

REQUEST FOR PROPOSALS

FREIGHT INVESTMENT STUDY

STATE OF WASHINGTON
JOINT TRANSPORTATION
COMMITTEE

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REQUEST FOR PROPOSALS

MAY 15, 2007



REPRESENTATIVES

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I. Background

The Washington State Legislature is concerned about freight mobility and growing congestion in freight corridors. Substitute Senate Bill 5207, enacted during the 2007 Legislative Session, created the Freight Congestion Relief Account in the Washington State Treasury; however, no revenue sources were identified to fund that account. Instead, the Joint Transportation Committee (JTC) of the Washington State Legislature was directed to administer a consultant study of mechanisms to fund freight congestion relief investments. Transportation Budget, ESHB 1094, appropriates funds for the Committee to administer the study, which must be completed by January, 2008.

Effective and efficient freight movement is vital to the economy of Washington State. The Washington Legislature is concerned about freight movement since Washington State is one of the most trade dependent states in the nation, and freight movement affects all its residents. To maintain this state's competitive position and meet the demand for future freight growth, additional infrastructure is needed. This will require a concerted effort by both the public and private sector, and must involve those directly involved in freight movement.

Recent transportation funding initiatives by the Legislature in 2003 and 2005, consisting principally of fuel and vehicle taxes, have significantly enhanced transportation infrastructure investment. These funding packages are largely dedicated for specific capital projects, and additional financing is required to address the large backlog of transportation investments to improve freight movement. The Long-Term Transportation Financing Study, recently completed by the Joint Transportation Committee, identified alternative medium term financing options, including container charges, to address transportation funding needs.

Freight mobility issues are currently administered by several state and local agencies. A State Freight Mobility Strategic Investment Board, consisting of public and private sector representatives of freight interested parties, was created in 1998 to advocate for freight mobility needs for all modes and without regard to jurisdiction or ownership. Two accounts, each funded at slightly over \$3 million per year, were established in 2005 to help finance road and multi-modal projects related to freight mobility. In addition, the State Department of Transportation is responsible for development

of projects to address highway and rail freight congestion issues. The Transportation Improvement Board, which provides grants to local and state transportation projects, considers freight movements in ranking project grants. The State Transportation Commission also recently completed a Statewide Rail Capacity and System Needs Study which contained recommendations related to the need for additional freight rail capacity as well as state administration of freight programs. These recommendations were addressed during consideration of Senate Bill 6120 during the 2007 Legislative Session.

Local governments and the private sector also share in efforts to address freight mobility. Public ports, cities and counties contribute to specific projects identified in regional transportation plans. The Puget Sound Regional Council sponsors the Regional Freight Mobility Roundtable, bringing together federal, state and local agencies and the private sector to address improvement of freight movement in the Puget Sound region.

Senate Bill 5207, as introduced, imposed a fee on freight containers passing through a port to better finance freight corridor improvements. The bill evolved through the legislative process to ultimately require this study of alternatives for financing freight improvements, involving participation of a group of stakeholders and requiring an evaluation of the structure and responsibility for a future project recommendation body.

II. SCOPE OF WORK

This study is primarily to identify and evaluate funding sources to improve freight movement in the state, taking into account this state's current transportation finance structure and planned transportation system infrastructure improvements. It should also examine the current institutional arrangements for identifying freight congestion relief projects, and evaluate and make recommendations for alternative approaches for a project recommendation body including its membership, processes, and project selection criteria.

The goal of the study is to have specific options and recommendations for the Legislature to fund existing and future freight mobility projects to provide freight congestion relief. In addition, the goal is to identify the preferred mechanisms for administering freight mobility projects, including project identification, prioritization and coordination.

As set forth in Substitute Senate Bill 5207, the study must include the following tasks:

Research Tasks:

1. Evaluate existing and potential federal, state, and local government freight-related project funding incentives.
 - a. Identify the funding and conditions on those funds.
 - b. Estimate the scale and future of the funding sources.
2. Analyze current taxes and fees paid by the freight industry and the projects those taxes and fees fund.
 - a. Identify whether the taxes and fees are project or program specific.
 - b. Identify what activities those funds are used for.
3. Assess how freight congestion relief investments are financed in selected other states and countries.
 - a. Identify governmental funds set aside specifically to address freight movement.
 - b. Evaluate specific fees, taxes, or tax incentives for capital investment in transportation facilities.

