



**Alaska Electric & Energy
Cooperative, Inc.**

A Touchstone Energy[®] Cooperative 

REQUEST FOR BIDS

**Battery Energy Storage System (BESS) - Phase 2 &
3 Construction**

Alaska Energy & Electric Cooperative, Inc. (AEEC) is seeking Bids from qualified electrical contractors to provide construction services that include below-grade and above-grade electric construction for its BESS Project within and adjacent to its Soldotna Substation. The expected value of this contract is from \$2,500,000 to \$3,250,000. Work must be complete no later than July 31, 2021. AEEC is not responsible for any costs incurred by contractors while developing a Bid.

Bidders must submit evidence of qualifications as part of its Bid submittal. Qualifications include, but are not limited to, having a collective bargaining agreement with the IBEW Local 1547, being licensed in the State of Alaska as a General Contractor, having prior experience providing similar services, having an OSHA compliant safety program, and providing proof of the following minimum insurance coverages:

- General (Public) Liability Insurance - \$2,000,000
- Auto Liability Insurance - \$1,000,000
- Workers' Compensation with Employer's Liability coverage of not less than \$500,000

To obtain an RFB package contact Chris Edgar at (907) 283-2350 or by email: CEdgar@HomerElectric.com.

Deadline for receipt of bids is 3:00 p.m. AKT, July 10, 2020.

NON-DISCLOSURE AGREEMENT

AGREEMENT made as of the ____ day of _____, 20____,

BETWEEN:

**ALASKA ELECTRIC & ENERGY COOPERATIVE,
INC.,**

a company organized under the law of the State of Alaska,
USA,
(hereinafter referred to as "AEEC")

- and -

HOMER ELECTRIC ASSOCIATION, INC.,

a company organized under the law of the State of Alaska,
USA,
(hereinafter referred to as "HEA")

- and -

Bidder: _____

a company existing under the laws of the State of _____
(hereinafter referred to as the "Company")

WHEREAS, AEEC, an Alaska company doing business in Alaska, and the Company wish to participate in discussions regarding the Company potentially providing AEEC with certain of the Company's services (a "Transaction"); and

WHEREAS, in connection with AEEC and the Company considering a possible Transaction, it may be necessary for AEEC or its affiliate HEA (collectively "AEEC/HEA") to permit Company to have access to and review certain Confidential Information (as defined below), all in accordance with the terms of this Non-Disclosure Agreement ("NDA");

NOW, THEREFORE, the Company agrees as follows:

This NDA is entered as of the Effective Date between the AEEC/HEA and the Company identified below. AEEC/HEA and Company agree as follows:

1. Purpose. Each party hereto or its Affiliates (each, a "Discloser") may disclose Confidential Information to the other parties or its Affiliates (each, a "Recipient") in order to consider a potential business relationship with each other or fulfill the objectives

of such relationship (“Purpose”). “Confidential Information” means information disclosed by Discloser that is marked as confidential or proprietary, identified as confidential or proprietary at the time of disclosure (e.g. if disclosed orally or visually), or disclosed under circumstances by which Recipient should reasonably understand such information is to be treated as confidential or proprietary.

2. Confidentiality. Subject to Section 3, Recipient may not: (a) use Discloser’s Confidential Information for any reason except the Purpose; or (b) disclose Confidential Information to any individual or third party except to its personnel, directors, consultants, professional advisors, and Affiliates, or (to the extent expressly approved in writing by Discloser) other unaffiliated third parties, in each case that (i) have a “need to know” such Confidential Information for the Purpose and (ii) are bound to confidentiality obligations that protect Confidential Information to at least the same extent as the terms of this NDA (collectively, “Authorized Recipients”). Recipient shall implement and maintain appropriate organizational, technical, and administrative security measures, exercising the same degree of care to protect Discloser’s Confidential Information that it uses for its own confidential information of a similar nature, but in no event less than reasonable care. Promptly after learning of any unauthorized use or disclosure of, and/or unauthorized attempt to access or modify, any Confidential Information in Recipient’s (or its Authorized Recipients’) custody or control, Recipient shall notify Discloser in writing and cooperate with Discloser to investigate and mitigate any adverse effects. Recipient shall be responsible for any unauthorized use or disclosure of Confidential Information by its Authorized Recipients.

