

Washington State Legislature

RFP #14-1: WSDOT's Estimates of Long-Term Highway Maintenance and Preservation Needs

Joint Legislative Audit and Review Committee

SECTION I – INTRODUCTION

I-1 PURPOSE

This Request for Proposal (RFP) is issued by the Joint Legislative Audit and Review Committee (JLARC), a performance audit and program evaluation committee of the Washington State Legislature. JLARC is a joint committee comprised of 16 members, with equal representation between the Senate and House, and the two major parties. JLARC provides the Legislature with independent, objective, and credible answers to its questions about government performance.

As part of the 2013-15 transportation budget, Engrossed Substitute Senate Bill 5024, the Legislature directed JLARC to review the methods and systems used by the Washington Department of Transportation (WSDOT) to develop asset condition and maintenance service level needs and subsequent funding requests for highway preservation and maintenance programs. Washington’s highway system is composed of numerous components, such as pavements, bridges, drainage systems, and electrical systems, all of which must be maintained on a regular basis and replaced or restored when they wear out. Highway maintenance is funded from the Department’s operating budget and is budgeted at \$407 million in the 2013-15 Biennium. Highway preservation is a capital budget activity and is budgeted at \$699 million in the 2013-15 Biennium.

The Legislature directed JLARC to conduct this study in two phases. The first phase, a [briefing report](#) completed in January 2014, was an overview of the methods and systems WSDOT uses to develop estimates of maintenance and preservation needs and the documentation for those methods and procedures. JLARC staff completed this phase in-house. This review will examine whether the methods and systems used by the WSDOT for estimating preservation and maintenance needs and costs are consistent with industry practices and other appropriate standards. JLARC plans to issue a contract not to exceed \$230,000 to work on this study.

The work of the successful bidder will assist JLARC by providing quantitative and qualitative analysis consistent with the direction provided in this RFP. The contract will have fixed prices for the specified deliverables, and the amount of the contract will cover all expenses of the contractor. In addition to the fixed price deliverables, JLARC is requesting that bidders submit hourly rates to allow JLARC the option to request additional consulting assistance from the successful bidder on a per hour basis. Payment under the contract will be based on the successful completion of the tasks, work products, and deliverables specified in the contract to JLARC’s satisfaction.

JLARC will retain overall management of the final report to the Legislature, including development of study findings and formal recommendations, and the presentation of study results. The contract will run from the date of execution through January 31, 2015, with the majority of the work to be completed by mid-June 2014.

SECTION II – Statement of Work

II-1 Scope of Work

The Firm shall assist JLARC by gathering qualitative and quantitative data to answer a set of research questions to objectively analyze WSDOT’s approach to estimating preservation and maintenance needs, specifically focusing on state highways and bridges, and comparing it with industry practices. This analysis will need to consider both a long-term (10-year) time horizon and a short-term time horizon (2-year increments for biennial budget estimates).

II-2 SERVICES TO BE PROVIDED

The Firm will be required to address/answer the following four questions:

- (1) Are the methods and systems WSDOT uses to develop long-term (10-year) estimates of highway maintenance and preservation needs consistent with industry practices and other appropriate standards?**

Identify best practices in the development of long-term estimates of highway and preservation needs, and compare them to WSDOT’s methods and systems. Conduct a gap analysis to identify: 1) strengths and weaknesses in the information and procedures used by WSDOT to estimate long-term highway maintenance and preservation needs and 2) how long-term needs are communicated to the Legislature.

(2) How accurate is the information that is used to develop long-term estimates of maintenance and preservation need?

Develop an approach to assess and validate the information that WSDOT uses to report highway and bridge condition and project long-term need. This may include sampling and verifying the condition of assets as reported by WSDOT.

(3) Are practices in place to minimize life-cycle preservation and maintenance costs?

Determine whether the methods WSDOT uses for estimating maintenance and preservation needs for pavement and bridges leads to the identification of the lowest life-cycle costs of transportation assets. Identify strengths and weaknesses in WSDOT’s ability to minimize life-cycle costs of its assets. Are data and models available and used to accurately forecast maintenance and preservation needs in the short and long term?

Evaluate whether the maintenance and preservation programs are adequately integrated to determine whether maintenance is accounted for in the planned preservation program and preservation is accounted for in the planned maintenance program. Also, evaluate how preservation and maintenance project backlogs affect the coordination of project planning, budgeting, and implementation.

(4) How does WSDOT quantify risks to its need and cost estimates?

Analyze how WSDOT quantifies uncertainty in its long-term maintenance and preservation need estimates. JLARC’s Phase One report found that WSDOT’s approach appears logical; for this phase, the consultant should review how the Department identifies uncertainty in the information used in its assumptions for long-term needs. Additionally, compare WSDOT’s methods with best practices in transportation risk management and identify the strengths and weaknesses of WSDOT’s approach.

II-3 REPORTING AND DELIVERY REQUIREMENTS

A. Work Plan

All work shall be in accordance with a work plan approved by JLARC:

- 1) Within fourteen (14) calendar days after the date of the contract execution (anticipated to be March 12, 2014), the Firm shall develop an initial work plan to meet the work requirements of this RFP, and any changes necessary based on additional information or input provided by JLARC staff. The work plan shall include:
 - The specific tasks and sub-tasks to be performed;
 - 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;
 - The milestone dates; and
 - The management, supervisors, staff, and affiliates assigned to the tasks and subtasks, and the amount of time each person will spend on each task and subtask.
- 2) Within eighteen (18) calendar days after the first work plan is submitted, an adjusted work plan will be submitted based on discussions with JLARC staff. Changes that adjust priorities and tasks should be negotiated prior to submittal of the adjusted work plan.
- 3) The work plan and adjustment to the work plan is subject to approval by the Legislative Auditor. Any subsequent changes shall also require approval by the Legislative Auditor.

