

**STATE OF WASHINGTON
JOINT TRANSPORTATION
COMMITTEE**

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REQUEST FOR PROPOSALS

JULY 22, 2011



REPRESENTATIVES

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Co-Chair

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SENATORS

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REQUEST FOR PROPOSALS

**EVALUATE THE MANAGEMENT
ORGANIZATION STRUCTURE OF THE
WASHINGTON STATE FERRIES**

The Legislature has directed the Joint Transportation Committee (JTC) to investigate the management organization structure of Washington State Ferries (WSF). The original study proviso which passed the Legislature called for a study to recommend changes to the WSF organizational structure for more efficient operations and a more balanced organization structure scaled to the workforce. This study proviso was vetoed by the Governor; however, the JTC wishes to proceed with more targeted study objectives related to WSF management and the changing operating environment. The JTC is allocating up to \$125,000 to conduct this study.

I. BACKGROUND

Over the past several years, the Washington State Ferries has undergone numerous evaluations and reviews. These included reexamination of long range plans, vessel and terminal maintenance reviews, financing and ferry fare studies, and reviews of labor and management practices.

An area of continuing challenge to policy makers is opportunities to improve management of the ferry system. Enactment of Second Engrossed Substitute Senate Bill 5742 during the 2011 legislative session redefined management collective bargaining rights, and WSF Captains are severed from their current union membership effective July 1, 2013 but permitted to form another bargaining unit. While legislative efforts have addressed certain issues, an effective measurement of system performance is yet to be resolved. Questions also remain as to WSF management layers, chain of command, where management responsibility is appropriately placed for certain operational decisions, and the relationship between WSF management and employees.

2ESSB 5742 also makes changes to ferry finance and establishes a process to develop performance targets for the WSF. Section 10 of that legislation requires the Governor to appoint an Ad Hoc committee to establish performance targets for WSF by December 31, 2011. Additionally, Section 12 requires the Office of Financial Management to report to the Legislature on WSF performance by November 1, 2011.

I. Study Purpose

The overall purpose of the study is to evaluate the current management and staffing structure of three divisions in WSF (the Operations Division, the Vessel Maintenance, Preservation, and Engineering Division, and the Administration and Finance Division) and identify improvements to the management structure that more effectively address challenges presented by the system's changing operating environment.

II. Scope of Work

The description below is not intended to fully encompass the study's tasks, but instead includes the minimum requirements in order to provide the consultant with a framework for the study. Additions and innovations that accomplish the study's tasks, or other tasks recommended by the consultant, are encouraged.

Task 1. Examine the management structure and staffing levels in the Washington State Ferries operations division; vessel maintenance, preservation and engineering division; and the administration and finance division.

- 1) Identify and evaluate the current management structure of the three divisions
 - a) Outline the current management structure of the divisions including responsibilities for management positions within each division
 - b) Identify issues for which the management positions are responsible, and how managers interact with other division managers
 - c) Identify any issues managers are responsible for but have limited or no control over
- 2) Provide a schematic for the three divisions showing who is responsible at the system, route, and run level for the following:
 - a) On-time performance
 - b) Reducing overtime expense
 - c) Meeting ridership goals
 - d) Customer satisfaction
 - e) Fuel conservation
 - f) Balancing these objectives, such as scheduled runs with on-time performance, fuel conservation and overtime reduction goals

Task 2. Evaluate whether the current management and operating structure allows WSF to cost-effectively implement the Legislature's adaptive management practices*, and meet future performance targets and measures.**

- 1) Evaluate whether decisions are made at the appropriate management level to meet the targets for vessel performance, terminal performance, and other performance measures.

- 2) Identify whether there are ways to organize WSF to better enable the ferry system to meet these targets and operate as a more efficient and effective organization. As appropriate, identify operational and structural changes to enable the organization to better respond to the changing operational environment.
- 3) Monitor the Ad Hoc Committee's development of the performance targets, and evaluate whether those targets are consistent with the performance report developed by the Office of Financial Management required by Chapter 16, Laws of 2011, 1st Ex. S., Sec. 12 (2ESSB 5742). The consultant shall provide an assessment of these targets, including any recommended changes, as part of the Addendum referenced in Task 4.

** Chapter 512, Laws of 2007, Sec. 1 (ESHB 2358)*

***Chapter 16, Laws of 2011 1st Ex. S., Section 10 and 12 (2ESSB 5742)*

Task 3. How can the WSF organization best respond to new initiatives such as implementing the vehicle reservation system, and recent changes in labor agreements?

