

FUEL FURNISH AND DELIVER 2018



OWNER:

**CITY OF KENAI
210 FIDALGO AVENUE
KENAI, ALASKA 99611
(907) 283-7535 ext. 240**



CITY OF KENAI
210 FIDALGO AVENUE
KENAI, ALASKA 99611-7794
(907) 283-8236

ADVERTISEMENT FOR BID

Project Name: Fuel Furnish and Deliver 2018
Last Day for Questions: 5PM Wednesday June 6, 2018
Bid Due Date and Time: No later than 2PM Tuesday June 8, 2018

Scope of Work: The City of Kenai is soliciting a bid for furnishing and delivering diesel to various locations in the City.

Bidders should contact the Public Works Department at (907) 283-8236 to be placed on the plans holders list. Questions may be submitted to publicworks@kenai.city.

Bids must be delivered in a sealed envelope clearly marked with the project name to the Public Works Department at the address above. Bid documents can be obtained on City of Kenai website at www.kenai.city or at City Hall for a non-refundable fee of \$10.00 including sales tax for each set of documents.

Publish: Anchorage Daily News-May 29, 2018
Peninsula Clarion –May 31 and June 5, 2018

**CITY OF KENAI
INSTRUCTIONS TO BIDDER**

1. GENERAL

These instructions specify the form and procedures for the submission of a complete and acceptable bid. To obtain addenda in a timely manner, you should be on the City of Kenai's plan holder's list. Downloading project specifications and drawings from the City website or other online plans rooms does not place you on the City's plan holder's list. To be added to the plan holder's list, please contact the Public Works Department Administrative Assistant by phone (907) 283-8236 or by email at PublicWorks@kenai.city.

Project Name: Fuel Furnish and Deliver 2018
Last Day for Questions: 5PM Wednesday June 6, 2018
Bid Due Date: No later than 2PM Tuesday June 8, 2018

2. EVIDENCE OF QUALIFICATIONS

Upon request of the City, a Bidder whose bid is under consideration for the award of the Agreement, shall submit promptly to the City, satisfactory evidence of the Bidder's financial resources, their experience, their performance in completing other projects of a similar nature, and the organization and equipment they have available for the performance of the Agreement.

3. BIDDER QUALIFICATIONS

Before the bid is considered for award, the City reserves the right to determine whether or not a Bidder is responsible and to require the Bidder to complete a Bidder Qualification Form and/or provide a current financial statement prepared by a Certified Public Accountant. The City shall determine whether a Bidder is responsible on the basis of the following criteria:

- The skill and experience demonstrated by the Bidder in performing Agreements of a similar nature.
- The Bidder's record for honesty and integrity.
- The Bidder's capacity to perform in terms of facilities, personnel, and financing.
- The Bidder's past performance under City Agreements. If the Bidder has failed in any material way to perform its obligations under any Agreement with the City, the Bidder may be determined as a non-responsible Bidder.
- A Bidder's representations concerning their qualifications will be construed as a covenant under the Agreement. Should it appear that the Bidder has made a material misrepresentation, the City shall have the right to terminate the Agreement for the Contractor's breach, and the City may then pursue such remedies as provided in the Agreement Documents or as provided by state statute, City code, or as appropriate.

Any final determination that a Bidder is non-responsible will be made by the City Manager. Such determination will be made in writing to the Bidder setting forth the reasons for such determination.

4. CONDITIONS AFFECTING THE WORK

The Bidder shall examine carefully the site(s) of the proposed work and the bid documents before submitting a bid. The submission of a bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements and accuracy of the bid documents.

The City assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Agreement, unless such understanding or representations are expressly stated in the bid documents or Addenda.

The Bidder shall include in their bid, sufficient sums to cover all items required by the Agreement and the conditions of the site(s), and shall rely entirely upon their own examination in making their bid. The submission of a bid shall be taken as prima facie evidence of compliance with this paragraph.

If information or documentation required for submitting an accurate and complete bid is absent from these documents, the Bidder is required to notify the Public Works Director by facsimile (907) 283-3014, or by e-mail to PublicWorks@kenai.city.

5. SECURITY TO BE FURNISHED BY BIDDER

No Security shall be required for this bid.

6. LICENSING

Alaska State Statutes requires that all businesses wishing to engage in business in Alaska obtain license(s). All Bidders are required to furnish with their bid, the applicable, current licenses required to perform the work. Applicable licenses may include the following: Contractor's License, Specialty Contractor License, and Alaska Business License. Failure to submit license(s) with the bid may result in rejection of the Contractor's bid.

