each of the following criteria:

EVALUATION CRITERIA

DESCRIPTION

WEIGHT

1. Experience & Qualifications of the Firm:

25 Points

- Introduce your firm to us, describing your history, your ownership structure, including parent, affiliated or subsidiary company, and business partners.
- Disclose any information that may pose an actual conflict of interest in providing these services or give the appearance of a conflict of interest.
- Please provide any other relevant information that may assist ARRC in the selection process.

2. Proposed Key Personnel:

50 Points

- Identify and describe the pertinent experience of the individual(s) who would be involved in the performance of this contract. Include resume.

3. Pricing:

25 Points

Please specify the hourly rates you will charge ARRC for the key personnel who will perform the majority of work on this project. Submit this information in a separate sealed envelope labeled "Pricing" with your proposal.

Note: Pricing shall be evaluated as follows: For evaluation purposes, the proposed price of a Proposer who qualifies as an Alaska bidder under ARRC Procurement Rule 1200.9 shall be reduced by 5%. Proposers seeking an Alaska Bidders Preference must submit information with their proposals documenting that they meet each requirement stated in ARRC Revised Procurement Rule 1200.9(b).

Total Possible Score

100 Points

CONTRACT AWARD

Once the committee has established a ranking, ARRC will begin negotiations with the highest ranked firm. If an agreement cannot be reached on contract terms, negotiations will be terminated, and negotiations will be conducted with the next highest ranked firm, until an agreement is reached, or until ARRC exercises its right to cancel the solicitation.

SECTION D

QUESTIONNAIRE

(Revised 2-27-06)

Note: Failure to provide the information requested in this questionnaire may be cause for rejection of your bid or offer on the grounds of nonresponsiveness and/or nonresponsibility.

Solicitation Number:

Business Name:

Street Address:

Mailing Address (if different):

City:

State:

Zip Code:

Telephone:

Fax:

E-Mail:

Date Firm Established:

How many years has the business been under the above name?:

Previous Business name(s) if any:

Federal Tax ID Number:

Business License Number:

Contractor License Number (for construction):

Bid acceptance period _____ days. Bids providing less than thirty (30) calendar days for acceptance may be considered non-responsive and may be rejected.

Discount for prompt payment _____% _____days.

List any variations from or exceptions to the terms, conditions and/or specifications of the solicitation:

Continued on the next page

Page 1 of 2
Form 395-0136

List the three most recent contracts performed by your company where the commodity or service requested in this solicitation was the primary commodity or service supplied. Include the client's name, contract amount, the contract date, person to contact regarding performance, their telephone, facsimile number and e-mail.

Clients name, Contact person, Contact info. Description of Work and Contract Amount
(telephone, fax, and email)

<u>List any other business related experience:</u>	

Are you acting as a broker or the primary supplier in this transaction?

- Broker
- Primary Supplier

Business Information (Please check all that apply):

- The business is Individual
- The business is a Partnership
- The business is a Non-Profit
- The business is a Joint-Venture
- The business is a Corporation incorporated under the laws of the State of _____
- The business is full-time
- The business is part-time
- The business is not a certified Disadvantaged Business (DBE)
- Business is a certified DBE
- DBE was certified by State DOTPF
- DBE was certified by the Municipality of Anchorage
- Business is an 8(a)/WBE/MBE and is certified by SBA
- B business was certified by _____
- DBE Certification # is _____

Firms Annual Gross Receipts:

- <\$500,000
- \$500,000 - \$999,999
- \$1,000,000 - \$4,999,999
- \$5,000,000 - \$9,999,999
- \$10,000,000 - \$16,999,999
- >\$17,000,000

Completed by: _____ Title: _____

Signature: _____ Date: _____

**APPENDIX E
GENERAL TERMS AND CONDITIONS
(General Service Contracts)
(Revised 4/29/08)**

The following terms and conditions supersede the terms and conditions on the reverse side of ARRC's purchase order to the extent that they are inconsistent therewith and shall be deemed to have the same force and effect as though expressly stated in any such purchase order into which this document is incorporated.