- 1) Is the current management structure adequate or appropriate to effectively respond to new legislative initiatives and other operating initiatives?
- 2) If not, the consultant shall recommend changes to enhance the ability of WSF to respond to new initiatives.

Task 4. Prepare a report outlining the findings and recommendations as required above. The report shall also include an addendum to address findings and recommendations related to performance targets which are to be developed by the Ad Hoc Committee by December 31, 2011.

III. CONTRACT DELIVERABLES

The successful consultant will provide the following services and deliverables:

1. Within five (5) calendar days after the award date of the contract, the consultant shall submit a work plan to meet the requirements in Section II of this RFP, and any changes necessary based on additional information. The work plan shall include:
 - Specific steps detailing how this study will be carried out;
 - The specific tasks to be performed and by whom;
 - The expected duration and level of effort in hours by person;
 - The specific data that will be needed, along with data sources;
 - A schedule for performing the tasks; and
 - An updated project budget, as necessary.

The JTC will review, comment on, and approve the final work plan. Any subsequent changes to the work plan shall also require approval by the JTC.

2. Periodic consultation with the Policy Workgroup, which will oversee the study, and the Staff Workgroup.
3. Up to three presentations to the Joint Transportation Committee on study activities, findings and results. Meetings will likely be held in Aberdeen on October 19th, and in Olympia on December 7th, and January 4th, 2012. The consultant should expect to schedule up to four meetings or phone conferences with the Policy Workgroup and about four meetings with the Staff Workgroup. In addition, presentations to the House and Senate Transportation Committees will be required in Olympia, likely in January, 2012.
4. Prepare and present to the JTC Project Manager, monthly interim progress briefings (these may be by phone) and written progress reports that address and summarize the issues in the consultant's contracted Scope of Work and Work Plan. The consultant must written reports on each task as they are completed, to the JTC Project Manager. Progress payments will depend on meeting these milestones.
5. The consultant will provide copies of materials for meetings of the Staff Workgroup, the Policy Workgroup, and Joint Transportation Committee and the House and Senate Transportation Committees.
6. Prepare a draft, draft final and final report. The report should describe the analysis, findings, conclusions, and recommendations for the contracted Scope of Work and Work Plan. The JTC and staff will provide comments. The consultant shall submit the draft report on December 5, 2011 and the draft final report on December 21, 2011. After reviewing and incorporating comments, and after formal acceptance of the report by the JTC, the consultant will finalize the report and submit to the JTC Project Manager:
 - 25 paper copies of the final report, and an electronic PDF copy on CD;
 - 25 copies of a stand-alone executive summary of the final report and an electronic PDF copy on CD; and
 - An electronic copy of a Power Point presentation for this study.
 - The draft final addendum shall be submitted to the JTC by January 17th, 2012, and after comment by the JTC, the final addendum shall be submitted by January 27, 2012.
 - In addition, the consultant shall be prepared to present the final report to the House and Senate Transportation Committees during the 2012 legislative session, likely in January.

IV. OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITY

Policy oversight for this study would be provided by periodic meetings or conference calls with JTC members. Other legislators may be included in this meetings/conference calls.

- Likely three to four meetings, either in person or by phone-conference, with the JTC members will be required during the study process.
- These meetings are in addition to presentations at JTC meetings in October, December, and January.

The study will be supported by a Staff Workgroup comprised of staff from the JTC, House and Senate Transportation Committees, the Office of Financial Management, and others as warranted, including WSF staff. The consultant should expect to meet with the staff workgroup four to six times.

JTC staff will be responsible for the following activities:

- Prepare, publish and administer the RFP process.
- Coordinate the consultant selection process and negotiate the contract.
- Administer the contract (review and approve invoices, ensure milestones are being met, etc.)
- Participate in monthly briefings with consultant.
- Receive, evaluate and edit consultant products.
- Oversee communications and meetings between JTC, the consultant, the Staff Workgroup, and the Policy Workgroup.
- JTC will be responsible for meeting logistics for the Policy Workgroup.

JTC will have prime oversight for this study.

V. QUALIFICATIONS

- Bidder must be licensed to do business in the state of Washington.
- Bidder must be able to demonstrate their professional independence and their ability to render unbiased and candid advice to the Joint Transportation Committee.
- JTC shall also examine Bidder for responsibility. Responsibility shall include such measures as insurance coverage that meets state requirements, references, prior experience and satisfaction of existing clients, and other information related to responsibility.

