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JOINT TRANSPORTATION  
COMMITTEE

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REQUEST FOR PROPOSALS

JUNE 30, 2011



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REQUEST FOR PROPOSALS

EVALUATE THE USE OF  
LIQUEFIED NATURAL GAS  
IN WASHINGTON STATE FERRIES

The Legislature has directed the Joint Transportation Committee (JTC) to investigate the use of liquefied natural gas (LNG) for fuel in Washington State ferry vessels.

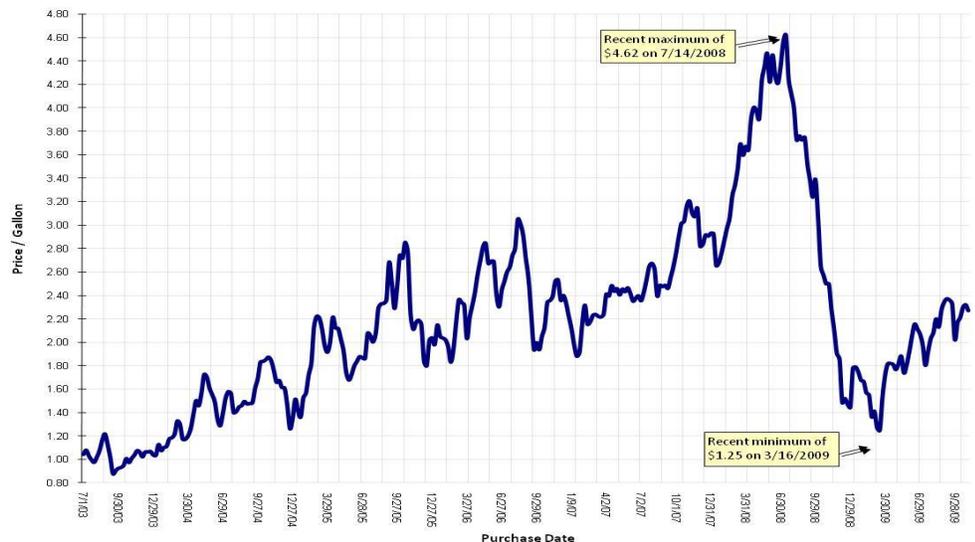
I. BACKGROUND

**WSF budget challenges.** The Washington State Ferry system (WSF) faces a number of challenges in funding its operating and capital budgets. Fuel costs are a significant factor, and recent cost and price volatility has exacerbated an already difficult budget problem.

**Fuel costs.** During the decade of the 1990's, ferry fuel costs typically amounted to about \$10 million a year, and accounted for about 10% of WSF operating costs. Since 2000, fuel costs have grown dramatically. Since 2007, costs have grown from \$20 million per year to more than \$65 million per year. For the two-year 2011-13 budget, fuel costs are estimated at \$135 million – 29% of the total operating budget.

**Diesel price volatility.** Fuel prices have been extremely volatile in recent years, a function both of supply and demand uncertainty. This poses significant problems for budget stability and predictability.

WSF FUEL PRICE HISTORY  
7-1-2003 to 11-2-2009



### **Emissions reduction requirements**

EPA is requiring much stricter diesel exhaust emission standards for new on-road trucks, off-road equipment, locomotives, and some marine vessels. Beginning in 2014, WSF will have to meet Tier 4 standards for new or rebuilt vessels.

WSF says there are too many unknowns to accurately predict the costs of incrementally moving the fleet to Tier 4 standards. Nonetheless, the new requirements contribute to WSF's investigation of LNG fuel, which reduces CO<sub>2</sub> emissions by 25% and virtually eliminates NOx, SOx and particulate matter. WSF assumes LNG engines will be certified to Tier 4 EPA requirements, alleviating the requirement for exhaust gas after-treatment for any vessels built after January, 2014.

WSF also believes the new requirements, when fully implemented, will increase demand for the ULSD currently used in their fleet, thereby potentially raising the cost for these fuels.

### **WSF vessel construction program**

WSF is in the midst of a procurement for three 64-car Kwa-di Tabil class ferries. The third vessel is expected to be delivered in the fall of 2011. Todd Pacific (now Vigor) Shipyards is the prime contractor.

WSF is also in the midst of a procurement for one 144-car ferry. The final detailed design for production drawings is scheduled to be completed in June, 2011.

The budget adopted by the Legislature provides funding for most of the construction of the first vessel and the very beginnings of construction for the second vessel in 2011-13. It assumes construction on the first vessel will begin in February, 2012 and be completed in October, 2013. Construction of the second vessel would begin in February, 2013 and be completed in October, 2014. Vigor Shipyards (formerly Todd Pacific) was awarded the contract.

