



ALASKA RAILROAD CORPORATION

July 8, 2009

REQUEST FOR PROPOSAL

09-29-58138

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

Enterprise Resource Planning (ERP) Project Consulting Services

Sealed offers in **original and six copies** will be received until **3:00 pm local time, July 30, 2009**. The envelope used for the submittal of your offer shall be plainly marked with the following information:

1. Offeror's name.
2. Offer number 09-29-58138
3. Date and time scheduled for the receipt of offers.
4. Sealed Offer: Enterprise Resource Planning (ERP) Selection Consulting Services

The ARRC may award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the ARRC.

ARRC may reject any or all offers if such action is in the best interest of ARRC, and waives informalities and minor irregularities in offers received. ARRC may award a contract on the basis of initial offers without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. Any contract resulting from this solicitation shall incorporate the Standard Terms and Conditions contained in this solicitation package.

This Request for Proposal 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.

Please direct all responses and/or questions concerning this Request for Proposal 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.

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Calendar of Events

Date	Time	Description of Activity
July 8, 2009	10:00 a.m.	Request for Proposals issued; documents available at the following location: www.akrr.com/suppliers
July 15, 2009	11:00 a.m.	Pre-proposal Meeting to be held at the following location: Alaska Railroad Corporation 327 W Ship Creek Avenue Anchorage, AK 99501 3 rd Floor Board Room or teleconference (907)265-2348
July 30, 2009	3:00 p.m.	Deadline for sealed proposals to be received at the following location: Alaska Railroad Corporation 327 W Ship Creek Avenue Anchorage, AK 99501

Note: Time shown above is Alaska Standard Time.

SECTION A

BACKGROUND INFORMATION

ARRC Corporate Background

The Alaska Railroad Corporation (ARRC) is the last full service (passengers and freight) railroad in the United States, with a route that runs from Seward and Whittier at tidewater to the interior of Alaska just beyond Fairbanks. The corporate headquarters are in Anchorage.

ARRC is a public corporation of the State of Alaska. As a public corporation, ARRC has many governmental aspects, e.g., it is tax exempt, benefit plans are governmental and generally not subject to ERISA, and employees are not subject to FICA.

ARRC earns revenue from transporting freight and passengers, and through real estate transactions.

ARRC approximately 800 employees spread over a large geographic area along the entire rail system. They work in a variety of settings, including offices, mechanical shops, section houses, rail yards, track and trains. Although some employees have ready access to computers, others work in locations without reliable phone or network access.

ARRC is divided into the following divisions:

- Executive—Corporate Affairs, Human Resources, Labor Relations, Police and Security, and Safety
- Finance—
 - o Administration
 - Fleet Management
 - Budget
 - o Accounting
 - Financial Reporting and Auditing
 - Grant Financial Administration
 - Budget Support Services
 - Payroll
 - Accounts Payable
 - Accounts Receivable, Credit and Freight Revenue
 - Passenger Accounting
 - o Supply Management including warehouse and inventory control
- Legal – Risk Management, General Counsel and Equal Opportunity
- Operations
 - o Maintenance—Construction and maintenance of roadway, track structures, bridges and tunnels; including maintenance of way (MOW)
 - o Mechanical—Maintenance of locomotives, freight and passenger railcars
 - o Transportation—Operation of the trains, including train dispatchers, crew dispatchers, freight customer services, brakemen, locomotive engineers, conductors, and yardmasters
- Projects and Engineering
 - o Engineering Services – Engineering and design
 - o Environmental Services – Permitting and support

- o Grant and Project Administration – Project accounting and support; federal grant applications and associated grant and project reporting
 - o Project Management – Design, construction and oversight of ARRC capital projects
- Information Technology, Telecommunications and Signals
 - o Information Systems– software and hardware maintenance, development and support
 - o Technology - Advanced technologies such as Positive Train control, Automatic Equipment Identification, large diverse communication infrastructure
 - o Signals – Construction and maintenance of signals and highway-railroad grade crossing and train defect detectors
- Business Development—
 - o Freight marketing, logistics, and customer service
 - o Passenger services, sales and marketing,
 - o Reservations and ticketing,
 - o Passenger Operations – station agents, tour guides, gift shop, and baggage handlers
- Real Estate and Facilities—Management of ARRC-owned land and facilities through permits and leases

Business Activities

ARRC's day-to-day operations can be organized into the following categories:

- Terminal Operations – all operations occurring in the train yards
- Train Operations – all operations that comprise train movement along the track
- Asset Maintenance – maintenance of assets owned by ARRC
- Real Estate Asset Management – management of all real estate assets owned and managed by ARRC
- Administrative Services – all services provided in support of ARRC operations

Workforce

ARRC normally employs between 750 and 850 employees. A number of these positions are seasonal, particularly to accommodate increased passenger, freight service, and infrastructure maintenance and construction projects during the summer months. Approximately 600 are represented by one of five unions.