VI. DEFINITIONS

- **Apparently Successful Bidder or Apparently Successful Consultant** - the Bidder or Consultant selected as the most qualified entity to perform the stated services.
- **Bidder or Consultant** - an entity intending to submit or submitting a proposal for the project.
- **JTC** - Joint Transportation Committee, a Washington State legislative agency.
- **JTC Coordinator** - the Chief Executive Officer of the Joint Transportation Committee.
- **RFP** - this Request for Proposal, any addendum or erratum thereto, Bidder's written questions and the respective answers, and any related correspondence that is addressed to all Bidders.

Contract definitions are provided in the state of Washington General Terms and Conditions for personal services contracts in Exhibit A.

VII. STUDY RESOURCES AND ASSOCIATED LINKS

2007 JTC ferry study finding:

- Fuel and labor account for nearly 80% of WSF operating costs. 92% of WSF's employees are covered by labor contracts with binding pay provisions. As a consequence, management has very limited opportunities to manage and control costs. (p. 54, final report)
http://www.leg.wa.gov/JTC/Documents/Ferries/Ferry_Finance_Study_Final_Report_January_2007.pdf

September, 2010 – Passenger Vessel Association ERP report of a management review of WSF ferries division. Among their findings:

- The Vessel Master should act as the management's rep for the vessel and all of its crew
- WSF should modify its capital projects design and management structure to be more in line with industry norm. WSF should assess their mid-term capital program (5-10 years) and adjust the mix of in-house staff/consultants accordingly
- WSF adjust their staff sizing over time to reduce the number of engineers and designers
- WSF management should develop a network of peers such as BC ferries and the PVA to provide fresh ideas
- http://www.wsdot.wa.gov/News/2010/09/09_PVA-SAOreports.htm

WSDOT Response and Action Plan re: PVA Expert Panel Report

http://www.wsdot.wa.gov/News/2010/11/PVA_111710.htm

Chapter 512, Laws of 2007 (ESHB 2358)

<http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202007/2358-S.SL.pdf>

Chapter 16, Laws of 2011, 1st Ex Sess (2ESSB 5742)

<http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202011/5742-S.SL.pdf>

WSF Organization Chart

<http://www.leg.wa.gov/JTC/Pages/RFPs.aspx>

WSF Management and Support Review; Cedar River Group/Kathy Scanlan; April 1, 2011

Review of management growth rate vs. vessel and terminal labor, and detail on FTE functions

<http://www.leg.wa.gov/JTC/Pages/RFPs.aspx>

VIII. PROJECT BUDGET

The budget for this project shall not exceed a maximum of **\$125,000**. Any resulting contract for this project will be subject to the standard state of Washington General Terms and Conditions for personal services contracts. A copy is attached to this RFP as Exhibit A.

IX. INSTRUCTIONS TO BIDDERS

A. SUBMISSION OF PROPOSAL

NOTE: All times listed below refer to local time in Olympia, Washington.

1. A Letter of Intent to Bid must be received either electronically or by paper copy by **5:00 p.m., local time in Olympia, on August 3, 2011**, and must include company name, address and email address.
2. Bidders must submit six copies of the proposal and one electronic PDF copy on CD.
3. Bidders must include one paper copy of two samples of previous work similar to this type of project and the Internet link to these samples or an electronic copy on CD. These work samples may not be work previously performed for the JTC.
4. Proposals are due no later than **5:00 p.m., local time in Olympia, on August 9, 2011**, whether mailed or hand delivered. Late proposals will not be accepted and will be automatically disqualified. Proposals should be submitted to:

Joint Transportation Committee
Sonia Plasencia, RFP Coordinator
3309 Capitol Blvd SW
Olympia, WA 98504-0937

5. Selected bidders will be required to attend oral interviews and provide presentations at their expense. Selected bidders will be notified of the date, time and location of their scheduled interview and presentation.
6. All proposals and accompanying documentation become the property of the JTC and will not be returned.
7. JTC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP. The Bidder assumes responsibility for its personnel's travel and associated costs as they relate to bidding on this project
8. In the event it becomes necessary to revise any part of this RFP, an addendum or erratum will be provided to all Bidders who submitted a Letter of Intent to bid.
9. After submission, Bidders will not be allowed to amend their proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.
10. Questions regarding this RFP should be directed to Sonia Plasencia, RFP Coordinator, as the single point of contact for this solicitation, **by email only** to sonia.plasencia@leg.wa.gov. Inquiries concerning clarification of some aspect of the RFP will be accepted beginning at 9:00 a.m. on July 25, 2011. No inquiries concerning the RFP will be accepted after 5:00 p.m., local time in Olympia, on August 3, 2011. On August 4, 2011, responses to inquiries will be transmitted by email to all Bidders who have submitted a Letter of Intent to Bid.

