



**ALASKA RAILROAD CORPORATION**  
327 W. Ship Creek Ave.  
Anchorage, AK 99501

February 18, 2010

**REQUEST FOR PROPOSAL # 10-06-59470**  
**ARRC Drug and Alcohol Program Consortium/Third Party Administrator**

Fax Response Requested

This page must be completed and returned to ensure receipt of future addenda or additional information. Fax this form to (907) 265-2439. All addenda will be forwarded to the contact name and number listed below. Bidders must acknowledge the receipt of all issued addenda in their proposal / bid submittal

Company \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Contact \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email address \_\_\_\_\_

Website: [www.alaskarailroad.com](http://www.alaskarailroad.com)



February 18, 2010

**REQUEST FOR PROPOSALS #10-06-59470**

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

**ARRC Drug and Alcohol Program Consortium/Third Party Administrator**

**OFFERS WILL BE RECEIVED AT:** Alaska Railroad Corporation  
Attn: Greg C. Goemer  
327 West Ship Creek Avenue, 2<sup>nd</sup> Floor  
Anchorage, Alaska 99501

**Sealed proposals shall be received until 3:00 p.m. local time, March 25, 2010. Submit one (1) original and three (3) copies.** Detailed instructions for submitting responses are outlined in this document. The envelope(s) used in submitting your firm's offer shall be plainly marked with the following information:

1. Offeror's Name -
2. RFP # 10-06-59470
3. ARRC Drug and Alcohol Program Consortium/Third Party Administrator

The Alaska Railroad may award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the Alaska Railroad. The Alaska Railroad may reject any or all offers if such actions is in the best interest of Alaska Railroad, and waive informalities and minor irregularities in offers received.

This Request for Proposal is not to be construed as a commitment of any kind nor does it commit the Alaska Railroad to pay any costs incurred in the submission of an offer or for any other costs incurred prior to the execution of a formal contract.

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.

Bidder's responsibility: ARRC shall not be held responsible for Bidder's lack of understanding of what is required by this bid. Should a Bidder not understand any aspect of this bid, or require further explanation, or clarification regarding the intent or requirements of this bid, it shall be the responsibility of the Bidder to seek guidance from the ARRC.



The Alaska Railroad is a member of Green Star (<http://www.greenstarinc.org/>). ARRC earned an initial Green Star Award in 1994 and a Green Star Air Quality Award in 2007. The Alaska Railroad considers Green Star membership to be a positive business attribute, and regards a Green Star award as a tangible sign of an organization's commitment to environmental stewardship and continual improvement within its operations.

Please direct all responses to this solicitation and/or questions concerning this Request for Proposal to Greg C. Goemer, Alaska Railroad Corporation, 327 Ship Creek Avenue, Anchorage, AK 99501, Questions may be emailed to [goemerg@akrr.com](mailto:goemerg@akrr.com)

Best Regards,

*Greg C. Goemer*  
Greg Goemer  
Contract Administrator.

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## SECTION A

### 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 March 22, 2010 and the written inquiries must be submitted as follows:

Greg C. Goemer, Alaska Railroad Corporation, 327 Ship Creek Avenue, Anchorage, AK 99501,  
Questions may be emailed to: goemerg@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., local time, on March 25, 2010 at:

Alaska Railroad Corporation  
Purchasing Department  
327 W. Ship Creek Avenue, 2<sup>nd</sup> Floor  
Anchorage, AK 99501

One (1) original and three (3) 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 Number 10-06-59470
3. Date and Time Scheduled for Receipt of Proposals
4. Sealed Proposal: **Drug and Alcohol Program Consortium/Third Party Administrator**

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.

#### 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 three (3) copies, containing a statement of qualifications and a concise narrative that fully addresses each evaluation criteria. 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 Proposer deems will emphasize the Proposer's ability to successfully perform the services required and demonstrate why selection of Proposer 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.

## **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 with the possibility of three one-year extensions subject to acceptance by both parties.

## **SECTION B BACKGROUND INFORMATION**

The Alaska Railroad Corporation (ARRC) is a public corporation created by the State of Alaska legislature to own and operate the railroad. The ARRC is a full-service railroad offering passenger and freight service over 611 miles of track from Fairbanks to Seward. Approximately 670 employees are employed on a year-round basis with an additional 80 seasonal summer hires.

