

## REQUEST FOR PROPOSAL

The Seven County Infrastructure Coalition (COALITION) is soliciting proposals from interested concerns for the following:

### **Engineering Services Uinta Basin Rail Road**

Sealed offers in **original and ten (10) copies** plus an emailed or electronic copy will be received until **3:00 pm local time (Mountain Time), August 2, 2018**. The envelope used for the submittal of your offer shall be plainly marked with the following information:

1. Offeror's name.
2. Date and time scheduled for the receipt of offers.
3. Sealed Offer: Uinta Basin Rail Road Engineering Services

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

COALITION may reject any or all offers if such action is in the best interest of COALITION, and the COALITIN may waive informalities and minor irregularities in offers received. COALITION 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.

A pre-bid tele-conference call has been scheduled for July 19, 2018 at 10:00 a.m. Mountain Time. The tele-conference will be held by calling the following number and access code. Phone Number 1-866-906-7447; Access Code 4149729#. Any questions that an offeror desires to have addressed on the pre-bid tele-conference call must be submitted in writing via email by 3:00 p.m. on July 17, 2018 to all of the following: 1) Mr. Michael J. McKee, Executive Director of the Seven County Infrastructure Coalition [mmckee@7county.utah.gov](mailto:mmckee@7county.utah.gov) and 2) to Mr. Brian Barton of Jones and DeMille Engineering at [brian@jonesanddemille.com](mailto:brian@jonesanddemille.com) and 3) to Mr. Eric Johnson of Blaisdell, Church & Johnson, LLC at [eric@bcjlaw.net](mailto:eric@bcjlaw.net)

This Request for Proposal is not to be construed as a commitment of any kind nor does it commit the COALITION 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 each of the following: Mr. Michael J. McKee, Executive Director, Seven County Infrastructure Coalition, at [mmckee@7county.utah.gov](mailto:mmckee@7county.utah.gov), and Mr. Brian Barton at [brian@jonesanddemille.com](mailto:brian@jonesanddemille.com) and Mr. Eric Johnson at [eric@bcjlaw.net](mailto:eric@bcjlaw.net)

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## **SECTION A**

### **Project Overview**

The Seven County Infrastructure Coalition (COALITION) intends to prepare and submit a project application to the Federal Surface Transportation Board (STB) for a new rail line extending from the existing rail line near Rifle, Colorado into the Uinta Basin in Utah, with a terminus near the Roosevelt/Myton areas. In accordance with the National Environmental Act (NEPA), an environmental analysis (most likely an Environmental Impact Statement (EIS)) will need to be conducted for the proposed line extension. The STB will be the lead agency for the line extension EIS process and will oversee the independent third-party Contractor who will complete the EIS.

Prior to the preparation and submission of the application, alternative analysis, conceptual engineering and preliminary environment work should be accomplished to support the application and provide background information for the filing of the application. COALITION plans to award several contracts:

- Engineering Contract to include the production of an alternatives analysis report, conceptual and preliminary engineering. Final engineering and preparation of plans and specifications for the construction of the project may be included at the COALITION's discretion to be determined at a later date.
- Environmental Contract to support the alternatives analysis report, engineering, public involvement, EIS support, and permit preparation.
- After selection of the COALITION preferred action, a third-party Contractor will be selected to complete the EIS process on behalf of the STB.
- Economic and Financial Feasibility Contract as required to support the EIS and project financing.

Both the Engineering and Environmental contracts are expected to be executed the summer of 2018. The third-party EIS contract is anticipated to be executed towards the end of 2018 or in 2019 in coordination with the STB. The economic/financial feasibility study contract is anticipated to be executed towards the end of 2018 or in 2019.

Contractors or substantial sub-Contractors which are awarded any of the above contracts will be precluded from subsequent awards of the above (i.e., only one contract will be awarded per firm/team). The environmental and engineering contracts will continue throughout the EIS process with individual task order work assigned as required by requests from the STB third-party EIS Contractor during the processing of the EIS. This request for proposal is for the Engineering Contract which includes, but may not be limited to, alternative analysis, conceptual engineering work and task order support of the third-party EIS Contractor. A separate proposal has been issued concurrently for the Environmental Contract.

## Background Information

The Seven County Infrastructure Coalition is an independent political subdivision of the State of Utah created under the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended. The members of the Coalition consist of Carbon, Daggett, Duchesne, Emery, Sevier, San Juan, and Uintah counties in Utah. The Coalition is an interlocal entity and functions as a public body, separate and independent of its members.