1. Definitions.

"ARRC" shall mean the Alaska Railroad Corporation.

"Contractor" shall mean the person or entity entering into the contract to perform the work or services specified therein for ARRC.

"Contract" shall mean these General Terms and Conditions, the contract form to which they are annexed, and all other terms, conditions, schedules, appendices or other documents attached to the contract form or incorporated by reference therein.

"Services" shall mean any work, labor, time, effort or other services furnished by Contractor to ARRC under the contract.

2. Inspection and Reports. ARRC may inspect all of the Contractor's facilities and activities under this contract in accordance with the provisions of ARRC Procurement Rule 1600.9. The Contractor shall make progress and other reports in the manner and at the times ARRC reasonably requires.

3. Claims. Any claim by Contractor for additional compensation or equitable adjustment arising under this contract which is not disposed of by mutual agreement must be made by Contractor in accordance with the time limits and procedures specified in sections 1800.12 et seq. of ARRC's Procurement Rules, which by this reference are hereby incorporated herein.

4. Nondiscrimination.

4.1 The Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental handicap, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the positions do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. To the extent required by law, the Contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical or mental handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

4.2 The Contractor shall cooperate fully with ARRC efforts which seek to deal with the problem of unlawful discrimination, and with all other ARRC efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

4.3 Full cooperation in Paragraph 4.2 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.4 Failure to perform under this section constitutes a material breach of the contract.

5. Cancellation/Termination.

5.1 ARRC may, for its sole convenience, cancel this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such cancellation, Contractor shall be entitled to receive payment in accordance with the payment provisions of this contract for services rendered or charges incurred prior to the effective date of termination. Contractor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. In no event shall ARRC be liable for unabsorbed overhead or anticipatory profit on unperformed services.

5.2 In addition to ARRC's right to cancel this contract for its convenience, ARRC may, by written notice of default to Contractor, terminate the contract in whole or in part in the following circumstances:

(1) The Contractor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Contractor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(2) Reasonable grounds for insecurity arise with respect to Contractor's expected performance and Contractor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(3) Contractor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

5.3 Upon receipt of a notice of cancellation or termination, Contractor shall immediately discontinue all service and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to ARRC all reports, plans, drawings, specifications, data, summaries or other material and information, whether completed or in process, accumulated by Contractor in performance of the contract. In the event of termination for default, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the amount to be paid on this contract exceeds the expense of finishing the work, compensation for additional managerial and administrative services and such other costs and damages as ARRC may suffer as a result of Contractor's default, such excess shall be paid to Contractor. If such expense, compensation, costs and damages shall exceed such unpaid balance, Contractor shall be liable for and shall pay the differences to ARRC. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. No Assignment or Delegation. The Contractor may not assign, subcontract or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the prior written consent of ARRC. The hiring or use of outside services, subcontractors or consultants in connection with the work shall not be permitted without the prior written approval of ARRC. No such approval shall relieve Contractor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Contractor's relationship to ARRC in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action. The personnel performing services under this contract shall at all times be under Contractor's exclusive direction and control and shall be employees of the Contractor, and not of ARRC.

8. Payment of Taxes. As a condition of performance of this contract, the Contractor shall pay all federal, state, and local taxes incurred by the Contractor and shall require their payment by any subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by ARRC under this contract.

9. Governing Law. This contract, and all questions concerning the capacity of the parties, execution, validity (or invalidity) and performance of this contract, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Alaska.

10. Alaska Executive Branch Ethics Act Requirements. No officer or employee of the State of Alaska or of the ARRC and no director of the ARRC or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 et seq. Contractor shall not make or receive any payments, gifts, favors, entertainment, trips, secret commissions, or hidden gratuities for the purpose of securing preferential treatment or action from or to any party. This obligation will apply to the activities of Contractor's employees and agents in their relations with ARRC employees, their families, vendors, subcontractors, and third parties arising from this contract and in accomplishing work hereunder. Certain gratuities may be given or accepted if:

- (1) there is no violation of any law or generally accepted ethical standards;

(2) the gratuity is given as a courtesy for a courtesy received and does not result in any preferential treatment or action;

(3) the gratuity is of limited value (less than \$150) and could not be construed as a bribe, payoff or deal; and

(4) public disclosure would not embarrass ARRC.

