



	Approved	Denied
Date Action Taken:	6/11/07	
Other:		
Verified by:	<i>W. Miller</i>	

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 07-29

TITLE: AWARD OF ANNUAL CONTRACT TO CROWLEY PETROLEUM DISTRIBUTION, INC. (FORMERLY SERVICE OIL & GAS, INC.) FOR SUPPLY OF DIESEL IN THE AMOUNT OF \$35,000 PER YEAR.

Agenda of: June 11, 2007

Date: May 25, 2007

Originator: William A. Miller, Purchasing Officer *W. Miller*

Route to:	Department	Signature/Date
	Police Chief Youth Court, Dispatch, Code Compliance	
	Culture and Recreation Services Director Library, Museum, Sports Complex	
	Public Works & Recreation Facility Maintenance Director	
X	Finance, Risk Management & MIS Director Purchasing	<i>Jeanne E. Collogan</i>
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>J. Miller 5-30-07</i>
X	City Clerk	<i>W. Miller</i>

REVIEWED BY MAYOR DIANNE M. KELLER:

Dianne M. Keller 6/1/07

FISCAL IMPACT: yes \$35,000 per year or no Funds Available yes no

Account name/number:

\$30,000.00 001-4320-432.60-25 Public Works/Roads Division/Gasoline & Diesel

\$ 5,000.00 310-4351-435.60-25 Public Works/Sewer Division/Gasoline & Diesel

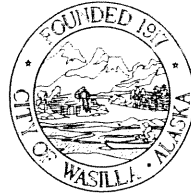
Attachments: Invitation to Bid 0604-0-2006/WM

SUMMARY STATEMENT: In accordance with WMC 5.08.110, on January 20, 2006, the City of Wasilla issued Invitation to Bid (ITB) 0604-0-2006/WM for delivery of diesel fuel to City tanks. The objective was to secure a stable and economical diesel supply for the City's tanks that feed fuel to City graders, trucks and stand-by generators. These tanks are located at the City shop, the Wasilla Police Department, the Multi-Use Sports Complex and public works sewer/water facilities.

In response to the ITB, a single bid was received from Crowley Petroleum Distribution, Inc., (formerly Service Oil & Gas, Inc.). Following a thorough review of the bid from Crowley, the Purchasing/Contracting Officer confirmed that it conformed in all material aspects to the solicitation. The price structure offered by Crowley is substantially less

than was being paid to the previous vendor and represents a savings to the taxpayer of more than \$3,300 per year. For the balance of FY2006 and FY2007, only the Mayor's approval was required per WMC 5.08.070.A. as total fuel purchases were not to exceed \$25,000 per year. However, with the increased price of fuel, the potential exists for usage to be as much as \$35,000 in FY2008 thus Council approval is being requested per WMC 5.08.070.B.

ACTION: Council is requested to authorize the award of a contract for diesel fuel delivery services to Crowley Petroleum Distribution, Inc. The City may terminate this Contract, and Crowley Petroleum Distribution, Inc., waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding from City, State, and/or federal sources is not appropriated or is withdrawn, limited, or impaired.



Bid No. ITB-0604-0-2006/WM

**THE CITY OF WASILLA PURCHASING DEPARTMENT IS SOLICITING BIDS FOR
DELIVERY OF #1 AND #2 DIESEL TO TANKS LOCATED
WITHIN THE CITY LIMITS**

INVITATION TO BID NO. ITB-0604-0-2006/WM

F.O.B.: City of Wasilla, 290 Herning Avenue, Wasilla, AK 99654

Release Date: January 20, 2006

Opening Date: February 9, 2006 @ 2:00 P.M.

For additional information or to obtain a copy of this Invitation to Bid, please contact:

BILL MILLER, PURCHASING OFFICER

(907) 373-9047

Company Name: Service Oil & Gas, Inc.
Contact Name: Chuck Stielstra E-Mail Address: cstielstra@serviceoil.com
Address: 523 S. Valley Way
City: Palmer State: AK Zip: 99645
Telephone (907) 745-3776 Fax (907) 745-2876 Federal Tax ID No.: 92-0048898
Prices contained in this bid are subject to acceptance within 60 calendar days.
Delivery will be completed within 2 calendar days after receipt of purchase order.
Payment Terms 30 days Date 2-8-06

I have read, understand, and agree to all terms and conditions herein.

Signed [Signature] Print Name & Title Chuck Stielstra

Bid Submittal Information located on page 2 Palmer Gen. Mng.

Bid Specifications & Signature Page located on pages 12 - 17

This ITB contains a total of 17 pages.

BID SUBMITTAL INFORMATION

Bids sent by mail or overnight delivery must be returned in a sealed envelope with the bid number and opening date clearly marked in the lower left corner on the front side of the envelope. Bids mailed by the US Postal Service, UPS, Federal Express, DHL, etc. must be addressed to: *CITY OF WASILLA, Purchasing Officer, 290 E. HERNING AVENUE, WASILLA, AK 99654*. The City of Wasilla will not be held responsible for bid envelopes mishandled as a result of the envelope not being properly prepared. Faxed bids will not be accepted.