B. LETTER OF SUBMITTAL

The Letter of Submittal and the attached Certification and Assurances form (Exhibit B) must each be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Bidder and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Bidder (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Bidder would operate.
6. Identify any Washington State employees or former Washington State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the JTC that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.
7. Identify prior work, affiliations and advocacy activities directly or indirectly related to the subject matter of this study.

C. PROPOSAL FORMAT

Six copies of the proposal must be submitted on eight and one-half by eleven (8 1/2x11) inch paper with tabs separating the major sections of the proposal and one electronic PDF copy on CD. The five major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit B).
2. Technical Approach
 - A description of proposed approaches to Tasks 1-4 of the Scope of Work, Section II of this RFP, not to exceed ten pages. This includes the schedule to complete the study, with dates noted for accomplishing each task. This page limitation does not include resumes, qualifications, work samples, Letter of Submittal or signed Certifications and Assurances form.

3. Management Approach

- A statement of qualifications to conduct this work.
- Identification of the individual(s) who will do the actual work being proposed, with attached professional resumes.
- Bidders must include one paper copy of two samples of previous work similar to this type of project and the internet link to these samples or an electronic copy on CD. This work must not be work previously done for the JTC.

4. Cost Approach

- The total cost of this work in a detailed budget, including direct and indirect labor, travel, and any other expenses (itemized). The cost description should identify projected work hours and hourly rate(s) for each employee by name, and for each task, who will be assigned to this project.

5. References

- Include three references with whom your Firm and your Project Manager have done similar work. For each reference, include name, title, organization, address, phone number and email address. The references may not include staff from the Joint Transportation Committee, or the House or Senate Transportation Committees.

X. EVALUATION CRITERIA

Proposals will be reviewed and evaluated by a panel selected by the JTC. After the initial evaluations, the JTC will select a small group of Bidders as finalists for oral interviews and presentations to the evaluation panel. Commitments made by the Bidder at the oral interview, if any, will be considered binding. The score from the oral presentation will be considered independently and will determine the apparently successful bidder.

Written proposals submitted in response to this RFP will be evaluated and weighted on the following three categories. This evaluation will be used solely for selecting Bidders invited for an oral interview.

- Technical Approach (50%)
 - Proposed project approach and methodology
 - Quality of work plan
 - Feasibility of proposed schedule
 - Description of proposed deliverables
- Management Approach (40%)
 - Project Team Structure/Internal Controls
 - Firm and Staff Qualifications and resumes
 - Relevant experience with projects of similar complexity and type
 - Other applicable experience
- Cost Approach (10%)
 - Quality of detailed budget
 - Reasonableness of cost approach
 - Total project cost

XI. ESTIMATED SCHEDULE OF ACTIVITIES

➤ Post RFP	July 22, 2011
➤ RFP Questions and Letters of Intent to Bid Due	August 3, 2011
➤ Responses to questions will be e-mailed	August 4, 2011
➤ Due Date for Proposals	August 9, 2011
➤ Evaluate Proposals	August 9-12, 2011
➤ Oral Interviews	August 18, 2011
➤ Announce Apparent Successful Consultant	August 22, 2011
➤ Estimated Contract Start Date	August 29, 2011
➤ Report to JTC	October 19, 2011
➤ Present Findings and Recommendations to JTC	December 7, 2011
➤ Draft Report Due	December 15, 2011
➤ Draft Final Report Due	January 2, 2012
➤ Draft Final Addendum--if necessary	January 17, 2012
➤ Final Addendum--if necessary	January 27, 2012
➤ Presentations to House and Senate Transportation Committees	2012 session, likely in January

