



**Alaska Railroad Corporation**  
**327 W. Ship Creek Avenue,**  
**Anchorage, AK 99501**

December 15, 2017

Invitation to Bid

#17-38-206243

**USED 100 or 110 TON, OPEN TOP, BOTTOM DISCHARGE HOPPER  
CARS**

Response Required

This page must be completed and returned to ensure receipt of future addenda or additional information. Please email this from to [goemerg@akrr.com](mailto:goemerg@akrr.com) All addenda will be forwarded to the contract name and number listed below.

**Instructions:** It is important to complete this page and returned to ensure receipt of future addenda or additional information. All addenda will be forwarded to the contact name and number listed below.

Firms that have not returned this cover sheet will not be informed of addenda and will only be alerted to addenda by checking with the ARRC procurement officer or by checking ARRC's internet site: [www.alaskarailroad.com](http://www.alaskarailroad.com) select Corporate, Procurement, / Solicitations. Bidders must acknowledge the receipt of all issued addendums in their proposal/bid submittal.

Company \_\_\_\_\_

Address \_\_\_\_\_

Contact \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

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



Alaska Railroad Corporation  
327 W. Ship Creek Avenue,  
Anchorage, AK 99501

**THIS IS NOT AN ORDER**

**ITB Number: 17-38-206243**

**Date of Solicitation: December 15, 2017**

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

**Purchase of 90 Used 100 or 110 Ton Open Top Bottom Discharge Hopper Cars**

UNTIL 3:00 P.M. LOCAL TIME ON **January 11<sup>th</sup> 2018**, AT THAT TIME BIDS WILL BE PUBLICLY OPENED

The Alaska Railroad Corporation ("ARRC") is soliciting bids from interested for used hopper cars as specified herein. Interested parties are invited to submit a bid to supply said items to ARRC. Bids must be submitted on the bid form contained herein and must be mailed or delivered to the above address. Bids received via facsimile transmission will be considered non-responsive. The bid shall be in a sealed envelope with the bid number 17-38-206243 clearly printed on the face of the envelope. Bids must be complete and in U.S. dollars. See instructions and conditions enclosed herein.

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.

ARRC may award a contract resulting from this solicitation to the responsive offeror whose offer conforming to this solicitation will be the most advantageous to the ARRC. ARRC may reject any or all offers or any part thereof, negotiate changes in bids, accept any bids or any part thereof, waive minor informalities or defects in any bids, if it is in the best interest of the ARRC. Any resulting contract from this solicitation shall incorporate the Standard Instructions, and General Terms and Conditions incorporated in this solicitation.

This solicitation is not to be construed as a commitment of any kind nor does it commit the ARRC to pay for any costs incurred in the submission of an offer or for any other incurred cost prior to the execution of a formal contract

**BIDDER/VENDOR TERMS AND CONDITIONS: PROSPECTIVE BIDDERS ARE CAUTIONED TO PAY PARTICULAR ATTENTION TO THIS CLAUSE.** Bidder/contractor imposed terms and conditions which conflict with this Invitation to Bid terms and conditions are considered counter offers and, as such, will cause the Alaska Railroad Corporation to consider the bid non-responsive.

If a bidder attaches additional terms and conditions as part of the bid, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Invitation to Bid and the terms and conditions of the bidder/contractor, the terms and conditions of the Invitation to Bid will prevail.

**ARRC Disadvantaged Business Enterprise (DBE) Program**

ARRC is an equal opportunity corporation that encourages the participation of DBEs as prime contractors and subcontractors on its contracts funded in whole or in part by the Federal Transit or Federal Highway Administrations. The ARRC currently has a 100% race-neutral DBE program and does not set DBE goals on individual contracts. Nonetheless, the ARRC aspires to achieve an overall DBE participation of 3.87% in FY 2017/18.



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 and/or questions concerning this invitation to bid to Greg Goemer, Alaska Railroad Corporation, Supply Management, 327 W. Ship Creek Avenue, Anchorage, AK 99501, telephone number 907-265-2593, email address [goemerq@akrr.com](mailto:goemerq@akrr.com). Questions must be submitted in written form prior to January 9th. Questions submitted after that date will not be accepted.

Sincerely,

Greg Goemer  
Sr. Contract Administrator  
Alaska Railroad Corporation

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**SUBMITTALS:** Bids will not be considered if the following documents are not completely filled out and submitted at the time of bidding:

1. Cost Schedule
2. Bidder's Questionnaire
3. Supply Bid Form
4. Drawings/ Pictures of equipment offered

**APPENDIX A**  
**SPECIFICATIONS**

Equipment offered must meet the following specifications in order to be considered for award.