This entire document and any amendments if applicable to this bid must be returned as part of the vendor's bid submission. Vendors must return one (1) signed copy of their entire bid document submission to the Purchasing Officer. Failure to comply with this requirement will be grounds for non-acceptance of the bid.

BID PRICES WILL BE DISCLOSED AS REQUIRED BY WASILLA MUNICIPAL CODE. WHILE PRICE IS AN IMPORTANT CRITERIA CONSIDERATION IN THE BID AWARD PROCESS IT IS NOT THE ONLY CRITERIA. A BID AWARD IS MADE TO THE LOWEST RESPONSIBLE BIDDER OR BIDDERS BASED UPON AN EVALUATION OF ALL BIDS SUBMITTED AND THEIR CONFORMANCE WITH SPECIFICATIONS, TERMS AND CONDITIONS STATED IN THE BID. THE PURCHASING OFFICER MAY REJECT ANY OR ALL BIDS OR MAY ACCEPT THE BID DETERMINED BEST FOR THE INTEREST OF THE CITY.

1. ACRONYMS/DEFINITIONS:

For the purposes of this Invitation to Bid, the following acronyms/definitions will be used:

Bidder	Organization/individual submitting a bid in response to this Invitation to Bid.
Goods	Within the definition of WMC 5.08.010 and 5.08.110; identified in this Invitation to Bid.
Lowest Responsible Bidder/Vendor	The organization/individual that is awarded a contract or order for the goods identified in this Invitation to Bid.
May	Indicates something that is not mandatory but permissible.
NRS	Wasilla Municipal Code
Shall/Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a bid as non-responsive.
City	The City of Wasilla and any City department identified herein.

2. **BID SOLICITATION, EVALUATION AND AWARD PROCESS:**

1. This procurement is being conducted in accordance with WMC 5.08.110.
2. For purposes of addressing questions concerning this Invitation to Bid the sole contact will be the Purchasing Officer. Upon issuance of this Invitation to Bid, employees and representatives of the agencies identified herein will not answer questions or otherwise discuss the contents of this Invitation to Bid with any prospective bidders or their representatives. Failure to observe this restriction may result in disqualification of any bid. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
3. Pursuant to WMC 5.08.110, responsible bids must conform to all standards and specifications in the Invitation to Bid.
4. Pursuant to WMC 5.08.110, the Purchasing Division may enter into a contract using a standard form of contract, by advertising in accordance with the provisions of WMC 5.08.110(B) for the furnishing of goods for not more than 5 years. The original terms of a contract may be extended annually thereafter if the conditions for extension are specified in the original solicitation, and the Purchasing Officer determines that an extension is in the best interest of the city.
5. In accordance with WMC 5.08.190, if a person who submits a bid or proposal is a local vendor as defined in WMC 5.08.190(C), the Purchasing Officer shall reduce the bid or proposal price of a local vendor by two and one-half (2-1/2) percent for purposes of bid or proposal evaluation. The reduction authorized by 5.08.190(C) is only for bid or proposal evaluation, and is not applied to the awarded contract price.
6. Pursuant to WMC 5.08.110 and 5.08.130, all goods with an the estimated cost in excess of \$10,000 must be purchased by formal contract from the lowest responsible bidder after due notice inviting the submission of sealed bids to the Purchasing Division at the date, hour and location set forth in the bid, and at that date, hour and location the bids must be publicly opened.
7. Pursuant to WMC 5.08.110 and 5.08.170, the Purchasing Officer, Mayor and/or City Council may reject any or all bids, or may accept the bid determined best for the interest of the City.
8. In awarding contracts for the purchase of goods, whenever two or more lowest bids are identical, the Purchasing Officer shall:
 - (a) If the lowest bids are by bidders resident in the City of Wasilla, accept the bid that is in the best interests of the City.
 - (b) If the lowest bids are by bidders resident outside the City:
 - (1) Accept the bid for goods or commodities produced or manufactured in the State; or
 - (2) Accept the bid for goods or commodities supplied by a dealer resident in the State.
9. All bids on more than one item on which bids are called for by the same notice must be itemized and give a price for each item.

10. Pursuant to WMC 5.08.110 all bids must:
 - (a) Be in writing and signed.
 - (b) Be sealed or, if the bid is submitted electronically, secured by an electronic equivalent of a seal, as approved by the Purchasing Officer.
 - (c) Be opened and read publicly by the Purchasing Officer as they are opened.

