

**CHUGACH ELECTRIC ASSOCIATION, INC.  
REQUEST FOR BID NO. 22-15 – 38 KV SWITCHGEAR  
FOR INTERNATIONAL BATTERY STORAGE SUBSTATION  
W.O. P2031027**

**October 27, 2022**

Chugach Electric Association, Inc. (Chugach) is soliciting Bids from qualified vendors for 38 kV Switchgear and related field engineering services for assembly upon delivery at 6000 Electron Drive, near Chugach's Headquarters in Anchorage, Alaska.

**Non-Disclosure Agreement (NDA) Required:**

**The documents provided by Chugach are confidential; the Bid Documents and attachments contain large amounts system information. These documents will be provided upon receipt of a Non-Disclosure Agreement (NDA) provided on Chugach's website under the following:**

<https://bidopportunities.chugachelectric.com>

Select: RFB No. 22-15: 38 kV Switchgear for International Battery Storage Substation

Access to the RFB will be provided to the Bidders upon receipt of the NDA.

Bids are to be uploaded to Chugach's website at the address provided above and the Project listed as RFB 22-15: 38 kV Switchgear for International Battery Storage Substation – Submit Technical Proposal button, no later than 4:00 PM, Alaska Time on Tuesday, November 29, 2022.

Questions should be directed to Ron Vecera, Vice President, Risk Management & Administrative Services, via email to [ron\\_vecera@chugachelectric.com](mailto:ron_vecera@chugachelectric.com). Questions are due no later than 4:00 PM Alaska Time, Tuesday, November 8, 2022. Responses will be sent via email to all Proposers, by 4:00 PM, Alaska Time, Tuesday, November 15, 2022.

The Bidder shall deliver and offload the 38 kV Switchgear, F.O.B. (as defined in Alaska Statute § 45.02.319) foundation located at the Project site at Chugach's facility at 6000 Electron Drive, Anchorage, Alaska no earlier than August 1, 2023, and no later than August 31, 2023.

Bidders shall specify in their response to this RFB in writing whether exceptions are taken to any of the terms and conditions of the attached Sample Equipment Contract. Exceptions taken later may result in rejection of the Bid.

Bids must remain valid and subject to acceptance or rejection at Chugach's election for 60 days from the Bid due date.

Chugach reserves the right, in its sole and complete discretion, to define and/or waive irregularities, to accept or reject any or all Bids, in whole or part, and to reissue, withdraw or cancel the Project in its entirety for any reason, without incurring any liability of any type or nature to any Bidder or Contractor, including but not limited to any costs associated with Bid preparation and submittal.

## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (“Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2022 by and between Chugach Electric Association, Inc. (“Party”), a Alaska Corporation having its principal place of business at 5601 Electron Drive, Anchorage, Alaska, 99518 and \_\_\_\_\_ (“[COUNTERPARTY]”), a \_\_\_\_\_ [STATE] [LEGAL ENTITY] having its principal place of business at \_\_\_\_\_ [ADDRESS, CITY, STATE, ZIP CODE] (each of which are referred to herein as a “Party” and collectively as the “Parties”).

WHEREAS, the Parties may wish, for their mutual benefit, to disclose to each other Proprietary Information (as defined below) in connection with their discussions regarding a potential business relationship, transaction or other strategic commercial arrangement between the Parties (the “Potential Transaction”); and

WHEREAS, the Parties wish to set forth the conditions and obligations that will govern the use, duplication, and disclosure of any Proprietary Information that may be disclosed by one Party to the other in connection with the Potential Transaction.

NOW, THEREFORE, the Parties agree as follows:

1. It is anticipated that each Party hereto (the “Disclosing Party”) will disclose to the other Party (the “Receiving Party”) certain Proprietary Information in connection with the Potential Transaction. For purposes of this Agreement, “Proprietary Information” means information that is either identified or reasonably could be deemed confidential and/or proprietary regarding the Disclosing Party or its Affiliates (as defined herein) that the Disclosing Party discloses to the Receiving Party either orally or in writing (electronically or in tangible form), including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (i) trade secrets, inventions, patents and pending patents, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information acquired during any facilities tours; (iv) any portions of summaries, notes, reports or analyses or other documents created by the Receiving Party or its Representatives (as defined herein) that refer to, discuss, constitute, or embody all or any portion of Proprietary Information; and (v) all other information disclosed to the Receiving Party that is not otherwise generally available to the public other than as a result of a disclosure by the Receiving Party or any of its Representatives in breach of this Agreement.
2. The Receiving Party will neither disclose to any unauthorized third party nor use the Proprietary Information it receives from the Disclosing Party for any purpose other than for evaluating, negotiating or consummating the Potential Transaction unless the Disclosing Party shall expressly agree otherwise in writing. The Receiving Party shall be permitted to disclose the Proprietary Information only to its Affiliates and joint venture partners and its and their directors, officers, employees, control persons, advisors, agents or representatives, including, without limitation, legal counsel, accountants, consultants, contractors and financial advisors (collectively, “Representatives”), who need to know such information for the purpose of participating in the evaluation of the Potential Transaction, and who have an obligation of confidentiality with respect to the Proprietary Information substantially similar to obligations set forth in this Agreement. The Receiving Party shall be liable to the Disclosing Party for any breach of the terms and conditions contained herein by any of its Representatives. For purposes of this Agreement, (i) “Affiliate,” with respect to a Party, means any entity controlled, directly or indirectly, by the Party, any entity that controls, directly or indirectly, the Party, or any entity directly or indirectly under common control with the Party; and (ii) “control” of a Party means ownership of a

majority of the voting power of the Party. In addition, Chugach Electric Association, Inc. shall be entitled, but not obligated, to disclose any Proprietary Information it receives to Matanuska Electric Association, Inc. ("MEA") and its Representatives under the terms of this Agreement provided that MEA and its Representatives agreed to be bound by the terms of this Agreement.

3. The Receiving Party agrees to take reasonable and appropriate measures to keep Proprietary Information received from the Disclosing Party confidential and to safeguard such Proprietary Information from theft or loss. The Receiving Party shall exercise with respect to such information the same degree of care used to protect its own proprietary and non-public information of similar importance, but in all events such degree of care shall be reasonable in all respects.
4. Information shall not be considered Proprietary Information for purposes of this Agreement if it:
  - a. is or becomes a part of the public knowledge or literature or becomes publicly available other than as a result of a breach of this Agreement by the Receiving Party;
  - b. was rightfully in the possession of the Receiving Party prior to the date of disclosure by the Disclosing Party;
  - c. is supplied without restriction on disclosure to the Receiving Party by a third party which is not known to the Receiving Party to be prohibited from disclosing such information; or
  - d. was independently developed or obtained by the Receiving Party without reference to or reliance upon the Proprietary Information.
5. Should the Receiving Party be requested or required (by applicable law, statute, regulation, legal process, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigation demand or other similar process) to disclose any of the Proprietary Information received hereunder, the Receiving Party shall, to the extent permitted by law, promptly notify the Disclosing Party in writing of such request or requirement prior to disclosure so that the Disclosing Party may, if it so elects, seek an appropriate protective order or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. With respect to any disclosure made by the Receiving Party pursuant to this Paragraph 5, the Receiving Party agrees to furnish only that portion of the Proprietary Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand and to exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Proprietary Information. The Receiving Party will provide reasonable cooperation to the Disclosing Party and its legal counsel with respect to performance of the covenants undertaken pursuant to this Paragraph 5.
6. Should the Receiving Party become aware of any actual or suspected breach of this Agreement, the Receiving Party shall promptly notify the Disclosing Party thereof in writing and shall take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such actual or suspected breach.
7. The Receiving Party agrees that money damages may not be a sufficient remedy for any breach of this Agreement and that Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity. Notwithstanding the foregoing, the Receiving Party's liability to the Disclosing Party in connection with this Agreement and any activities undertaken in connection with the evaluation of the Potential Transaction shall be limited to direct damages and shall exclude any other liability, including without limitation, liability for special, indirect, liquidated, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