- 1) **MUST BE ACCEPTABLE IN AAR INTERCHANGE**
- 2) **100 TON (MINIMUM) NOMINAL PRODUCT LOAD**
- 3) **263,000 lb. TOTAL WEIGHT ON RAIL**
- 4) **1300 cu.ft (level full)+200/-50 cu. ft for 263,000 lb. car,**
- 5) **TWO OUTLET GATE HOPPER ARRANGEMENT (45 +5/-8 DEGREE)**
- 6) **DOORS MUST OPEN TO ACCOMMODATE AN 8-INCH STONE**
- 7) **AGE OF CARS TO BE 30 YEARS OR LESS**
- 8) **TRUCKS ARE TO BE EQUIPPED WITH WEAR ELIMINATION DEVICES**
- 9) **36"WHEELS WITH FULL FLANGE PROFILE**
- 10) **AAR PLATE "B"**

**PREFERRED OPTIONS**

- 1) **Low Mount Hand Brake.**
- 2) **One side gate/man operation device.**
- 3). **110-ton load, 1500 cu.ft (level full) +200/-100, 286,000 lb. car**
- 4). **Limited specialty parts**
- 5). **Car length 40-feet or less at the coupler pulling faces**

## APPENDIX B

### SPECIFIC TERMS AND CONDITIONS

**Objective:** The objective of this RFP is to solicit offers from qualified suppliers to provide 90 **used** 100 or 110 ton, Open Top Bottom Discharge Hopper cars per the terms, conditions and specifications of this solicitation.

**F.O.B. Point:** All prices quoted shall be F.O.B. ARRC Barge Slip, Harbor Island, Washington (Seattle). Transportation to Alaska will be arranged and paid for by ARRC from Harbor Island to Alaska.

**Inspection:** ARRC shall inspect the equipment offered prior to the award of a purchase contract to determine condition, compliance with specifications and suitability for intended service.

**Record Drawings:** The seller must provide legible and complete shop drawings of the railroad cars including any specialty parts or equipment installed.

#### **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

#### **Alaska Bidder's Preference**

1. ALASKA BIDDER PREFERENCE: Award will be made to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent (5%) has been applied. The preference will be given to a person who: (1) holds a current Alaska business license at the time designated in the invitation to bid for bid opening; (2) submits a bid for goods or services under the name on the Alaska business license; (3) has maintained a place of business within the state staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid; (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and, (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

2. ALASKA VETERAN PREFERENCE: If a bidder qualifies for the Alaska bidder preference and is a qualifying entity as defined herein, they will be awarded an Alaska veteran preference of five percent (5%). The preference will be given to a (1) sole proprietorship owned by an Alaska veteran; (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans; (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or (4) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans, and may not exceed \$5,000. The bidder must also add value by actually performing,

controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other governments, or the general public.

**In order to receive the Alaska Bidder Preference and/or Alaskan Veteran Preference, the bid must also include a statement certifying that the bidder is eligible to receive said preferences. The application of preferences is for bid evaluation purposes only.**

**Bid Evaluation Factors:**

Per Alaska Railroad Procurement Rules 1200.7 the following factors may be used in determining the low bid.

Factors determined to be pertinent to this procurement that will be considered for award are listed below.

**1. ARRC Car Inspection 20 Points**

Points for this criterion shall be determined by an ARRC or its authorized representative inspection of the cars that ARRC believes may be reasonably susceptible for award from a price and condition standpoint.

**2. Age of the Cars Offered 15 Points**

Please state the age of the cars offered and confirm that they meet the specifications stated in Appendix B.

Cars from 1 to 10 years old will receive 15 points.

Cars from 10 to 15 years old will receive 10 points.

Cars from 15 to 20 years old will receive 5 points.

**3. Preferred Options 15 Points**

Cars that are equipped with one or more of the preferred options stated in Appendix B shall receive the following points:

Low Mount Hand Brake	2 points
One Side Gate/Man Operation	4 points
110-ton capacity 286,000 lb car	4 points
Length of Car 40-foot or less at coupler pulling faces	1 points
Car of standard Design (limited unique parts)	4 points

4.

**Cost per Car**

**50 Points**

The score for cost will be determined as follows:

$$\frac{\text{Lowest Price Received}}{\text{Proposed Price Offered}} \times 50 = \text{Score}$$



## APPENDIX B.2

### RAILCAR CAR CONDITION ASSEMENT

Condition of the cars will be evaluated using the following factors to assign a point value. We will use the definitions to provide a determination of how each car will be scored. The string of cars will then be averaged to come up with a final score.