7. TAX COMPLIANCE CERTIFICATE

No agreement will be awarded to any individual or entity that is in violation of the tax laws of the City of Kenai or the Kenai Peninsula Borough unless the violation is cured within ten business days of notice. The Tax Compliance Certificate must be signed by the Bidder only and submitted with the bid. The City will obtain verification of tax compliance from the Kenai Peninsula Borough for the successful bidder. Bids submitted without a completed Tax Compliance Certificate may be considered non-responsive.

8. INTERPRETATION OR CORRECTIONS OF BID DOCUMENTS

Bidders shall notify the Public Works Director promptly of any error, omission, or inconsistency that may be discovered during examination of the bid documents and the proposed work site(s). Requests from Bidders for interpretation or clarification of the bid documents shall be made in writing to the Public Works Director and shall arrive no later than the time and date specified in Section 1 of these Instructions to Bidders. Questions may be faxed to (907) 283-3014 or emailed

to PublicWorks@kenai.city. The subject line of the email or fax must include the name of the project.

Oral questions may be presented at a pre-bid conference if one is provided for in Section 1 of these Instructions to Bidders. Interpretations, corrections, or changes, if any, to the bid documents shall be made by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally, at the pre-bid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum. All Addenda issued during the time of bidding shall become part of the Agreement Documents. Questions or requests for clarifications shall be directed to the Public Works Director. Only written interpretations or corrections by Addendum shall be binding, and no other forms of interpretation or correction will be binding on the City of Kenai.

It is the Bidder's sole responsibility to ascertain that they have received all Addenda issued by the City of Kenai. Addenda will be issued electronically and/or by facsimile. All Addenda must be acknowledged in the space provided on the Bid Form. If no Addenda have been issued, write or type "zero" or "N/A" on the Bid Form in the space provided.

9. PREPARATION AND SUBMISSION OF BIDS

- Bids must be received at City Hall prior to the time and date specified in Section 1 of these Instructions to Bidders.
- Bids must be submitted on the Bid Form furnished. Bids must be completed in ink or by typewriter, and must be manually signed by an authorized person. If erasures or other changes appear on the forms, the person signing the bid must initial each erasure or change in ink.
- One (1) complete bid package shall be completely sealed in an envelope clearly marked with the Bidder's company name, and the "Project Name" and "Bid Due Date" specified in Section 1 of these Instructions to Bidders. A complete bid package shall include the following documents:
 - Bid Form
 - Tax Compliance Certificate
 - Applicable Licenses
 - Non-Collusion Affidavit
- Bids received without all the required documents may be considered non-responsive. Bids received after the bid due date and time will be considered non-responsive and will not be accepted.
- No responsibility shall be attached to the City for the premature opening of, or the failure to open a bid not properly addressed and identified.
- Please note that overnight delivery from the Lower 48 States is generally not available. Prospective Bidders should anticipate a minimum of two to three days delivery time for express, priority or expedited delivery services.

10. MODIFICATION OF BIDS

Bid modifications will be accepted by the City at publicworks@kenai.city and binding upon the Bidder where the modification:

- is received at City Hall prior to the time and date specified in Section 1 of these Instructions to Bidders.
- does not identify the adjusted Bid Total price. Only adjustments to the sealed bid will be accepted. For example:
 - CORRECT – Decrease the Unit Bid Price of Item 20.22 Leveling Course by \$2.50 per ton and the Bid Total by \$2,500.
 - CORRECT – Increase the Unit Bid Price of Item 90.16 Mobilization and Demobilization and the Bid Total by \$5,000.
 - INCORRECT – Decrease the Bid Total by \$5,000 for a new Total of \$95,000.
- is signed by the same individual who signed the original bid.

Should there be more than one bid modification from a Bidder, only the last modification received prior to the deadline shall be applied to the bid. All earlier modifications shall be disregarded.

Any modification which fails to meet any requirement of this section shall be rejected, and the bid shall be considered as if no modification had been attempted.

It is the Bidder's responsibility to confirm the City's receipt of any bid modification.

11. WITHDRAWAL OF BID

At any time prior to scheduled closing time for receipt of bids, any Bidder may withdraw their bid, either personally or by written request.

