

## REQUEST FOR PROPOSALS

# FEASIBILITY OF PRIVATE AUTO FERRY BETWEEN WASHINGTON STATE AND VANCOUVER ISLAND, B.C.

### STATE OF WASHINGTON JOINT TRANSPORTATION COMMITTEE

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[JTC WEBSITE](#)

## REQUEST FOR PROPOSALS

APRIL 14, 2020



## JTC EXECUTIVE COMMITTEE

### SENATORS

Steve Hobbs  
1<sup>st</sup> Co-Chair

Curtis King  
Ranking Member

### REPRESENTATIVES

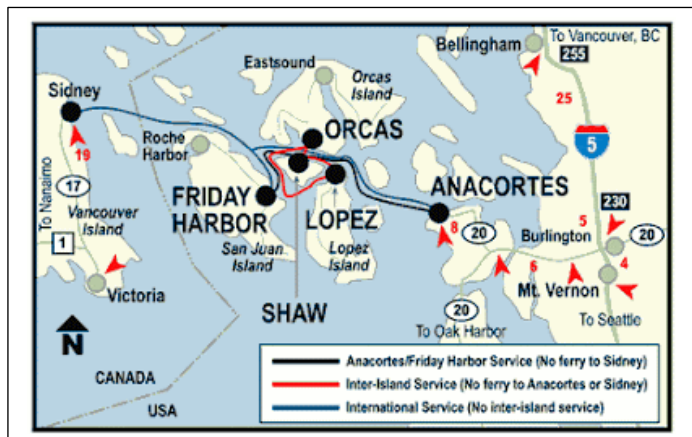
Jake Fey  
Co-Chair

Andrew Barkis  
Ranking Member

## I. BACKGROUND

The Washington State Legislature has commissioned a study examining the feasibility of allowing a private ferry system to provide ferry service between Washington state and Vancouver Island..

Current WSF service running out of Anacortes includes service to the San Juan Islands and to Sidney, B.C. on Vancouver Island.



Because it crosses into Canada, Vessels serving the Sidney run must comply with the Coast Guard's Safety of Life at Sea (SOLAS) regulations. Two of the boats in WSF's fleet meet SOLAS requirements. One of those boats, the Elwha, is being removed from service because of significant preservation costs. This study will examine the feasibility of bringing in a private ferry operator to provide service between Washington and Vancouver Island.

If a private ferry operator also provided service to the San Juans, as the current run does, the federal Jones Act requires that the vessel be built in the United States.

The Legislature has considered terminating the WSF Anacortes-Sidney in the past. More background on that history can be found in the materials referenced later in the RFP.

## **II. SCOPE OF WORK**

### **Purpose:**

The [budget proviso](#) authorizing this study directs the JTC to conduct a feasibility analysis of terminating SF's Anacortes- Sidney run and authorizing private ferry service between Washington and Vancouver Island. The study will examine:

- Impacts to WSF ridership, revenues, and expenses;
- Options for encouraging private auto ferry service between Washington and B.C. including:
  - Expected impacts to fares;
  - Possible terminal locations on Fidalgo Island
- Local/regional impacts to:
  - Ferry service to the San Juan Islands;
  - Economy of the Anacortes area;
  - Economy of the San Juan Islands;
  - Family wage jobs in the marine industry
- Legal analysis of all state, federal, or Canadian laws or rules, including the Jones Act and rules of the board of pilotage commissioners, that may apply to initiation of private service or cessation of state service.

### **Stakeholder Panel and Staff Workgroup**

The Stakeholder Panel will include representatives from:

- The Washington State Department of Transportation (WSDOT);
- San Juan County;
- City of Anacortes;
- The Inland Boatmen's Union;
- Puget Sound Pilots or the Pilotage Commission;
- Port of Anacortes;
- Economic development alliance of Skagit County;
- Interested private ferry operators.

The JTC expects the Stakeholder Panel to meet 2 or 3 times over the course of the study.