The Omnibus Transportation Employee Testing Act of 1991 requires the ARRC to conduct drug and alcohol testing of its safety-sensitive transportation employees. The U. S. Department of Transportation (DOT) publishes rules on who must conduct the drug and alcohol tests, how to conduct those tests, and what procedures to use when testing. The ARRC conducts drug and alcohol testing under federal authority, namely the Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA). These tests are called DOT tests and require strict accordance with federal regulations using the proper DOT forms for all collections.

Drug and alcohol testing is also conducted under ARRC authority. These tests are called Non-DOT tests and require that Non-DOT forms be used for the testing. The detailed differences between DOT tests and Non-DOT tests are essential to maintain credible and valid testing to be sustained under the scrutiny of the FRA and the FMCSA. In either case (DOT or Non-DOT), all drug and alcohol tests must be conducted according to federal regulations, 49 Code of Federal Regulations (CFR) Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

The ARRC has a Drug and Alcohol Program Manager (hereafter called ARRC Program Manager) in its Human Resources Department to oversee and manage all aspects of the program, to include:

- DOT and Non-DOT testing
- ARRC Drug and Alcohol Policy interpretation and enforcement
- FRA and FMCSA Random testing pools
- Positive and negative test results
- Refusals and adulterated or tampered specimens
- Policy overview training for ARRC supervisors and managers
- Reasonable suspicion and FRA and FMCSA Post Accident training
- Consultation with the FRA, FMCSA, and DOT regarding federal regulation interpretation
- FRA and/or FMCSA audits of the ARRC Drug and Alcohol Program

The ARRC Program Manager is available 24/7/365 to confirm testing determinations with ARRC supervisors and managers and to coordinate the drug and alcohol tests with the nearest collection site.

ARRC employees work up and down the rail belt, 24 hours a day, 7 days a week. Therefore, it is crucial that trained urine, breath, and blood collectors are available to conduct drug and alcohol testing on all days of the year (including holidays) and at any time during the day or night.

Each reason and authority for drug and alcohol testing is defined and outlined in the ARRC's Drug and Alcohol Policy #64-3, 49 CFR Part 219, or 49 CFR Part 382. Under FRA and FMCSA authority (i.e. DOT tests), the testing reasons are:

- Pre-employment
- Random
- Reasonable suspicion
- Return-to-duty
- Follow-up
- Post-accident.

Under ARRC authority (i.e. Non-DOT), the testing reasons are:

- Pre-employment
- Reasonable suspicion
- Fit-for-duty
- Reasonable cause
- Return-to-duty
- Follow-up

Drug and alcohol collections for the ARRC Drug and Alcohol Program are currently conducted at the facilities listed below:

- AAT in Fairbanks, AK
- Alaska Medical Lab Services in Anchorage, AK
- Interior Neighborhood Health Clinic in Healy, AK
- Sunshine Clinic in Talkeetna, AK
- Valley Phlebotomy in Wasilla, AK
- Glacier Family Clinic in Seward, AK

Each of these facilities is available to conduct urine, breath, and blood collections for the ARRC on a 24/7/365 basis. The C/TPA schedules and performs mock drug and alcohol collections on a semi-annual basis with each of the above clinics, and conducts training and certifies urine and breath collectors. The C/TPA is the liaison and coordinator between the satellite collection sites and the ARRC and is available by phone 24/7/365 to assist in directing after-hours collections and to provide quality control in the specimen collection process.

The ARRC owns 10 Alco Sensor IV/RBT IV evidential breath-testing devices (EBTs), which are located and used at the collection sites (with the exception of Valley Phlebotomy in Wasilla). The C/TPA works with all collection sites to ensure each has a working EBT(s) and that all calibration checks are performed as recommended by the manufacturer. Non-working EBTs are shipped by the C/TPA to the manufacturer, Intoximeters, Inc., for repair and a replacement EBT is immediately sent to the collection site to replace the non-working one. The ARRC pays for the required maintenance and repairs of each EBT and for all DOT and Non-DOT Alcohol Testing Forms (ATF). The ARRC also provides to each collection site a supply of 10 ml grey stopper blood tubes for blood draws and an ARRC Specimen Collection Reference Manual.

The ARRC maintains two (2) random selection pools, an FRA Random Selection Pool and an FMCSA Random Selection Pool. Locomotive Engineers, Conductors, Brakemen, Hostlers, Train Dispatchers, Signal Maintainers, and Equipment Maintenance Specialists are regulated by 49 CFR Part 219. ARRC employees using a commercial driver's license (CDL) in their job at the ARRC are regulated by 49 CFR Part 382. Each active employee occupying one of the above positions is part of a random selection pool for monthly drug and alcohol testing. During the winter season, the FRA Random Selection Pool contains approximately 150 employees. With the busy summer season, those number increase to approximately 195 employees. The FMCSA Random Selection Pool contains 90 – 95 employees year round. In October 2010, an additional 100 employees from the Maintenance of Way Department will be added to the FRA random pool.