After the scheduled closing time for receipt of bids, no Bidder will be permitted to withdraw their bid unless Notice of Award is delayed for a period exceeding forty-five (45) days.

A bid may not be withdrawn after opening without the written consent of the City.

12. ACCEPTANCE – REJECTION OF BIDS

The City reserves the right to reject any or all bids, to waive minor irregularities in any bids or in the bidding procedure, and to accept any bid presented which meets or exceeds said specifications and which is deemed to be in the best interest of the City. However, the requirements for timeliness and manual signatures shall not be waived. The City is not obligated to accept the lowest bid and is not responsible for bid preparation costs.

13. EXECUTION OF AGREEMENTS

The successful Bidder shall be required to execute an Agreement for the work within ten (10) days after receiving the Notice of Award and Agreement documents from City; if Contractor does not return executed copies within this time, then, at the option of City, the bid may be rejected.

14. AWARD OF AGREEMENT

It is the intent of the City to award the bid to the lowest, qualified, responsive and responsible Bidder. Unless otherwise stated in the bid documents, the Agreement, if awarded, shall be awarded to the responsible Bidder who submits the lowest responsive bid. When bid documents contain a base bid and alternates, only the total of the base bid and the alternates to be awarded shall be used to determine the low Bidder.

The amount of the Agreement shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by the City and specified in the Agreement.

On all bids, Notice of Award or rejection will be given within forty-five (45) days of bid opening. The notice will be in writing and signed by the Public Works Director. A Notice of Intent to Award, and no other act of the City of Kenai or its representatives, constitutes an acceptance of a bid. The acceptance of a bid shall bind the successful Bidder to execute the Agreement.

15. AGREEMENT AND PERFORMANCE AND PAYMENT BOND SIGNATURE INSTRUCTIONS WHEN BONDS ARE REQUIRED

No Bonds are required.

16. SPECIAL PROVISIONS

No Special Provisions.

17. APPEAL PROCEDURE

KMC 7.15.120 Appeal procedures.

(a) Any party submitting a bid or proposal for a contract with the City and who believes that they are adversely affected by the City's relevant ordinances, regulations, procurement process, or by any acts of the City in connection with the award of a City contract, may file a protest appeal with the City Clerk. All protest appeals must be to the City within five (5) calendar days of the issuance of the City's notice of its intent to award the contract. The appeal must be hand delivered, delivered by mail, or by facsimile and must comply with all requirements of this section. If the fifth day is a City-recognized holiday or a weekend, the deadline for appeal shall be the next work day. It is up to the protester to choose a method of delivery to assure timely receipt by the City.

(b) Rejection of Appeal. The Clerk shall reject an untimely or incomplete appeals. Such rejection shall be final and may be appealed to the Superior Court pursuant to the Court Rules of Appellate Procedure.

(c) The protest appeal must be in writing and shall include the following information:

(1) The name, address, e-mail, and telephone (and facsimile if available) numbers of the protester;

(2) The signature of the protester or the protester's representative;

(3) Identification of the contracting agency and the solicitation or contract at issue;

(4) A statement of the legal and factual grounds of the protest, including copies of relevant documents; and

(5) The form of relief requested.

(d) Stay of Award. If a timely and complete protest appeal is filed, the award of the contract shall be stayed until all administrative remedies have been exhausted, unless the City Manager determines in writing that award of the contract pending resolution of the appeal is in the best interests of the City.

(e) Notice and Response. Notice of the stay and protest appeal shall be delivered to any party who may be adversely affected by the City Manager's decision by facsimile, first class mail or in person within three (3) business days of receipt of a properly filed appeal.

(f) City Manager Decision. The City Manager shall issue a written decision to the appellant within ten (10) business days of the date the appeal is filed. If multiple appeals have been filed, they may be consolidated for purposes of the decision. Copies of the appeal and decision shall be provided to any interested party requesting one. The decision may include any lawful action, including without limitation an amendment of all or any part of the recommended award. For good cause shown, the City Manager may extend the date for the decision for such additional period as may be necessary.

(g) If the City Manager sustains a protest in whole or in part, the City Manager shall implement an appropriate remedy. In determining an appropriate remedy, the City Manager shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the City.

(h) Notwithstanding subsections (a) and (b) immediately above, if the City Manager sustains a bid protest appeal in whole or part, the protester's damages shall not exceed the reasonable bid or proposal preparation costs.