The current plan is for the first 144-car ferry to be built with a diesel propulsion system. WSF expects to work with the Legislature to define the 144-program for subsequent vessels, including the type of propulsion system to be used. In budgeting for the second vessel, the Legislature has assumed the vessel will utilize LNG.

The table below shows the funds appropriated for the 144-car class vessel.

#### **144-Car Class Vessel Total Cost Estimate (June, 2011)**

*Assumed in the 2011-13 Transportation Budget*

	<b>2011-13</b>	<b>2013-15</b>	<b>Total</b>
Vessel 1	\$123,828,000	\$23,085,000	<b>\$146,913,000</b>
Vessel 2	\$4,160,640	\$163,277,000	<b>\$167,437,640</b>

## **Current WSF work on LNG use in ferries**

WSF is currently studying the use of LNG to reduce fuel costs and greenhouse gas emissions. A March, 2010 paper prepared for WSF by The Glosten Associates of Seattle concluded LNG use as a marine fuel is practical and cost effective.

WSF is evaluating the use of LNG in existing ferries (the Issaquah class) and in the new proposed 144-car ferry. The Issaquah class comprises six vessels: the *MV Cathlamet*, *MV Chelan*, *MV Issaquah*, *MV Kitsap*, *MV Kittitas* and *MV Sealth*. Built between 1979 and 1981, this class of vessels carries approximately 1,200 passengers and 124 vehicles.

Conversion of an existing ferry. Glosten found in 2010 that “Conversion of an existing ferry to LNG technology ... would likely not be cost effective”. According to WSF, Glosten has re-evaluated their position and now believes a retrofit project would be the smartest way to proceed with LNG. The earlier conclusion was in part based on an initial assumption that the tanks had to be installed below deck, making retrofit very difficult. The United States Coast Guard (USCG) now requires that any LNG tank on a passenger ship be installed above the passenger spaces.

WSF has produced a cost benefit analysis for a retrofit of an Issaquah class vessel. They estimate a retrofit cost of \$14 million for one vessel, annual fuel savings of \$1.6 million, and a resulting pay-back period of 8.4 years. Depending on the price assumed for LNG fuel, the payback period could be shorter or longer than this.

New 144-car ferry. In 2010, Glosten estimated an \$8.3 million differential cost to adapt the current 144-car ferry design for LNG propulsion, and estimated annual fuel cost savings of \$871,200 for a single vessel.

In February, 2011, WSF contracted with Glosten to conduct a two-phase feasibility study to investigate using LNG fuel on the new 144-car ferry. Phase 1 of the study is to be completed June 30, 2011; it will investigate the technical feasibility of converting the new 144-car ferry design to operate on LNG fuel. If Phase 1 finds redesign is feasible, WSF is prepared to immediately move ahead with Phase 2 of the project, which will develop a model to calculate operational costs and emissions for each route.

Regulatory requirements. As part of the 2011 study, WSF and Glosten have worked extensively with the USCG and Det Norske Veritas (DNV) to identify regulatory challenges as early as possible. WSF believes that based on this work, the USCG will respond positively to WSF’s request for a Design Basis Approval.

## **STUDY PURPOSE**

The purpose of the study is to assess WSF’s work and studies on LNG-use in WSF vessels; to identify the full range of issues that must be addressed to successfully implement LNG use in WSF vessels; and the cost, risk, timeline and related implications for doing so. The study should address these issues both for a retrofit of an existing vessel, and incorporating LNG into the new 144-car vessel design. The Legislature is concerned that while LNG fuel is less expensive and its price less volatile than ultra low sulfur diesel (ULSD), its use in vessels may drive significant other costs that must be considered to fully evaluate its feasibility for use in WSF vessels.

## II. SCOPE OF WORK

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

### **TASK 1: EVALUATE LNG AS AN ENERGY SOURCE FOR VESSEL PROPULSION**

The consultant shall review existing research and describe LNG as an energy source for passenger-vessel propulsion, considering the following and other relevant issues:

- a. History of its use in vessels and ferries, worldwide and in the United States
- b. Economics of LNG use when compared with ultra low sulfur diesel (ULSD): near-term and long-term outlook for source; availability and volume of supply; cost of LNG as compared with ULSD, including the cost on an energy basis; and other relevant issues
- c. Desirability of dual-fuel option versus solely LNG as fuel source
- d. Impact of LNG use on vessel speed, performance, maintenance, etc.
- e. Briefly summarize regulatory requirements for use of LNG in passenger vessels, refueling, etc.
- f. Other relevant issues

Deliverable: White paper on LNG as energy source for passenger-vessel propulsion

### **TASK 2: EVALUATE THE COSTS, OPPORTUNITIES AND RISKS OF LNG VS. DIESEL USE**

The consultant shall evaluate the costs associated with using LNG in WSF vessels, and identify the risks, challenges, opportunities, and other cost considerations regarding LNG vs. diesel to fuel WSF vessels.