Each year, the FRA and FMCSA Administrators publish the minimum annual percentage rate for random testing in the Federal Register. For 2010, FRA requires that 25% (annual percentage rate) of active FRA-regulated employees are to be drug tested and a 10% (annual percentage rate) are to be alcohol tested. For 2010, FMCSA requires a 50% annual percentage rate for drug testing and a 10% annual percentage rate for alcohol testing.

According to ARRC's Drug and Alcohol Policy #64-3, specific testing reasons allow certain ARRC employees the option of a blood draw, in addition to the urine and/or breath specimens. The blood is tested only if the breath and/or urine tests positive. The results of the blood test will prevail over the positive urine and/or breath results. When a satellite collection site collects a blood specimen, the specimen is shipped to the C/TPA and stored there. If either the breath or urine tests positive, then

C/TPA ships the blood via overnight to the laboratory for testing. However, if the urine and/or breath test results are negative, then the blood is not tested and the blood is disposed of.

The ARRC Program Manager coordinates and manages the ARRC's Follow-up Drug and Alcohol Testing Program. Based on the recommendation of the Substance Abuse Professional (SAP) or Employee Assistance Professional (EAP), the ARRC Program Manager is responsible for selecting the dates for follow-up testing, for coordinating with supervisors to ensure that the employee is on duty that day, confirming operationally that the employee can be taken off shift for testing, and scheduling the test with the collection facility. Employees are responsible for all costs associated with the testing (including any after-hours costs).

The following table illustrates the number of collections conducted at each collection site during 2008 and 2009.

|                                   | <b>2008<br/>Drug<br/>Tests</b> | <b>2009<br/>Drug<br/>Tests</b> | <b>2008<br/>Alcohol<br/>Tests</b> | <b>2009<br/>Alcohol<br/>Tests</b> | <b>2008<br/>Optional<br/>Blood<br/>Sample</b> | <b>2009<br/>Optional<br/>Blood<br/>Sample</b> |
|-----------------------------------|--------------------------------|--------------------------------|-----------------------------------|-----------------------------------|---|---|
| Anchorage                         | 364                            | 316                            | 366                               | 284                               | 22  | 12  |
| Fairbanks                         | 107                            | 118                            | 120                               | 100                               | 8   | 5   |
| Healy                             | 26                             | 33                             | 26                                | 24                                | 1   | 0   |
| Talkeetna                         | 8                              | 6                              | 8                                 | 4                                 | 0   | 0   |
| Wasilla                           | 26                             | 33                             | 27                                | 28                                | 2   | 2   |
| Seward                            | 10                             | 2                              | 10                                | 2                                 | 1   | 0   |
| On-site at<br>ARRC<br>(Anchorage) | 29                             | 10                             | 29                                | 5                                 | 14  | 1   |

Currently, all urine and blood specimens are sent to MedTox Laboratories in St. Paul, MN for validity testing and to determine the presence of drugs in the urine and/or the blood. The C/TPA selected this laboratory to conduct the specimen testing and is the direct contact for managing the relationship with the laboratory regarding test results and any other issues surrounding the specimen collections and the testing process. Med Tox provides the C/TPA with a supply of urine collection cups, DOT and Non-DOT Custody and Control Forms (CCFs), and Non-DOT CCFs for blood draws. The C/TPA distributes forms and collection cups to all collection sites.

## **SECTION C SCOPE OF SERVICES**

The contractor shall act as the Consortium/Third Party Administrator (C/TPA) for the Alaska Railroad Corporation's Drug and Alcohol Program.

There are many components of the C/TPA's responsibilities, including:

- A. General C/TPA Services
- B. Medical Review Officer Services
- C. Toxicological Laboratory Testing of Urine and Blood Specimens
- D. Specimen Collection Sites, including 24/7/365 availability, ARRC on-site collection and satellite collection sites
- E. Urine Collections
- F. Breath Alcohol Collections
- G. Blood Collections and Storage
- H. FRA Post Accident Collections
- I. FRA and FMSCA Random Selection Pools
- J. Training and Refresher Training of Collectors
- K. Mock Collections
- L. Quality Control
- M. Records Retention
- N. FRA Program Audit

The following outlines the ARRC's requirements and expectations with respect to the scope of services:

### **A. General C/TPA Services**

- The C/TPA must have a thorough working knowledge of 49 CFR Part 40, Part 219, Part 382, DOT Medical Review Officer (MRO) Guidelines, and ARRC #64-3 Drug and Alcohol Policy.
- The C/TPA must be available for consultation and counsel by phone on a 24/7/365 basis to ensure quality assurance for the ARRC's Drug and Alcohol Program.
- The C/TPA must understand the differences between DOT and Non-DOT drug and alcohol tests, and is responsible for properly documenting the different types of tests.
- Monthly billings to the ARRC will include a summary of each test conducted, to include:
  - Name of donor
  - Date of test
  - Reason for test
  - Testing authority (DOT or Non-DOT)
  - Cost for each test conducted
  - Collection site
  - After-hours costs, mileage, etc, if applicable

### **B. Medical Review Officer Services:**

- Comply with and be knowledgeable about DOT agency drug and alcohol testing regulations, to include 49 CFR Part 40 and the DOT MRO Guidelines
- Keep current with any changes to the above
- Be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed positive drug test results
- Receive and review laboratory test results
- Be knowledgeable about issues relating to adulterated and substituted specimens

- Determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted and invalid drug test results from the laboratory
- Conduct confidential interviews (per federal regulations) with individuals who have a confirmed positive, adulterated, substituted, or invalid drug test result
- Report all drug test results to the ARRC and ensure the timely flow of test results and other information
  - Negative drug test results must be received within 3 business days of the urine collection
  - CCFs (employer copy) must be mailed to the ARRC within 1 day of the collections
- Immediately notify the ARRC Program Manager by telephone when a drug test result is confirmed positive for a controlled substance
- Ensure that all Breath Alcohol Technicians (BATs) immediately notify the ARRC Program Manager of a confirmed positive breath alcohol test result
- Ensure that the BATs mail completed Alcohol Testing Form (ATF) (employer copy) to the ARRC within 1 day of the test
- Immediately notify the ARRC Program Manager of any test results that must be cancelled
- Correct and forward documentation to the ARRC Program Manager for correctable flaws on drug and alcohol tests
- Provide a quality assurance review of the drug testing process for the specimens collected
- Recommend (and/or approve) medical providers who can conduct shy bladder and shy lung evaluations in Anchorage, Fairbanks, or the closest community
- Protect the confidentiality of the ARRC's drug and alcohol testing information
- Participate in FRA Drug and Alcohol Program Audits
  - Interview with the FRA Audit Team to include a review of the MRO's confidential interview notes
- MRO must be available to review and advise the ARRC on other medical issues

**C. Toxicological Laboratory Testing of Urine and Blood Specimens**

- C/TPA will develop and maintain the relationship with a testing laboratory and will ensure that the laboratory is certified by the U. S. Department of Health and Human Services (DHHS).
- The laboratory will conduct testing of the urine in strict compliance with 49 CFR Part 40, Part 219, and Part 382
- The laboratory will conduct an analysis (as requested) of the blood for either alcohol or the DOT standard 5-drug panel (marijuana, amphetamines, PCP, cocaine, opiates). The DOT standard will change to a 7-drug panel in 2010.
- As requested by the MRO, the laboratory will forward urine split specimens and the appropriate paperwork to another HHS-certified laboratory for testing of the split
- Laboratory will report and transmit test results directly to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- C/TPA will send all DOT and Non-DOT urine specimens to the same laboratory for testing
- Laboratory shall provide semi-annual aggregate statistical summaries for all DOT drug tests conducted
- Lab personnel shall be available for consultation with the ARRC if the need arises
- If the selected laboratory loses its certification, select a new certified laboratory and manage the transition to the new laboratory.