A Staff Workgroup will provide guidance during the study, meeting in advance of each Stakeholder Panel meeting. The Staff Workgroup will include staff with content expertise from the JTC, House and Senate Transportation Committees, Governor's Office of Financial Management, WSDOT, San Juan County, the City of Anacortes, the Port of Anacortes and the Skagit County Economic Development Alliance and staff designated by industry representatives. The consultant should expect to work with the Staff Workgroup throughout the study, to solicit input, review draft materials, and to review findings, recommendations, and draft reports.

A final report is due to the House and Senate Transportation Committees by February 15, 2021.

### **III. TASKS TO BE COMPLETED IN STUDY**

The description of tasks below is not intended to fully encompass the study tasks, but instead includes the minimum requirements, in order to provide the Consultant with a framework for the study.

**Consultants are encouraged to recommend additions and/or alternatives to better meet the study's stated objectives.**

#### **TASK 1: LEGAL ANALYSIS**

The successful consultant will provide a comprehensive legal analysis of maritime and other legal requirements, including procedural and contractual requirements, that would affect the transition of Washington to Vancouver Island service to a private operator. This analysis will inform the consideration of options and impacts under the remaining tasks.

Deliverable: Legal memorandum documenting comprehensive legal analysis to be included, possibly as an appendix, in the final report. This will include identification of any RCW sections that would need to be amended to authorize termination of the current WSF run and enable additional private ferry service between Washington state and Vancouver Island.

#### **TASK 2: PRIVATE FERRY SERVICE OPTIONS**

Examine opportunities and constraints for converting the WSF Anacortes-Sidney service fully or partially to a private operator, including but not limited to:

- Options for encouraging private auto ferry service between the state of Washington and Vancouver Island
- Identification of private operators potentially interested in providing international service;
- Projecting potential fares for private service projections;
- Customs issues related to terminating current WSF run and instituting private ferry service; and
- Possible terminal locations on Fidalgo Island.

Deliverable: Draft report chapter for inclusion in final report.

#### **TASK 3: IMPACTS TO WASHINGTON STATE FERRIES**

Analysis of potential impacts to WSF including but not limited to ridership, revenue, and expenditures. The successful consultant will gather and evaluate WSF's financial and other information, including origin and destination studies, to inform this task. This analysis will include alternative costing analyses for different options identified under task 2.

Deliverable: Draft report chapter quantifying potential impacts to WSF

## **TASK 4: IMPACT ANALYSIS**

Analysis of potential impacts of including:

- Impact on ferry service to the San Juan Islands;
- Impact to fares;
- Economic impact to the San Juan Islands if ferry service or ferry tourism is reduced;
- Economic impact to the Anacortes area;
- Impact to family wage jobs in the marine industry.

This task will include an analysis of the net impact of terminating WSF international service and authorizing private international service on local tourism dependent economies.

The consultant shall begin this task by reviewing analyses previously conducted by interested parties. The consultant will evaluate and supplement those analyses as necessary to provide a comprehensive analysis of potential economic impacts.

Deliverable: Draft report chapter documenting potential impacts.

## **TASK 5: COORDINATE WITH STAKEHOLDER PANEL AND STAFF WORKGROUP**

A Stakeholder Panel of representatives of the entities listed in the Scope of Work section will be convened to discuss and understand the study's findings and recommendations and provide technical expertise for the study.

The Consultant will work with a Staff Workgroup throughout the study, soliciting input, presenting draft materials before they are shared publicly, and reviewing findings, recommendations and draft reports. The Staff Workgroup will meet in advance of each Stakeholder Panel meeting. The Staff Workgroup membership is identified above under the scope of work section. JTC staff will provide contact information for Workgroup members. The consultant will be responsible for convening the workgroup after initial JTC contact.

The Consultant should generally expect to provide copies of all materials needed for meetings with the Staff Workgroup.

The Consultant's study proposal must describe how the Stakeholder Panel and Staff Workgroup meetings will be incorporated into each task of the study. Specifically, the consultant must describe the number and objective of Stakeholder Panel meetings needed to:

- Brief the panel on specific operational, budget, and economic issues specific to the Anacortes-Sidney run;
- Facilitate a discussion of the impact of terminating WSF international service and instituting private ferry service between Washington and Vancouver Island;

## **TASK 6: PRESENTATIONS**

The Consultant will attend and provide study updates at the following meetings:

- September 17, 2020 JTC meeting in Olympia
- December 17, 2020 JTC meeting in Olympia
- Possible presentations to the House and/or Senate Transportation Committees during the 2021 legislative session, likely in late January or early February 2021. These presentations would be at the discretion of the Committee Chairs.