XII. PROPRIETARY INFORMATION

All proposals received shall become public record, but shall remain confidential until the successful bidder resulting from this RFP, if any, is announced. Thereafter, proposals shall be available for public inspection and copying as required by Chapter 42.56 RCW (the principal Washington State statute pertaining to accessibility to public records) except as exempted in that chapter or by other. Bidders are advised that the permissible exemptions from public disclosure pursuant to Chapter 42.56 RCW are very narrow in scope and will be strictly construed. In the event that a bidder desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that bidder to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. ***Designating the entire proposal as confidential is not acceptable and will not be honored.***

NOTE: The proposal of the successful bidder will be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the *entirety* of the successful bidder's proposal will be subject to public disclosure regardless of any claim of confidentiality or previously applicable statutory exemption. Nevertheless, should a successful bidder obtain a court order from a Washington State court of competent jurisdiction prohibiting disclosure of parts of its proposal prior to the execution of the contract incorporating the same, the JTC shall comply with the court order. The burden is upon the successful bidder to evaluate and anticipate its need to maintain confidentiality and to proceed accordingly. Timeliness will be of the essence; a delay in execution of the contract to accommodate a petition to the courts will not be allowed.

XIII. JTC RIGHTS

1. Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the JTC. The JTC reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.
2. The JTC reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the JTC, without any penalty to the JTC.
3. The JTC intends to award the contract to the Bidder with the best combination of attributes based on the evaluation criteria listed in Section X of this RFP. This RFP does not, however, obligate the JTC to contract for services herein.
4. Should the JTC fail to negotiate a contract with the Apparently Successful Bidder, the JTC reserves the right to negotiate and contract with the next most qualified Bidder.
5. The JTC reserves the right to waive specific terms and conditions contained in this RFP.
6. It shall be understood by Bidders that their proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Bidder has obtained such a waiver, in writing, from the JTC prior to submission of the proposal. Any such waiver will be granted to all Bidders.
7. The JTC reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any Bidder's proposal.

Thank you for your interest.

GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. The "Joint Transportation Committee," or "JTC," shall mean the Washington State Joint Transportation Committee, any division, section, office, unit, or other entity of JTC or any of the officers or other officials lawfully representing the JTC.
- B. "Contractor" shall mean that firm, provider, organization, individual, or other entity performing services under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

CONTRACTOR NOT EMPLOYEE OF THE AGENCY -- The Contractor and his or her employees or agents performing under this contract are not employees or agents of JTC. The Contractor will not hold himself/herself out as or claim to be an officer or employee of JTC or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege or benefit which would accrue to an employee under Chapter 41.06. RCW or Chapter 28B.16 RCW.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations, and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with JTC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the JTC.

INDEMNIFICATION -- The contractor shall defend, protect, and hold harmless the state of Washington, JTC, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark, or trade name through use of reproduction of material of any kind.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. JTC shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, at

its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST -- JTC may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the JTC that there is a violation of the *State Ethics Law Chapter 42.52 RCW*; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, JTC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of JTC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the JTC makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

TREATMENT OF ASSETS --

- A. Title to all property furnished by JTC shall remain in JTC's office. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in JTC upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in JTC upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by JTC in whole or in part, whichever first occurs.
- B. Any property of JTC furnished to the Contractor shall, unless otherwise provided herein or approved by the JTC, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of JTC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. Upon loss or destruction of, or damage to, any auditees' or JTC's property, the Contractor shall notify JTC thereof and shall take all reasonable steps to protect that property from further damage.
- E. The Contractor shall surrender to JTC all property of JTC prior to settlement upon completion, termination, or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents, or Subcontractors.
- G. "Property" means all property, whether real or personal, tangible or intangible.

NONASSIGNABILITY – Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

RECORDS, DOCUMENTS AND REPORTS -- The Contractor shall maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the JTC, State Auditor or federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six (6) years after settlement, and make them available for inspection by persons authorized under this provision.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the JTC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning JTC for any purpose not directly connected with the administration of JTC or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the JTC.

RIGHTS IN DATA -- Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by JTC. Data shall include, but not be limited to: working papers, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom shall be transferred to JTC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; *provided*, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise JTC, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. JTC shall receive prompt written notice of each notice of claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. JTC shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.

INDUSTRIAL INSURANCE COVERAGE -- The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract. JTC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and services under this contract.

ADVANCE PAYMENTS PROHIBITED -- No payment in advance or in anticipation of services or supplies to be provided under this contract shall be made by JTC.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, JTC may terminate the contract under the "Termination for Convenience" clause, without the five-day notice requirement, subject to renegotiation under those new funding limitations and conditions.