B. Deliverables

Major deliverables are due according to the following schedule:

	Due Date	Deliverable
1)	Bi-weekly throughout the project	Bi-weekly progress report identifying accomplishments of each reporting period, identifying any issues or challenges that need to be overcome, and any concerns or problems identified that might jeopardize the successful completion of the study along with plans to overcome any challenges. These reports should also detail any assistance needed from JLARC staff to overcome any challenges.
2)	3/24/2014	Initial Work Plan (as specified above).
3)	4/3/2014	Initial meeting with JLARC staff and consultant to: review methodology; discuss any concerns about data availability; make initial introductions to WSDOT staff; and provide a listing of resources needed from JLARC and/or WSDOT.
4)	4/11/2014	Adjusted Work Plan (as specified above) and pre-fieldwork discussion.
5)	5/8/2014	Progress report describing preliminary results of work on questions 1 and 2.
6)	5/22/2014	Progress report describing preliminary results of work on questions 3 and 4.
7)	6/12/2014	Synthesis of findings and draft report outline.
8)	6/23/2014	Draft report provided to JLARC.
9)	7/28/2014	Final Report which synthesizes reports for deliverables 5 through 7, answers all the research questions contained in Section II-2 –Services to Be Provided, and includes any revisions requested by JLARC.
10)	12/10/2014	Attend JLARC meeting and be available to answer member questions.
11)	1/07/2015	Attend JLARC meeting and be available to answer member questions.

JLARC will review the deliverables and reports to ensure that the Firm’s analysis is supported by relevant, sufficient, and credible evidence. JLARC shall submit comments on the Draft Report within 30 calendar days of receipt. The final report shall incorporate all changes made necessary, as determined by JLARC staff.

C. Working Paper Requirements

- 1) The Firm shall obtain and document in writing sufficient, competent evidential matter to support the analysis in its report, models, spreadsheets, or other data analysis.
- 2) In order to facilitate reviews of working papers by JLARC staff, the Firm shall exercise strict control over the preparation and maintenance of working papers.
- 3) Working papers are to be organized, numbered, and cross-referenced in a logical manner to enable easy cross-walk between the work plan, working paper sections, conclusions, findings, and source documents.
- 4) All working papers, electronic models, spreadsheets, and data sets resulting from this study shall be owned by JLARC and shall be retained for a period of at least six years or until any claim brought under this RFP is settled. It is JLARC’s expectation that the Firm will use standard, commercially available software that is in wide use or readily available to JLARC and other agencies. The Firm may retain a copy of working papers supporting this study.
- 5) The report and all working papers supporting it are confidential until the preliminary report is officially released to the public by JLARC. Prior to the official release of the report, working paper access shall be limited to JLARC staff, its consultant (if applicable), and the Firm. JLARC will coordinate communication about the report and between the Firm and the Washington State Department of Transportation.

D. Progress Reporting

The Firm shall provide JLARC bi-weekly written reports outlining the following:

- Risks or issues which might affect the schedule or level of effort as planned, and their required resolution time frames;
- Progress against planned tasks and activities for the particular reporting period;
- Planned tasks and activities for the next reporting period, which may include anticipated contacts and research plans; and
- Disposition of previously reported risks or issues.

The progress reports, which may be filed electronically, shall be organized into narrative language that is clear, concise, and structured to be easily understood by a third party.

In addition to the bi-weekly progress report, the Firm will prepare the three project progress presentations. These presentations do not substitute for the bi-weekly progress reports.

E. Draft and Final Reports to JLARC

The Firm will submit draft and final reports to JLARC staff. JLARC staff will review the draft report and may also share them with select others for technical review. The Firm’s final report will include revisions to the draft report as necessary to incorporate comments and suggestions from JLARC staff. The findings and conclusions of the final report might be distributed by JLARC or incorporated, as appropriate, into a report being prepared by JLARC staff. The final report may also be made available to the public as a Technical Appendix to the JLARC staff report. The draft and final reports and all electronic models, spreadsheets, and data sets should synthesize findings and conclusions resulting from a thorough and cumulative assessment of all completed work described in Section II. Findings and conclusions must be clearly documented as resulting from field work and analysis done for this study.

The Firm may be required to make up to two oral presentations, in public meetings, to legislative committees and their staff. As appropriate, the Firm may need to provide follow-up on questions or comments raised at these meetings. The Firm shall be required to follow guidance provided by JLARC staff as to the format and length of reports and briefings, as well as the level of detail appropriate for intended audiences.

SECTION III - OFFEROR QUALIFICATIONS

III-1 MANDATORY MINIMUM QUALIFICATIONS

Offerors, or Offerors consisting of consultant teams assembled as a joint venture, must satisfy **all** of the following mandatory minimum qualifications as outlined below in order to be considered for the contract award:

- A. At a minimum, the Offeror must agree to provide the services as detailed in Section II, “Statement of Work,” as well as all other requirements stated in the RFP.
- B. The Offeror must provide assurance that the key professionals and/or the organization do not have, nor could they potentially have, a material conflict of interest with the subject of highway maintenance or preservation within the state of Washington, JLARC, or any personal, external, or organizational impairments as described in the *Government Auditing Standards GAO-12-331G, as issued by the United States Government Accountability Office* (<http://www.gao.gov/assets/590/587281.pdf>).
- C. Current contracts or agreements with entities that could provide the appearance of an impairment to independence must be disclosed and explained in the Offeror’s proposal.