## **TASK 7: DRAFT AND FINAL REPORTS**

The Consultant shall work with the JTC Project Manager on review of the draft reports and incorporate any needed changes. The consultant will provide a draft report by December 15, 2020; with a final report by February 1, 2021

Deliverable: Draft and final reports.

## **IV. CONTRACT DELIVERABLES**

The successful Consultant will provide the following services and deliverables:

1. Within five (5) business days of the announcement of the apparent successful Consultant, the Consultant shall submit a work plan to meet the requirements of Sections II and III of this RFP, with 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; and,
  - A schedule for performing the tasks which includes dates for completion of drafts of the deliverables in Tasks 1-7.

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. In conducting the study, the Consultant shall coordinate and facilitate the Stakeholder Panel and Staff Workgroup meetings. The Consultant shall provide all meeting materials. JTC staff will be responsible for securing meeting locations and providing food and refreshments for the meetings.
3. The Consultant Project Manager shall have, at a minimum, twice-monthly scheduled conference calls with the JTC Project Manager. Full or partial Consultant team conference calls may be scheduled as needed.
4. The Consultant shall prepare draft deliverables as described above in Tasks 1-4. The Consultant shall present a draft to the JTC Project Manager and Staff Workgroup, for comments and suggestions. The Consultant shall work with the JTC Project Manager on review of the draft deliverables and PowerPoints and incorporate any needed changes.

5. The Consultant shall present a draft report to the JTC Project Manager and Staff Workgroup by December 15, 2020, for comments and suggestions. The Consultant shall work with the JTC Project Manager on review of the draft report and incorporate any needed changes.
6. The Consultant shall submit the draft final report by February 1, 2020. The draft final report is not final until the four JTC Executive Committee Members have voted to accept.
7. The Consultant may be requested to make a presentation to the House and Senate Transportation Committees during the 2021 legislative session. The decision will be up to the chairs of the House and Senate Transportation Committees.
8. The Consultant must deliver the approved Final Report in an electronic format suitable for printing and web-based distribution (PDF).

## **V. OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITY**

The JTC will have primary oversight for this study. The clients of this study are the four JTC Executive Committee Members (the Chairs and Ranking Members of the House and Senate Transportation Committees), who are represented in day-to-day study activities by the JTC Project Manager. 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.);
- Attend regularly scheduled briefings with Consultant;
- Receive, evaluate and edit Consultant products; and
- Oversee communications and meetings between JTC, the Consultant, and the Staff Workgroup.

## **VI. QUALIFICATIONS**

- Bidder must be licensed to do business in the state of Washington.
- 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.

## **VII. 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 governed by an Executive Committee comprised of the Chairs and Ranking Members of the House and Senate Transportation Committees. JTC shall mean the Executive Committee, Committee Coordinator, Project Manager, and/or any other staff of the JTC.
- **JTC Coordinator** – the Chief Executive Officer of the Joint Transportation Committee.
- **RFP** – this Request for Proposals, 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.

## VIII. **PROVISO ESHB 2322 §204(6)**

(6)(a) \$250,000 of the motor vehicle account—state appropriation is for the joint transportation committee to conduct a study of the feasibility of a private auto ferry between the state of Washington and British Columbia, Canada. The study must include the following elements:

(i) Expected impacts to ridership, revenue, and expenditures for Washington state ferries;

(ii) Expected impacts to ferry service provided to the San Juan Islands;

(iii) Possible terminal locations on Fidalgo Island;

(iv) Economic impacts to the Anacortes area if ferry service between the area and Vancouver Island ceases;

(v) Economic impacts to the San Juan Islands if ferry service or ferry tourism is reduced;

(vi) Expected impacts to family wage jobs in the marine industry for Washingtonians;

(vii) Expected impacts to ferry fares between the state of Washington and British Columbia, Canada;

(viii) Legal analysis of all state, federal, or Canadian laws or rules, including the Jones act and rules of the board of pilotage commissioners, that may apply to initiation of private service or cessation of state service; and

(ix) Options for encouraging private auto ferry service between the state of Washington and Vancouver Island, Canada.

