



March 9, 2018

Bernie Karl, Principal Member  
Kodiak Narrow Cape Lodge, LLC  
P.O. Box 58156  
Fairbanks, AK 99711

Re: Alaska Aerospace Corporation RFP #AAC 18-007

Dear Mr. Karl:

At its February 23, 2018 meeting, the Board of Directors of Alaska Aerospace Corporation directed its legal counsel to report to the Chair of the Board regarding the grounds for AAC's decision regarding the award of RFP 18-007. The report that the Corporation's legal counsel prepared in response to this direction is enclosed.

Yours truly,

Alaska Aerospace Corporation

A handwritten signature in dark ink that reads "Robert McCoy". The signature is written in a cursive, flowing style.

Robert McCoy  
Chair, Board of Directors

**MEMORANDUM**

**TO:** DR. ROBERT MCCOY,  
CHAIR, ALASKA AEROSPACE CORPORATION BOARD OF  
DIRECTORS

**FROM:** THOMAS F. KLINKNER  
BIRCH, HORTON, BITTNER & CHEROT

**RE:** AWARD OF RFP 18-007

**FILE NO.:** 505,274.69

**DATE:** MARCH 7, 2018

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**1. *Introduction.***

At its February 23, 2018 meeting, the Board of Directors ("Board") of the Alaska Aerospace Corporation ("AAC") instructed me to report to you regarding the grounds for AAC's decision regarding the award of RFP 18-007. My report follows.

**2. *The Procurement.***

RFP 18-007 requested proposals for a Life Support Area ("LSA") at the Pacific Spaceport Complex Alaska ("PSCA") on Kodiak Island, to provide temporary living quarters and related services for personnel of an AAC launch customer. Section 2.0 of the RFP described the scope of the procurement as follows: "... furnish all parts, labor, tools, materials, and transportation necessary to prepare the site, assemble, operate, dismantle the LSA."

This was the second solicitation of proposals for the LSA. The proposals that were submitted in response to the first solicitation, RFP 18-005, were rejected by AAC's launch customer as exceeding the project budget. PRL Logistics, Inc. ("PRL") had been conditionally selected as the lowest price, technically acceptable proposer under RFP 18-005. AAC had identified the competing proposal of Kodiak Narrow Cape Lodge, LLC ("KNCL") as also being technically qualified.

**3. *The Award and the Protest.***

PRL and KNCL were the only firms that submitted proposals in response to RFP 18-007. On January 17, 2018, AAC issued its Notice of Intent to Award to PRL, who, it stated, "has been determined to be both responsive and responsible," in the amount of \$10,969,098.81. By a Notice of Protest dated January 22, 2018, KNCL protested the award of RFP 18-007. As grounds for the protest, KNCL alleged an "inconsistent,

erroneous and what appears to be biased technical adequacy decision making process,” and a “red flag raising set of facts,” consisting of the following:

- AAC had informed KNCL that its proposal in response to RFP 18-005 was deemed technically qualified.
- AAC’s launch customer did not accept the proposal chosen under RFP 18-005, and instead a new RFP was solicited with a changed scope of work, intended to reduce the cost.
- KNCL’s proposal in response to RFP 18-007 was \$3,500,000 less than that of the other proposer; however this time KNCL’s proposal was determined not to be technically qualified.

KNCL followed its January 22, 2018 Notice of Protest with a letter dated February 9, 2018 to the Commissioner of Military and Veterans Affairs, in which it requested, “acknowledgement from the Alaska Aerospace board of directors that [KNCL] was a technically qualified bidder for the RFP and did provide a technically qualified proposal ...” In its subsequent presentation to the AAC Board of Directors on February 23, 2018, KNCL emphasized what it considered to be AAC’s determination that it was not a qualified proposer, with resulting alleged negative effects on KNCL’s business reputation.

#### **4. Analysis.**

1.030(c)(10) of the AAC Procurement Regulations provides that the procurement officer shall award a contract under an RFP to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to AAC taking into consideration price and the evaluation factors set out in the RFP. 1.050(c)(1) of the AAC Procurement Regulations emphasizes that a procurement decision requires separate determinations whether a proposal is responsive and a proposer is responsible:

(c) Determination of Responsibility, as follows:

(1) a written determination of responsibility of a bidder or proposer shall be made by AAC; the unreasonable failure of a bidder or proposer to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of non-responsibility with respect to the bidder or proposer;

Contrary to KNCL’s assertion, the record does not reflect that AAC made any determination that KNCL was not a responsible (or qualified) proposer.

As stated above, Section 2.0 of RFP 18-007 described the scope of the procurement as follows: “... furnish all parts, labor, tools, materials, and transportation necessary to prepare the site, assemble, operate, dismantle the LSA.” This scope of

work is reflected in the Part II.A of the Proposal Instructions, which states in relevant part, "2. Method - describe the offerors understanding and proposed method for the assembly, operation and breakdown of the temporary housing as required under SOW 2.0, Life Support Area (LSA)," and the Proposal Form, which divides the offeror's price proposal into specified line items, the fifth of which is "Demobilization." KNCL stated an amount of \$0 for this line item in its proposal. In the cover letter to its proposal, at page 3, KNCL states with regard to demobilization only that, "Demobilization will be accomplished by reducing staff and placing the facility in standby mode." It made no reference to dismantling the facility as specified in the RFP scope of work. Similarly, in its Technical Approach submission, at page 1, KNCL omits any reference to dismantling the LSA under the heading "2.0 Life Support Area." The omission of dismantling the LSA from the KNCL proposal accounts for a large part of the difference in its pricing from that in the PRL proposal. In contrast to the amount of \$0 stated by KNCL, PRL states an amount of \$2,235,043 for the Demobilization line item on its Proposal Form. The price stated by PRL for dismantling the LSA indicates that the omission of this work from the KNCL was material, and the omission thus rendered the KNCL proposal non-responsive.

## **5. Conclusion.**

The non-responsive nature of the KNCL proposal clearly was the reason for its rejection by AAC; AAC made no determination that KNCL was not a qualified (or responsible) proposer under 1.050(c)(1) of the AAC Procurement Regulations. It would be consistent with the actual reason for AAC's rejection of the KNCL proposal for the AAC Board of Directors to acknowledge, as KNCL has requested, that KNCL was a technically qualified bidder under RFP 18-007.