20	Excellent
15	Very Good
10	Good
5	Poor

Ratings indicate the level at which the bid is responsive and/or provides quality or value to ARRC. Using the evaluation Criterion, should a determination of good be given, 5 points would be assigned for that criterion. That evaluator's final score for this criterion will be determined by summing the rating factor for all cars and dividing the points by the total number of cars resulting in a final score.

**Excellent** – New or like new 100% to 95% of its rated (forecasted) life; no visible defects, no damage, cosmetically looks new. Meets all AAR interchange rule and no FRA defects

**Very Good** –Asset has 70% to 94% of its useful life remaining. Shows minimal signs of wear, no major problems, some minor defects ok with only minimal signs of deterioration. Meets all AAR interchange and FRA rules

**Good** - Asset has 50% to 69% of its useful life remaining. Some deterioration exists, cosmetically "fair" but all devices are functioning as designed. Meets most of AAR interchange and FRA rules.

**Poor** - Asset has 30% to 49% of its useful life remaining. Asset nearing end of life but in serviceable condition. Asset has increasing number of defects or deteriorated component(s) and increasing maintenance costs. Needs to be brought up to meet AAR interchange and FRA rules.

**RAILCAR CONDITION CERTIFICATE**

Car Number \_\_\_\_\_

**COUPLERS**

**A End**

New / Used / Qualified  
(Circle One)

Rear Wall Measurement \_\_\_\_\_

**(Installed Coupler)**

**B End**

New / Used / Qualified  
(Circle One)

Rear Wall Measurement \_\_\_\_\_

**(Installed Coupler)**

**BOLSTERS**

**A End**

New / Used / Qualified  
(Circle One)

Greatest Friction Pocket  
Percent of Wear \_\_\_\_\_

Greatest Non-Friction Pocket  
Percent of Wear \_\_\_\_\_

Greatest GIB to GIB  
Measurement \_\_\_\_\_

**(Installed Bolster)**

**B End**

New / Used / Qualified  
(Circle One)

Greatest Friction Pocket  
Percent of Wear \_\_\_\_\_

Greatest Non-Friction Pocket  
Percent of Wear \_\_\_\_\_

Greatest GIB to GIB  
Measurement \_\_\_\_\_

**(Installed Bolster)**

**SIDE FRAMES**

**AR Location**

**New / Used / Qualified  
(Circle One)**

**Greatest Brake Hanger or  
Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Non-Brake Hanger or  
Non-Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Column to Column  
Face Measurement \_\_\_\_\_**

**Greatest Pedestal to Pedestal  
Face Measurement \_\_\_\_\_  
(Installed Side Frame)**

**AL Location**

**New / Used / Qualified  
(Circle One)**

**Greatest Brake Hanger or  
Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Non-Brake Hanger or  
Non-Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Column to Column  
Face Measurement \_\_\_\_\_**

**Greatest Pedestal to Pedestal  
Face Measurement \_\_\_\_\_  
(Installed Side Frame)**

**BR Location**

**New / Used / Qualified  
(Circle One)**

**Greatest Brake Hanger or  
Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Non-Brake Hanger or  
Non-Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Column to Column  
Face Measurement \_\_\_\_\_**

**Greatest Pedestal to Pedestal  
Face Measurement \_\_\_\_\_  
(Installed Side Frame)**

**BL Location**

**New / Used / Qualified  
(Circle One)**

**Greatest Brake Hanger or  
Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Non-Brake Hanger or  
Non-Column Guide  
Percent of Wear \_\_\_\_\_**

**Greatest Column to Column  
Face Measurement \_\_\_\_\_**

**Greatest Pedestal to Pedestal  
Face Measurement \_\_\_\_\_  
(Installed Side Frame)**

**OVERALL CONDITION : \_\_\_\_\_**

**SIGNED \_\_\_\_\_**

**DATE \_\_\_\_\_**

**APPENDIX C**

**COST SCHEDULE**

A bidder's failure to provide the information requested in this appendix will be cause for rejection of the offer on the basis of non-responsiveness. All prices quoted must be F.O.B. Seattle Interchange. Each vehicle must comply with the specifications as spelled out in Appendix A

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>COST PER CAR</u>
1. Open Top Bottom Discharge Hopper Cars in accordance with the Specifications described in Appendix B.	1-90 cars	\$ _____
Additive Alternate 1-25 additional cars		\$ _____

2. Age of the Cars Offered: \_\_\_\_\_

**ARRC's goal is to have delivery of all cars within 90 days after receipt of order. Please provide estimated delivery schedule:**