**D. Specimen Collections Sites**

- The C/TPA will be responsible for maintaining the collections sites up and down the Railbelt:
  - Confirm the names and phone numbers for the collectors who are available for after-hours urine, breath, and blood collections.
  - Ensure that each site has adequate urine and breath collection forms, supplies, current blood tubes, FRA tox boxes with current blood tubes, EBT mouthpieces, EBT calibration dry gas tank, etc.
  - Ensure all collectors have completed qualification training for urine and breath collections including refresher training per 49 CFR 40, and any required error correction training.
- Collectors at all sites are responsible for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate
- Each collection site must be secured according to 49 CFR Part 40.43 to protect the security and integrity of the urine collections
- Collection sites must be equipped with the proper DOT and Non-DOT forms for breath, urine, and blood collections
- Collection sites must have EBTs ready at all times to perform breath alcohol tests, including calibration checks performed as recommended by the manufacturer
- Collection sites must cooperate with the FRA during audits and must perform mock collections if requested by the FRA and/or the ARRC
- ARRC specimen collection sites must be available for drug and alcohol testing on a 24/7/365 basis
- The on-call collector must contact the ARRC Program Manager within 15 minutes of the first attempt to contact the collector
- The collector must report fully prepared to conduct breath, urine, and blood collections for a minimum of 10 employees
- For certain Anchorage after-hours collections, collector must report to ARRC's Anchorage Operations Center (AOC) (or other specified ARRC site in Anchorage or Fairbanks) to conduct breath, urine, and/or blood collections
- Specimens collected at satellite collection sites ((i.e. Healy, Talkeetna, Wasilla, Seward) must be couriered/shipped the next day to the C/TPA for shipment to the testing laboratory

**E. Urine Collections:**

- All urine specimen collections shall be performed by experienced collectors who are certified in DOT urine split specimen collection procedures (as outlined in 49 CFR Part 40) and who can provide written documentation of said training
- Collectors must have working knowledge of the current DOT Urine Specimen Collection Procedures Guidelines and ARRC urine specimen collection procedures (as outlined in the ARRC Specimen Collection Reference Manual).
- Collectors are responsible for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate
- Collectors are required to provide their identification if requested by the ARRC employee
- All DOT and Non-DOT urine specimen collections shall be performed in strict compliance with 49 CFR Part 40 and the current DOT Urine Specimen Collection Procedures Guidelines, as well as ARRC protocols and requirements

- A designated urine specimen collector shall be on call and available 24/7/365 at each collection site
- Collectors will instruct and assist individuals in the urine collection process
- Collectors will use proper DOT CCFs for a DOT drug test and the proper Non-DOT CCFs for a Non-DOT drug test
- All CCFs will be filled out correctly with all required signatures on the forms
- Collector will mail the employer copy of completed CCFs to the ARRC within 1 day of the collection
- Collector will immediately contact (by phone) the ARRC Program Manager of any suspicious collection activity, such as:
  - Donor failing to remain at the collection site until the collection process is complete;
  - Donor refuses to provide the urine specimen;
  - Urine specimen – temperature out of range;
  - Signs of tampering with urine specimen; or
  - Unusual and/or uncooperative behavior by the donor.
- Collectors will ensure the integrity of the urine specimen and the collection process to prevent the test from losing credibility
- Collectors will have thorough knowledge and understanding of shy bladder procedures as outlined in 49 CFR Part 40.193
- Collectors will have thorough knowledge and understanding of directly observed urine collections as outlined in 40 CFR 40.67
- All collectors will be knowledgeable of the requirements specified in this contract and shall perform all collections in strict compliance with this contract

**F. Breath Alcohol Collections:**

- Breath Alcohol Technicians (BATs) must be knowledgeable and certified about the alcohol testing procedures in 49 CFR Part 40 and current DOT guidance and must have completed qualification training with the DOT Model BAT or a course of instruction equivalent to the DOT Model Course. Must provide written documentation of said training.
- All breath specimen collections shall be performed by a certified BAT who is proficient in the use of an EBT that is approved by the National Highway Traffic Safety Administration and is on a Conforming Products List for such devices
- A designated breath specimen collector shall be on call and available 24/7/365 at each collection site
- Collectors are responsible for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate
- Collectors are required to provide their identification if requested by the ARRC employee
- BATs will instruct and assist individuals in the alcohol testing process
- BAT will immediately notify (by phone) the ARRC Program Manager of all positive screening test results and all positive confirmation test results
- All DOT and Non-DOT breath alcohol specimen collections shall be performed in strict compliance with 49 CFR Part 40 and ARRC policy protocols and requirements
- BATs will ensure that a DOT ATF is used for all DOT tests and that a Non-DOT ATF is used for all Non-DOT tests
- BAT will ensure that all ATFs are filled out correctly and that all required signatures are on the form

- BAT will mail employer's copy of completed breath alcohol forms to the ARRC within 1 day of the test
- BATs must have EBTs ready at all times to perform breath alcohol tests, including calibration checks performed as recommended by the manufacturer
- Collector will immediately contact (by phone) the ARRC Program Manager of any suspicious collection activity, such as:
  - Donor fails to remain at the collection site until the testing process is complete;
  - Donor refuses to provide the breath specimen;
  - Donor fails to provide adequate breath for the test;
  - Unusual and/or uncooperative behavior of the donor; or
  - Anything that causes the test to be cancelled, per 49 CFR Part 40.
- Collectors will have thorough knowledge and understanding of shy lung procedures as outlined in 49 CFR Part 40.265
- Ensure the ARRC's EBTs are calibrated per the manufacturer's recommendations and maintain written records of compliance.
  - Calibration checks shall be performed prior to testing at collection sites where the EBT is not used on a regular basis.
  - Send ARRC's EBTs to the manufacturer for any needed maintenance and/or repairs and maintain all records.