ARRC may cancel this contract without penalty or obligation in the event Contractor or its employees violate the provisions of this section.

11. Non-Disclosure of Confidential Information. Contractor acknowledges and agrees that for and during the entire term of this contract, any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor pursuant to the performance of this contract shall be considered and kept as the private, confidential and privileged records of ARRC and will not be divulged to any person, firm, corporation, regulatory agency or any other entity except upon the prior written consent of ARRC. Furthermore, upon termination of this contract, Contractor agrees that it will continue to treat as private, privileged and confidential any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor during the term of the contract and will not release any such information to any person, firm, corporation, regulatory agency or any other entity, either by statement, deposition or as a witness except upon the express written authority of ARRC. ARRC shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information.

Contractor's agreement of non-disclosure as specified in this section applies except to the extent required for (1) performance of services under this contract; (2) compliance with standards of conduct for preservation of the public safety, health, and welfare (so long as Contractor has given ARRC prior notice of the potential hazard and ARRC has had a reasonable opportunity to correct the hazard prior to disclosure); (3) compliance with a court order or subpoena directed against Contractor (so long as Contractor has given ARRC prior notice of such and ARRC has had an opportunity to contest the same in a court of law); or (4) Contractor's defense against claims arising from performance of services under this contract.

12. Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract, and that it has not paid or agreed to pay any person, company, individual, or firm any commission, gift, percentage, fee, contingent upon or resulting from the award or making of this contract. For the breach or violation of this warranty, ARRC may terminate this contract without liability and, at its discretion, deduct from the contract price or otherwise recover the full amount of the commission, percentage, gift, or fee.

13. Standard of Performance. Contractor shall perform its services with care, skill and diligence in accordance with normally accepted industry standards and shall be responsible for the quality, accuracy, and completeness all services furnished under this Contract. Contractor shall comply with all applicable federal, state and local laws and ordinances, codes, and regulations in performing its services. If any failure to meet the foregoing standard of performance appears within one (1) year after the services are accepted by ARRC, Contractor shall, at a minimum, reperform the work at no cost to ARRC and shall reimburse ARRC for any additional costs that may be incurred by ARRC or any of its contractors or subcontractors as a result of such substandard work. If Contractor should fail to reperform the work, or if ARRC

determines that Contractor will be unable to correct substandard services before the time specified for completion of the project, if any, ARRC may correct such unsatisfactory work itself or by the use of third parties and charge Contractor for the costs thereof. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

14. Warranty. In the event Contractor supplies equipment, goods, materials or other supplies in addition to services under this contract, Contractor warrants that said items: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications, if any, stated in the contract. Contractor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials or other supplies provided under this contract. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

15. Indemnification. Contractor shall defend, indemnify and hold ARRC harmless from and against all claims and actions asserted by a third party (or parties) and related damages, losses and expenses, including attorney's fees, arising out of or resulting from the services performed or neglected to be performed by Contractor or anyone acting under its direction or control or in its behalf in the course of its performance under this contract and caused by any error, omission or negligent act, provided that Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the independent negligence of ARRC. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of ARRC, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. The term "independent negligence" is negligence other than ARRC's selection, administration, monitoring, or controlling contractor and in approving or accepting Contractor's work.

16. Insurance. Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this contract 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, ARRC shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the ARRC contracting officer prior to beginning work and must provide for a 30-day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the Contractor's services.

16.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this contract, worker's compensation insurance as required by applicable law. The Contractor shall be responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S.L. & H. and Jones Acts) must also be included.