11. Pursuant to WMC 5.08.160 every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Purchasing Officer shall consider, if applicable, the imposition of inverse preference described in WMC 5.08.190 and may consider:
 - (1) The location of the using agency to be supplied.
 - (2) The qualities of the articles to be supplied.
 - (3) The total cost of ownership of the articles to be supplied.
 - (4) Except as otherwise provided in paragraph (5), the conformity of the articles to be supplied with the specifications.
 - (5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:
 - (I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;
 - (II) The purchase of the alternative article results in a lower price; and
 - (III) The Purchasing Officer deems the purchase of the alternative article to be in the best interests of the City of Wasilla.
 - (6) The purposes for which the articles to be supplied are required.
 - (7) The dates of delivery of the articles to be supplied.

12. When determining the purchase of goods, the Purchasing Officer will consider the "total cost of ownership" which includes, but is not limited to:
 - (a) The history of maintenance or repair of the articles;
 - (b) The cost of routine maintenance and repair of the articles;
 - (c) Any warranties provided in connection with the articles;
 - (d) The cost of replacement parts for the articles; and
 - (e) The value of the articles as used articles when given in trade on a subsequent purchase.

13. A contract may be awarded for separate items or portions or groups of items, or for separate portions or groups of portions of a project, as the best interest of the city requires.

15. Pursuant to WMC 5.08.110(D.1.), the Purchasing Officer may allow a person to withdraw his bid if:
 - (a) The Purchasing Officer believes that an obvious error has been made by the person which would cause him financial hardship; and
 - (b) The contract has not yet been awarded.

16. Pursuant to WMC 5.08.110(E) each bid and the name of the person making the bid shall be entered on a record. The record, with the name of the successful bidder indicated thereon, shall be open to public inspection after the award of the contract.

17. Reference to a specific manufacturer or a specific product or model in the bid specifications does not restrict bidders to that manufacturer, product or model. This method is used to indicate the functional requirements (e.g., type, design, characteristics, quality) of the article desired. Bids may be considered on other manufacturer's products or other models determined by the Purchasing Officer to be the functional equivalent of the product or model referenced.
 18. Submission of a bid shall constitute an agreement to all terms and conditions specified in the Invitation to Bid, including, without limitation, the Terms and Conditions for Purchase of Goods set forth in Section 4, except such terms and conditions that the bidder expressly excludes.
 19. Bids must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the bidder's standard contract language. The omission of these documents renders a bid non-responsive. A review of these documents is necessary to a determination of which bid is in the best interests of the City.
 20. Prices offered in bids are an irrevocable offer for the term of the contract and any contract extensions unless otherwise specified.
 21. The Purchasing Officer's acceptance of a bid through a written Notification of Award will create a binding contract.
 22. Sanctions for breach of contract and penalties may be assessed by the Purchasing Officer.
 23. Tabulations of the bid evaluation are available to all bidders at their expense by contacting the Purchasing Officer.
 25. Pursuant to WMC 5.16 any vendor who enters into a contract with the City of Wasilla and who sells tangible personal property in the City of Wasilla is required to obtain a permit and agree to collect and pay the taxes imposed by law on the sale of tangible personal property in this city.
3. **BID SPECIFICATIONS AND FUNCTIONAL REQUIREMENTS:** The purpose of this solicitation is to obtain competitive pricing for supply of #1 and #2 diesel. Proof, satisfactory to the City, must be provided by Bidder to show that any alternate article is equal to, or exceeds the bid specifications in design and performance. Complete and detailed comparative documentation for equipment other than requested in this solicitation is **required** to be submitted with bid. Equivalent items may be subject to performance testing. Specifications can be found on pages 12 thru 17 of this bid document
4. **TERMS AND CONDITIONS FOR PURCHASE OF GOODS:**
1. **ASSENT:** The City and Vendor agree that the City's acceptance of Vendor's Bid through the issuance of a written Notification of Award shall create a binding Contract.
 2. **INCORPORATED DOCUMENTS:** The Contract shall consist of this Invitation to Bid, any amendments to this invitation to bid if applicable the Vendor's Bid and all documentation contained therein, and the Notification of Award, together with any subsequently-issued Purchase

Order executed by a person with full power and authority to issue same on behalf of the City. A Vendor's Bid shall not contradict or supersede any City specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

3. **DEFINITIONS:** "City" means the City of Wasilla and any city department identified herein.
4. **CONTRACT TERM:** This Contract shall be effective for the period indicated in the Invitation to Bid, unless sooner terminated by either party as set forth in this Contract. The Contract term may be extended.
5. **NOTICE:** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
6. **TERMINATION:**
 - a. Without Cause. This Contract may be terminated upon written notice by mutual consent of both parties or by the City upon 5 days written notice without cause
 - b. City Termination for Nonappropriation. The continuation of this Contract beyond the current year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Wasilla City Council and/or federal sources. The City may terminate this Contract, and Vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from City, State, and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
 - c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
 - i. If Vendor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Vendor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Vendor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the City materially breaches any material duty under this Contract and any such breach impairs Vendor's ability to perform; or
 - v. If it is found by the City that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Vendor, or any agent or representative of Vendor, to any officer or employee of the City of Wasilla with a view toward securing a contract or securing favorable treatment with respect to awarding, extending,

- amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the City that Vendor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (5), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
 - i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those that are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Vendor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency.