Business Problems

ARRC has inter-related business processes that are critical to the safe and continuing operation of trains and effective management of its real estate holdings. These processes rely on diverse forms of technology ranging from computer applications and automated data capture devices in the field to GPS tracking and state-of-the-art locomotives, as well as manual record keeping systems.

This diversity necessitates custom interfaces that create significant difficulties for the ARRC when upgrades are done to one or more of the systems. Many of these systems were developed internally over the years, using programming languages that are no longer widely supported or require skills that are not readily available.

ARRC's core financial system was implemented in 1994. Upgrades have been applied to these core financial programs as they were provided by the vendors. However, there are many disparate support systems that are not well integrated and developed over time that are used for

managing critical business processes. The need for real-time data to effectively manage all ARRC's departments and support ARRC's extensive capital and project management, growth in accounting functions and addition of assets with timely and accurate information is critical for success. The current disparate management information systems do not adequately support the current business processes or provide enough flexibility to enhance on-going and future operations.

The current systems that will be included in this evaluation are:

- Infor FMS and HCM Infinium :
 - Financial management - General Ledger, Accounts Receivable, Accounts Payable, Budget, Fixed Assets, and Payroll
 - Human Resources Management – Benefits, Training and Employee Self Service
- Marsh Axiom - Project Accounting
- Oracle Synergen:
 - Computerized Maintenance Management
 - Inventory Management
 - Procurement
 - Asset Management
- Other mission critical systems that have been developed by ARRC:
 - Billing (various systems)
 - Equipment costing and allocations
 - Freight revenue
 - Grants and project management
 - Federal Railroad Administration Hours of Service train crew management, compliance and reporting (NOTE; The existing ARRC developed Powerbuilder crew dispatch system is currently being modified to meet new requirements.)

A performance audit of Information Technology (IT) department was carried out in 2007 to optimize the use of technology in support of the ARRC vision statement: "Be profitable while delivering safe, high quality service to our freight, passenger and real estate customers".

That audit recommended "...an ERP Study to facilitate integration and reduce cost of ownership... The ERP study would begin with the current systems baseline and end with a detailed RFP for an ERP system."

SECTION B

SCOPE OF WORK & SERVICES

Scope of Work

The ARRC is soliciting proposals to:

- 1) Perform a Software Planning Assessment for an Enterprise Resource Planning (ERP) implementation
- 2) Create a Strategy Report
- 3) Review and revise Systems Requirements
- 4) Develop a Return on Investment (ROI)/Business Case

These additional tasks (5-10) will be added to the project scope of work after review of the above tasks are performed and accepted by management:

- 5) Review needs with ARRC, revisit requirements and scope and make any necessary corrections based on the results of tasks 1 - 4
- 6) Develop a list of vendors that meet the criteria of the Strategy Report and ROI
- 7) Develop a demonstration script
- 8) Participate in final demonstrations
- 9) Assist with vendor evaluations and negotiations with successful software vendor(s) and software implementation vendor(s)
- 10) Perform additional associated services which may be determined necessary by management

The following further describes the tasks outlined above:

1. Software Planning Assessment

Identify the gaps and validate the current systems from an integration, usability, functionality, and technology infrastructure point of view.

2. Strategy Report

The focus of the Strategy Report is to define how the key business processes will be improved for the current and future operations, for efficiency, effectiveness, affordability, maintainability, and focus on achieving measurable business value.

The report will recommend how ARRC's ERP system should look like in the future. Recommend which systems should be retained and which systems should be considered for replacement. Identify the gaps between the current state and the recommended future state. Identified gaps should be characterized as either critical needs or useful enhancements.

Recommend the most cost effective ownership strategy in the long run for the ARRC, e.g. one, fully integrated, system or a combination of best-of-breed systems in the core business areas. Best practices, white papers and other implementation strategies should all be considered when developing the recommendation.

The report should include comparisons of potential vendors, differentiating criteria and ranges of associated costs for software, hardware, maintenance and professional

services, to include the total cost of ownership over five years.

The report should include a recommendation for an organizational structure for both in-house and consultant staffing required during the implementation phase. Provide definitions of the implementation team's members' roles and responsibilities.

3. Develop Systems Requirements

ARRC has completed an extensive requirements list using an automated decision support tool, but would like the contractor to enhance/revise/reduce that requirements list based on interviews with the core users. The expectation is that the contractor will prioritize the requirements and identify differentiating criteria to enable a more efficient analysis of ERP systems alternatives that will evolve with changes to the business.