The Coalition's purpose is to be the implementation and ownership entity allowing its members to build essential regional infrastructure elements. The plan is for the Coalition to identify and plan for, procure the funding for, permit, secure rights-of-way, own, and operate revenue-producing infrastructure assets that will benefit the region. Operation and maintenance of these assets will likely be outsourced to third parties. It is contemplated that arrangements with private sector partners will be made in order to share risks and bring needed expertise to various portions of proposed projects.

All of the seven counties are located in resource rich Eastern and Central Utah. Coming together as a coalition gives the counties economic and political strength. Within the member counties there are some significant geographical challenges which will impact the placement of potential and vital infrastructure elements in the future.

The Uinta Basin is the most populated area within the continental United States that is not now and never has been serviced by rail. For over 100 years various studies and efforts have desired to bring rail service into the Uinta Basin. Since 2001, multiple studies have evaluated the potential for rail services into the Uinta Basin. The tall mountains rimming the Uinta Basin have long restricted all transportation solutions. The Uinta Basin is only accessed by two lane roads without rail or freeway connections. A 2013 study performed for UDOT indicated that if the transportation restrictions persist without improvement, that over a period of 30 years approximately \$1Billion per year (approximately \$30Billion total) in lost economic benefits will be lost. At least one recent study suggested that rail service into the Uinta Basin may be economically feasible, however, not at a level sufficient to attract private investment. At present, the Coalition is having a second economic feasibility study conducted by the firm of R.L. Banks on the viability of rail into the Basin. The R.L. Banks feasibility study is schedule to be completed by August 3, 2018, with a report to the COALITION Board on August 10, 2018.

It is the desire for the COALITION to be prepared to initiate the STB filing and subsequent NEPA process at or near the end of 2018. After the NEPA process is initiated, the EIS process will require support throughout until a record of decision is made. It is anticipated that this would be in 2021. The COALITION has applied for state and federal grants to fund the EIS effort.

A COALITION executive management committee to oversee the development of this project has been established. It consists of the COALITION's Executive Director and two COALITION Board members. Responsibility and authority has been delegated to these three individuals who will work as a team to provide project oversight and executive supervision of all aspects of the project.

## **SECTION B**

### **SCOPE OF WORK**

#### **General Request for Proposal**

It is the intent of this contract to procure a professional team to perform alternative analysis, conceptual and preliminary engineering, and related services to support the submission of an application to the STB for a rail line from the Rifle, Colorado area to the Roosevelt/Myton area in Utah and to provide support to the STB'S third party Contractor as requested. In addition, detailed coordination will be required with the Environmental Contractor and feasibility Contractor. The COALITION will prepare the application for submission to the STB and will coordinate the work of all Contractors. This contract will be in three phases. Phase 1 is the work required to support the submission of an application; Phase 2 is work required to support the third-party EIS Contractor and will be directed by individual task order; Phase 3, to be awarded at COALITION's option, consists of preliminary and final engineering and preparation of bid documents.

The scope of work anticipated is as follows:

#### ***Project Administration:***

The schedule for work under this contract will require close coordination with the COALITION, and other Contractors working on the project. Project status and coordination meetings will occur on a weekly basis for the foreseeable future. Due to this element of the work, the Contractor will provide a project manager and other key personnel locally within the project area (i.e. Uinta Basin). Living expenses associated with providing these personnel will not be reimbursed.

Every other month, or as otherwise scheduled, a briefing will be made by the project team to the project executive committee. Other executives from COALITION will be invited to the briefings. These meetings will initiate with the kick-off meeting, and other scheduled meetings for the following year will be established at this meeting. Minimum mandatory Contractor attendance at these executive briefings will be the project manager and the project principal.

#### ***PHASE 1:***

##### ***Sub Part A: Alternative Analysis***

- The identification of additional potential alignment alternatives and refinement of existing alignment alternatives and design concepts such that they can be adequately evaluated relative to one another.
- The selection of a preferred alignment alternative based upon cost, constructability, hydraulic/hydrologic/river morphology, operative/maintainability, material sourcing, geotechnical, structural, environmental, social-economic, political, and all other considerations.
- Field data recovery and significant coordination with the COALITION environmental consultant, project legal counsel, and property managers.

- To support, coordinate, and supplement the Environmental Contractor as directed.

The deliverable for this effort will be a detailed, defensible and annotated alignment alternatives report to adequately describe the process used in establishing the routes analyzed the process and criteria used in the comparison of route alternatives, the sources of information used in the analysis, and a clear, defensible position as to the preferred route alternative. The report will be supplemented with exhibits and drawings of all the route alternatives including relevant data used in their comparison (e.g. contours, land use, wetland delineations, etc.) and detailed exhibits of the preferred alignments.