7. **REPRESENTATIONS AND WARRANTIES:** Vendor represents and warrants to the City:

- a. Vendor Authorization: Vendor is duly organized, validly existing, and in good standing under the appropriate laws with full power and authority to conduct the business that it presently conducts in the City of Wasilla. Vendor has the legal power and right to enter into and perform the Contract. Consummation of the transactions contemplated by the Contract will not violate any provision of law, or any of Vendors governing documents (articles of incorporation, partnership Contract, etc). Execution of the Contract and all documents provided for in the Contract by Vendor and its delivery to the City have been duly authorized by the board of directors or managing agents of Vendor and no further action is necessary on Vendor's part to make the Contract valid and binding on Vendor in accordance with its terms. Vendor has obtained all licenses and permits to perform all of its requirements under the Contract, and is current on all tax obligations to the City of Wasilla or any other governmental entity in Alaska.
- b. Bid Representations: All statements made by Vendor on any application, bid, proposal, offer, financial statement, or other document used by Vendor to induce the City to enter into the Contract are true, correct, complete, and omit no information which would render them misleading.
- c. Use of Broker: Vendor agrees to indemnify the City from any damage, liability, or expense that it may suffer as a result of any claim of a broker or other finder with whom it is determined that Vendor has dealt in connection with the transactions contemplated under the Contract.
- d. Express Warranties: For the period specified on the face of the Contract, Vendor warrants and represents each of the following with respect to any goods provided under the Contract, except as otherwise provided on the face of the Contract or in a Contract signed by both parties:

- i. Fitness for Particular Purpose: The goods shall be fit and sufficient for the particular purpose set forth above.
 - ii. Fitness for Ordinary Use: The goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by the Contract are ordinarily intended is general government administration and operations.
 - iii. Merchantable, Good Quality, No Defects: The goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship.
 - iv. Conformity: The goods shall conform to the standards, specifications and descriptions set forth above. If Vendor has supplied a sample to the City, the goods delivered shall conform in all respects to the sample and if the sample should remain in the City's possession it shall be identified by the word "sample" and the signature of Vendor's sales representative.
 - v. Uniformity: The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
 - vi. Packaging and Labels: The goods shall be contained, packaged, and labeled so as to satisfy all legal and commercial requirements applicable to use by a government agency, including without limitation, OSHA material safety data sheets and shall conform to all statements made on the label.
 - vii. Full Warranty: The foregoing warranties are "full" warranties within the meaning of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. § 2301 *et seq.*, and implementing regulations 16 C.F.R. pts. 700-703, if applicable to this transaction.
 - viii. Title: Vendor has exclusive title to the goods and shall pass title to the City free and clear of all liens, encumbrances, and security interests.
- e. Infringement; Indemnity: Vendor warrants the purchase or use of the goods shall not infringe upon any United States or foreign patent, and Vendor shall indemnify the City against all judgments, decrees, costs, and expenses resulting from any alleged infringement and shall defend, upon written request of the City, at its own expense, any action which may be brought against the City, its vendees, lessees, licensees, or assigns, under any claim of patent infringement in the purchase or use of Vendor's goods. If the City is enjoined from using such goods, Vendor shall repurchase such goods from the City at the original purchase price. The City shall notify Vendor promptly in writing of any such suit. If the City compromises or settles any such suit without the written consent of Vendor, Vendor shall be released from the obligations of this paragraph and from any liability to the City under any statute or other rule of law.
- f. Usage of Trade; Course of Dealings; Implied Warranties: Vendor shall also be bound by any other implied warranty that, at the time of execution of this Contract, prevails in the trade of government in the marketing area in and about the State of Alaska. Vendor shall also be bound by any other implied warranty arising through course of dealings between Vendor and the City from and after the execution of this Contract. Vendor shall also be bound by all warranties set forth in Alaska's Uniform Commercial Code in effect on the date of issuance of the Notification of Award.