LIMITATION OF AUTHORITY -- Only the JTC shall have the express, implied, or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the JTC.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the JTC and attached to the original contract.

CHANGES AND MODIFICATIONS -- The JTC may, at any time, by written notification to the Contractor and without notice to any known guarantor or surety, make changes in the general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; *provided*, however, that the JTC may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

DISPUTES -- If a dispute should arise between the Contractor and JTC regarding the performance or expected outcomes of the contract, such dispute shall be referred to the JTC Coordinator for review and decision. If the decision by the JTC Coordinator is not satisfactory to the Contractor, the Contractor may request in writing that the dispute be reviewed by the executive committee of JTC. Such written request shall be provided to the JTC Coordinator within five (5) days following the Coordinator's decision. The Coordinator shall present the written request to the executive committee at its earliest convenience for review and decision. The decision of the executive committee shall become final and binding.

Unless mutually agreed to by the JTC and the Contractor, the work to be performed under this agreement shall not be delayed or stopped during the review of a dispute either by the JTC Staff Coordinator or the JTC Executive Committee.

TERMINATION FOR DEFAULT -- By written notice, JTC may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the

original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the mailing, advertising, and staff time; *provided*, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the JTC may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part when it is in the best interests of JTC. If this contract is so terminated, JTC shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE -- Upon termination of this contract, JTC, in addition to any other rights provided in this contract, may require the Contractor to deliver to JTC any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

JTC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by JTC, and the amount agreed upon by the Contractor and JTC for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by JTC, and (iv) the protection and preservation of property, unless the termination is for default, in which case the JTC shall determine the extent of the liability of JTC. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. JTC may withhold from any amounts due the Contractor such sum as the JTC determines to be necessary to protect JTC against potential loss or liability.

The rights and remedies of JTC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the JTC, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to JTC, in the manner, at the times, and to the extent directed by the JTC, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case JTC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the JTC to the extent the JTC may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to JTC and deliver in the manner, at the times, and to the extent directed by the JTC any property which, if the contract has been completed, would have been

required to be furnished to JTC;

6. Complete performance of such part of the work as shall not have been terminated by the JTC; and
7. Take such action as may be necessary, or as the JTC may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which JTC has or may acquire an interest.

GOVERNING LAW -- This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

SEVERABILITY -- If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

FORCE MAJEURE -- Neither party shall be liable to the other or deemed in default under this contract for any delay or failure to perform its obligations under this contract if such delay or failure arises from any cause or causes beyond the reasonable control of the parties and without fault or negligence of the parties, including and not limited to acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics, or other similar circumstances.

SCOPE OF CONTRACT -- This contract and the attachments incorporate all the contracts, covenants, and understandings between the parties concerning the subject matter, and all such covenants, agreements, and understandings have been merged into this contract. No prior contract or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

CHANGE OF CONTROL OR PERSONNEL -- Contractor shall promptly and in any case within twenty-four (24) hours notify the JTC Contract Coordinator in writing:

1. If any of the representations and warranties of the Contractor set forth in this contract shall cease to be true at any time during the term of this contract;
2. Of any material change in the Contractor's management staff;
3. Of any change in control of the Contractor or in the business structure of the Contractor; or
4. Of any other material change in the Contractor's business, partnership, or corporate organization relating to this engagement. All written notices regarding changes in management staff shall contain the same information about newly assigned management staff as was requested by JTC in the RFP and such additional information as may be requested by the JTC. For purposes hereof, the term "management staff" shall mean those persons identified as senior management in any response to a RFP or who otherwise will exercise a major administrative role or major policy or consultant

role to the provision of the Contractor's services hereunder. All written notices regarding changes in control of the Contractor shall contain the same information about any new controlling entity as was requested by JTC in the RFP regarding the Contractor and such additional information as may be requested by JTC.

Approval of these changes rests solely with JTC and will not be unreasonably withheld.

PAYMENT OF TAXES -- Contractor shall pay all applicable taxes assessed on the compensation received under this contract and shall identify and pay those taxes under Contractor's federal and state identification number(s).

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the JTC without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that the JTC will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the JTC, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Bidder or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. The bidder certifies that no condition exists with respect to the bidder, or any of its employees, regarding any current or past relationship with the JTC, WSDOT, or agencies that violate Chapter 42.52 RCW, the "Ethics in Public Service" Law.

Signature of Bidder

Title

Date