(b) In conducting the study, the joint transportation committee must consult with the department of transportation, a representative of San Juan county, a representative of the city of Anacortes, a representative of the inland boatman's union, a representative of Puget Sound pilots, a representative of the port of Anacortes, a representative of the economic development alliance of Skagit county, and interested private ferry operators in Washington state.

(c) A report of the study findings and options is due to the transportation committees of the legislature by February 15, 2021.

## IV. **HELPFUL RESOURCES**

The following resources are provided for convenience and additional background for preparation of proposals. These resources are not exhaustive, and should not be solely relied upon to form the basis of a proposal or any subsequent recommendations.

- SB 6667 - 2019
- Feb. 3, 2009 article re: history of Anacortes-Sidney Ferry Run
- Feb. 20, 2020 article re: Cost to preserve the Elwha and potential impact of retirement

## **X. PROJECT BUDGET**

The budget for this project shall not exceed a maximum of **\$245,000**. 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.

## **XI. INSTRUCTION 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 submitted either electronically or by paper copy by 5:00 p.m. on **April, 24, 2020**, and must include company name, address and email address.
2. Bidders must submit seven copies of the proposal and one electronic PDF copy on a flash drive. If state offices are still closed on May 5 due to the pandemic, proposals must be submitted via email in lieu of hard copies. In that event pdf versions of the proposal will be sent to study lead Paul Neal at: [paul.neal@leg.wa.gov](mailto:paul.neal@leg.wa.gov).
3. Bidders must include two samples of previous work similar to this type of as electronic copies on a flash drive.
4. Proposals are due no later than **5:00 p.m. (local time in Olympia) on May 5, 2020** whether mailed or hand delivered. Late proposals will not be accepted and will be automatically disqualified. If state offices are reopened on May 5, Proposals should be submitted to:

Joint Transportation Committee (JTC)  
Sonia Plasencia, RFP Coordinator  
P.O. Box 40937  
606 Columbia Street NW, Suite 105  
Olympia, WA 98504-0937

If state offices are still closed on May 5, proposals should be submitted via email as discussed in item no. 2, above. Even if state offices are open, the proposal may be submitted by email with a follow-up submission of hard copies.,

5. Selected bidders will be required to attend oral interviews on **May 20, 2020** at JTC's offices in Olympia and provide presentations at their expense. These interviews may be held via telephone or video conferencing due to coronavirus concerns. Selected bidders will be notified of the time 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 the travel and associated costs of Bidder personnel 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](mailto:Sonia.Plasencia@leg.wa.gov). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning at 9:00 a.m. on **April 15,**



**2020.** No inquiries concerning the RFP will be accepted after 5:00 p.m., on **April 27, 2020**. Responses to questions will be posted at <http://leg.wa.gov/JTC/Pages/RFPs.aspx> within three business days. By **April 28, 2020**, responses to inquiries will be posted and transmitted 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. The names of 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.

## **C. PROPOSAL FORMAT**

Seven 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 a flash drive. If state offices have not reopened on May 5, email submission as discussed above will take the place of the requirement for hard copies. 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
  - The Technical Approach should respond to Tasks 1-7 in Section III of this RFP, not to exceed ten pages. This page limitation does not include resumes, qualifications, work samples, the Letter of Submittal or signed Certifications and Assurances form.
  - The Technical Approach should describe the approaches, methodologies, and techniques that will be used to undertake each of these tasks and produce the deliverables; and shall identify each person responsible for each task. It should describe in as much detail as possible the anticipated tasks, levels of effort, schedules, and coordination work required to undertake the Tasks.