4. Assess non-freight related fees and taxes that could be used to pay for freight congestion relief investments in Washington.
 - a. Evaluate the advantages and disadvantages of each of the fees and taxes identified, using appropriate criteria.
 - b. Forecast the impacts of those fees and taxes in accordance with tasks 5-8.

Economic Tasks:

5. Measure the impact of various tax and fee mechanisms on Washington's competitiveness in freight movement.
 - a. Identify the impact in taxes and fee mechanisms in other selected states and countries.
 - b. Evaluate these with other factors that affect Washington's competitiveness in freight movement.
6. Assess the imposition of a shipping container-based fee, port-related user fees, or other funding mechanisms on the demand elasticity of the movement of freight goods through Washington's container ports at various rates as well as forecast diversion of marine cargo at various price points.
7. Measure the return on investment in freight rail and highway-based infrastructure supported by potential taxes and fees and its impact on forecast growth in shipping container traffic and the movement of freight goods. This should include an assessment of benefits to the state and benefits that accrue to local agencies and owners of certain facilities.
8. Examine other potential project specific fees.
 - a. This may include fees and taxes, or other assessments and incentives.

Other Tasks:

9. Recommend the structure of a future project recommendation body.
 - a. Evaluate alternative structures and memberships for that body.
 - b. Evaluate processes to be used to identify and prioritize freight mobility and freight congestion relief projects and to select those projects.
10. The consultant is invited to identify other work tasks supplemental to tasks 1-9 deemed to be beneficial to accomplishing the overall objectives of this study.
11. Stakeholder/Legislator Task-Substitute Senate Bill 5207 directs the JTC to convene a Stakeholder Group to work on the study. Twelve representatives of various groups are mandated, and other members may be appointed. Representatives of the following groups are identified:
 - Container ports (2)
 - Trucking and Railroads (1 each)
 - International and national shipping (1 each)
 - Organized labor (2)
 - Import/export community (2)
 - Department of Transportation and Freight Mobility Strategic Investment Board (1 each)
 - Others as deemed necessary by the Joint Transportation Committee.

The duties identified in the legislation for the Stakeholder Group are to work with the consultant in:

1. Identifying critical freight congestion relief investments;
2. Identifying alternatives for a dedicated funding source for freight congestion relief investments or user fees to fund specific freight congestion relief investments;
3. Developing and reviewing a final consultant study.

The successful consultant or their subcontractor will be responsible for integrating the work of the Stakeholder Group with this research study, preparation of meeting agenda content, meeting logistics, announcements, and Stakeholder Group meeting facilitation. The consultant should anticipate making periodic (eg. monthly) presentations to the Stakeholder Group to solicit suggestions and provide study progress updates. Meeting room and Stakeholder Group expenses will be approved and paid by the JTC.

In addition to establishing the Stakeholder Group, the Joint Transportation Committee intends to name a group of House and Senate Transportation Committee Members to participate in Stakeholder Group activities, as well as provide guidance for the study. Staff from the House, Senate and Joint Transportation Committees, and staff from the Governor's Office will also be assigned to participate in study activities. The Joint Transportation Committee will have final jurisdiction regarding the study.

The legislation requires that the consultant's draft report must be submitted to the transportation committees of the legislature by December 15, 2007, with the final findings and recommendations of the report being due prior to the beginning of the 2008 legislative session, which begins January 14, 2008. The Joint Transportation Committee intends that a draft final report will be due November 21, 2007 and presented at its November 28, 2007 meeting. The final report is due January 3, 2008 and will go before the Committee for acceptance at its January 10, 2008 meeting.

III. CONTRACT DELIVERABLES

The successful consultant will provide the following services and deliverables:

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

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 effort, the consultant shall coordinate and facilitate the Stakeholder Group meetings.
3. Prepare and present to the JTC Contract Manager, monthly interim progress briefings (these may be by phone) and written progress reports that address and summarize the issues in the consultant's contracted Scope of Work and Work Plan.
4. Must submit working papers on each task as they are completed, to the JTC Contract Manager. Progress payments will depend on meeting these milestones.

5. Prepare a draft final and final report. The report should describe the analysis, findings, conclusions, and recommendations for the contracted Scope of Work and Work Plan. The JTC will provide comments. After reviewing and incorporating the JTC's comments, the consultant will finalize the report and submit 100 paper copies and an electronic PDF copy on CD to the JTC Contract Manager. The Consultant is expected to present the draft report to the JTC in late November 2007, and to present the final report to the JTC in early January 2008, and to the House and Senate Transportation Committees during the Legislative Session.
6. Prepare an executive summary of the final report.
7. Provide an electronic copy of a Power Point presentation for this study.