- g. Warranties Cumulative: It is understood that warranties created by this Contract, whether express or implied, as well as all warranties arising by operation of law that affect the rights of the parties under this Contract, are cumulative and should be construed in a manner consistent with one another.
 - h. Priority of Warranties: If it is held by a court of competent jurisdiction that there is an irreconcilable conflict between or among any of the warranties set forth in this Contract and any warranties implied by law, the parties agree that the specifications contained in this Contract shall be deemed technical and mere language of description.
 - i. Beneficiaries of Warranties: Benefit of any warranty made in this Contract shall be in favor of the City, any of its political subdivisions or agencies, and any employee or licensee thereof who uses the goods, and the benefit of any warranty shall apply to both personal injury and property damage.
5. **DELIVERY, INSPECTION, ACCEPTANCE, TITLE, RISK OF LOSS**: Vendor agrees to deliver the goods as indicated in the Contract, and upon acceptance by the City, title to the goods shall pass to the City. The City shall have the right to inspect the goods on arrival and, within a commercially reasonable time, City must give notice to Vendor of any claim or damages on account of condition, quality, or grade of the goods, and the City must specify the basis of the claim in detail. Acceptance of the goods described in this Contract is not a waiver of UCC revocation of acceptance rights or of any right of action that the City may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on Vendor until the goods have been accepted and title has passed to the City. If given any, the City agrees to follow reasonable instructions regarding return of the goods.
6. **NO ARRIVAL, NO SALE**: The Contract is subject to provisions of no arrival, no sale terms, but proof of shipment is to be given by Vendor, each shipment to constitute a separate delivery. A variation of ten days in time of shipment or delivery from that specified herein does not constitute a ground for rejection. The City may treat any deterioration of the goods as entitling the City to the rights resulting from a casualty to the identified goods without regard to whether there has been sufficient deterioration so that the goods no longer conform to the Contract.
7. **PRICE; TAXES; PAYMENT**: The price quoted is for the specified delivery, and, unless otherwise specified in the Contract, is F.O.B. (freight included) to the delivery address specified above. Unless otherwise specified in the Contract, the price does not include applicable federal or City sales, use, excise, processing or any similar taxes, or duty charges, which shall be paid by the City, or in lieu thereof, the City shall provide Vendor with a tax exemption certificate acceptable to the applicable taxing authority. Unless otherwise specified in the Contract, payment shall be made by warrant drawn on the City of Wasilla and mailed to Vendor at the address specified above (or to assignee if assignment is acknowledged by the City) within the time specified above.
8. **BREACH; REMEDIES**: Failure of either party to perform any obligation of the Contract shall be deemed a breach. In the event of a breach, the party asserting breach may, in addition to any remedies or rights afforded by Alaska law, cancel the Contract with respect to any executory obligations. All rights and remedies are cumulative with one another and with those provided by law, and exercise of one remedy or right is not a waiver of the right to pursue any other right or remedy afforded. Penalties provided under Alaska law shall be limited to those in effect on the effective date of the Contract. Either party, as a prevailing party to any arbitration or other action regarding the enforcement of the Contract, is entitled to reasonable attorneys fees and costs. It is specifically agreed that reasonable attorneys' fees shall

include without limitation \$165 per hour for City-employed attorneys. The City may set off consideration against any unpaid obligation of Vendor to any City agency.

9. **LIMITED LIABILITY**: The City will not waive and intends to assert available liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages.
10. **WAIVER OF BREACH**: A failure to assert any right or remedy available to a party under this Contract, or a waiver of the rights or remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Contract, unless such waiver is contained in a writing signed by the waiving party.
11. **SEVERABILITY**: If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
12. **ASSIGNMENT/DELEGATION**: To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. No duties of either party may be delegated without written consent by the other party, and any such consent does not in any way affect the liability of the delegating party, unless the writing so states.
13. **FORCE MAJEURE**: Vendor shall not be liable for any delay in delivery or failure to deliver any or all of the goods where the delay or failure is caused by labor troubles, strikes, lockouts, war, riots, insurrection, civil commotion, failure of crops or supplies from ordinary sources, earthquake, fire, flood, storm, accident, any act of God or any other cause beyond the control of Vendor. City shall not be liable for failure to take delivery of the goods where any of the above causes prevent carrier or City from accepting delivery. But, in any case, the party claiming the benefit of this provision shall use due diligence to remove any such causes and to resume performance under this Contract as soon as is feasible. Performance by the other party shall be suspended and excused during the period of any such delay or failure and performance shall resume as soon as possible after removal of the excuse.
14. **GOVERNING LAW; JURISDICTION**: The laws of Alaska, including, without limitation, Alaska's Uniform Commercial Code in effect on the date of the Notification of Award, shall govern this Contract. The parties consent to the jurisdiction of the trial courts for the State of Alaska at Palmer, Alaska for enforcement of this Contract.
15. **ENTIRE AGREEMENT; CONFLICT WITH OTHER DOCUMENTS**: This Contract (including all incorporated attachments) is intended by the parties as the final expression of their agreement and is the complete and exclusive statement of the terms hereof. All prior agreements are superseded and excluded. Prices, quantities, dates, and places of deliveries and means of transportation may be fixed by attachments to this Contract. Except as previously stated, if any term in any incorporated attachment or in any Vendor's invoice contradicts or negates a term in this Contract, this Contract shall control. All amendments must be in writing signed by the parties.