### ***Sub Part B: Conceptual Engineering***

After the selection of a preferred alternative, the conceptual engineering will be accomplished so that an approximate project foot print can be established. A conceptual plan set will be completed and provide to the COALITION as a deliverable. It is anticipated that at least some of the conceptual level design information in the plan set will be generated during the alternatives analysis. The plan set will have photo background using a common sub- 1"=1000' scale on ANSI B-sized paper, and will include all major aspects of the project including property lines, way-side appurtenances, materials sources, project foot-print, and mitigation areas where defined. Details associated with the project as part of the alternatives analysis portion of the project, including typical sections, general bridge span and foundation details shall also be included. The following is a potential, non all inclusive list of items which will likely need to be generated:

- Typical sections based on identified potential frozen ground conditions
- Typical sections and layouts for access roads and grade crossings as required
- Standard bridge span and foundation arrangement for short-, medium-, and long span bridges. The intent is to have up to three basic bridge designs for the entire project, with specific bridge selection to be site specific.
- Grade separation of highways and other roadways as deemed necessary.
- Signal & communication facilities as directed
- Related system-wide siding locations as directed
- Related system-wide terminal facilities as directed
- Related system-wide track maintenance facilities and equipment as directed
- Mitigation details (habitat, fish passage, etc)
- Preliminary hydrology/hydraulics of structures and development of surface flow patterns as required
- Identification of right-of-way and preparation of exhibits and documents to support acquisition.

## ***Phase 2:***

### ***EIS Support***

Throughout the STB EIS process, STB and its third-party EIS Contractor will be requesting the applicant's response to requests for additional information or studies. Requests within the expertise of the Engineering Contractor will be provided to the Contractor by the COALITION on an individual task order basis. The COALITION will provide the Contractor a task order and request an estimated cost of the task order.

Scope and estimated cost will be negotiated. The COALITION will provide a notice to proceed on the task order, and the contract revised accordingly.

The provision of conceptual details supporting the EIS is expected to include, but not be limited to:

- Typical sections for standard and special geotechnical or topographic constraints.
- Conceptual bridge plans, elevations, and sections.
- Conceptual crossing details for roadways and other linear facilities (grade separated or at-grade).
- Hydrologic/hydraulic analysis
- Detailed construction phasing and materials/equipment estimates
- Special mitigation concepts
- The generation of details may require technical reports to document their development and justify the conclusions.

In addition, the following services may be issued on a task order basis as needed:

- Specific land research to support possible acquisition beyond apparent ownership and availability of lands
- Aerial photography, mapping, or surveying as required.
- Provide support and supplement as required to the Environmental Contractor as directed.
- The Contractor shall develop an independent estimate of construction cost for the preferred alternative with consideration of recent relative construction costs, remote construction, and technical complexity. The deliverable will be provided in a tabular format with quantities, unit costs, and with written documentation of sources of data and assumptions applied to the proposed project.

### ***PHASE 3: Final Design and Bid Documents***

The following additional scope of work may be added by COALITION as an option to this contract during or following the EIS process.

- Final engineering including the generation of design plans including final alignment design, bridge type size and location for all structures, plan and layout information for ancillary facilities including, but not limited to, access roads, road and trail crossings, maintenance/operation appurtenances, and preliminary cross sections.
- Preparation of Bid documents for the project delivery method for this project has not been determined. Based upon this decision, the final scope of work to provide bid documents will be determined. The project delivery method will likely be the traditional design-bid-build.

**Information to be Railroad Supplied:**

- 1.
- 2.

**Project Schedule**

A preliminary project schedule has been completed and listed below are dates for milestones associated with this project. This schedule may change due to unforeseen circumstances and is included at this time for the benefit of the Contractor to determine availability of prospective team members.

- Notice to Proceed by August 17, 2018
- Project Kick-Off meeting by August 17, 2018
- Preliminary Selection of Preferred Route Alternative and analysis complete November 2, 2018
- Review of Project Details, including conceptual bridge span/foundation designs  
As directed
- Submittal of Preliminary Alternatives Document November 2, 2018
- Submittal of Final Alternatives Document by December 7, 2018
- Submittal of Conceptual Plan Set and Estimate of Probable Construction Cost by January 4, 2019.