8. The Disclosing Party shall own all rights, title and interest in (a) its Proprietary Information, whether or not fixed in tangible media, (b) any copies thereof, and (c) any media on which any such Proprietary Information was delivered by the Disclosing Party. Neither this Agreement nor the disclosure of Proprietary Information hereunder shall be construed as granting any ownership right or license to the Proprietary Information or to any invention, patent, or other property now or hereafter owned or controlled by the Disclosing Party, nor shall any such disclosure constitute any representation, warranty, assurance, or guaranty, with respect to non-infringement of patent or other rights of others. No warranty or representation as to the accuracy, completeness or technical or scientific quality of any Proprietary Information is provided herein. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE FOR ANY PURPOSE OF THE PROPRIETARY INFORMATION. Neither the Disclosing Party nor any of its Representatives shall be subject to liability resulting from the use of the Proprietary Information by the Receiving Party.
9. Each Party shall bear its own costs incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party, including without limitation the Potential Transaction. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or co-ownership between the Parties.
10. Unless terminated earlier by either Party by written notice to the other, this Agreement shall be in force and effect upon execution and continuing for a period of five (5) years from the effective date hereof; provided, however, the obligations contained herein with respect to Proprietary Information shall survive for five (5) years after the disclosure of such Proprietary Information; and provided further, notwithstanding the foregoing, the obligations contained herein with respect to Proprietary Information that also qualifies as a trade secret shall survive so long as such Proprietary Information continues to qualify as a trade secret.
11. Upon expiration or termination of this Agreement or upon written request by the Disclosing Party, the Receiving Party shall immediately cease use of all Proprietary Information furnished to it by the Disclosing Party hereunder and shall, within ten (10) business days, return to the Disclosing Party, delete or destroy, all such written Proprietary Information in any medium, together with all copies made thereof by the Receiving Party. Upon request, the Receiving Party shall send the Disclosing Party a certificate signed by a duly authorized officer of the Receiving Party confirming the destruction, deletion or return of all Proprietary Information delivered hereunder. Notwithstanding the foregoing, Receiving Party may retain copies of Proprietary Information and any reports or other documents generated by Receiving Party containing Proprietary Information: (i) automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel; or (ii) to the extent necessary to comply with applicable law, regulation or bona fide document retention policies. Any Proprietary Information retained by Receiving Party pursuant to the preceding sentence shall remain subject to all restrictions and obligations contained in this Agreement until such time as the Proprietary Information is returned to the Disclosing Party or destroyed.
12. The Parties shall comply with all applicable U.S. laws and regulations including without limitation those that are related to the export of technical information. The Receiving Party certifies that no Proprietary Information will be exported to any country in violation of applicable United States export control laws or regulations.
13. All notices, requests and other communications to any Party hereunder shall be in writing and delivered by hand, by nationally-recognized delivery service that guarantees overnight delivery, or by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to Chugach:

Chugach Electric Association, Inc.  
Attention: Ron Vecera, VP Risk Management & Administrative Services  
P.O Box 196300  
Anchorage, AK 99519-6300  
(907) 762-4759

if to \_\_\_\_\_ [COUNTERPARTY]:  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_ [COUNTERPARTY]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[ADDRESS]  
\_\_\_\_\_  
\_\_\_\_\_  
[CITY, STATE, ZIP CODE]  
Telephone: \_\_\_\_\_

or to such other address as such Party hereafter may specify for the purpose by notice to the other Party. Each such notice, request or other communication shall be effective upon delivery or refusal of delivery at the address specified in this Paragraph 13.

14. This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by either Party without the prior written consent of the other Party.
15. The validity, interpretation, effect, and enforcement of this Agreement shall be governed by the laws of the State of Alaska, exclusive of its principles of conflict of laws. The Parties hereto irrevocably submit to jurisdiction in the State of Alaska with respect to any dispute between them arising out of, relating to, or in connection with this Agreement, and venue will lie in a state or federal court located in Anchorage, Alaska.
16. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, commitments, understandings, and representations with respect thereto. No variation or modification of this Agreement or waiver of any terms or provisions hereof shall be deemed valid unless in writing and signed by authorized representatives of both Parties.
17. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.
18. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any executed counterpart may be delivered to the other Party by facsimile or any image transmitted by electronic mail (such as a PDF file).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first listed above.

CHUGACH ELECTRIC ASSOCIATION, INC. \_\_\_\_\_ [COUNTERPARTY]

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**EQUIPMENT CONTRACT**

**BETWEEN**

**CHUGACH ELECTRIC ASSOCIATION, INC.**

**AND**



**FOR**

**INTERNATIONAL BATTERY STORAGE SUBSTATION**

**38 kV SWITCHGEAR**

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## **EQUIPMENT CONTRACT**

This Contract is made \_\_\_\_\_, 2022, between Chugach Electric Association, Inc. (Chugach), and \_\_\_\_\_ (Contractor).

Whereas Chugach desires to purchase and the Contractor desires to sell the equipment described herein for the project (the "Work") designated as International Battery Storage Substation.

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

### **SECTION 1. SCOPE OF SERVICE AND COMPENSATION**

The Contractor shall sell and deliver to Chugach and Chugach shall purchase and receive from the Contractor 38 kV switchgear ("Equipment"), said Equipment described in the Technical Specifications, Drawings, Special Provisions and purchased in accordance with the terms and conditions herein stated. Equipment prices include Chugach test witnessing, Manufacturer's representative if required to validate warranty, field engineering, and delivery FOB and off-loaded on the foundation at 6000 Electron Drive, Anchorage, Alaska.