(i) Appeal to Superior Court. Appeals may be taken from the written decision of the City Manager within thirty (30) days of the date of the decision pursuant to Part VI of the Alaska Rules of Appellate Procedure.

(Ord. 2852-2015)

18. COMPLIANCE OR ACCEPTED ALTERNATES TO SPECIFICATIONS

No Alternates Accepted.

**CITY OF KENAI
BID FORM**

TO: City of Kenai
Public Works Department
210 Fidalgo Avenue
Kenai, Alaska 99611-7794

FROM: _____
Name of Bidder's Company or Business Entity

BIDDER'S DECLARATION & UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the Bidder has carefully examined the Bid Documents including but not limited to: the Agreement, Addenda, Supplemental General Conditions, General Conditions, Drawings and Specifications, Request for Proposal / Invitation to Bid, Instructions to Bidders, this Bid Form, Advertisement, Bonds, Releases, Affidavits, and supplemental documentation (e.g. Grant documentation, Title 36 or other State Statues), and the location(s) where work is to be performed for the project, and that the Bidder has satisfied themselves as to the contractual requirements, and quantity and condition of work involved.

It is expressly agreed that the quantities shown in the Bid Form, whether for a "Unit Price Bid" or in connection with a "Lump Sum Bid" on the Bid Form are approximate only for use as a basis for comparison of Bids and are not to be taken to be either representations or warranties. The City does not expressly, nor by implication, agree that the actual amount of work will correspond therewith.

The Bidder further declares that the only person or parties interested in the Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of the City of Kenai, and that the Bid is made without any connection or collusion with any person submitting another Bid.

The Bidder agrees not to withdraw this bid within forty-five (45) days after the actual date of the bid opening.

DOCUMENTS TO SUBMIT WITH THIS BID

1. Bid Form
2. Tax Compliance Certificate
3. Applicable Licenses
4. Non-Collusion Affidavit

**DOCUMENTS THE CITY OF KENAI IS TO RECEIVE WITHIN 10 DAYS
AFTER NOTICE OF AWARD**

The Bidder agrees that if this Bid is accepted he will deliver to the City of Kenai, within ten (10) calendar days of Notice of Award, the following:

1. Executed Agreement
2. Certificate(s) of Insurances*
3. Construction Schedule

* Refer to the General Conditions for insurance requirements. Note the additional insured and waiver of subrogation requirements.

BID TABULATION AND SUMMARY

Bidder agrees to perform all of the work described and per the conditions in the Bid Documents for the prices stated on this Bid Form.

Prices are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern. In case of error in the extension of prices, the unit price will govern. Bidder understands that the City reserves the right to reject any or all bids and to waive irregularities in the bidding.

BID GUARANTEE: The Undersigned further agrees that the check or bid bond accompanying the bid is left in escrow with the City, that the amount of the check or bond is the measure of damages which the City will sustain by failure of the Undersigned to deliver said documents within ten (10) days after written notice of the award of contract to him or her, and that check shall become the property of the City, or the bid bond shall remain in full effect, should he or she so fail. But if this bid is not accepted within forty-five (45) days of the date set for the opening thereof, or if accepted and the Undersigned delivers said Agreement, and performance, and labor, and material payment bonds as required, the check shall be returned to him or her and the bid bond shall become void.

EXECUTION OF BID

Bidder shall complete and submit all pages of the Bid Form.

I have received the Bid Documents for the Project: **Fuel Furnish and Deliver 2018**

I have received Addenda No(s). _____ and have included their provisions in my proposal.

I have examined both the Bid Documents and the work locations, and submit the following bid with the understanding that I agree:

1. To hold my bid open forty-five (45) consecutive calendar days.
2. To accept the provisions of the Bid Documents.
3. To enter into and execute an Agreement, if awarded, on the basis of my Bid.
4. To furnish all labor and materials and to accomplish the work in accordance with the Bid Documents.
5. To accomplish Substantial Completion as specified above in TIME OF COMPLETION.

BIDDER’S PRICE PER GALLON for Ultra-Low Sulfur Non-Highway Diesel No. 1 Fuel rounded to the nearest thousandth of a dollar (\$0.001)

\$ _____
(In figures)

\$ _____ Dollars
(Amount Written in Words)

OPIS GROSS ULTRA LOW SULFUR DISTILLATE PRICES UBD RACK AVG (Unbranded Rack Average) on the day of this bid, June 8, 2018:

\$ _____
(In figures)

\$ _____ Dollars

(Amount Written in Words)

An Agreement shall not be formed and no rights shall exist under the Agreement until the final Agreement is fully executed by all parties. Bidder agrees to commence work immediately upon full execution of the Agreement or such later time as defined in a Notice To Proceed.