IV. OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITY

The JTC will form a Stakeholder Group for technical input and review of this study. This Stakeholder Group will include representatives from:

- Container ports (2)
- Trucking and Railroads (1 each)
- International and national shipping (1 each)
- Organized labor (2)
- Import/export community (2)
- Department of Transportation and Freight Mobility Strategic Investment Board (1 each)
- Others as deemed necessary by the Joint Transportation Committee.

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 monthly briefings with consultant.
- Receive, evaluate and edit consultant products.
- Oversee communications and meetings between JTC, the consultant, Transportation Committee staff and the Stakeholder Group.
- JTC will have prime oversight for this study.

V. 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.

VI. DEFINITIONS

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

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

VII. RESOURCES

The following references are to assist bidders wishing to prepare a Proposal for this study. This is not an endorsement of the content of the referenced documents, but is provided for use as a reference to items referred to in the study, as well as other efforts that may have relevance to this study.

- “Statewide Rail Capacity and System Needs Study”; Washington State Transportation Commission, December, 2006; Cambridge Systematics, Inc.
<http://www.wstc.wa.gov/Rail/default.htm>
- Washington State Department of Transportation “Freight” web page:
<http://www.wsdot.wa.gov/freight/>
- Governor’s Container Ports Initiative:
<http://www.governor.wa.gov/priorities/economy/ports.pdf>
- Freight Mobility Strategic Investment Board: <http://www.fmsib.wa.gov/>
- Transportation Improvement Board: <http://www.tib.wa.gov/>
- Washington State Legislative Information:
 - <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5207&year=2007> SB 5207— Freight funding study
 - <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6120&year=2007> SB 6120— Rail and freight infrastructure
 - <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1094&year=2007> HB 1094— Transportation Budget, Sec. 205 relates to JTC studies
- Washington Public Ports study references:
 - <http://www.washingtonports.org/downloads/Marine%20Cargo%20Forecast%202004%20Technical%20Report.pdf> --Cargo forecasts
 - http://www.washingtonports.org/downloads/2004_Rail_Capacity_Study.pdf -- Rail Study
 - http://www.washingtonports.org/issues_areas/marine_cargo.asp --Marine Cargo
- Puget Sound Regional Council Freight: <http://www.psrc.org/projects/freight/index.htm>
- “Long Term Transportation Finance Study”; Joint Transportation Committee, Washington State Legislature, January 2007; by Cambridge Systematics, Inc.;
<http://www1.leg.wa.gov/JTC/Studies/>

- Transportation Infrastructure Financing Alternatives Study, January 2004, by The Legislative Oversight Committee for Transportation Infrastructure Financing Alternatives, <http://www.wsdot.wa.gov/partners/tifa/>
- “America’s Container Ports, Delivering the Goods”; the Bureau of Transportation Statistics, May, 2007 -> http://www.trb.org/news/blurb_detail.asp?id=7634
- “Cargo on the Move Though California: Evaluating Container Fee Impacts on Port Choice”; by Energy and Environmental Research Associates, LLC. http://docs.nrdc.org/air/air_06081401A.pdf

VIII. PROJECT BUDGET

The budget for this review shall not exceed **Maximum of \$400,000**. Any resulting contract for this project will be subject to the standard state of Washington General Terms and Conditions for personal services contracts. A copy is attached to this RFP as Exhibit A..

IX. INSTRUCTIONS TO BIDDERS

A. SUBMISSION OF PROPOSAL

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

1. A Letter of Intent to Bid must be submitted either electronically or by paper copy by **May 25, 2007**, and must include company name, address and email address.
2. Bidders must submit six copies of the proposal and one electronic PDF copy on CD.
3. Bidders must include one paper copy of two samples of previous work similar to this type of project and the internet link to these samples or an electronic copy on CD.
4. Proposals are due no later than **5:00 p.m., local time in Olympia, on June 5, 2007**, whether mailed or hand delivered. Late proposals will not be accepted and will be automatically disqualified. Proposals should be submitted to:

Joint Transportation Committee
Diane Schwickerath, RFP Coordinator
P.O. Box 40937
531 15th Avenue SE
Olympia, WA 98504-0937

5. Selected bidders will be required to attend oral interviews and provide presentations at their expense. Selected bidders will be notified of the date, time and location of their scheduled interview and presentation.
6. All proposals and accompanying documentation become the property of the JTC and will not be returned.
7. JTC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP. The Bidder assumes responsibility for its personnel's travel and associated costs as they relate to bidding on this project.
8. In the event it becomes necessary to revise any part of this RFP, an addendum or erratum will be provided to all Bidders who submitted a Letter of Intent to bid.
9. After submission, Bidders will not be allowed to amend the proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.