3. Exceptions. The obligations of Section 2 shall not apply to information that: (a) is already known to Recipient at the time of disclosure without obligation of confidentiality, (b) is or becomes publicly known through no wrongful act or omission of Recipient, (c) is rightfully received by Recipient from a third party without obligation of confidentiality, (d) is approved for release by written authorization of Discloser, or (e) was developed by Recipient independently and without the use or benefit of any of Discloser’s Confidential Information. A disclosure that Recipient is required to make pursuant to any order or requirement of a court, administrative agency, other governmental agency, or stock exchange will not be deemed a breach of Section 2 of this NDA, provided that Recipient has to the extent permitted by law: (x) promptly notified Discloser in writing of such order or requirement, (y) given Discloser an opportunity to challenge or limit the disclosure requirement or seek an appropriate protective order, and (z) cooperated with Discloser to narrow the scope of such disclosure to only that portion of the Confidential Information that is necessary to fulfill the order or requirement. A disclosure which complies with a U.S. Federal Acquisition Regulation permitting disclosures to the government concerning government contracts will not be deemed a breach of this NDA. Each party is hereby given notice of the immunity set forth in 18 USC § 1833(b).

4. Ownership. All Confidential Information and derivations thereof remain Discloser's sole property, and no license or other right to Confidential Information or intellectual property is granted or implied in this NDA or by any disclosure. This NDA does not require either party to disclose any information.

5. Affiliate. "Affiliate" means an entity which either controls or is controlled by a party or is under common control with a party, where "control" means the power to direct or cause the direction of an entity's management and policies through ownership or control of at least 50% of its voting securities or ownership interest.

6. As-Is Disclosures. Discloser warrants that it has the right to disclose the Confidential Information to Recipient. No other warranties are made whether express, implied, or statutory. Unless otherwise provided, all Confidential Information is provided on an "AS IS" basis. Discloser disclaims any and all other representations, warranties, or assurances concerning the Confidential Information, including as to accuracy, performance, completeness, suitability, or third-party rights.

7. Current and Future Development. Nothing in this NDA prohibits each party from developing, or having developed, products or services that, without violation of this NDA, compete with other parties' products or services. Neither party may be presumed to have violated this NDA solely because it uses, makes, has made, or offers products or services which compete with the other party's products or services.

8. Return or Destruction. Confidential Information, and all copies thereof, remain Discloser's property. Upon expiration or termination of this NDA or Discloser's written request, Recipient shall promptly return to Discloser all documents, presentations, and other tangible items of Confidential Information or, at the request of Discloser, certify in writing that all such Confidential Information has been destroyed; provided, however, that Recipient may retain and use such Confidential Information if and to the extent permitted by a license or similar right under a separate agreement. Recipient shall also use reasonable efforts to delete all electronic copies of Confidential Information under its control. If it would be unreasonably costly or burdensome for Recipient to immediately delete copies of Confidential Information from its routinely-made backup or disaster-recovery systems, then Recipient will not be required to do so until the next regularly-scheduled destruction of such copies in the usual course of business and in compliance with a reasonable back-up retention policy adopted by Recipient, provided that such copies remain subject to the requirements of Section 2 so long as they remain in Recipient's custody or control. If data is restored to Recipient's production systems from a backup or disaster recovery system after Confidential Information was otherwise required to be returned or destroyed, Recipient must either ensure that the restoration does not include any Confidential Information which should otherwise have been returned or destroyed or, if such Confidential Information is included in the restoration, securely delete such Confidential Information promptly after the restoration.

9. Termination. This NDA is effective as of the Effective Date and will expire 3 years thereafter. Either party may terminate its participation in this NDA for any or no reason by giving 60 days' prior written notice to the other parties. Expiration or termination will not affect a party's rights or obligations with respect to Confidential Information disclosed before such expiration or termination, and such rights or obligations will continue as long as Recipient has custody of or control over Confidential Information. Sections 2–4 and 7–13 hereof will survive for 5 years after the expiration or termination of this NDA.