Chugach shall pay the Contractor \$ \_\_\_\_\_ USD for 38 kV switchgear, said price to include requirements of the Technical Specifications and Special Provisions per RFB 22-15.

### **SECTION 2. DELIVERY**

The Contractor shall deliver the Equipment FOB and off-loaded on the foundation at 6000 Electron Drive, Anchorage, Alaska no earlier than August 1, 2023, and no later than August 31, 2023. The time for delivery may be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Contractor, including, but not limited to, acts of God, fires, strikes and floods.

The parties agree that in the event the delivery of Equipment is delayed for reasons other than those described above, the Contractor shall pay \$5,000.00/week, to Chugach as liquidated damages, and not as penalty. To be eligible for an extension of time for completion, the Contractor must make a written request within seven (7) days of the onset of the delay. The request shall include the nature of delay and its expected duration. No extension shall be effective unless approved by Chugach in writing.

Approval documentation, including manuals and drawings, shall be delivered no later than four (4) weeks after receipt of the Notice to Proceed.

### **SECTION 3. PAYMENT**

Upon the shipment of the Equipment hereunder, the Contractor shall submit to Chugach a detailed statement of the Equipment shipped. Chugach shall, upon receipt of the Equipment, pay the Contractor ninety percent (90%) of the Contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation and tested, and the required documentation received as

specified in the Technical Specifications and Special Provisions, Chugach shall make final payment to the Contractor; provided, however such final payment shall be made no later than ninety (90) days after initial operation of the Equipment or later than 180 days after Equipment delivery, whichever is earlier, unless acceptance is delayed because of the fault of the Contractor.

**SECTION 4. WARRANTIES, DEFECTIVE MATERIAL AND WORKMANSHIP**

All Equipment furnished hereunder shall be subject to the inspection, testing and approval of Chugach, and the Contractor shall furnish all information required concerning the nature of source of any Equipment, and provide adequate facilities for testing and inspecting the Equipment at the plant of the Contractor.

The Equipment furnished hereunder shall become the property of Chugach upon receipt, offloading, installation, test and acceptance. Contractor warrants to Chugach, that the goods delivered hereunder will be free from defects in material or workmanship when used and installed in accordance with Contractor's applicable operation instructions and will be the kind and quality specified in the Contract.

In addition to any warranties specified elsewhere or provided by law, Contractor warrants that all materials and equipment furnished and all Work performed will be of specified quality, new, (unless otherwise required or permitted by the Equipment), free from faults or defects, free from faulty design and of sufficient size and capability and of proper materials to meet in all respect the requirements or the Contract Documents.

If the Contractor fails to proceed to comply promptly with the terms of this warranty, Chugach may correct the defect and Contractor shall be liable for all costs incurred therefore. The foregoing shall not be exclusive remedies and Chugach shall also have such other remedies as are available at law and in equity.

All manufacturer guarantees of Equipment shall be transferred and assigned to Chugach upon delivery of any Equipment, and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Contractor by other provisions of this Contract.

**SECTION 5. PATENT INFRINGEMENT**

The Contractor shall indemnify and hold harmless Chugach from and against any and all claims, suits and proceedings for infringements of any patent or patents covering Equipment purchased hereunder.

**SECTION 6. INDEPENDENT CONTRACTOR, AGENCY, SUBCONTRACTOR**

The Contractor agrees to perform the Work described in this Contract as an independent contractor and not as a subcontractor, agent, or employee of Chugach.

Nothing in this Contract shall be interpreted to make Contractor the agent of Chugach, nor Chugach the agent of Contractor.

**SECTION 7. WAIVER**

Failure by Chugach in any instance to insist upon observance or performance by Contractor shall not be deemed a waiver by Chugach or any such observances or performance; no waiver shall be binding upon Chugach unless in writing, and shall then be for the particular instance only; waiver of any one breach shall not be deemed a waiver of any other breach; payment of any sum by Chugach under this Contract shall be cumulative and not exclusive of each other, and may be prosecuted separately or concurrently, as Chugach may determine. Acceptance of final payment shall constitute a waiver by Contractor of all claims, except those previously made in writing and still unresolved.

**SECTION 8. NO PUBLIC ANNOUNCEMENT**

Contractor shall not release any information concerning this Work or any part thereof in the form of advertising or publication, including news releases or professional articles, without the prior written permission of Chugach.