This task encompasses both the retrofit of an existing Issaquah class vessel and the redesign of the current 144-car vessel design. To the extent the costs and risks, etc. are different for the retrofit than for the new 144-car vessel, the deliverables should address both.

In conducting this review, the consultant shall review and comment on the findings of the two Glostien studies prepared for WSF on the use of LNG in vessels, as well as other work WSF has produced on the topic.

Issues to be considered include but are not limited to the following:

- a. Capital cost (vessel, terminal, design, other)
- b. Operating cost (fuel; staffing; labor, personnel, training and collective bargaining costs; marine insurance costs; other operating considerations such as engine life and maintenance; impact on vessel performance, including speed and travel times; refueling, etc.)
- c. Evaluate the market to supply the fuel for WSF vessels. This includes both ULSD and LNG.

- d. Desirability of dual-fuel option versus solely LNG as fuel source – and impacts on both capital costs and operating costs.
- e. Return on investment. As part of this task, evaluate the cost benefit analysis produced by Glosten in 2010 concerning the retrofit of an existing vessel, and the more recent WSF cost benefit analysis. Have these cost estimates adequately captured all the likely costs?
- f. Capital and operating cost to meet regulatory requirements for design, use, storage, fueling and other related requirements. In addition, evaluate whether a LNG-retrofit of an existing vessel would trigger additional USCG upgrade requirements.

Deliverable: Report on Task 2, including findings and recommendations

### **TASK 3: LNG IMPLEMENTATION ISSUES FOR WSF**

Identify implementation issues and risks concerning use of LNG in WSF vessels, and likely timeframes for resolving these issues and/or eliminating any identified barriers, along with associated costs.

This task encompasses both the retrofit of an existing Issaquah class vessel and the redesign of the current 144-car vessel design. To the extent the costs and risks, etc. are different for the retrofit than for the new 144-car vessel, the deliverables should address both.

- a. Regulatory issues
  - Status of WSF discussions with USCG and other regulatory agencies on regulatory requirements related to the design, use, storage, transport of LNG in ferries, and other associated requirements.
    - i. Likely timeframes to obtain regulatory approvals needed to proceed.
    - ii. How these regulatory approvals will affect the current schedule for vessel procurement.
  - Implications for state's emission standard and federal Clean Diesel requirements. As part of this task, identify emissions differences between LNG and ULSD.
  - Review of other federal, state and local environmental requirements, and summarize implications for implementation.
- b. Refueling issues
  - How, where, how often would WSF vessels be refueled with LNG?
  - Identify regulatory, cost, or other issues associated with LNG refueling of vessels.
  - Evaluate the potential supply-chain for LNG for WSF vessels, and any related siting, procurement and implementation issues, including safety
- c. Labor and collective bargaining issues
  - Training, personnel and other issues related to collective bargaining agreements, and timeframes for resolving the issues.
- d. Vessel and facility safety issues, security concerns; strategies to address these concerns and reduce risks; and WSF's plan to address these issues and concerns.
- e. Evaluate whether LNG-use poses any particular issues for particular ferry routes.

f. Timeframe/schedule implications.

- Given the current 144-car vessel procurement plan, and considering all the above and any related issues, how would a LNG-redesign for the 1<sup>st</sup> and subsequent vessels affect that procurement plan?
- How long would it likely take to retrofit the existing vessels, considering all the above and any other related issues?
- Identify the cost implications of any resulting procurement delay or loss-of-service during retrofit.
- Investigate other relevant considerations

Deliverable: Report on Task 3, including findings and recommendations

#### **TASK 4: PREPARE DRAFT AND FINAL REPORT**

The consultant shall prepare a draft and final report.

- Present preliminary findings to JTC on October 19, 2011
- Present findings and recommendations to JTC on November 16, 2011
- Draft Report due November 28, 2011
- Draft Final Report due December 16th, 2011
- Presentations of the Final Report to the House and Senate Transportation Committees in the 2012 legislative session, likely in January.

### **III. CONTRACT DELIVERABLES**

The successful consultant will provide the following services and deliverables:

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

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

2. Periodic consultation with the Staff Workgroup, comprised of staff from the JTC, House and Senate Transportation Committees, OFM, and Washington State Ferries.
3. Two presentations to the Joint Transportation Committee on study activities, findings and recommendations. Meetings will likely be held in Aberdeen on October 19 and Bellevue on November 16<sup>th</sup>. In addition, presentations to the House and Senate Transportation Committees, likely in January, 2012.