**Delivery to Seattle (Days) ARO :** \_\_\_\_\_

**Award Criteria**

**Award Criteria:** An award will be made to the low, responsive, responsible bidder that meets the requirements as set forth in the specifications and compliance thereof. The Alaska Railroad Corporation reserves the right to determine that all offered materials will serve the application intended. Award will be made in the aggregate. The bid award is contingent on the availability of Alaska Railroad Corporation funds.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
SIGNATURE BY AND FOR THE BIDDER

\_\_\_\_\_  
COMPANY ADDRESS

\_\_\_\_\_  
PRINTED NAME OF ABOVE BIDDER

\_\_\_\_\_

\_\_\_\_\_  
DATE OF BID

\_\_\_\_\_  
CONTACT PHONE NUMBER

\_\_\_\_\_  
CONTACT EMAIL

**APPENDIX D**

**QUESTIONNAIRE**

Note: Failure to provide the information requested in this questionnaire may be cause for rejection of the solicitation on the basis of non-responsiveness.

**Name of Your Business:** \_\_\_\_\_

**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 nonresponsive and may be rejected.)

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

The bidder shall list any variations from or exceptions to the Terms, Conditions or Specifications of the Solicitation

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

Continued on the next page

List three current contracts (where the commodity or service requested in this solicitation is the primary product being supplied) include the client's name, contract amount, person to contact regarding performance, their telephone, facsimile number and e-mail.

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

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

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

1.

- Primary Supplier  
 Broker

**Business Information (Please check all that apply):**

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

**Firms Annual Gross Receipts:**

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

Completed by: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX E**

**ALASKA RAILROAD CORPORATION  
SUPPLY BID FORM**

**NAME** \_\_\_\_\_ **ADDRESS**  
\_\_\_\_\_  
\_\_\_\_\_

**To the CONTRACTING OFFICER, ALASKA RAILROAD CORPORATION:**

In compliance with your Invitation for Bids No.: \_\_\_\_\_, dated \_\_\_\_\_, the Undersigned proposes to furnish and deliver all the supplies, materials or equipment and perform all the work required in said Invitation according to the specifications and requirements contained therein and for the amount and prices named herein as indicated on the Cost Schedule, which is made a part of this Bid.

The Undersigned hereby agrees to execute the said contract and bonds, if any, within **Ten (10) Calendar Days**, or such further time as may be allowed in writing by the Contracting Officer, after receiving notification of the acceptance of this Bid, and it is hereby mutually understood and agreed that in case the Undersigned does not, the accompanying bid guarantee, if any, shall be forfeited to the Alaska Railroad Corporation as liquidated damages, and said Contracting Officer may proceed to award the contract to others.

The Undersigned agrees to commence performance within **Ten (10) Calendar Days** after the effective date of the Notice to Proceed and to complete performance by \_\_\_\_\_, unless extended in writing by the Contracting Officer.

The Undersigned acknowledges receipt of the following addenda to the requirements and/or specifications for this Invitation for Bids (give number and date of each).

Addendum Number/Dated	Addendum Number/Dated	Addendum Number/Dated
_____	_____	_____
_____	_____	_____

**NON-COLLUSION AFFIDAVIT**

The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association, or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

\_\_\_\_\_

The Undersigned has read the foregoing proposal and hereby agrees to the conditions stated therein by affixing his/her signature below:

\_\_\_\_\_  
Name and Title of Person Signing

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Facsimile Number      Form 395-0132

**APPENDIX F  
GENERAL TERMS AND CONDITIONS  
(Supply Contracts)  
(Revised 4/17/08)**

**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.

"Vendor" shall mean the person or entity entering into the contract to provide the supplies 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.

"Supplies" shall mean the equipment, goods, materials or other items to be provided by Vendor to ARRC under the contract.

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

3. Claims. Any claim by Vendor for additional compensation or equitable adjustment arising under this contract which is not disposed of by mutual agreement must be made by Vendor 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 Vendor 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 Vendor 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 Vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.



4.2 The Vendor 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 Vendor 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 Vendor'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, Vendor shall be entitled to receive payment in accordance with the payment provisions of this contract for supplies delivered to ARRC and, as to work in progress prior to receipt of notice, ARRC shall pay Vendor only for direct expenditures on work specifically identified to this contract. Vendor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. However, in no event shall ARRC be liable for incidental, consequential, or punitive damages, overhead or other direct or indirect costs, or lost profits. Payments made under this contract shall not exceed the aggregate price specified in this contract.

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

(1) The Vendor 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 Vendor 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 Vendor's expected performance and Vendor 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) Vendor 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, Vendor shall immediately discontinue all work and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise. In the event of termination for default, Vendor shall be liable for any damage to ARRC resulting from the Vendor's nonperformance. 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 Vendor 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. No such approval shall relieve Vendor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Vendor'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.