**G. Blood Collections and Storage**

- All blood specimen collections shall be performed by an individual certified in phlebotomy skills, such as a Laboratory Technician, Certified Medical Assistant, Certified Phlebotomist, Emergency Medical Technician, Nurse, Physician's Assistant, or Medical Doctor.
- The collector performing blood specimen collections must also be trained in blood specimen collections in accordance with 29 CFR Part 1910.1030, OSHA Standards on Blood Borne Pathogens.
- A designated blood specimen collector shall be on call and available 24/7/365 at each collection site
- Blood collector will instruct and assist individuals in the blood collection process
- The blood specimens and respective CCFs at satellite collection sites are to be kept in a secure refrigerator until sent to the C/TPA within 24 hours of the blood collection.
- If toxicological testing is authorized, the C/TPA shall send the blood specimen and custody and control form via an overnight courier to the laboratory designated to conduct toxicological testing for the ARRC.

**H. FRA Post Accident Collections**

- The C/TPA must have a thorough understanding of FRA Post Accident qualifying events (49 CFR 219 Subpart C) and the forms and supplies necessary for the collections (forms and supplies are located inside each FRA Post Accident Shipping Box ("FRA Tox Box")).
  - C/TPA will train collectors at all sites on the purpose and use of the forms and supplies within an FRA Tox Box and ARRC protocols. Recurrent training will be conducted annually.
  - C/TPA will maintain a list of all numbered FRA Tox Boxes and their locations, and will ensure that each tox box is fully equipped and contains unexpired blood tubes and all current forms.
  - C/TPA will be available 24/7/365 to assist and/or advise collectors (either in person or by phone) in the event the ARRC experiences an event qualifying as FRA Post

Accident and/or to resolve any other problems associated with the collection process.

**I. FRA and FMCSA Random Selection Pools**

- From information supplied by the ARRC, the C/TPA shall maintain and update monthly an FRA Random Selection Pool and an FMCSA Random Selection Pool
- Selection of employees for random testing will be made by the C/TPA and must be conducted employing objective, neutral criteria ensuring that every employee in the pool has a substantially equal statistical chance of being selected within a specified time frame. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular specimens were collected.
- C/TPA will provide the ARRC with a master list and a back up list of employees from each pool on or before the last day of month preceding the testing month
- C/TPA will be knowledgeable regarding the annual random percentage rate for the FRA and the FMCSA
- C/TPA will provide the ARRC with a monthly statistical summary report for each pool, which shows the annual percentage rate, the number of year-to-date drug and alcohol random tests conducted, and the calculations for obtaining the current month's random numbers for drug tests and alcohol tests

**J. Training and Refresher Training with Collectors**

- All urine collectors must meet the training requirements and refresher training as outlined in 49 CFR 40.33 and have thorough working knowledge of the "DOT Urine Specimen Collection Procedures Guidelines"
- All breath collectors must meet the training requirements and refresher training as outlined in 49 CFR 40.213
- BATs must be knowledgeable about the alcohol testing procedures in 49 CFR Part 40 and current DOT guidance and must have completed qualification training with the DOT Model BAT or a course of instruction equivalent to the DOT Model Course. Must provide written documentation of said training, as well as proof of refresher training, if applicable.
- C/TPA will provide urine and breath collection training with each new collector at all collection sites.
- C/TPA will provide recurrent training as needed at all collection sites and will conduct mock collections with all trained collectors semi-annually
- C/TPA will conduct error correction training as needed per 49 CFR 40.33 (f)
- In the event of a cancelled test (i.e. fatal or uncorrected flaw), the collector must undergo error correction training within 30 days of the date notified of the error and the C/TPA will maintain documentation that the collector has met the regulatory training requirements for the cancelled test
- C/TPA will maintain and keep current records demonstrating that each collector has met all requirements of 49 CFR Subpart C, to include:
  - Written documentation of the collector's type of training and certification establishing the collector's qualification training and initial proficiency demonstration
  - Refresher training as outlined in 49 CFR 40.33 (e)
  - Mock collections conducted semi-annually with an evaluation of each mock collection and recommendations and corrections from the trainer relating to the demonstrated mock collection