4. Return on Investment (ROI)/Business Case

Develop the ROI/Business Case documenting all costs for acquiring, implementing and maintaining a new ERP system, including "hidden costs" such as internal resources, data conversion, and lost productivity. The report should also include post implementation performance measures in the high-level business cases. The contractor, in conjunction with ARRC staff, will also set baselines and targets and develop key performance measures and post implementation metrics.

5. Review needs with ARRC, revisiting requirements and scope, making any necessary corrections

Recategorization of critical needs and useful enhancements and potentially culling items for either category.

6. Develop a list of vendors that may meet the requirements of the strategy report, systems requirements and ROI/business case

7. Provide assistance with developing the Demonstration Script

The demonstration script will be used for the vendor selection and will include key processes to be addressed by the ERP project.

8. Participate in Final Demonstrations

This phase may include site visits.

9. Assist with evaluation of Vendor Responses

Assist ARRC staff with vendor selection. Upon request, the consultant will provide assistance to the ARRC in negotiating the contract(s) with the selected software vendor(s) and implementation partner(s).

10. Perform additional associated services which may be determined necessary by management

Provide the hourly rates as applicable for any additional services that may be requested.

SECTION C

MINIMUM QUALIFICATIONS

Any interested firm who responds to this solicitation must meet the following minimum qualifications in order to be considered responsive:

1. It is in ARRC's interest to avoid the appearance of partiality, therefore proposers must have no affiliation with any software vendor or implementation partner.
2. Proposing firms must have a minimum of five years of experience in the evaluation and selection of ERP systems as described in the Scope of Work. The firm must also have had experience in performing this work in a variety of vertical industrial sectors (at least three), and with multi-functional systems (e.g., financial, human resources, materials management, project management, etc.)

All offers 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. Proposals from firms that do not meet the above qualifications will not be considered.

SECTION D

PROPOSAL FORMAT AND CONTENT

Alaska Railroad Corporation (ARRC) is requesting proposals from interested firms that meet the minimum qualifications set forth herein. This is intended to be an unbiased evaluation. As a result, any firm with an affiliation with any software vendor or implementation partner will be considered not meeting the minimum qualifications.

During the implementation phase, an ERP implementation partner will be solicited and the firm that is awarded the Scope of Work defined in this solicitation will not be eligible to perform the implementation consulting services.

ARRC reserves the right to determine that proposed services will meet ARRC requirements. ARRC reserves the right to withdraw this RFP, reject any and all proposals, advertise for new proposals, or accomplish the work by other means including issuing only some of the tasks defined in the Scope of Work above, that ARRC in its sole discretion, determines to be in its best interest. ARRC may request additional information from any firm to make a proposal responsive to this RFP or otherwise obtain clarification or additional information that ARRC, in its sole discretion, deems necessary to analyze and compare proposals. Interested firms shall attend (by teleconference or in person) the mandatory pre-proposal meeting, and then submit an original proposal and **six (6)** copies, containing a statement of qualifications, the information requested below, a cost/fee matrix and a concise narrative that addresses each evaluation criteria stated in Section E. Proposals shall have a maximum of 30 pages, exclusive of resumes and exhibits. Proposals will be limited to 60 pages total. Proposals must be complete as to the requested information.

Failure to follow this format in a proposal or failure to include complete information as requested will result in a lower score and may result in rejection of the proposal. At a minimum your proposal shall address the following in order to be considered responsive:

- A transmittal letter with general information on your organization, including the year it was founded, the number of years your firm has been providing ERP selection consulting services, and any other lines of business or affiliated entities.
- A list of at least three references of your clients with contact information, where similar services have been provided during the last two years must be included.
- Identification of the location of the office from which management of the project would be accomplished, as well as any other offices anticipated to be involved
- Signature and title of a person authorized to obligate the firm
- An organizational chart showing all key personnel and how they will interact with ARRC and among themselves.
- Description of the firm's proposed organization of responsibilities, work plan, and approach. The work plan must include a schedule for completion of the proposed deliverables. Samples of each deliverable proposed shall be submitted with the proposal.

- Discuss the availability of key personnel for this engagement.
- Include resumes and work experience of the key personnel to be assigned to the work effort. Information about these individuals should include three projects for which they acted as ERP consultants, performing tasks and functions comparable to those outlined in the Scope of Services for a client with similar scope and complexity. Further, for the individuals to be assigned, discuss the knowledge or recent experience (if any) providing the services discussed in Section B in the transportation industry, or utility and/or governmental sector.

ARRC reserves the right to terminate the contract at any point in the evaluation process or after award if the approved personnel become unavailable, are reassigned or otherwise removed from the project by the firm, or the qualifications are generally found to be inadequate. All personnel reassignments will be approved by ARRC in writing.