- D. The Offeror must have demonstrated expertise, experience, knowledge, and abilities in the following specific areas:
1. Cost estimating for highway maintenance and preservation projects.
 2. Financial planning for capital transportation assets including transportation asset management implementation and life-cycle cost minimization strategies.
 3. Experience in data-driven methods for project prioritization.
 4. At least one team member must hold a professional engineer license.
 5. Experience working with a broad road range of clients and constituency groups, both public and private.
 6. Skill at preparation of reports and presentation graphics that effectively communicate study results to non-technical audiences whose primary interest will be the use of study results to improve transportation outcomes and to inform options for agency program funding, organization, and public policy.

SECTION IV - GENERAL INFORMATION

IV-1 DEFINITIONS

“Offeror” or “Firm” means an entity intending to submit or submitting a proposal for the project, including any entity such as a joint venture, assembled specifically for this purpose and its subcontractors.

“Apparently Successful Offeror” or “Apparently Successful Firm” means the Offeror or Firm selected by the Legislative Auditor as the most qualified entity to perform the stated services.

“Legislative Auditor” means the chief executive officer of JLARC.

“JLARC” means the Washington State Joint Legislative Audit and Review Committee and/or its staff.

“WSDOT” means the Washington State Department of Transportation.

“RFP” means this Request for Proposal, any *addendum* or *erratum* thereto, Offerors' written questions and the respective answers, and any related correspondence that is: (1) addressed to all Offerors, and (2) signed by the Legislative Auditor or his/her designee.

Contract definitions are provided in Exhibit D.

IV-2 COMPENSATION AND PAYMENT

The compensation for the duration of this contract shall be fixed from the fee included in the Offeror’s proposal. This fixed compensation shall include all costs, including all travel, as necessary. Invoices shall be submitted to:

Eric Thomas, Research Analyst
 Joint Legislative Audit and Review Committee
 1300 Quince Street SE
 PO Box 40910
 Olympia, WA 98504-0910

Progress billing may be submitted following completion of the following deliverables:

Deliverable	Contract Amount Payable
Initial work plan	7%
Final adjusted work plan	4%
Written reports (Deliverables 5 through 7)	24% (8% each)
First interim progress report, meeting, and presentation	15%
Second interim progress report, meeting, and presentation	15%
Firm’s draft final report, meeting, and presentation	15%
Firm’s final report, meeting, and presentation	14%
Final supporting work papers and all models, spreadsheets, and data sets	3%
JLARC’s final report and/or presentations	3%
Consultation with JLARC staff	Hourly rate

Payment for each billing shall be made by JLARC to the Firm after JLARC has determined that the progress of the project and the quality of the work is satisfactory. This determination will include consideration of the progress of the project in comparison to the work plan, and that the work meets JLARC standards. If JLARC determines that the Firm has not made satisfactory progress in accordance with the work plan or the work does not meet JLARC standards, it may withhold payment until the necessary work is completed to its satisfaction.

IV-3 EXPECTED TIME PERIOD FOR CONTRACT

The period of contract performance is expected to be from March 7, 2014 through January 31, 2015.

IV-4 ELIGIBILITY TO COMPETE

The Firm, or any subsidiary, affiliate, or parent company thereof, competing for this procurement must inform JLARC of all current contracts with state or local governments related to highway transportation analysis. The Firm must also inform JLARC whether it has any contracts or agreements with private entities for the purpose of assisting those entities with highway transportation analysis. In their proposals, Firms must provide an attachment describing how such contracts do not pose impairment to independence, as described in Government Auditing Standards GAO-12-331G issued by the United States Government Accountability Office (<http://www.gao.gov/assets/590/587281.pdf>).

The Legislative Auditor reserves the right to disqualify proposals from Firms that do not provide adequate justification of how impairments to independence are avoided. The Firm, during the term of the resulting contract, and any extensions thereto, may compete in procurements for consulting services with a state agency or local government relating to highway maintenance and preservation management or analysis provided that:

- 1) JLARC is first notified of such intention;
- 2) The Firm makes assurances that the contract for which the Firm is bidding will not result in an impairment to independence; and
- 3) The Legislative Auditor agrees that no such conflict of interest exists. Failure to meet these terms may result in contract termination.

SECTION V - INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

V-1 RFP CONTACT

The RFP Coordinator listed below is the sole point of contact for this RFP, except as expressly authorized by the Legislative Auditor or his/her designee. Throughout the duration of the procurement process, all communications are to be directed to the contact listed below.

Eric Thomas, Research Analyst
 Joint Legislative Audit and Review Committee
 1300 Quince Street SE
 PO Box 40910
 Olympia, WA 98504-0910
 Telephone: (360) 786-5182
 FAX: (360) 786-5180
 E-mail: eric.thomas@leg.wa.gov
 Web: http://jlarc.leg.wa.gov

The RFP Coordinator may require that inquiries be put in writing.