10. Disputes; Venue. This NDA is governed by the laws of the State of Alaska without regard to conflict of laws principles. Each party will be jointly and severally responsible for the acts and omissions of its Affiliates and each of their respective Authorized Recipients. The rights of and damages incurred by a party's Affiliate will be deemed to be rights of and damages incurred by such party. The parties shall discuss in good faith a resolution to any conflict or dispute under this NDA. The exclusive venue for any judicial action arising out of or relating to this NDA will be state and federal courts located in the State of Alaska. The parties, for themselves and their respective Affiliates and Authorized Recipients, hereby waive any challenge to venue and jurisdiction in such courts.

11. Independent Contractors. AEEC and the Company are and will at all times solely remain independent contractors of the other, and neither the execution nor delivery of this NDA, nor the disclosure and receipt of the Confidential Information hereunder in any way implies or creates any onus or obligation on the part of either AEEC or the Company to enter into any business relationship or contract, or to purchase any product(s) or service(s). Nothing in this NDA shall, nor is intended to, constitute the parties as principal-agent, partners, or trustee-beneficiary of each other.

12. The parties will send notices in writing as follows:

Notice to AEEC

Alaska Electric & Energy Cooperative, Inc.
3977 Lake Street, Homer, Alaska 99603
Attn: Mr. Bradley P. Janorschke, General Manager
Fax: 907-283-7122

Notice to HEA

Homer Electric Association, Inc.
3977 Lake Street, Homer, Alaska 99603
Attn: Mr. Bradley P. Janorschke, General Manager
Fax: 907-283-7122

Notice to Bidder Company: _____ .

Bidder Address: _____ .

Attn: _____ .

Fax: _____ .

All notices, requests, consents, and other communications hereunder shall be addressed to the receiving party's address set forth above, and shall be (i) delivered by hand, (ii) made by facsimile transmission or electronic mail, (iii) sent by overnight courier (all fees pre-paid), or (iv) sent by certified or registered mail, return receipt requested, postage prepaid. All notices, requests, consents, and other communications hereunder shall be deemed to have been given: (i) if by hand, at the time of the delivery thereof to the receiving party, (ii) if made by facsimile transmission or electronic mail, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the business day following the day such mailing is made, or (iv) if sent by certified or registered mail, on the third business day following the time of such mailing thereof to such address. Either party may change to whom or where notice is to be given by providing notice to the other party of such change at such other party's last address provided pursuant to this NDA. A notice is effective only if the party giving the Notice has complied with the requirements of this Section 12.

13. Miscellaneous. This NDA constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, representations, and understandings between the parties regarding its subject matter. If any provision hereof is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this NDA shall remain in full force and effect. This NDA is written in the English language, and the English version shall prevail over any translation thereof. A waiver of any right hereunder does not imply a waiver of any other rights. No waiver, alteration, modification, or amendment of this NDA shall be effective unless in writing and signed by all parties. This NDA may be signed in duplicate originals or in separate counterparts, each of which is effective as if the parties signed a single original, and a facsimile of an original signature or electronically-signed version transmitted to the other parties is effective as if the original was sent to the other parties. Each party agrees that it shall not assign, transfer, or otherwise convey or delegate any of its rights or duties under this NDA (except to the successor in a merger, acquisition, or corporate reorganization of the assigning party) without the other parties' prior written consent, and any attempt to do so shall be void.

IN WITNESS WHEREOF, this NDA has been executed and delivered as of the date first above written, by the duly authorized representatives of the parties hereto.

Bidder Company: _____ .

By: _____

Name: _____

Title: _____

ALASKA ELECTRIC & ENERGY COOPERATIVE, INC.

By: _____

Name: _____

Title: _____

HOMER ELECTRIC ASSOCIATION, INC.

By: _____

Name: _____

Title: _____