8. Payment of Taxes. As a condition of performance of this contract, the Vendor shall pay all federal, state, and local taxes incurred by the Vendor 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. Vendor shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 et seq. Vendor 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 Vendor'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 Vendor or its employees violate the provisions of this section.

11. Covenant Against Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Vendor, 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.

12. Warranty. Vendor warrants that the equipment, goods, materials or other supplies sold to ARRC under this contract: (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 free from all liens, claims, demands, encumbrances and other defects in title; and (d) shall conform to the specifications, if any, stated in the contract. Vendor 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.

13. Indemnification. The Vendor shall indemnify, save harmless and defend ARRC, its officers, agents and employees from all liability of any nature or kind, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission, product defect, negligent or wrongful acts of the Vendor, its subcontractors or anyone directly or indirectly employed by them in the performance of this contract, provided that Vendor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of ARRC.

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

15. 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.

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

17. 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.

18. 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.

19. Conflict of Interest. Vendor 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 Vendor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.

20. Publicity. Vendor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and other supplies furnished under this contract without the prior written consent of the ARRC.

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

22. Internal Controls and Record Keeping. Vendor 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.

23. Force Majeure. Neither ARRC nor Vendor 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.

24. Set Off. If ARRC has any claim against the Vendor 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.

25. Observance of Rules. The Vendor's personnel performing work hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work.

26. 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.

27. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Vendor 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 Vendor.

28. Invalid Provision. The invalidity or unenforceability of any provision of this contract shall not affect the other provisions hereof, and this contract shall be construed in all respects as if such invalid or enforceable provisions were omitted.

29. Packing, Marking and Shipping. All supplies shall be properly packaged to prevent damage or deterioration and to obtain the lowest transportation rates. ARRC will pay no charge for preparation, crating, dunnage or other materials unless separately stated in this contract. Each packing slip, bill of lading, invoice, container, tag and correspondence shall bear the applicable contract number and the location to which the supplies are to be shipped. A waterproof Master Packing Slip shall accompany each shipment and shall be included in one of the packages marked "Packing Slip Inside" or in the case of a carload shipment, be conspicuously displayed on the inside of the freight car. The original Bill of Lading shall be mailed to the attention of ARRC Supply Management Department on date of shipment.

30. Improper Delivery. If for any reason the Contractor fails to make timely delivery, ARRC may, at its option, approve a revised delivery schedule, request shipment via air or expedited routing (at Contractor's expense) or terminate this contract without any liability. Contractor will not, however, be liable for damages resulting from delays in delivery due to causes beyond Contractor's reasonable control, provided Contractor promptly notifies ARRC in writing of any such delay or expected delay as soon as such delay or expected delay becomes or should have become apparent. The remedies provided in this paragraph shall be cumulative and in addition to any other or further remedies ARRC may have.

31. Shipping Release. The Contractor shall not ship any of the supplies covered by this contract, unless specific delivery dates or written instructions are furnished to Contractor by ARRC. ARRC shall have no responsibility for supplies for which delivery dates or other written instructions have not been provided. Shipments in excess of those authorized may be returned to Contractor and Contractor shall pay ARRC for all expenses incurred in connection with such shipments. ARRC may change or temporarily suspend shipping schedules specified in this contract or written instructions.

32. Inspection/Rejection. Notwithstanding prior shipment, all supplies are subject to inspection and acceptance by ARRC within a reasonable time after they arrive at destination. ARRC shall notify Contractor if any supplies are rejected for any reason or if there are shortages. At ARRC's election, rejected supplies may be held for Contractor's account or returned to Contractor at Contractor's risk and expense. No replacement or correction of defective or nonconforming supplies shall be made by Contractor without written authorization from ARRC. Contractor shall promptly ship any shortages after notification of the same by ARRC.

33. Compliance with Laws and Regulations. Contractor agrees that in the performance of this contract it will comply with the requirements of all applicable Federal, State and local statutes, regulations and orders and will indemnify and save ARRC harmless from any claim, loss or damage arising from Contractor's violation or alleged violation of them.

34. Reduction in Contractor's Cost. Any reduction in Contractor's costs resulting from a reduction in freight rates, custom duties, import taxes, excise taxes and/or sales taxes from those in force on the date of the contract is to be paid to ARRC by Contractor in reduction of the price of the ordered supplies.

35. Payments. Payments for supplies furnished under this contract will be due thirty (30) days after the later of (1) receipt of the supplies established in the contract, (2) receipt of proper billing for such supplies, and (3) receipt of all documents required by this contract. ARRC shall not be liable for interest charges on late payments.