If provided a Notice of Award, Bidder agrees to execute and perform the Agreement in accordance with the Bid Documents.

By executing this Bid I certify that I have authority to bind the Company or Business Entity submitting this bid.

Name of Company or Business Entity

Date

Signature

Title

Print Name

Phone

Address

Fax

Address

Email address

Kenai Peninsula Borough

144 N. Binkley
Soldotna, Alaska 99669-7599

BUSINESS: (907) 714-2197 or (907) 714-2175
FAX: (907) 714-2376



TAX COMPLIANCE CERTIFICATION

FILL IN ALL INFORMATION REQUESTED, SIGN AND DATE, AND SUBMIT WITH BID OR PROPOSAL

Reason for Certificate: _____ For (Dept.): _____
 Date Rec'd by Finance: _____ Business Name: _____
 Owner Name(s): _____ a. Individual _____
 Business Mailing Address: _____ b. Corporation _____
 Telephone: _____ Fax: _____ c. Partnership _____
 E-mail: _____ d. Other _____

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? Yes ___ No ___ (If yes, please supply the following account numbers and sign below. If no, please sign below.)
 Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS

Number	Account Name
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

<u>TAX ACCOUNTS/STATUS</u>	
(TO BE COMPLETED BY BOROUGH PERSONNEL)	
YEAR LAST PAID	BALANCE DUE
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Kenai Peninsula Borough Finance Dept (Signature Required)

Date _____ IN COMPLIANCE
 YES NO

SALES TAX ACCOUNTS

Number	Account Name
_____	_____
_____	_____
_____	_____

<u>TAX ACCOUNTS/STATUS</u>		
(TO BE COMPLETED BY BOROUGH PERSONNEL)		
FILED THRU	M/F's	BALANCE DUE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Kenai Peninsula Borough Sales Tax (Signature Required)

Date _____ IN COMPLIANCE
 YES NO

I, _____, the _____, hereby certify that, to the best of my knowledge, the above
 (Name of Applicant) (Title)
 information is correct as of _____.
 (Date) (Signature of Applicant - Required)

*** IF ANY BUSINESS IS CONDUCTED OR IS AWARDED A BID WITHIN THE KENAI PENINSULA BOROUGH YOU MUST BE REGISTERED TO COLLECT SALES TAX. THE SALES TAX DEPARTMENT CAN BE REACHED AT (907) 714-2175.

SAMPLE

Alaska Department of Commerce, Community, and Economic Development
P.O. Box 110806, Juneau, Alaska 99811-0806

ALASKA BUSINESS LICENSE

The licensee named below holds Alaska Business License Number _____
Covering the period of: _____ through _____
Line of Business: _____

COMPANY NAME

ADDRESS

Owner:
NAME OF OWNER

This license shall not be taken as permission to do business in the state without having complied with
The other requirements of the laws of the State of Alaska or of the United States.

Alaska Department of Commerce, Community, and Economic Development
Commissioner: _____

This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.

SAMPLE

No. _____
Effective: _____
Expires: _____

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC
DEVELOPMENT
Division of Occupational Licensing

Division of Occupational Licensing

Certifies that

COMPANY NAME

Is a Registered

Specialty

Commissioner: _____

NON – COLLUSION AFFIDAVIT

(To be executed and submitted with Bid Proposal)

I, _____ of _____,
Firm Name

being duly sworn, do depose and state:

I, or the firm, association, or corporation of which I am a member, who bid on the Contract to be executed by the City of Kenai, for the construction of that certain construction project designated as:

FUEL FURNISH AND DELIVER 2018

located at Kenai, Alaska in the State of Alaska, have not, 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 such Contract.

Signature

Name

Title

Date

ACKNOWLEDGMENT

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 201____, by_____.