16.2 Comprehensive (Commercial) General Liability Insurance: Covering all errors, omissions or negligent acts of the Contractor, its subcontractor(s) or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to ARRC. Said policy shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements and shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees. Combined single limits required are per the following schedule:

<u>Contract Amount</u>	<u>Minimum Required Limits</u>
Under \$100,000	\$ 500,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$1,000,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$2,000,000 per Occurrence/Annual Aggregate
Over \$1,000,000	Negotiable-Refer to Risk Management

16.3 Comprehensive Automobile Liability Insurance: Covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17. ARRC's Rights Not Waived by Payment. No payment made by ARRC shall be considered as acceptance of satisfactory performance of Contractor's obligations under this contract. Nor shall any payment be construed as acceptance of substandard or defective work or as relieving Contractor from its full responsibility under the contract.

18. Nonwaiver. A party's failure or delay to insist upon strict performance of any of the provisions of this contract, to exercise any rights or remedies provided by this contract or by law, or to notify the other party of any breach of or default under this contract shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this contract and shall not be deemed a waiver of any right to insist upon strict performance of this contract or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this contract operate as a waiver of any of the provisions of this contract. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded the nonbreaching or nondefaulting party by any other provisions of this contract, or by law.

19. Savings Clause. If any one or more of the provisions contained in thee contract shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. Headings. The headings of sections and paragraphs of this contract are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

21. Forum Selection. The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the contract, to recover damages for breach or default under the contract, or otherwise arising under or by reason of the contract, other than in the courts of the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably

consent to the jurisdiction of said courts.

22. Conflict of Interest. Contractor shall act to prevent any actions or conditions which could result in a conflict with ARRC's best interests. This obligation shall apply to the activities of Contractor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.

23. Publicity. Contractor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and/or services furnished under this contract without the prior written consent of the ARRC.

24. Audit. ARRC has the right to audit at reasonable times the accounts and books of the Contractor in accordance with the provisions of ARRC Procurement Rule 1600.10.

25. Internal Controls and Record Keeping. Contractor shall keep full and accurate records and accounts of all of its activities in connection with this contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.

26. Force Majeure. Neither ARRC nor Contractor shall be responsible for failure to perform the terms of this contract when performance is prevented by force majeure, provided that: (1) notice and reasonably detailed particulars are given to the other party and (2) the cause of such failure or omission is remedied so far as possible with reasonable dispatch. The term "force majeure" shall mean acts of God, earthquakes, fire, flood, war, civil disturbances, governmentally imposed rules, regulations or other causes whatsoever, whether similar or dissimilar to the causes herein enumerated, which is not within the reasonable control of either party and which through the exercise of due diligence, a party is unable to foresee or overcome. In no event shall force majeure include normal or reasonably foreseeable or reasonably avoidable operational delays.

27. Permits and Licenses. The Contractor shall, at its own expense, obtain all necessary permits, licenses, certifications and any other similar authorizations required or which may become required by the government of the United States or any state or by any political subdivision of the United States or of any state except where laws, rules or regulations expressly require the ARRC to obtain the same.

28. Environmental Protection. When performing all obligations under the contract, Contractor shall comply with all specific instructions of ARRC with regard to environmental concerns, regardless of whether such instructions are based upon specific law, regulation or order of any governmental authority.

29. Set Off. If ARRC has any claim against the Contractor related or unrelated to this contract, it may set off the amount of such claim against any amount due or becoming due under this contract.

30. Observance of Rules. The Contractor's personnel performing work or services hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work. ARRC may, in writing, require the Contractor to remove from the work site any employee ARRC deems to be incompetent, careless, or otherwise detrimental to the progress of the work, but ARRC shall have no duty to exercise this right.

31. No Third-Party Beneficiary Rights. No provision of this contract shall in any way inure to

the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

32. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument signed by both ARRC and the Contractor.

33. Key Personnel Changes. Contractor shall secure prior written approval from ARRC for any changes of key personnel assigned to perform services under this contract. ARRC reserves the right to reject any of Contractor's employees whose qualifications and/or experience in ARRC's good faith and reasonable judgment do not meet the standards necessary for the performance of the services required under this contract.