3. Management Approach
  - The Management Approach shall describe how your firm proposes to organize, manage, control, and report on the status of the study. Identify all critical milestones. It should include the following:
    - 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. Please keep resumes as concise as possible.
    - An organization chart indicating the lines of authority for all personnel involved in performance of the potential contract.
    - A description of staff responsibilities and the amount of time they will devote to the project by task or topic area.
  - Bidders must include two samples of previous work similar to this type of project as electronic copies on a flash drive.
4. Cost Approach
  - The total cost of this work shall be documented in a detailed budget, including direct and indirect labor, travel, and any other expenses (itemized). The cost description shall identify projected work hours and hourly rate(s) for each employee, by name and task, who will be assigned to this project.
5. References
  - Include three references with whom your firm and the proposed Consultant Project Manager has done similar work. For each reference, include name, title, organization, address, phone number and email address. References shall not include staff of the Joint Transportation Committee, nor Washington State House or Senate Transportation Committee staff.

## **XII. 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 to be invited to make an oral presentation.

- Technical Approach (55%)
  - 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
  - Staff qualifications & resumes
  - Relevant experience with projects of similar complexity & type
  - Other applicable experience

- Cost Approach (5%)
  - Quality of detailed budget
  - Reasonableness of cost approach
  - Total project cost

### **XIII. ESTIMATED SCHEDULE OF ACTIVITIES**

Letters of Intent to Bid due	April 24, 2020
Due date for proposals	May 5, 2020
Oral Interviews	May 20, 2020
Announce apparently successful Bidder	Approximately May 22, 2020
Estimated contract start date	June 8, 2020
Kick-off meeting with Staff Workgroup	The week of June 15, 2020 unless the Consultant prefers an earlier kick-off meeting
Presentations to JTC in Olympia	September 17, 2020
Submit draft report to JTC staff	December 15, 2020
Final report draft due to JTC	February 1, 2021
Final report presented to House and Senate Transportation Committees	No later than February 15, 2021

### **XIV. 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.
- C. "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.

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.

CHANGE OF CONTROL OR PERSONNEL -- Contractor shall promptly and in any case within twenty-four (24) hours notify the JTC Project Manager 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;
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.

CHANGES AND MODIFICATIONS -- The JTC may, at any time, by written notification to the Contractor, 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.

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.

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.

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.

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 Committee Coordinator for review and decision. If the decision by the JTC Committee Coordinator is not satisfactory to the Contractor, the Contractor may request in writing that the dispute be reviewed by the Legislative Members of the JTC Executive Committee. Such written request shall be provided to the JTC Committee Coordinator within five (5) days following the Committee Coordinator's decision. The Committee Coordinator shall present the written request to the Legislative Members of the JTC Executive Committee at its earliest convenience for review and decision. The decision of the Legislative Members 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 Committee Coordinator or the JTC Executive Committee.

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.

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.

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.

INDUSTRIAL INSURANCE COVERAGE -- The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract as required under Title 51 RCW. 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.

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

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.

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

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.

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).

RECORDS, DOCUMENTS AND REPORTS -- The Contractor shall maintain books, records, documents, data 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 state or federal officials so authorized by law, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six (6) years after the date of final payment, and make them available for inspection by persons authorized under this provision.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, <http://dor.wa.gov/Content/Home/Default.aspx>, and be responsible for payment of all taxes due on payments made under this contract.

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.

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 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.

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.

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.

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.

SEVERABILITY -- The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

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.

TERMINATION FOR CAUSE -- In the event the JTC determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the JTC has the right to suspend or terminate this contract. 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.

A termination shall be deemed a "Terminate for Convenience" if it is determined that the Contractor (i) was not in default, or (ii) failure to perform was outside of his or her control, fault or negligence.

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.

TREATMENT OF ASSETS--

1. 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.

2. 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.
3. 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.
4. If any JTC property is lost, destroyed or damaged, the Contractor shall notify JTC immediately and shall take all reasonable steps to protect that property from further damage.
5. The Contractor shall surrender to JTC all property of JTC prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents, or Subcontractors.

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.



**Exhibit B**

**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 or other agencies that violate Chapter 42.52 RCW, the "Ethics in Public Service" Law.

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Signature of Bidder

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Title

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Date