NOTARY PUBLIC for State of Alaska
My Commission Expires: _____

Contractor's Printed Name: <hr/> Contractor's Fed. Tax ID #: <hr/>		<p>THE CITY OF KENAI SHORT FORM AGREEMENT</p> <p>This agreement is not valid until properly signed by the parties and accompanied by a valid City of Kenai Purchase Order</p>	City of Kenai 210 Fidalgo Ave. Kenai, AK 99611 907-283-8236
<p>CONTRACTOR WILL PROVIDE THE CITY OF KENAI THE FOLLOWING SERVICE(S);</p> <p>Interpretation: The following documents are incorporated herein by reference and shall be given the following order of precedence:</p> <ol style="list-style-type: none"> 1. Addenda 2. Bid Specifications / Drawings / Instructions to Bidders 3. This Short Form Agreement 4. General Conditions (See page two / reverse of this form if double sided) 5. Contractor's Bid 			
Contractor's compensation will be (In words and numbers):			
Time of commencement and completion:			
BY SIGNING BELOW, THE CONTRACTOR HEREBY AFFIRMS THAT HE OR SHE HAS READ AND ACCEPTS ALL TERMS AND CONDITIONS OF THIS AGREEMENT INCLUDING THE GENERAL CONDITIONS			Contractor's Address & Phone / Fax Numbers:
Contractor's Signature _____ Date _____			
Recommended by:	Purchase Order Number:	Approved by City Manager:	
Signature _____ Date _____		Signature _____ Date _____	

GENERAL CONDITIONS

Section 1. Execution of This Agreement. This agreement is not valid until properly signed by the parties and accompanied by a valid City of Kenai Purchase Order.

Section 2. Independent Contractor. The Contractor shall provide services as an independent contractor to the City.

Section 3. Compliance With Laws. The Contractor shall comply with all statutes, ordinances, and regulations governing its performance, post all required notices, and obtain all permits, licenses, and other entitlements necessary to its performance. The Contractor shall pay all taxes related to its performance and shall be current on all borough taxes at the time of entering this agreement. The Contractor shall acquire and maintain in good standing all permits, licenses; and other entitlements necessary to the legal performance of this agreement.

Section 4. Equal Employment Opportunity.

- A. The Contractor will not discriminate against any applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, or mental or physical handicap. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the characteristics listed above. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting or recruiting advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall state in all solicitations or advertisements for employees to work on agreement jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, marital status, or physical or mental handicap.
- C. The Contractor shall include the provisions of subsections A and B of this section in every subcontract or purchase order under this agreement, so as to be binding upon every subcontractor or vendor of the Contractor under this agreement.

Section 5. Insurance. During the term of this agreement the Contractor shall maintain a policy of workers' compensation and employers' liability insurance as required by law. Contractor shall also be required to carry Commercial general liability with minimum coverage of \$1,000,000 and automobile liability insurance with minimum coverage of \$1,000,000 combined single limit bodily injury and property damage per occurrence. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. The commercial general liability insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained. Certificate(s) of Insurance shall be provided by Contractor and all subcontractors, or their Insurance Companies and/or their Agents, naming the City of Kenai as an additional insured for the work specified in this contract with a waiver of subrogation for commercial general liability insurance and automobile liability insurance. The certificates of insurance must reference the specific contract by name and project number. Workers compensation insurance must be endorsed for waiver of subrogation against the City. Such insurance shall be by a company/corporation currently rated "A-" or better by A.M. Best. If providing professional services, \$1,000,000 against any claim arising out of professional liability/errors or omissions of Consultant and/or Consultant's subcontractors must be provided.

Section 6. Assignments. Unless the City provides otherwise in writing, any assignment by the Contractor of its interest in any part of this agreement or any delegation of its duties shall be void, and permit the City to terminate this agreement without liability for work performed.

Section 7. Ownership, Publication, Reproduction, and Use of Material. Unless the City provides otherwise in writing, all data, documents, and materials that the Contractor produces shall be property of the City, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. This exclusive right does not apply to any materials presently in the public domain or not subject to copyright.

Section 8. Indemnity. The contractor shall indemnify, hold harmless, and defend the City at its own expense from and against any and all claims, losses, damages or expenses, including reasonable attorney's fees, of, or liability for, any wrongful or negligent acts, errors, or omissions of the contractor, its officers, agents or employees, or any subcontractor under this agreement. The contractor shall not be required to defend or indemnify the City for any claims of, or liability for, any wrongful or negligent act, error, or omission solely due to the independent negligence of the City. If there is a claim of, or liability for, the joint negligence of the contractor and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be determined upon final determination of percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "Contractor" and "City" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, to each. The term "independent negligence of the City" is negligence other than in the City's selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor's work.