“Letter of Intent to Bid,” in the format of Exhibit B, must be received at the JLARC office by **February 12, 2014 at 4:30 p.m. Pacific Standard Time.** The letter of intent to bid may be submitted electronically via e-mail or fax.

Offerors who submit the “Letter of Intent to Bid” prior to the deadline will be sent any modifications of the RFP and a written record of additional substantive information provided to prospective Offerors (such as responses to telephone inquiries). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning January 31, 2014. No inquiries about the RFP will be accepted after February 10, 2014.

A firm which either chooses not to submit a “Letter of Intent to Bid” or fails to meet the deadline for its submittal may submit a proposal in response to this RFP, but may not have the benefit of the information referenced in the preceding paragraph.

V-2 SCHEDULE OF PROCUREMENT ACTIVITIES

The following schedule of activities must be adhered to by all Offerors. Offerors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator listed in Section V-1 of this RFP.

Event Dates

Release of RFP	January 31, 2014
Acceptance of RFP clarification inquiries beginning	February 3, 2014
Deadline for RFP clarification inquiries	February 10, 2014
Letters of intent to bid due to JLARC by 4:30 p.m. PST	February 12, 2014
Distribution of answers to clarification inquiries	February 17, 2014
Proposals due to JLARC by 4:30 p.m. PST	February 26, 2014
Start of finalist oral interviews (may be telephonic)	March 3, 2014 (anticipated)
Apparently Successful Firm notified	March 7, 2014 (anticipated)
Contract execution	March 12, 2014 (anticipated)
Public announcement of Successful Firm	March 13, 2014 (anticipated)

V-3 SUBMITTING PROPOSALS

Submittal of eight (8) copies of the proposal is required. Seven (7) copies must be hardcopy and one must be electronic (CD or flash drive). One hardcopy must have original signatures and the other six copies can have photocopied signatures. One of the six copies with a photocopied signature must be **unbound**.

The unbound copy must be marked “**Copy for Reproduction,**” and **must** be formatted as follows: (a) no divider sheets or tabs; (b) text only on **one** side of the sheet of paper (*i.e.*, no double-sided pages); and (c) those pages containing “confidential” information **removed**, but a cover index for this copy attached bearing the Offeror’s name setting forth which page(s) has (have) been removed because they contained “confidential” information.

Eight (8) copies of the proposal (including the unbound copy and the electronic copy) shall be delivered to the following address by 4:30 p.m., Pacific Standard Time, February 26, 2014:

Eric Thomas, Research Analyst
 Joint Legislative Audit and Review Committee
 1300 Quince Street SE
 PO Box 40910
 Olympia, WA 98504-0910

Proposals may not be transmitted using e-mail or facsimile transmission. Notwithstanding the provisions of RCW 1.12.070, postmarks will not be considered as date received for the purposes of this RFP. **Late proposals will not be accepted, nor will time extensions be granted.**

The outside of the proposal packaging is to clearly identify the RFP being responded to.

All proposals and accompanying documentation become the property of the JLARC and **will not be returned.**

V-4 PROPOSAL FORMAT AND CONTENT

Proposals should be prepared on 8½ x 11 inch paper; however, 11 x 14 inch paper is permissible for charts, spreadsheets, etc.

All of the conditions set forth in this section must be included and addressed thoroughly and completely by the Offeror before JLARC will accept a response to this RFP.

The proposal should consist of six (6) main sections as outlined below: 1) Executive Summary, 2) General Information, 3) Technical Expertise Proposal, 4) Management Proposal, 5) Cost Proposal, and 6) “Certifications and Assurances” form (Exhibit A). Section 3 shall not exceed 25 single-spaced pages. Proposals should be in sufficient detail to permit evaluation and should include tabs separating the individual sections (except for the unbound copy). Please keep any attachments to a minimum.

SECTION 1: Executive Summary

Please set forth a stand-alone Executive Summary of the contents of your Firm’s proposal, including all the subsection topics set forth therein. Take particular care in its preparation, for if your Firm is selected as a finalist, this document may be used as a guide in conducting an oral interview. **DO NOT** structure it in the format of a reference to sections of your overall proposal.

SECTION 2: General Information

Please provide the material specified below. If the proposal includes a subcontract or joint venture, the Offeror must submit specific information for each subcontractor or joint venture member.

- A. Name, mailing address, phone, e-mail, and FAX number of legal entity with whom the contract is to be written.
- B. Name, mailing address, phone, e-mail, and FAX number of primary contact.
- C. Name, mailing address, e-mail, and phone number(s) of principal officer(s).
- D. Legal status of organization (e.g., sole proprietorship, partnership, corporation, etc.).
- E. Federal employer identification number.
- F. Washington State Department of Revenue Registration Number (UBI number), if applicable.
- G. The location of the facility from which the Offeror will operate.

- H. If the Offeror or anyone associated with the Offeror has been an employee of the state of Washington during the past two years, indicate his/her job title, agency by which employed, and separation date.
- I. If the Offeror or anyone associated with the Offeror contracted with the state of Washington during the past two years, identify the agency and contract number and briefly describe the contract.

SECTION 3: Technical Expertise Proposal

The technical expertise proposal should respond to the Section II – Statement of Work. The technical expertise proposal should describe the approaches, methodologies, and techniques that will be used to provide these services and produce the deliverables; shall identify each person responsible for each task; and support the fact that the offer is qualified to successfully complete this study on time. The technical expertise proposal should describe in as much detail as possible:

- 1) Anticipated tasks, levels of effort, schedules, coordination work, and meetings with state agencies, local governments, and private firms;
- 2) Software to be used in this project, data requirements, and other technical aspects of the Firm’s proposal;
- 3) Which individuals will be responsible for each of the tasks listed.