**SECTION 9. ARBITRATION AND DISPUTES**

Chugach, at its sole discretion, shall have the right to require Contractor to arbitrate any and all claims, disputes and other matters in question between Chugach and the Contractor arising out or relating to this Contract or the breach thereof. Contractor agrees that, upon the written demand of Chugach based on a contention of a duty of Contractor to indemnify Chugach or a claim for contribution, it will become a party to any arbitration proceeding involving Chugach, and any third party. All arbitration under this provision shall be conducted pursuant to the Construction Industry Rules of the American Arbitration Association then in effect.

**SECTION 10. TERMINATION**

At any time after the acceptance of the Contract, Chugach shall have the absolute right to terminate the Contract for any reason including its sole and absolute discretion, in whole or in part, and shall within thirty (30) days thereafter make payment to the Contractor for services rendered up to the time of termination less any disputed amounts, unless the termination is a consequence of the Contractor's failure to perform as agreed for the product or the performance of the Work. In the event of Contractor's failure or inability to perform, Chugach reserves any and all rights it may have by law, including nonpayment.

Upon notice of termination, the Contractor shall stop performance of Work hereunder except as may be necessary to carry out such notice of termination and take any other action toward termination of the Work, which Chugach may reasonably direct.

Upon such termination, the obligations of the parties to one another under this Contract, or the portion thereof, which is terminated, shall cease, except for such obligations, which, by their nature or the terms of this Contract, would survive completion of the Work hereunder.

Upon termination notice, the Contractor shall:

1. Assign and transfer to Chugach all materials, Equipment, and tools for which payment has been or will be made under the Contract, all subcontracts, orders and commitments;
2. Cancel subcontracts, orders and commitments to subcontractors and suppliers;
3. Sell, at prices approved by Chugach, such of Chugach's materials, Equipment and tools as are designated by Chugach, and remit the proceeds thereof to Chugach. Contractor shall, as a condition precedent to payment by Chugach of termination costs hereunder, executed and deliver all documents and papers, take all action required to effectuate the above as directed by Chugach, and provide proof there are no liens or claims against Chugach or its property.

In no event shall Chugach pay Contractor termination costs aggregating in excess of the Contract Price.

Upon any termination of this Contract, all of the terms and provisions of the Contract shall remain in full force and effect as to all material, Equipment or Work delivered to Chugach, prior to, or in connection with such termination.

Failure by Contractor to perform any of its obligations hereunder, including but not limited to, a failure to make delivery within the time and in the manner specified, shall give Chugach the right to cancel the Contract, or at Chugach's option, that part of the Contract affected by Contractor's failure to perform. In the event of a Contractor default, the Contractor shall not be entitled to any reimbursement of its expenses resulting from such cancellation, whether the cancellation affects the whole or only a part of the Contract, except for the reasonable value of items furnished by Contractor and accepted by Chugach prior to cancellation, which amount shall not in any event exceed the total Contract Price.

## **SECTION 11. NOTICES AND CORRESPONDENCE**

All notices required or provided for under this Contract, including but not limited to notice of termination, shall be in writing and shall be effective if delivered personally or sent by certified mail, return receipt requested, with postage prepaid, or by overnight carrier, telegram, or confirmed telex or facsimile addressed as follows:

### If to Chugach

When Mailed: Chugach Electric Association, Inc.  
P.O. Box 196300  
Anchorage, Alaska 99519-6300  
Attn: Ron Vecera, V. P., Risk Management & Administrative Services

### When Personally

Delivered: Chugach Electric Association, Inc.  
5601 Electron Drive  
Anchorage, Alaska 99518  
Attn: Ron Vecera, V. P., Risk Management & Administrative Services

If to Contractor:

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Any notice by mail in the manner set forth above shall be deemed given and received 48 hours after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier, telegram, telex or facsimile in the manner set forth above shall be deemed given upon receipt. Any party hereto may change its notice address by giving notice to the other parties, in the manner set forth herein; provided, however, that no change of address notice shall be effective until received by the other party.

**SECTION 12. COMMENCEMENT, PERFORMANCE AND COMPLETION OF WORK**

Contractor shall commence the Work upon receipt of a written Notice to Proceed. Contractor shall deliver all drawings, manuals, and Equipment in accordance with Schedule dates as called for in the Contract Documents, and as further agreed to and delineated in writing during the course of Work.

Contractor shall deliver the Equipment not later than the date stated in the Contract, but no earlier than thirty (30) days prior to that date without the prior written approval of Chugach.