- Proof of any error correction training conducted

**K. Mock Collections**

- Coordinate and conduct mock collections semi-annually at each collection site up and down the Railbelt to include all collectors at the C/TPA's facility(s)
- Make recommendations to the collector (with written documentation) after conducting mock collections. The written documentation will summarize strengths and weaknesses of the collector and will outline necessary corrections for the collector with the collection processes
- Cooperate with the FRA during drug and alcohol program audits, conduct mock collections for the FRA, and answer questions as requested by the FRA Audit Team

**L. Quality Control**

- Manage all facets of the ARRC's Drug and Alcohol Program as specified in this contract, and in strict compliance with applicable federal regulations. Consult on regulations, interpretations, and advise the ARRC Program Manager or other ARRC personnel on proper procedures in both normal and/or unusual circumstances

**M. Records Retention**

- C/TPA will maintain all records relating to the ARRC Drug and Alcohol Program as required by federal regulations, such as:
  - CCFs
  - ATFs
  - Positive and negative test results
  - Refusals to test
  - Adulterated and tampered specimen test results
  - Random pools
  - Random selection lists
  - MRO interview notes
- C/TPA must ensure that ARRC's records maintained by the C/TPA are made available to the ARRC within two business days whenever the ARRC is asked by DOT to produce requested documents.
- The C/TPA must review all documents for accuracy and completeness on a regular basis and make, or cause to be made, any required error correction or memorandum of explanation to explain any anomalies or mistakes. The C/TPA will contact the ARRC upon discovering any errors on forms or test results.

**N. FRA Program Audits**

- Participate in FRA Drug and Alcohol Program Audits. Typically, the FRA sends an audit team to the ARRC and conducts:
  - 5-day audit every 3 years to include a comprehensive review of all DOT drug and alcohol test results and paperwork.
  - Mock collections at various collection sites
  - Anonymous collections by an FRA auditor at an unannounced collection site
  - Interview with the MRO and review of the MRO's confidential interview notes

**SECTION D  
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. However, at its sole discretion, ARRC may require the three highest ranked firms to make an oral presentation to the evaluation committee. In this event, oral presentations will be scheduled at ARRC’s Board Room located at 327 West Ship Creek Avenue, Anchorage, Alaska and the selected firms will have an opportunity to summarize the information provided in their written proposals, expand on their capabilities and experience, and answer questions from the selection committee. It is important that the primary individuals servicing the contract are present for this presentation. Upon completion of the oral presentations, the evaluation committee will review the material presented and determine a ranking order for the firms interviewed in accordance with the evaluation criteria listed herein. 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:

**Award Criteria for Consortium/Third Party Administrator**

| <b><u>Description</u></b>   | <b><u>Weighted</u></b> |
|---|------------------------|
| <b>1. C/TPA and Collection Services</b>   | <b>30%</b>             |
| a. Describe your understanding of the Scope of Services and make a positive commitment to perform the work within the quality guidelines specified.   |                        |
| b. Describe your plan for covering the ARRC rail belt for drug and alcohol testing on a 24/7/365 basis. What is your back-up plan if the first on-call collector is not able to respond to the need for testing?  |                        |
| c. What is your availability for consultation 24/7/365 and who would be responding to after-hours phone calls from the ARRC Program Manager?  |                        |
| d. Describe your methodology for establishing monthly random drug and alcohol selection pools. What type of software do you use for the randomization process? Did you develop the software or purchase it from a manufacturer?   |                        |
| e. Describe your collection facility layouts in your major facilities. Provide floor layouts. Describe how you ensure privacy, confidentiality and monitor compliance with collection protocols.  |                        |
| f. Do you have other clients with both DOT and Non-DOT drug and alcohol testing program requirements? If so, how many clients and how many employees are in each client’s drug and alcohol testing program? Which modalities do you have the most experience with relating to drug and alcohol testing? |                        |

- g. Describe your knowledge and experience with Federal Railroad Administration (FRA) regulations, 49 CFR Part 219. Do you have first-hand experience with clients regulated by the FRA? What is your knowledge and experience level with FRA Post Accident drug and alcohol testing and FRA tox boxes?
- h. Describe the three most commonly occurring problems you have encountered with other clients' programs and how you resolved these problems. Describe three unusual problem situations you have encountered in providing third party consortium services to your clients in the last two years and how you resolved the problems.
- i. Describe your training plan for new collectors, recurrent training for current collectors, error correction training, and mock collections for all collection sites.
- j. Describe and/or list the professional organizations of which your company is a member. What types of newsletter or reporting service does your company subscribe to in order to remain current in the industry?
- k. Describe your quality control procedures.
- l. Describe your records processing and maintenance procedures. Describe your records retention program. How long do you maintain positive and negative drug testing results? How long do you maintain CCFs, ATFs and other testing documentation? Where and how are your records maintained?