The technical expertise proposal should also include:

- 1) Descriptions of other projects the offer has successfully completed in the last five years in evaluating state highway maintenance and preservation programs similar to this project; and
- 2) A sample of work that demonstrates the Offeror’s expertise in this area.

If appropriate, include the contract numbers, period of performance, contact persons, and telephone numbers for previous similar work. Indicate if the Offeror within the last five (5) years has had a contract terminated for default, defined as notice to stop performance. Provide full details, including the other party’s name, address, and telephone number. If the Firm has had any other contracts or agreements with WSDOT within the last ten years, Offeror must list each contract, indicate the nature of the work for each contract, and provide an explanation as to why the contracted work does not impair the Offeror’s independence to perform the work described in Section II – Statement of Work.

SECTION 4: Management Proposal

Describe how your firm proposes to organize, manage, control, and report on the status of the project. Identify all critical milestones.

If an offer is being made by a joint venture or multiple firms collaboratively, the lead Firm for contracting purposes must be identified. JLARC will enter into a contractual relationship with only one firm. All other entities must be subcontractors to the lead Firm. The Firm will be responsible for all work conducted by and deliverables produced by all subcontractors.

Include an organization chart indicating the lines of authority for all personnel involved in performance of the potential contract. Indicate who within the Offeror’s organization will have final authority for the work.

Identify the staff that will be assigned to the project, including those who will lead each of the four topic areas, the interactions with state implementing and oversight agencies, and those who will conduct the on-site fieldwork. Discuss staff responsibilities and the amount of time they will devote to the project by task or topic area. Succinctly state each person’s qualifications and relevant experience. Attach resumes. **[Note: Care should be taken to keep resumes as concise as possible.]**

NOTE: The Offeror must commit that the staff identified in the proposal will actually be assigned to this project. Any substitution must be approved by JLARC

SECTION 5: Cost Proposal

JLARC intends to enter into a fixed-term contract. The services detailed in Section II of this RFP are the basis for the Offeror’s fee. The fee for work performed shall be a fixed fee for the requested services and all travel.

The fixed-price cost proposal must include a fully detailed budget with staff costs and non-staff costs necessary to accomplish the tasks and to produce the deliverables. The staff must be identified by name, hourly rate, number of hours devoted to the project, and type of work.

SECTION 6: Certifications and Assurances Form

The Certifications and Assurances form, Exhibit A, must be signed by the president or chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or all members of a joint venture included in the Offeror's proposal.

V-5 PROPRIETARY INFORMATION

All proposals received shall be public records but shall remain confidential until the Legislative Auditor or his/her designee announces the successful Offeror resulting from this RFP, if any. 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 another. Offerors are advised that the permissible exemptions from public disclosure are very narrow in scope and will be strictly construed. In the event that an Offeror desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that Offeror 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.***

If a request is made to view an Offeror's proposal, the Legislative Auditor or his/her designee shall respond in accordance with RCW 42.56.070 *et seq.* If any of the specifically requested information is marked as “confidential” in the proposal, but in the opinion of the Legislative Auditor does not conform to any one of the enumerated exemptions from disclosure, such information will not be made available until three (3) business days after the affected Offeror has been given telephonic notice that the information has been requested. If the affected Offeror has undertaken proceedings to obtain a court order restraining the Legislative Auditor from disclosure of the “confidential” information requested within those three (3) days, the Legislative Auditor will not disclose such information until resolution of the court proceeding. Upon failure to make application for judicial relief within the allowed period, the information will be disclosed.

NOTE: The proposal of the successful Offeror may 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 Offeror's proposal will be subject to public disclosure regardless of any claim of confidentiality or previously applicable statutory exemption. Nevertheless, should a successful Offeror 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 Legislative Auditor shall comply with the court order. The burden is upon a successful Offeror 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.

V-6 RECORDS RETENTION

After the date of the announcement of the Apparently Successful Offeror, the Legislative Auditor will retain one master copy of each proposal received for a period of six (6) years or until any claim brought under this RFP is settled.

V-7 PREPARATION AND TRAVEL COSTS

JLARC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP.

The Offeror assumes responsibility for its personnel's travel and associated costs as they relate to the bidding on this project. These costs must be considered in the bid cost of the proposal.

V-8 ADDENDA TO THE RFP

In the event it becomes necessary to revise any part of this RFP, an *addendum* or *erratum* will be provided to all Offerors who have indicated an intention to submit a proposal.

V-9 SUBMISSION LIMIT

After submission, Offerors will not be allowed to amend the proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.

SECTION VI - EVALUATION OF PROPOSALS

VI-1 EVALUATION PROCEDURE

Proposals will be reviewed and evaluated by a panel selected by JLARC staff. Written submittals, subsequently requested materials and oral presentations, if any, will be used in selecting the winning proposal. After initial evaluations, the Legislative Auditor may select a few Offerors as finalists for oral presentations to the evaluation panel. The Legislative Auditor reserves the right, at his/her sole discretion, to reject any and all proposals received without penalty. Subject to the approval of the JLARC Executive Committee, the final selection, if any, will be that proposal which, in the opinion of the Legislative Auditor after review of all submissions by the evaluation panel, sufficiently and best meets the requirements set forth in the RFP and is in the best interest of the citizens of Washington.