**SECTION 13. INDEMNIFICATION, DEFENSE & HOLD HARMLESS**

Except as otherwise provided in AS 45.45.900, the Contractor shall indemnify, save harmless and defend Chugach, its officers, agents and employees from any and all liability, including without limitation all costs, damages, attorneys fees, and expenses, for all actions and/or claims, including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of the Contractor, and/or any of its subcontractors and/or anyone, including but not limited to Chugach, its officers, agents, and employees, directly or indirectly employed or utilized by the Contractor or otherwise involved in the preparation for and/or the performance of this Contract, or any Work awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers.

**SECTION 14. INSURANCE**

- A. During the term of this Contract, the Contractor will, at its sole expense, secure and maintain and will file with Chugach, proper and acceptable evidence of the following described insurance
  - 1. Worker's Compensation Insurance and Employer's Liability Insurance in compliance with the laws of all applicable states including USL&H and Jones Act (if applicable to the Work), and any other coverages that may apply where the Work is performed covering all employees engaged in the performance of the Work specified in this Contract and any project hereunder, with the following limits:

## Employer's Liability

- a. Bodily Injury by Accident - \$500,000 each accident
  - b. Bodily Injury by Disease - \$500,000 each employee
  - c. Bodily Injury by Disease - \$500,000 Policy Limit
2. Commercial General Liability Insurance, including blanket Contractual, Property Damage and Independent Contractors Personal Injury, and Products-Completed Operations Liability Insurance with coverage at least as broad as Insurance Services Office form number CG 0001 (Edition 04 13) or more recent form and minimum limits as follows:
- a. Each Occurrence Limit - \$1,000,000 for Bodily Injury and Property Damage Liability.
  - b. Personal and Advertising Injury Limit - \$1,000,000.
  - c. Products-Completed Operations Aggregate Limit - \$2,000,000.
  - d. General Aggregate Limit (Other than Products-Completed Operations) - \$2,000,000. This policy shall be endorsed to have the General Aggregate limit apply on a "per project basis."
3. Automobile Liability Insurance covering owned, non-owned and hired vehicles with limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability resulting from any one accident.
4. Excess/Umbrella Liability Insurance in an amount not less than \$4,000,000 Combined Single Limit for any one occurrence, and \$4,000,000 Annual Aggregate. This policy is to provide no less than the same coverage described in Paragraphs 1, 2 and 3 above, and is to be in excess of required primary limits of liability.
- B. The Contractor shall furnish original certificates of insurance on an ACORD form (sample attached as Exhibit 1) evidencing compliance with the requirements of this Section 14 for the Contract period.
- C. All liability insurance shall cover claims involving contractual liability applicable to the Contractor's obligations under the indemnification provisions in Section 13 of this Contract.
- D. All insurance required under this Contract shall be issued by insurance companies authorized to do business in the State of Alaska and rated A-/VII or better in the most recent edition of Best's Insurance Reports.
- E. The minimum policy limits required in this Section 14 are exclusive of defense costs for all applicable policies.
- F. The Contractor's obligation to procure and maintain the insurance required in Section 14 A, subparagraphs 1-4 and Section 14, B and C above is not in derogation of, nor in substitution

for Contractor's obligation to protect, defend, indemnify and save Chugach harmless under those provisions or under Section 13, it being understood that Contractor's obligations to protect, defend, indemnify and save Chugach harmless are not dependent upon nor limited to the amount or availability of insurance proceeds.

- G. Chugach shall be listed as additional insured on the Contractor's policies for all liability insurance required under the terms of this Contract (including Completed Operations) except Worker's Compensation Insurance.
- H. Contractor shall provide thirty (30) days prior written notice be given to Chugach in the event of cancellation and/or amendments to the policy/policies which adversely change the coverage, scope, or amount of the policy/policies and/or coverage provided thereunder.
- I. The "other insurance" clause of the Contractor policy/policies evidenced by the Certificates shall be interpreted to make it/them primary to any insurance policy/policies maintained by Chugach which might otherwise be applicable.
- J. All policies shall be endorsed to provide that underwriters and insurance companies of the Contractor shall not have any rights to subrogate against Chugach.
- K. All policies shall be endorsed to provide that there will be no recourse against Chugach for payment of the Contractor's premiums.
- L. All liability policies including excess/umbrella liability policies shall provide a severability of interest (cross liability) clause applicable to claims made by Chugach against any other insured.
- M. Contractor and its subcontractors shall not commence the shipment of equipment or materials nor commence work at the work site until all of the insurance that Contractor is required to provide is in force and the necessary certificates as required in subparagraph C above have been received and accepted by Chugach.
- N. All Contractor-owned or rented tools and equipment employed for the performance of work under this Contract and not intended to be incorporated into structures or work to which this Contract applies shall be brought to and kept at the work site at Contractor's sole cost, risk and expense and Chugach shall have no liability for loss or damage thereto. The Contractor agrees to waive its underwriters' right of subrogation against Chugach for any loss or damage to Contractor's tools or equipment used under this Contract.