SPECIAL TERMS AND CONDITIONS

- A. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the bid opening is available through prearrangement with the Purchasing Officer.
- B. The City of Wasilla, Purchasing Officer, shall not be obligated to accept low bid, but will make an award in the best interest of the City of Wasilla after all factors have been evaluated (WMC 5.08.160).
- C. Bids sent by special mail (UPS, Overnight, Fed. Ex., etc.) that do not arrive by bid opening time and date **WILL NOT BE ACCEPTABLE**.
- D. Bidder is required to submit descriptive data or printed specifications describing **COMPLETE UNIT** bidding. Failure to comply with this request may be cause for non-acceptance of bid.
- E. **BRAND NAMES:** Unless otherwise stated **“No Exceptions”**, brand names mentioned in these specifications are for reference only and are intended for the purpose of assisting in describing the need, use, and quality of the item. The contractor will identify any alternate item(s) and it is the City’s prerogative to either accept or reject any alternative item(s).
- F. Proof, satisfactory to the City, must be provided by Bidder to show that any alternate article is equal to, or exceeds the bid specifications in design and performance. Complete and detailed comparative documentation for equipment other than requested in this solicitation is **required** to be submitted with bid. Equivalent items may be subject to performance testing.
- G. Bidders are especially cautioned to **RECHECK BID PRICES FOR ERRORS** prior to submitting bid as changes in bid prices after opening date and hour of bid due to an error **WILL NOT BE PERMITTED OR ACCEPTED**. Bidder shall be required to furnish equipment at price or prices bid on or be penalized by being removed from bidder's list for a period of one year.
- H. For purposes of addressing questions concerning this solicitation, the sole contact will be the Purchasing Officer. Upon issuance of this solicitation, employees and representatives of the agencies identified herein will not answer questions or otherwise discuss the contents of this request with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any bid. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- I. Questions must be addressed to City of Wasilla, Attn: Bill Miller, 290 E. Herning Avenue, Wasilla, AK 99654, faxed to (907) 373-9011 or emailed to wmillers@ci.wasilla.ak.us. The deadline for submitting questions is **January 30, 2006, 2:00 P.M.**, Alaska Time. All questions and/or comments will be addressed in an amendment and provided to all interested vendors on or about **January 31, 2006**. Please provide company name, address, phone, email, fax number and contact person when submitting questions.
- J. The City reserves the right to reject any or all bids and to waive any minor informality or irregularity in a bidder’s response if deemed in the best interests of the City.

BID SPECIFICATIONS FOR DELIVERY OF #1 AND #2 DIESEL

The City of Wasilla requires a supply of diesel for its tanks for equipment which includes stationary and portable generators and road maintenance vehicles. Specifications are as follows:

1. INTENT

- 1.1 This Invitation to Bid (ITB) is intended to result in use contracts for delivery of #1 and #2 Diesel Fuel from one or more vendors into City owned bulk fuel tanks located within the City limits.
- 1.2 The City reserves the right to solicit competitive quotations, outside the contract(s) resulting from this ITB, for any single purchase of less than 500 gallons.

2. DEFINITIONS

- 2.1 As-needed service – delivery must be made within 2 working days after the receipt of an order.
- 2.2 Bidder – an entity submitting a bid in response to this Invitation to bid (ITB) who will be bound to perform under a contract that results from this ITB.
- 2.3 Bulk Fuel Tank – Storage tanks located next to or near City operated facilities.
- 2.4 Contracting Officer – The City of Wasilla Purchasing/Contracting Officer is responsible for contract development and administration.
- 2.5 Delivery Charge – is the bidder's total per gallon bid price to deliver fuel to the City (it is to include all of the Contractor(s) fixed and variable costs such as overhead, handling, transportation, delivery costs, fees, profit, etc.).
- 2.6 Dealer Tank Wagon Price – The Dealer Tank wagon price is the contractor(s) wholesale purchase price per gallon of fuel from the distributor.
- 2.7 Keep full service – all tanks will be maintained by the vendor to be not less than fifty percent (50%) full any time.
- 2.8 Vendor – an entity that is awarded and has a contract with the City of Wasilla for the goods and services identified in this ITB.

3. CONTRACT PERIOD

- 3.1 The term of this contract is for one year, commencing April 1, 2006 with four additional one year renewal options subject to annual funding.