The selection will be accomplished through the following process:

- A. Initially, the JLARC office will review each proposal for compliance with minimum mandatory requirements as stipulated within the RFP. Proposals found non-compliant will be rejected from further consideration. Proposals not rejected will then be evaluated using the criteria outlined in Section VI-1-B below.
- B. The evaluation panel will evaluate the acceptable proposals and assign numeric scores based on the following weights:

Technical Expertise Proposal	72 percent
Management Proposal	20 percent
Cost Proposal	8 percent

JLARC reserves the right to ask for re-submittals of RFPs by finalists, as determined by the Legislative Auditor. Finalists in the RFP process may be asked to make oral presentations either telephonically or in Olympia, Washington to the evaluation panel and/or JLARC regarding their proposal. If finalists are asked to make an oral presentation, the final selection of the successful Offeror may be based on a combination of the evaluation of the written RFP and the oral presentation.

SECTION VII - JLARC RIGHTS

VII-1 PROPOSAL REJECTIONS

Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the Legislative Auditor or his/her designee. The Legislative Auditor 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.

The Legislative Auditor reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the Legislative Auditor, without any penalty to the Legislative Auditor.

VII-2 CONTRACT AWARD

The Legislative Auditor intends to award the contract to the Offeror with the best combination of attributes based on the evaluation criteria listed in Section VI-1-B of this RFP.

Should the Legislative Auditor fail to negotiate a contract with the Apparently Successful Offeror, the Legislative Auditor reserves the right to negotiate and contract with the next most qualified Offeror.

VII-3 PUBLICITY

No informational pamphlets, notices, press releases, findings, conclusions, research reports, and/or similar public notices concerning this project may be released by the Apparently Successful Offeror without obtaining prior written approval from the Legislative Auditor.

VII-4 WAIVERS

The Legislative Auditor reserves the right to waive specific terms and conditions contained in this RFP.

It shall be understood by Offerors that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Offeror has obtained such a waiver, in writing, from the Legislative Auditor or his/her designee prior to submission of the proposal.

Any waiver granted, prior to formal negotiation with the Apparently Successful Offeror, will be granted to all Offerors.

SECTION VIII - MISCELLANEOUS TERMS AND CONDITIONS

VIII-1 SUCCESSFUL OFFEROR NOTIFICATION

On or about the date specified in Section V-2, "Schedule of Procurement Activities," of this RFP, a letter indicating whether the Offeror was selected as "the Apparently Successful Offeror" will be mailed to each Offeror who submitted a proposal in accordance with the procedures specified in this RFP.

VIII-2 CONFERENCE FOR UNSUCCESSFUL OFFERORS

An unsuccessful Offeror may request a debriefing conference by notifying the RFP coordinator in writing within seven (7) days after the date of the notification letter. The Legislative Auditor will review materials relating to the debriefing conference and respond to the unsuccessful Offeror.

VIII-3 GENERAL CONTRACT TERMS AND CONDITIONS

Exhibit D of this RFP contains the contract form, including general terms and conditions that the JLARC office will use in the final negotiated contract with the successful Offeror.

NOTE: SPECIFIC PROVISIONS OF THIS CONTRACT FORM ARE SUBJECT TO NEGOTIATION BETWEEN JLARC AND THE SUCCESSFUL OFFEROR(S).

Exhibit A – Certifications and Assurances

The Offeror makes the following certifications and assurances as a required element of the proposal to which it is included, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award and continuation of the contract resulting from this RFP. Any exceptions to these certifications and assurances must be described in full detail on a separate page(s) and attached to this document. The Legislative Auditor reserves the right to determine if such exception is substantive and a basis for disqualification.

1. INDEPENDENT PREPARATION AND COST DETERMINATION

- Prices and/or cost data have been arrived at independently, without consultation, communications, or agreement with any other Offeror or with any competitor for the purpose of restricting competition.
- Unless otherwise required by law, the prices and/or cost data submitted have not knowingly been disclosed by the Offeror and will not knowingly be disclosed by the Offeror, prior to award, directly or indirectly to any other Offeror or to any competitor.
- No attempt has been made or will be made by the Offeror to induce any other person or Firm(s) to submit or not submit a proposal for the purpose of restricting competition.
- In preparing this proposal, assistance has not been provided by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.

NOTE: In order to ensure fair and equal competition between all Offerors, the development of proposals with the assistance of organizations or individuals outside the Offeror's organization must be declared in the proposal and the name(s) of such organizations or individuals provided. Failure to acknowledge such assistance and to identify those providing it may result in the disqualification of the proposal. No contingent fees for such assistance will be allowed to be paid under any contract or grant resulting from this RFP. HOWEVER, the Offeror may freely join with other persons or organizations for the purpose of presenting a single proposal.

2. PRICE WARRANTY

The costs quoted for services in response to this RFP do not exceed those typically charged any other client for the same services.

3. NO CONFLICT OF INTEREST

The Offeror certifies that no condition exists with respect to the Offeror, or any of its employees, regarding any current or past relationship with the Joint Legislative Audit and Review Committee or agencies that violates Chapter 42.52 RCW, the "Ethics in Public Service" Law.

4. CURRENT CONTRACTS/AGREEMENTS

The Offeror does not have current contracts or agreements related to highway maintenance and preservation management or analysis.