Section 9. Termination.

This agreement may be terminated for cause immediately or by the City for its convenience upon fifteen (15) days' written notice to the Contractor.

Upon termination and the Contractor's furnishing to the City all finished and unfinished data, documents or other materials prepared under the agreement, the City shall pay the Contractor for all satisfactory work performed before termination.

Section 10. Nonwaiver. Either party failing to enforce a provision of this agreement does not waive the provision or affect the validity of the agreement or a party's right to enforce any provision of the agreement.

Section 11. Jurisdiction and Choice of Law. Any civil action arising from this agreement shall be brought in the trial courts for the Third Judicial District of the State of Alaska at Kenai. The laws of the State of Alaska govern this agreement.

Section 12. Integration. This document and all documents incorporated in it by reference are the entire agreement of the parties and supersede all previous communications, representations or agreements regarding this subject, whether oral or written, between the parties.

**CITY OF KENAI
FUEL FURNISH AND DELIVER 2018
SPECIFICATIONS**

A. OCCUPATIONAL SAFETY AND HEALTH WARRANTY

Bidder, if awarded a contract, warrants that the products sold and service rendered to the City shall conform to the standards and/or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970(29 U.S.C. 651, OL 91-596) and all amendments thereto, and the State of Alaska Occupational Safety & Health Act of 1973 and all amendments thereto. In the event the product sold does not conform to the OSHA standards and/or regulations, the City may return the product for correction or replacement at the City's option and at the seller's expense, or by City at seller's expense in the event seller fails to make the appropriate correction within a reasonable time.

Material Safety Data Sheets (MSDS) must be furnished, at no charge, for each type of product delivered.

B. COMPLIANCE

Bidder, if awarded a contract, shall comply with all State, Federal and local laws, regulations or orders applicable to the purchase, manufacture, processing and delivery of the fuel. The fuel produced and the delivery shall be in compliance with all applicable requirements of the Fair Labor Standards Act as amended, and of the regulations of the U.S. Department of Labor.

C. INSURANCE REQUIREMENTS AND INDEMNIFICATION

See General Conditions of the Short Form Contract.

D. PRODUCT AND DELIVERY

1. **Ultra-Low Sulfur Non-Highway Diesel No. 1 Fuel** must be provided year round for all locations.
2. It will be the successful bidder's responsibility to make sure that each fuel tank remains full. The successful bidder must check tanks to ensure they are full at least twice a month. They must also be checked during and after power outages or when requested to be checked by the City of Kenai. Except for extenuating circumstances, such as power outages or long snow events, the contractor will be asked to deliver fuel and check the tanks during the City's normal working hours. During snow events, the airport tank may require daily service.
3. The following fuel tanks are included in this bid:

AIRPORT OPERATIONS FUEL TANK

515 N. WILLOW

The airport fuels equipment from this tank. This tank averages 15,500 gallons per year. It is very important for the successful bidder to work with the Airport Operations Supervisor to make sure that the tank remains full.

EMERGENCY GENERATOR TANKS:

AIRPORT GENERATOR (TERMINAL)

305 N. WILLOW

WATER TANK GENERATOR

305 FLOAT PLANE RD

SEWER TREATMENT PLANT GENERATOR

600 S. SPRUCE ST.

PUBLIC SAFETY BUILDING GENERATOR

105 S. WILLOW ST.

These tanks are used only during power outages, and when tested periodically, typically monthly. They shall be checked and filled after every power outage.

4. The successful bidder will be required to make their fuel truck(s) and driver(s) available at all times (24 hours/day, 7 days/week, and 365 days/year) for fueling when an emergency arises and the City is out of fuel. Phone number(s) shall be given to the City so the contractor can be contacted at all times.
5. The contractor's contract may be canceled, and/or they may become ineligible for future bidding, if their fuel or delivery becomes a problem to the City.

E. FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS

1. The successful bidder will be required to meet all of the federal, state, and local laws, rules, regulations and requirements.
2. All of the fuel purchased by the City is for use by the City and is exempt from State, Federal, and Sales taxes. The City will not pay taxes on the fuel the City uses. If the successful bidder has to pay taxes for fuel used by the City, the City will provide the successful bidder with an exemption certificate so the successful bidder can be reimbursed.
3. The successful bidder will provide all signs and notices at each site to meet all federal, state, and local laws, regulations, and requirements. This includes OSHA and safety signs and notices, plus any required signs or notices concerning dyed fuel, taxed or untaxed fuel, etc. The successful bidder will also meet all federal, state and local requirements for shipping, delivery, papers, bills of loading, and invoices.
4. The successful bidder is responsible for the safety of their delivery personnel, and equipment, and shall meet or exceed all federal, state, and local insurance requirements.