## **SECTION 15. REVISIONS TO THIS CONTRACT**

Chugach shall have the right to make any changes in, or delete services from, the Work described in this Contract and may direct the Contractor to perform extra Work and the Contractor shall implement such changes and perform such extra Work.

Any revisions and amendments to this Contract shall be effected by supplement to the Contract increasing or decreasing the amount of or making alternations the Work to be performed, which supplement shall be furnished to the Contractor and, if accepted by the Contractor, shall be signed and returned to Chugach promptly.

In the absence of such a supplement, the Contractor shall have no claim for compensation in addition to the price agreed upon for Work performed and no right to additional time for completion of the Work described in this Contract. In case of any such change or alteration, so much of the Contract as is not necessarily thereby changed shall remain in full force and effect and no act or conduct of either party or any employee or employees or agent or agents thereof shall be held to operate as a waiver of any term, condition, or provision of this Contract, unless made by proper authority and reduced to writing in the form of a supplement to this Contract. The provisions of this Section 15 shall not be construed to in any way limit the right of Chugach to make any changes, which Chugach may deem desirable, as provided in this Section.

#### **SECTION 16. CHUGACH'S RIGHTS NOT WAIVED**

No payment made shall be considered as conclusive evidence of the satisfactory performance of the Contractor's obligations under this Contract in whole or in part, nor shall payment be construed as acceptance of defective Work or as relieving the Contractor from its full responsibility under this Contract.

#### **SECTION 17. CHUGACH'S SATISFACTION**

Work performed by the Contractor under this Contract shall be to the satisfaction of Chugach. In all areas, Chugach shall be the sole judge as to whether Work is satisfactory.

#### **SECTION 18. NO THIRD PARTY BENEFICIARY**

This Contract and all rights hereunder are intended for the sole benefit of the parties hereto, and subject only to an assignment permitted in Section 19, in any, and shall not imply or; created any rights on the part of, or obligation to, any other entity not a party to this Contract. No provision of the Contract Documents is intended nor shall be construed to be for the benefit of nay third party.

#### **SECTION 19. ASSIGNMENTS**

Except in so far as this Contract specifically permits assignments, any assignment by the Contractor of its interest any part of this Contract or any delegation of duties under this Contract without the express prior written consent of Chugach shall be void, and any attempt by the Contractor to assign any part of its interest or delegate its duties under this Contract shall give Chugach the right immediately to terminate this Contract without any liability for payment for Work performed.

#### **SECTION 20. PROPRIETARY DATA**

All information and data, regardless of form, that is received from Chugach and/or prepared by the Contractor for this Contract are the property of Chugach and shall be treated as confidential by the



Contractor and the CONTRACTOR SHALL NOT DISCLOSE SUCH INFORMATION OR DATA TO OTHERS EXCEPT UPON EXPRESS WRITTEN APPROVAL OF CHUGACH. Without the prior written approval of Chugach, the Contractor shall not use for any purpose other than the performance of the Work contemplated by this Contract, information, including but not limited to designs, drawings, specifications, reports, or other documents received by and/or prepared by the Contractor for the contracted effort, supplies and/or materials. Upon Chugach's request, but not later than the delivery of the Equipment, the Contractor shall return all documentation, and shall safeguard against disclosure to others all Work papers and other documents and materials in the Contractor's possession that include such information.

#### **SECTION 21. SEVERABILITY**

If any provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall be unaffected by such adjudication, and the remaining provisions of the Contract shall remain in full force and effect as if such provision so adjudicated to be invalid had not been included herein.

#### **SECTION 22. VENUE, GOVERNING LAW AND JURISDICTION**

Venue for any arbitration or litigation under this Contract shall be Anchorage, Alaska. This designation of venue shall not be construed to modify the provisions of Section 9 (Arbitration and Disputes). Insofar as is necessary, the parties hereby consent and submit to the jurisdiction of said courts or arbitrators. This Contract is made subject to and shall be governed and construed in accordance with the laws of the State of Alaska and the authority granted to the individual parties thereunder. The prevailing party in any arbitration or litigation concerning this Contract or any Work hereunder shall be entitled to costs and a reasonable attorney's fee in addition to any damages or relief granted.