However, if the Offeror has current contracts or agreements related to highway maintenance and preservation management or analysis, the following information is required:

- a. If the Offeror has current contracts or agreements with state or local governments related to highway maintenance and preservation design, management, or analysis, list contracts or agreements and explain why these do not impair the Offeror's independence.

- b. If the Offeror has current contracts or agreements with private entities for the purpose of assisting those entities with highway maintenance and preservation management or analysis, explain why these do not impair the Offeror’s independence.

5. PRIOR CONTRACT(S) WITH THE DEPARTMENT OF TRANSPORTATION

The Offeror has not had any contract(s) or agreement(s) with the Washington State Department of Transportation in the past ten (10) years.

However, if the Offeror has had any contract(s) or agreement(s) with the Washington State Department of Transportation in the past ten (10) years, the following information is required:

- a. A brief description of the nature of the work, the begin and end date(s) of the contract(s) or agreement(s), and reference number(s) for the contract(s) or agreement(s); and
- b. An explanation of why the Offeror’s independence is not impaired.

6. PROPOSAL EVALUATION PERIOD

The attached proposal is a firm offer for a period of 120 days following receipt by the JLARC office and may be accepted by the Legislative Auditor without further negotiation at any time within the 120-day period.

7. CONTACTING REFERENCES

JLARC is hereby granted permission to contact any references or past contracting clients listed in response to this RFP.

8. PREPARATION COSTS

The Offeror understands that JLARC will not provide reimbursement for any costs incurred in the preparation of this proposal. It is further understood that JLARC reserves the right to reject all proposals and make no contract award.

The person signing below warrants that all of the foregoing certifications and assurances are true to the best of their knowledge after reasonable efforts to obtain the truth.

Firm Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name (typed)

Chief Executive Officer, Signature

Chief Executive Officer, Title (typed)

Date

Exhibit B – Letter of Intent to Bid

On behalf of my Firm, I hereby certify that we intend to submit a proposal to provide consulting services to the Joint Legislative Audit and Review Committee for the second phase of the Highway Maintenance and Preservation. (JLARC Proposal 14-1). I have read the Request for Proposal for the procurement of these services and accept the conditions set forth therein.

Firm Name (typed)

Legal Name (typed)

Telephone Number (typed)

Address (typed)

E-mail Address (typed)

Legal Name (typed)

Chief Executive Officer, Name and Title (typed)

Chief Executive Officer, Signature

Date

This letter of Intent to Bid must be received by the Joint Legislative Audit and Review Committee by 4:30 p.m. Pacific Standard Time, February 12, 2014. It may be mailed or faxed or submitted electronically via e-mail to:

Eric Thomas, Research Analyst
Joint Legislative Audit and Review Committee
1300 Quince Street SE
PO Box 40910
Olympia, WA 98504-0910
FAX: (360) 786-5180
eric.thomas@leg.wa.gov

PLEASE NOTE: If you submit this form and later decide not to submit a proposal, please notify Eric Thomas by telephone at (360) 786-5182. Thank you.

Exhibit C – Sample Contract Form

STATE OF WASHINGTON

CONTRACT NO. _____

Joint Legislative Audit and Review Committee
1300 Quince Street SE
PO Box 40910
Olympia WA 98504-0910
(360) 786-5171

1. THIS CONTRACT is made by and between the Joint Legislative Audit and Review Committee and the Firm of _____, hereinafter referred to as the "Contractor."

2. CONTRACTOR: _____

ADDRESS: _____

Federal Employer Identification No.: _____

Washington Uniform Business Identification No.: _____

3. SCOPE OF ENGAGEMENT

The Contractor will provide all services generally described in the Statement of Work, Exhibit A which is hereby made a part of this contract.

All written work of the Contractor will be expected to be of a professional quality acceptable to the Joint Legislative Audit and Review Committee. In written reports, the Contractor’s findings and conclusions must be clearly documented as resulting from fieldwork and data analysis done for this audit. Suggestions must be logically related to the findings and conclusions and must recognize practical and fiscal constraints.

4. It is agreed that Contractor's management staff performing work under this contract are as listed below:

It is understood that staff named above will be responsible throughout the period of this contract. Any changes in management personnel assigned to this engagement require JLARC approval.

5. Contractor warrants that staff performing work under this contract are free from personal and external impairments to independence.

6. Contractor warrants that staff performing work under this contract possess adequate professional proficiency for the tasks required.

7. If irregularities, fraud, or other significant audit issues which may impact the audit are suspected, the Contractor must immediately notify Eric Thomas, Research Analyst, at (360) 786-5182.

8. All instances of noncompliance with state and local laws will be disclosed to Eric Thomas, Research Analyst, at (360) 786-5182.

9. The Joint Legislative Audit and Review Committee’s contract coordinator is Eric Thomas, Research Analyst, at (360) 786-5182.

Contractor's contract coordinator is _____. (Name and Telephone)

10. It is understood the Joint Legislative Audit and Review Committee’s office is the principle auditing entity. Portions of the Contractor’s work will be incorporated into the report that will be prepared by JLARC staff. The Contractor’s report to JLARC may be incorporated as a Technical Appendix to the JLARC staff report.

11. EFFECTIVE DATE AND DURATION OF CONTRACT

Subject to other contract provisions, the period of performance under this contract will be from date of execution through January 31, 2015, unless sooner terminated as provided herein.

12. All rights and obligations of the parties to this contract shall be subject to and governed by those Special Terms and Conditions contained in the text of this contract and the attached General Terms and Conditions, all hereby incorporated as part of this contract.