## SECTION C

### Proposal Format and Content

The proposal shall be provided in the following format:

1. A signed cover letter of a maximum two (2) pages should introduce the proposed team, summarize the main qualifications of the team, and include any other information the Contractor deems will emphasize the Contractor's ability to successfully perform the services required and demonstrate why selection of Contractor would be advantageous to COALITION. The letter shall be signed by the sponsoring officer of the firm, so-called the Project Principal.
2. **Introduction of the Contractor Firm/Team** to include clear delineation of responsibility and recent, relevant firm experience to include a minimum of three references with phone numbers of client contacts with meaningful knowledge of the reference experience. Proposal should show how previous experience will provide value to the proposed project. An organizational chart clearly showing proposed personnel and roles needs to be included.
3. **Introduction of Proposed Project Personnel** to include at a minimum Project Principal, Project Manager, and all other team leads in specific technical areas. Section shall include recent relevant project related experience with a clear understanding of how that experience will provide value to the project. Resume related information shall be limited to no more than one page per person.
4. **Project Approach** by phases to show clear understanding of the project, and the STB EIS process. The proposal should provide insight as to how the contractor proposes to spontaneously respond to requests for information, coordinate with other team members, meet tight deadlines, and provide meaningful conclusions from limited data in constrained timelines.
5. **Sealed price proposal (original proposal only)** to include the anticipated effort associated with Phase 1 (Alternatives Analysis and Conceptual Design) and project management through the end of January 2019. Price proposal shall clearly show the anticipated costs associated with personnel hours, project related direct expenses, and specific deliverables and qualifications. Hourly rates shall be based on the firm's Federally Audited overhead Rate (FAR) and clearly shown. The firms proposed profit will then be applied to the loaded hourly fees. No premium will be reimbursed for overtime adjustments.

**Price proposals will be used in the evaluations of submittals and given a 10% weight.**

Proposals shall be concise and succinct. A limited number of appendices can be provided to provide additional information as deemed necessary.

## SECTION D

### SELECTION PROCESS & EVALUATION CRITERIA

The selection of a Contractor to perform the requested services will be made by committee appointed by the COALITION that will evaluate the proposals in accordance with the criteria specified herein and establish a ranking. The committee will include COALITION staff and professional advisors. Offers will be evaluated on the basis of advantages and disadvantages to the COALITION using the criteria described in this section. The COALITION reserves the right to reject all proposals or request new proposals. Interested firms shall submit an original proposal, containing a statement of qualifications, personnel, and proposed project approach.

**Process Overview** COALITION will be conducting the selection process in the following stages:

1. An Evaluation/Selection Committee appointed by the COALITION shall evaluate all responsive Proposals. The COALITION reserves the right to select the top ranked firm based on the scoring of the proposals.
2. The Evaluation/Selection Committee will perform the evaluation in accordance with the criteria listed in this section. COALITION, at its discretion, may request oral presentations from the short-listed candidates. Oral Presentations will be scheduled at COALITION's Board meeting on August 10, 2018, located at 751 E. 100 N. Price, Utah 84501. Oral Presentations should not exceed 10 minutes to allow for questions from the Coalition Board. The consulting team will have an opportunity to summarize the information in the written proposal and answer additional questions from the Coalition Board. Additional information about the interviews will be provided to the selected candidates. The Final selection will be based on all the material presented. Ranking used to select the short-listed firms may or may not carry forward into the interview stage. After interviews are complete, the COALITION will rank the teams as first, second, etc.
3. Upon approval of a proposal, the Executive Director will negotiate the final terms of the contract and a notice to award will be made to the apparent successful contractor.

## Evaluation Criteria

Proposals shall be evaluated based on the following factors and weighting.

- **EXPERIENCE (40 Points Possible):** The professional and technical qualifications and experience of the personnel proposed for key project functions specifically applicable to railroad alignment planning design and construction, generation of planning and environmental documents, bridge planning, design and construction, and experience in Utah and/or with remote site construction.

Firm/Team Technical Experience	10 Points
Personnel Technical Experience	20 Points
Personnel Experience in Utah	5 Points
Personnel Experience on Firm/Team Referenced Projects	5 Points

- **PROJECT APPROACH (45 Points Possible):** The Firm's proposed approach to the project. Specifically, how the firm intends on identifying and analyzing the route alternatives, facilities planning, and conceptual design. How the firm intends to manage uncertainty associated with data inputs. The Firm's plan and/or proven ability to spontaneously meet expectations, tight deadlines, and uncertainty considering the dynamic environment generally consistent with a railroad project of this nature.

Apparent understanding of the project	5 points
Apparent understanding of the STB EIS process	5 points
Approach to completing the Alternatives Analysis	15 points
Approach to respond to information requests	15 points
Approach to coordinating and communicating w/team members	5 points

- **COMPLETENESS AND QUALITY OF PROPOSAL (5 Points):** This evaluation criterion does not require a response. Points for this criterion will be awarded based on the quality of the submitted document, adherence to the requirements of the RFP, and the general adequacy of the submittal.
- **PRICE (10 Points Possible).** The Firm's proposed cost for Phase One and Phase Two.