#### **SECTION 23. EQUAL EMPLOYMENT**

The Contractor represents that it is and shall for the term of this Contract remain in compliance with applicable statutes, ordinances, regulations, and orders with respect to equal employment opportunity and either has heretofore provided or will provide to Chugach the certifications and representations regarding equal employment opportunity that Chugach may require under such statutes, ordinances, regulations and orders.

#### **SECTION 24. CONTRACT DOCUMENTS**

The Contract Document consists of

- Contract and Amendments
- Bid Package (Notice and Instructions to Bidders, Bid Form and Evaluation, Bidder's Qualification Form, Special Provisions, Technical Specifications, Drawings)
- Contractor Bid

In the case of conflict, the Contract takes precedence

**SECTION 25. SUCCESSORS IN INTEREST**

This Contract and each and every clause and the provisions herein contained shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the parties hereto and cannot be changed or terminated except by written instrument subsequently executed by the parties hereto.

**SECTION 26. SUBCONTRACTS**

Contractor shall assure that all material, Equipment, and supplies furnished under this Contract meet the specifications in all respects. Contractor shall procure such material, Equipment, and supplies from only subcontractors who have had similar material, Equipment, and supplies in satisfactory use and operation for five (5) or more years in installations similar to that contemplated in this Work, or from suppliers who are qualified for supply of Equipment for this type of system.

**SECTION 27. ENTIRE AGREEMENT**

The terms of this Contract and any provisions adopted by reference or otherwise incorporated into this Contract set forth the full intent of the parties regarding the matters covered by this Contract. Neither party is relying on or may rely on any written or oral collateral, prior, or contemporaneous agreements, assurances, representations or warranties not set forth in this Contract. No modifications of this Contract shall be implied in law or equity, nor may any part hereof be amended, supplemented, waived or modified without an instrument in writing signed by both parties. Chugach may terminate the Contract without prior Contractor approval; termination must be in writing.

**SECTION 28. COMPLIANCE**

The Contractor shall comply with all applicable Municipal, State and Federal ordinances, statutes, rules, and regulations pertaining to its Work and all standards related to training and inspection procedures in effect at the time of proposal. The Contractor shall also comply with the Chugach safety requirements in effect at the time of the Work. The Contractor shall obtain and maintain current for the duration of this Contract, all required Federal, State, and local licenses and permits. All associated fees and taxes shall be paid by the Contractor without additional cost to Chugach.

**FOR: CHUGACH ELECTRIC ASSOCIATION, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ITS: \_\_\_\_\_

**FOR: CONTRACTOR**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ITS: \_\_\_\_\_

**EXHIBIT 1**  
**SAMPLE ACORD FORM**

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/08/2003

<b>PRODUCER</b> Insurance Broker Name Address City, State, Zip Code Phone Number		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> Contractor Name Address City, State, Zip Code		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: Insurance Company - Best Rating	
		INSURER B: Insurance Company - Best Rating	
		INSURER C: Insurance Company - Best Rating	
		INSURER D: Insurance Company - Best Rating	
		INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD LTR NSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blanket Contractual Liability GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	POLICY NUMBER	00/00/00	00/00/00	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP OP AGG \$ 2,000,000	
	B	AUTOMOBILE LIABILITY ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	POLICY NUMBER	00/00/00	00/00/00	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		C	GARAGE LIABILITY ANY AUTO <input type="checkbox"/>			AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
			EXCESS UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	POLICY NUMBER	00/00/00	00/00/00
D		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	POLICY NUMBER USL&H IF APPLICABLE MARITIME LIABILITY AT LIMIT EQUAL TO EL	00/00/00	00/00/00	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 CEA is named as additional insured on all policies except Workers Compensation.  
 Waiver of Subrogation in favor of CEA is added to all policies listed hereon.  
 Coverage is primary and non-contributory to any liability coverage carried by CEA.  
 CEA will be notified 30 days prior to any material changes and/or cancellation of any policies listed hereon.

<b>CERTIFICATE HOLDER</b> Chugach Electric Association, Inc. (CEA) P.O. Box 196300 Anchorage, AK 99519-6300	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL <del>SEND</del> MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. AUTHORIZED REPRESENTATIVE
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**APPENDIX A**

**RFB NO. 22-15**

**APPENDIX B**  
**CONTRACTOR BID**