4. DELIVERY

- 4.1 Delivery will be via tank wagon F.O.B. each City location as indicated.
- 4.2 Vendor agrees not to damage or contaminate existing city property including buildings, tanks, equipment, mounting pads, vegetation or grounds. The vendor is responsible for replacing the damaged items or repair the damage at no expense to the City and to the satisfaction of the City and/or State of Alaska Department of Environmental Conservation (SOA-DEC). In the event vendor fails to make such repairs or replacements, the City will effect such repairs/replacements and deduct the amounts due under this contract.
- 4.3 The Vendor shall ensure all deliveries are conducted according to industry practice and applicable law to prevent injuries and spills.
 - 4.3.1 In the event of a spill, vendor is responsible for containment, clean-up, and disposal of the spilled diesel and associated clean-up materials.
 - 4.3.2 In the event vendor fails to clean up spills to City and/or SOA-DEC satisfaction, the City may do so itself and deduct any charges from the amounts due under this contract.
 - 4.3.3 The vendor shall reimburse the City for any expenses incurred including fines levied by appropriate agencies of federal or state governments.
 - 4.3.4 In the event of a spill, vendor must immediately report incident to the City of Wasilla Department of Public Works and the Alaska Department of Environmental Conservation
- 4.4 As needed orders placed by the City of Wasilla will normally be made via telephone call to the vendor requesting an “as needed” delivery. The City of Wasilla will provide the vendor the following information.
 - 4.4.1 A shipping address—location of the tank to be filled.
 - 4.4.2 Type of fuel to be delivered into each tank.
 - 4.4.3 The name, position and contact telephone number of the person requesting the delivery.
 - 4.4.4 A name and contact number of a person at the site requiring service.

5. SPECIFICATIONS AND REQUIREMENTS

- 5.1 **Grade No. 1 and 2 Diesel fuel oils offered** for this ITB shall conform to the American Society for Testing and Materials (ASTM) Designation D 975-89, “Standard Specification for Diesel Fuel Oils.” **The pour point for supplied** Diesel fuel oils shall be low enough to ensure free flow for the anticipated use period at the temperature and locations for which it is ordered.
- 5.2 The attached proposal sheets indicate estimated quantities based on our purchases from the previous contract year, and will be considered annual requirements. Successful bidders will be required to furnish more or less as needed. The City does not guarantee a minimum or maximum purchase.
- 5.3 Bidder must identify the brand name and grade offered. Failure of bidder to identify brand and grade offered may cause the bid to be rejected as non-responsive.
- 5.4 Fuel delivery equipment shall be equipped with fixed meters for registering exact quantities of fuel pumped. Meters shall be calibrated and certified by State of Alaska, Department of

Commerce, Weight and Measures Division. Meters must be recalibrated at prescribed Department of Commerce frequencies. Meters that malfunction must be repaired and calibrated before continued utilization. Any unsealed meter or meters found to be out of calibration tolerance shall not be utilized to perform contract refueling requirements. The contractor shall be responsible for the calibration or recalibration costs. Meters must have totalizer capability along with register capability. All numbers on the registers and totalizers must be legible and easy to read.

- 5.5 In event substandard fuel or damage is directly traceable to contaminants in the fuel, the contractor will be responsible for all costs incurred, including costs of removing all contaminated fuel from the tanks or drums, employee costs, damage to machinery, replacement parts & filters and any additional expense. This includes, but is not limited to, the following impurities -- water, dirt, harmful oils, fibrous materials, bacteria, other petroleum products or contaminants.

6. TAXES

- 6.1. DO NOT include the State Highway Gasoline Tax on low sulfur diesel fuel in the bid constant. The City is exempt from Federal Excise Tax.

7. BID PRICING

- 7.1. The method used to obtain a delivered price for diesel fuel is based on the Anchorage terminal DAILY RACK AVERAGE prices as quoted by Oil Price Information Service (OPIS) plus the vendor's BID CONSTANT.
- 7.1.1 The OPIS price information is published by the Oil Price Information Service in Rockville, Maryland. Their phone number is 1-888-301-2645. Their website is www.opisnet.com.
- 7.1.2 For contract prices resulting from this ITB, the weekly OPIS price used will be the average price per gallon for #1 and #2 Diesel reported for Anchorage, AK on the Thursday prior to the week of delivery.
- 7.2. DAILY RACK AVERAGE: The daily rack average of the prices posted by the companies using the terminal to store and load out their petroleum products.
- 7.2.1 The daily rack average is used for pricing purposes only and is not intended to restrict the successful bidder to obtaining product from the Anchorage Terminal.
- 7.2.2 The daily rack average prices include the Federal Superfund amount when in effect.
- 7.2.3 The successful bidders will be required to receive the daily rack average on their own from OPIS.
- 7.3. BID CONSTANT: The bid constant is the amount per gallon the bidder submits as a constant price which together with the daily rack average per gallon is the total cost any

given day that product is delivered to a City location.

7.3.1 Include in the bid constant all overhead costs, delivery charges, handling fees, etc., including, but not limited to, State Tax on diesel fuel, transportation costs and PROFIT.