10. Questions regarding this RFP should be directed to Diane Schwickerath, RFP Coordinator, as the single point of contact for this solicitation, **by email only** to schell.laura@leg.wa.gov. Inquiries concerning clarification of some aspect of the RFP will be accepted beginning at 9:00 a.m. on May 15, 2007. No inquiries concerning the RFP will be accepted after 5:00 p.m., local time in Olympia, on May 29, 2007. By May 30, 2007, responses to inquiries will be 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. Identify any Washington State employees or former Washington State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the JTC that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

C. PROPOSAL FORMAT

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

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit B).
2. Technical Approach
 - A description of proposed approaches to tasks 1-11 of the Scope of Work, Section II of this RFP, not to exceed ten pages. This page limitation does not include resumes, qualifications, work samples, Letter of Submittal or signed Certifications and Assurances form. The description should include a discussion of data that would be used, the sources for these data, and econometric models that would be estimated and employed.

3. Management Approach

- A statement of qualifications to conduct this work.
- Identification of the individual(s) who will do the actual work being proposed, with attached professional resumes.
- Bidders must include one paper copy of two samples of previous work similar to this type of project and the internet link to these samples or an electronic copy on CD.

4. Cost Approach

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

5. References

- Include three references with whom your firm has done similar work. For each reference, include name, title, organization, address, phone number and email address.

X. EVALUATION CRITERIA

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

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

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

XI. ESTIMATED SCHEDULE OF ACTIVITIES

Letters of Intent to Bid Due	May 25, 2007
Due Date for Proposals	June 5, 2007
Evaluate Proposals	June 6-11, 2007
Oral Interviews	June 15-21, 2007
Announce Apparent Successful Consultant	June 25, 2007
Notify Unsuccessful Bidders	June 25, 2007
Estimated Contract Start Date	July 1, 2007
Draft Report Due	November 21, 2007
Final Report Due	January 3, 2008
Presentations to Legislature	January, 2008

XII. PROPRIETARY INFORMATION

All proposals received shall become public record, but shall remain confidential until the successful bidder resulting from this RFP, if any, is announced. Thereafter, proposals shall be available for public inspection and copying as required by Chapter 42.17 RCW (the principal Washington State statute pertaining to accessibility to public records) except as exempted in that chapter or by other. Bidders are advised that the permissible exemptions from public disclosure pursuant to Chapter 42.17 RCW are very narrow in scope and will be strictly construed. In the event that a bidder desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that bidder to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. ***Designating the entire proposal as confidential is not acceptable and will not be honored.***

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

XIII. JTC RIGHTS

1. Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the JTC. The JTC reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.
2. The JTC reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the JTC, without any penalty to the JTC.
3. The JTC intends to award the contract to the Bidder with the best combination of attributes based on the evaluation criteria listed in Section X of this RFP. This RFP does not, however, obligate the JTC to contract for services herein.

4. Should the JTC fail to negotiate a contract with the Apparently Successful Bidder, the JTC reserves the right to negotiate and contract with the next most qualified Bidder.
5. The JTC reserves the right to waive specific terms and conditions contained in this RFP.
6. It shall be understood by Bidders that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Bidder has obtained such a waiver, in writing, from the JTC prior to submission of the proposal. Any such waiver will be granted to all Bidders.
7. The JTC reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any Bidder's proposal.

Thank you for your interest.

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

percentage, brokerage or contingent fee.

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

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

TREATMENT OF ASSETS --

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

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

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

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

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

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

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

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

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

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

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

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

LIMITATION OF AUTHORITY -- Only the JTC shall have the express, implied, or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore,

any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the JTC.

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

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

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

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

TERMINATION FOR DEFAULT -- By written notice, JTC may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the mailing, advertising, and staff time; *provided*, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience.

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

TERMINATION PROCEDURE -- Upon termination of this contract, JTC, in addition to any other rights provided in this contract, may require the Contractor to deliver to JTC any property specifically produced or acquired for the performance of such part of this contract as has been

terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

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

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

SEVERABILITY -- If any provision of this contract or any provision of any document

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

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

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

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

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

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

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

CERTIFICATIONS AND ASSURANCES

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

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

Signature of Bidder

Title Date