Successful Contractor shall provide the COALITION with rates and proof of insurance during the intent to award period.

The Contract to be awarded will include all work required under Phase 1 and 2 as described in Appendix A, "Scope of Services". Phase 3 work, to be exercised by the COALITION at their discretion, will be included in the Contract as an option to be successfully negotiated with the Contractor, and the Contract revised accordingly.

**SECTION E**

QUESTIONNAIRE  
(Revised 2-27-06)

**Note: Failure to provide the information requested in this questionnaire may be cause for rejection of your bid or offer on the grounds of non-responsiveness and/or non-responsibility.**

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

\_\_\_\_\_

\_\_\_\_\_

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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. Amount (telephone, fax, and email)	Description of Work and Contract
<u>List any other business related experience:</u>	

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

- Broker
- Primary Supplier

Business Information (Please check all that apply):

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

Firms Annual Gross Receipts:

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

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

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



## SECTION F

### GENERAL TERMS AND CONDITIONS (Professional Service Contracts) (Revised 06/10/18)

1. Definitions.

“COALITION” shall mean the Seven County Infrastructure Coalition.

“Contractor” shall mean the person or entity entering into the contract to perform the work or services specified therein for COALITION.

“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 COALITION under the contract.

2. Inspection and Reports. COALITION may inspect all of the Contractor's facilities and activities under this contract in accordance with the provisions of COALITION Procurement Rule 1600.9. The Contractor shall make progress and other reports in the manner and at the times COALITION 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 COALITION'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 COALITION efforts which seek to deal with the problem of unlawful discrimination, and with all other COALITION 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 COALITION 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 COALITION be liable for unabsorbed overhead or anticipatory profit on unperformed services.

5.2 In addition to COALITION's right to cancel this contract for its convenience, COALITION 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 COALITION or within such additional cure period as COALITION 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 COALITION 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 COALITION 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 COALITION 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 COALITION. The rights and remedies of COALITION 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 COALITION. 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 COALITION. No such approval shall relieve Contractor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Contractor's relationship to COALITION 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 COALITION.

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 COALITION 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 COALITION in the performance of this contract (collectively iWork Product) shall become the property of COALITION and may be used by COALITION for any other purpose without additional compensation to the Contractor. Contractor hereby grants COALITION an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to make, use and sell all proprietary and confidential information, trade secrets, patent rights, copyrights, and other intellectual property that may be partially or completely, directly or indirectly, incorporated into, integrated with or used in any of Contractor's Work Product for COALITION. Should COALITION elect to reuse said Work Product, COALITION 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 COALITION, 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 COALITION and its successors and assigns that no part of its work product for COALITION 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 COALITION the license and sublicensing rights referred to above. Contractor shall defend, indemnify and hold harmless COALITION, 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 COALITION or any of its successors or assigns of any of Contractor's work product for COALITION. COALITION 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 COALITION and no director of the COALITION or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise there from. 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 COALITION 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 COALITION.

COALITION 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 COALITION and will not be divulged to any person, firm, corporation, regulatory agency or any other entity except upon the prior written consent of COALITION. 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 COALITION. COALITION 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 COALITION prior notice of the potential hazard and COALITION 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 COALITION prior notice of such and COALITION 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, COALITION 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 COALITION, Contractor shall, at a minimum, re-perform the work at no cost to COALITION and shall reimburse COALITION for any additional costs that may be incurred by COALITION or any of its contractors or subcontractors as a result of such substandard work. If Contractor should fail to re-perform the work, or if COALITION determines that Contractor will be unable to correct substandard services before the time specified for completion of the project, if any, COALITION 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 COALITION 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 COALITION. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of COALITION, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. The term independent negligence is negligence other than COALITION'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, COALITION shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the COALITION 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 COALITION as an additional insured and contain a waiver of subrogation against COALITION 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 COALITION as an additional insured and contain a waiver of subrogation against COALITION 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 COALITION. Limits required are per the following schedule:

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

18. COALITION's Rights Not Waived by Payment. No payment made by COALITION 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 non-breaching or non-defaulting party by any other provisions of this contract, or by law.

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

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 COALITION's best interests. This obligation shall apply to the activities of Contractor's employees and agents in their relationships with COALITION'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 COALITION.

25. Audit. COALITION has the right to audit at reasonable times the accounts and books of the Contractor in accordance with the provisions of COALITION 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 COALITION 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 COALITION to obtain the same.

29. Environmental Protection. When performing all obligations under the contract, Contractor shall comply with all specific instructions of COALITION 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. COALITION 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 COALITION'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 COALITION 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 COALITION and the Contractor.