In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable federal and state statutes and regulations;
- (b) The terms and conditions of this contract;
- (c) Request for Proposal No 14-1;
- (d) The Contractor’s final approved Work Plan; and
- (e) The Contractor's Proposal dated _____ to the Joint Legislative Audit and Review Committee’s RFP, including all written information provided with the Contractor's Proposal;
- (f) The General Terms and Conditions and any other provisions of the contract whether incorporated by reference or otherwise.

13. COMPENSATION AND PAYMENT

The Contractor agrees that the maximum amount to be paid to the Contractor under this contract shall not exceed \$ _____ in total, and shall include full payment for all work specified in the scope of engagement outlined in item 3. The Contractor agrees that the Joint Legislative Audit and Review Committee is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the Contractor. Any additional services provided by the Contractor and/or Subcontractors would require a written contract amendment approved and processed through the Joint Legislative Audit and Review Committee’s office prior to beginning the additional services.

The Contractor may submit invoices for progress billings in accordance with the schedule included in Exhibit A. Payment for each billing will be made upon JLARC’s satisfaction with the overall progress of the Contractor and the quality of each deliverable. Each invoice will clearly indicate that it is for services rendered in performance under Contract No. 14-1.

All invoices must be submitted for payment to Eric Thomas, Research Analyst, 1300 Quince Street SE, PO Box 40910, Olympia, WA 98504-0910. Payment shall be considered timely if made by the Joint Legislative Audit and Review Committee within 30 days. If JLARC determines that the Contractor has not made satisfactory progress in accordance with the work plan, it may withhold payment until the necessary work is completed to JLARC’s satisfaction. JLARC may, in its sole discretion, withhold payments owed the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of the contract.

14. INSURANCE

The successful proposer will provide insurance coverage as set out in this section. The intent of the required insurance is to protect the Joint Legislative Audit and Review Committee should there be any

claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the contractor or subcontractor, or agents of either, while performing under the terms of this contract. No later than the date of contract signing, the apparently successful proposer will submit to JLARC a certificate of insurance which outlines the coverage and limits defined below. The contractor will submit renewal certificates as appropriate during the term of the contract.

The contractor will provide insurance coverage, which will be maintained in full force and effect during the term of this contract, as follows:

- A. Commercial General Liability (CGL) Insurance Policy: Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity, but no less than \$1,000,000 per occurrence. Additionally, the contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- B. Professional Liability: Coverages with limits of not less than \$1,000,000 for any one occurrence, including coverage that addresses liability arising from the loss or breach of confidential or proprietary information.

The required insurance shall be issued by an insurance company/ies authorized to do business within the State of Washington, and will name the State of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies will be primary to any other valid and collectible insurance. JLARC will be provided 30 calendar days written notice before cancellation or nonrenewal of any insurance referred to herein. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports.

- 14. The Joint Legislative Audit and Review Committee shall have the authority to monitor the performance of the Contractor, approve actions by the Contractor, and accept or reject any deliverable provided by the Contractor.
- 15. If any provision of this contract shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.
- 16. This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.
- 17. The parties agree that facsimile signatures, including scanned copies of signatures, shall carry the same authorization as original signatures for purposes of executing this contract.
- 18. This contract shall be subject to the written approval of the Legislative Auditor and shall not be binding until so approved. Only the Legislative Auditor shall have the express, implied, or apparent authority to alter, amend, or waive any clause or condition of this contract.

IN WITNESS WHEREOF: The Joint Legislative Audit and Review Committee and the Contractor have signed this contract.

STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

CONTRACTOR

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

By: _____
Assistant Attorney General

Date

EXHIBIT D – SAMPLE GENERAL TERMS AND CONDITIONS

DEFINITIONS

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

1. "JLARC" and/or "AGENCY" shall mean the Joint Legislative Audit and Review Committee of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing JLARC.
2. "LEGISLATIVE AUDITOR" or "AGENT" shall mean the Legislative Auditor and/or Chief Executive Officer of JLARC, and/or the delegate authorized in writing to act on his/her behalf.
3. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
4. "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.

ACCESS TO DATA

The CONTRACTOR shall provide access to data generated under this contract to the Joint Legislative Audit and Review Committee and the Washington State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONTRACTOR, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, 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, the AGENCY 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 the AGENCY 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 AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, 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.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

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 agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in 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.

DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. JLARC's contract coordinator shall send a written answer to the requester's statement to both the AGENT and the requester within 5 working calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract.

CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY.

The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

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.

LIMITATION OF AUTHORITY

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) 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 or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the CONTRACTOR'S non-compliance 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 the AGENCY. 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.

NONDISCRIMINATION

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

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

PUBLICITY

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name

may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

RECORDS MAINTENANCE

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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 Washington State Department of Revenue 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 AGENCY, 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.

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, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

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.

SITE SECURITY

While on AGENCY premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

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 AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to JLARC for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

TERMINATION FOR CAUSE

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, 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 competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY 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.

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

The rights and remedies of the AGENCY 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 AGENT, 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 that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY 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 AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT 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 the AGENCY has or may acquire an interest.

TREATMENT OF ASSETS

1. Title to all property furnished by the AGENCY shall remain in the AGENCY. 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 the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY 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 the AGENCY in whole or in part, whichever first occurs.
2. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
3. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that 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 AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
5. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY 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

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.