- Disclose any actual or appearance of conflict of interest (affiliation with software vendors or implementation partners);

Proposed Approach and Work Plan:

Proposals must also include a proposed approach and work plan that demonstrates the offeror's comprehension of the objectives and scope of services anticipated by this RFP, without simply duplicating the Scope of Services provided in Section B of the RFP. An alternate innovative approach maybe proposed if the proposer can explain how the approach was successful in another ERP selection process engagement.

The approach and work plan must clearly describe and detail the offeror's proposed approach to performing all services required by this RFP. At a minimum, the work plan must include the following:

- A description, organizationally and geographically, of how the offeror intends to provide the requested services to the Corporation.

Cost/Fee Matrix:

Provide a detailed description on how your firm is to be remunerated for the services requested, include administration costs, travel and all other related expenses. Provide the hourly rates of the key individuals who will be responsible for the performance of the services. The cost/fee matrix must be submitted in a separate envelope. Tasks 1-4 should be clearly delineated in the cost matrix hours from Tasks 5-10.

Alaska Bidder's Preference:

For the purposes of evaluating price, the proposed price of an offeror who qualifies as an Alaska Bidder shall be reduced by 5%. Offerors 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).

SECTION E

SELECTION PROCESS & 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 criteria specified herein and establish a ranking.

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 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. The selected firms will have an opportunity to summarize the information provided in their written proposals, expand on their capabilities, experience and proposed approach and work plan and answer questions from the selection committee. It is important that the primary individuals servicing the contract are present for this presentation. Scores obtained in the initial phase will not carry over to the presentation phase. Upon completion of the oral presentations, the evaluation committee will review the material presented and determine a ranking order for the firms interviewed

EVALUATION CRITERIA

DESCRIPTION	WEIGHT
Firm's Qualifications and Experience Experience in performing services as described in Section B. Meets minimum qualifications as described in Section C. Business history, strength and stability of firm. Firm's experience related to similar engagements Firm's experience in a broad variety of vertical industries and horizontal organizational structures	30
Proposed Approach and Work Plan Description of approach and schedule to perform tasks Samples of deliverables Innovative approach will be considered	35
Proposed Key Personnel The professional and technical qualifications of personnel proposed for key project functions. Experience related to project role in similar service contracts	30
Cost Cost/fee matrix	15

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 F

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: _____

Contractor License Number (For Construction: _____

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

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, contract date, person to contact regarding performance, their telephone, facsimile number and e-mail.

Clients name, Contact person, Contact info.
(telephone, fax, and email)

Description of Work and Contract Amount

List any other business related experience:	

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 G

GENERAL TERMS AND CONDITIONS (Professional Service Contracts) (Revised 3/4/08)

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, direction of work, technical information, technical consulting or other services, including but not limited to design services, analytical services, consulting services, construction management services, engineering services, quality assurance and other specialized 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. Ownership of Work Product. Except for items that have preexisting copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by Contractor to ARRC in the performance of this contract (collectively "Work Product") shall become the property of ARRC and may be used by ARRC for any other purpose without additional compensation to the Contractor. Contractor hereby grants ARRC an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to use all proprietary and confidential information and other intellectual property that may be incorporated into any of Contractor's Work Product for ARRC. Should ARRC elect to reuse said Work Product, ARRC shall indemnify, hold harmless and defend Contractor and its subcontractors against any damages or liabilities arising from said reuse. When Work Product produced by the Contractor and its Subcontractors under this Contract are reused by ARRC, the Contractor's and Subcontractor's signatures, professional seals, and dates shall be removed. If such Work Product requires professional

signature and seal, it will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for the new project for which such Work Product is being reused.

Contractor hereby represents and warrants to and for the benefit of ARRC and its successors and assigns that no part of its work product for ARRC will infringe any patent rights or copyrights or utilize any proprietary, confidential or trade secret information or other intellectual property for which Contractor does not have the unqualified right to grant ARRC the license and sublicensing rights referred to above. Contractor shall defend, indemnify and hold harmless ARRC, its successors and assigns, and their respective representatives, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by Contractor or any other person which arises out of, results from or is based upon the manufacture, use or sale by ARRC or any of its successors or assigns of any of Contractor's work product for ARRC. ARRC shall have the right to select its legal counsel and control its defense in any litigation resulting from any such claim.

10. 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.

11. 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.

12. 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 professional 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.

13. 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.

14. 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 professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications and other items and 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.

15. 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.

16. 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.

17. 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.

17.1 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.

17.2 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. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17.3 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.

17.4 Professional Liability (E&O) Insurance: Covering all errors, omissions or negligent acts of the Contractor, its 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 per the following schedule:

Contract Amount

Minimum Required Limits

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

18. 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.

19. 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.

20. Savings Clause. If any one or more of the provisions contained in the 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.