**2. Qualifications 25%**

Provide detailed information on your firm, including:

- a. History of the Firm
- b. Experience pertinent to this engagement, particularly within the public sector, or transportation and railroad industries
- c. Offices that would provide services on this engagement
- d. Describe how your firm keeps current with changing federal regulations in the field of drug and alcohol testing. Describe how your firm keeps current with the various adulterants and methods used to circumvent the drug and alcohol testing process.
- e. What is the name of the drug-testing laboratory your firm uses? Describe their qualifications. Are they DHHS certified? Describe your relationship with the drug-testing laboratory. How long have you used the laboratory? How do you ensure timely results are received and communicated to the client?
- f. Describe the process by which forms and collection materials are supplied to collection sites and how often they are updated?
- g. Provide a sample copy of your monthly billing format

**3. Key Personnel 25%**

Identify and describe the pertinent experience of the proposed Medical Review Officer, the account manager, and other individuals who would be involved in performing the work associated with this contract. Provide complete details on the functions to be performed by each of these persons and how their activities would be directed and coordinated. Include résumés of all key persons to be involved in this engagement. For each person involved, describe his/her:

- a. Expertise and experience as a C/TPA
- b. Training and how each one stays current with DOT-required training related to drug and alcohol testing
- c. Qualifications as a urine and breath collection trainer of new collectors
- d. Expertise with an RBT IV/ Alco Sensor IV alcohol-screening device. Are they a certified trainer to instruct and certify collectors in the use of the RBT IV/ Alco Sensor IV?
- e. For the MRO, describe his/her education, credentials and specific MRO training and experience.

**4. Fee Proposal 15%**

Your proposal should contain a detailed fee proposal for the tasks outlined in the scope of services and any ancillary costs associated with this work, to include any call out after-hours fees, mileage fees, training costs, etc.

**5. ALASKA BIDDER'S PREFERENCE 5 %**

"Alaska Bidder" means a person who:

1. holds a current Alaska business license;
2. submits a bid for goods, services, or construction under the name as it appears on the person's current Alaska business license;
3. has maintained a place of business within the State of Alaska staffed by bidder or an employee of the bidder for a period of six (6) months immediately preceding the date of this bid;
4. is incorporated or qualified to do business within the State of Alaska; is a sole proprietorship, and the proprietor is a resident of the State of Alaska; or is a partnership and all partners are residents of the State of Alaska;
5. is a joint venture, composed entirely of ventures that qualify under (1) through (4) of this subsection.
6. If bidding on supplies, the bidder must have a documented history of selling the supplies of the general nature solicited by the ARRC to other railroads, state agencies, governments, or the general public. If a prospective bidder can't meet the requirement, they can bid, but would not receive the award evaluation preference.

**Total 100%**

**SECTION E**

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 non-responsiveness and/or non-responsibility.**

Solicitation Number \_\_\_\_\_

Business Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address if Different: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Mailing Zip: \_\_\_\_\_

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: \_\_\_\_\_

**Bid Acceptance Period \_\_\_\_\_ Days. (Bids providing less than thirty-day (30) calendar days for acceptance may be considered non-responsive and may be rejected.)**

Discount for prompt pay \_\_\_\_\_ % \_\_\_\_\_ days.

List any variations from or exceptions to the Terms, Conditions or Specifications of the Solicitation

\_\_\_\_\_  
\_\_\_\_\_

**Continued on the next page**

**Page 1 of 2**

**Form 395-0136**

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: \_\_\_\_\_

**SECTION F**  
**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. Any liability of the Contractor to ARRC shall be governed by common law and statutory rules of liability applicable to an attorney-client relationship. In this connection ARRC is considered to be the client. In any action brought by ARRC to establish such liability, ARRC shall be entitled to recover its reasonable attorneys' fees and costs if it is the prevailing party.

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 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, ARRC shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the 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. 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. With coverage limits not less than \$1,000,000 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

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.

16.4 Professional Liability Insurance. Covering all errors, omissions or negligent acts of the Contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to ARRC. Limits required are \$1,000,000 per occurrence/annual aggregate.

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 this 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.