F. PRICING

1. All prices quoted shall be net and must be stated in dollars (rounded to the nearest \$0.001) per gallon and shall include all costs.
2. The successful Bidder must subscribe to the Oil Price Information Service (OPIS.) A trial subscription is available to meet the bid requirement to provide a report with your bid package. Bidder shall provide a copy of the OPIS CONTRACT BENCHMARK FILE showing the OPIS GROSS ULTRA LOW SULFUR DISTILLATE price information with their bid, and with every invoice. The date on the OPIS report submitted with the bid must match the bid date. The OPIS reports submitted with invoices must match the invoice date. The successful Bidder's per gallon bid price will be adjusted for each invoice based on the OPIS UBD RACK AVG (Unbranded Rack Average.) The bid price shall be adjusted by the same percentage the OPIS UBR RACK AVG changed. The adjusted price per gallon shall be rounded to the nearest \$0.001.

EXAMPLE

Bid Price \$3.345/gallon

OPIS UBD RACK AVG on Bid Day 380.67

OPIS UBD RACK AVG on Invoice Date 399.70

Adjusted Invoice \$/gallon = $\$3.345 \times 399.70 / 380.67 = \3.512 /gallon

G. CASH DISCOUNTS

All bid prices must be net. Cash discounts quoted for prompt payment of invoices will not be considered as a factor in awarding of bids.

H. BIDS

1. Signed bids must be in the Kenai Public Works Department office before **2 p.m. local time, June 8, 2018.**
2. Bids must be in a SEALED envelope and clearly marked as follows:

FUEL FURNISH AND DELIVER 2018

Due Date: June 8, 2018 at 2 p.m.

3. Faxed bids or bid amendments will not be accepted.
4. All bids shall be submitted on the attached bid forms in the spaces indicated, and must comply with these instructions.
5. No City employee or agent shall make any oral change in the bid documents or

make any oral interpretation that may affect the substance of the bid document.

6. The City reserves the right to accept or reject any or all bids, consider alternates, and further reserves the right to waive formalities in bidding procedures. In the case of a tie, the City reserves the right to choose a successful bidder based on the history of Contractor's performance or other criteria.
7. In the case of default by the successful bidder, the City of Kenai may procure the fuel and services from other sources and hold the successful bidder responsible for any excess cost occasioned thereby.
8. In case of damage to City property in fulfilling this contract, the successful bidder shall reimburse the City to the extent of such damage.
9. The successful bidder shall hold and save the City, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract; unless such suits or damages arise from negligence on the part of the City or its employees in the performance of their assigned duties. The City shall not be liable for any costs incurred by the bidder in bid preparation.
10. No officer or employee of the City of Kenai shall be admitted to any share or part of this contract, or of any benefit that may arise therefrom, unless it may be made with a corporation for its general benefit.
11. There will not be a pre-bid conference. Bidders may contact the Public Works Director at 283-8240 if they have any questions, comments, or recommendations concerning this bid.
12. The fuel bid proposal shall be filled out in its entirety. Any addenda to this bid shall be acknowledged on the Bid Form.

I. TAX COMPLIANCE CERTIFICATE

All bidders shall submit, with the bid, a Tax Compliance Certificate signed by the proper Kenai Peninsula Borough (KPB) Authority. Bidders should contact the Kenai Peninsula Borough to ascertain the procedure for obtaining this certificate. Bidders who previously had no KPB tax obligations shall so state on the tax compliance form (which still needs to be signed by the KPB). The City of Kenai assumes no responsibility for the bidders ability to obtain this certificate in a timely manner. Any bids submitted without a required certificate or statement indicating no certificate is required may be rejected by the City of Kenai.

J. QUANTITIES OF FUEL

The bidder's unit price will be used for payment regardless of quantities of fuel used.

K. CONTRACT TERMS

The term of this contract is from **July 1, 2018 to June 30, 2021**. The contract term may be extended upon mutual agreement of the parties for two additional one year periods. The contract will not be extended beyond June 30, 2023.