7.3.2 EXAMPLE:

Anchorage, AK weekly OPIS rack average for #2 diesel	\$2.00 per gallon
Bid Constant	\$0.04 per gallon
Total Bid Price	\$2.20 per gallon

7.4. INVOICING: Invoices shall contain the following information:

7.4.1 Delivery Date and Location

7.4.2 Gallons delivered (deliveries shall be verified with metered tickets)

7.4.3 Rack Average price per gallon on delivery date

7.4.4 Bid Constant per gallon

7.4.5 Delivered Price (Rack Average plus the Bid Constant) per gallon

7.4.6 Total Delivered Cost (Delivered Prices times gallons delivered)

7.5. The City does not guarantee any minimum or maximum purchase.

7.6. Annual adjustments in the Bid Constant may be requested in writing by the Vendor at least 30 days prior to the renewal date. Adjustment will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-W) for the Urban Wage Earners and Clerical Workers, All Items, Anchorage, Area, in effect for each January through June, six month average of the year prior to the year of contract renewal.

7.7. VOLUME REPORT: A quarterly volume report is required to be furnished to the Purchasing/Contracting Officer within 30 days of the end of the quarter (reports are due on October 31, January 31, April 30 and July 31). Volume report will detail the monthly total delivered gallons by location.

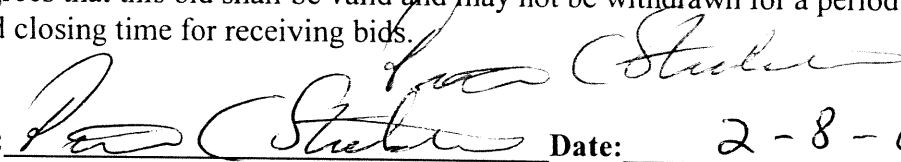
8. METHOD OF AWARD

9.1. Award will be made to the lowest responsive and responsible bidder.

9. **BID SCHEDULE**

Brand Offered <u>Tesoro</u>	#1	#2
OPIS Rack Average	<u>2.133</u>	<u>2.14</u>
Bid Constant [Delivery Charge Plus (+) or Minus (-)]	<u>.16</u>	<u>.16</u>
Total price per gallon (OPIS price plus or minus delivery charge)	<u>2.293</u>	<u>2.30</u>
Estimated Annual Gallons	<u>10,000</u>	<u>20,000</u>
Total (Total price per gallon x estimated annual gallons)	<u>\$ 45,930</u>	

Bidder understands that City reserves the right to reject any or all bids and to waive any informalities in the bidding. The Bidder agrees that this bid shall be valid and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

Authorized Signature:  Date: 2-8-06
 Firm Name: Service Oil & Gas, Inc.

Type Organization: Individual Small Business Non-Profit
 Partnership Corporation Joint Venture

Business is licensed (unless exempt by applicable law), permitted and certified to do business in the State of Alaska: Yes No License # 53882

Business is licensed, permitted and certified to do business in the Matanuska Susitna Borough: Yes No License # 06344

Business is licensed, permitted and certified to do business in the City of Wasilla: Yes No License # 00776

Authorized Representative's Name: Chuck Stielstra

Authorized Representative's Title: Palmer General Manager

Address: 523 S. Valley Way

City: Palmer State: AK Zip: 99645

Telephone No.: 745-3776 Fax No.: 745-2876

Email: cstielstra@serviceoil.com

Federal I.D. #: 92-0048898

Invoice Terms: NET 30

I have read, understand and agree to comply with the terms and conditions specified in this Bid Request. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance and should be detailed below. Any exceptions must be documented

YES NO SIGNATURE [Signature]

EXCEPTIONS: Attached additional sheets if necessary. [Signature]

Please see below for additional

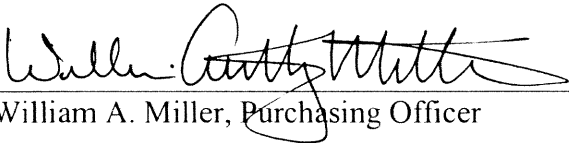
clarification and offerings:

- ① Bid constant can be reduced by .01 /gallon (to .15) if we do not have to supply a volume report (7.7)
- ② When blended fuel is supplied the cost will be computed as an average of #1 & #2
- ③ Fuel can be supplied at our Kwik Kards (Palmer/Wasilla Hwy & mile 48 Parks) at a bid constant over DPIS of .06. This would represent a savings of .10 /gallon from delivered price

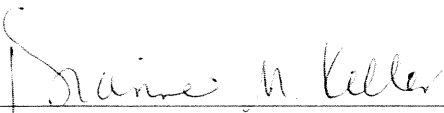
INVITATION TO BID
NO. ITB-0604-0-2006/WM
DELIVERY OF DIESEL TO TANKS LOCATED WITHIN CITY LIMITS
BEGINNING APRIL 1, 2006 AND ENDING JUNE 30, 2007

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

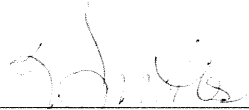
RECOMMENDED:

 3/1/2006
William A. Miller, Purchasing Officer Date

APPROVED:

 3/2/06
Signature – Dianne M. Keller, Mayor Date

ATTEST:

 3/2/06
Kristie L. Smithers, CMC, City Clerk Date

[SEAL]