4. Prepare and present to the JTC Project Manager, monthly interim progress briefings (these may be by phone) and written progress reports that address and summarize the issues in the consultant's contracted Scope of Work and Work Plan. The consultant must provide written reports on each task as they are completed, to the JTC Project Manager. Progress payments will depend on meeting these milestones.
5. The consultant will provide copies of materials for meetings of the Staff Workgroup, the Joint Transportation Committee, and the House and Senate Transportation Committees.
6. Prepare a draft, draft final and final report. The report should describe the analysis, findings, conclusions, and recommendations for the contracted Scope of Work and Work Plan. The JTC and staff will provide comments. The Consultant shall submit the draft report on November 28, and the draft final report on December 16. After reviewing and incorporating comments, and after formal acceptance of the report by the JTC, the consultant will finalize the report and submit 25 paper copies and an electronic PDF copy on CD to the JTC Project Manager. In addition, the consultant shall be prepared to present the final report to the House and Senate Transportation Committees during the 2012 legislative session.
7. Prepare a stand-alone executive summary of the final report, and submit 25 paper copies and an electronic PDF copy on CD.
8. Provide an electronic copy of a Power Point presentation for this study.

#### **IV. OVERSIGHT AND ADMINISTRATIVE RESPONSIBILITY**

The study will be supported by a Staff Workgroup comprised of staff from the JTC, House and Senate Transportation Committees, the Office of Financial Management, and Washington State Ferries.

JTC staff will be responsible for the following activities:

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

#### **V. QUALIFICATIONS**

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

## VI. DEFINITIONS

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

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

## VII. 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.

- Joint Transportation Committee website: <http://www.leg.wa.gov/JTC/Pages/default.aspx>
- Budget proviso directing JTC to undertake this study, ESHB 1175, Section 204(4): <http://wsltdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/1175-S.PL.pdf>
- Glosten, 2010 <http://www.leg.wa.gov/JTC/Pages/RFPs.aspx>
- The Glosten report due June 30, 2011 will be available and posted on JTC's website <http://www.leg.wa.gov/JTC/Pages/RFPs.aspx> the first week in July, 2011.
- WSF's retrofit cost-benefit analysis <http://www.leg.wa.gov/JTC/Pages/RFPs.aspx>
- Federal Tier 4 Clean Diesel requirements <http://www.epa.gov/nonroadiesel/2004fr.htm>

## VIII. PROJECT BUDGET

The budget for this project shall not exceed a maximum of **\$100,000**. 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 **July 11, 2011, at 5:00 p.m., local time in Olympia**, and must include company name, address and email address.
2. Bidders must submit six copies of the proposal and one electronic PDF copy on CD.
3. Bidders must include one paper copy of two samples of previous work similar to this type of project and the Internet link to these samples or an electronic copy on CD. These work samples may not be work previously performed for the JTC.
4. Proposals are due no later than **5:00 p.m., local time in Olympia, on July 20, 2011**, whether mailed or hand delivered. Late proposals will not be accepted and will be automatically disqualified. Proposals should be submitted to:

Joint Transportation Committee  
Sonia Plasencia, RFP Coordinator  
3309 Capitol Blvd  
Olympia, WA 98504-0937
5. Selected bidders will be required to attend oral interviews and provide presentations at their expense. Selected bidders will be notified of the date, time and location of their scheduled interview and presentation.
6. All proposals and accompanying documentation become the property of the JTC and will not be returned.
7. JTC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP. The Bidder assumes responsibility for its personnel's travel and associated costs as they relate to bidding on this project
8. In the event it becomes necessary to revise any part of this RFP, an addendum or erratum will be provided to all Bidders who submitted a Letter of Intent to bid.
9. After submission, Bidders will not be allowed to amend their proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.
10. Questions regarding this RFP should be directed to Sonia Plasencia, RFP Coordinator, as the single point of contact for this solicitation, **by email only** to [sonia.plasencia@leg.wa.gov](mailto:sonia.plasencia@leg.wa.gov). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning at 9:00 a.m. on July 1, 2011. No inquiries concerning the RFP will be accepted after 5:00 p.m., local time in Olympia, on July 11, 2011. By July 12, 2011, responses to inquiries will be transmitted by e-mail to all Bidders who have submitted a Letter of Intent to Bid.

## **B. LETTER OF SUBMITTAL**

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

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

## **C. PROPOSAL FORMAT**

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

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

### 3. Management Approach

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

### 4. Cost Approach

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

### 5. References

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

## **X. EVALUATION CRITERIA**

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

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

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

## XI. ESTIMATED SCHEDULE OF ACTIVITIES

RFP Questions and Letters of Intent to Bid Due	July 11, 2011
Responses to questions will be e-mailed	July 12, 2011
Due Date for Proposals	July 20, 2011
Evaluate Proposals	July 20 – 25
Oral Interviews	August 2, 2011
Announce Apparent Successful Consultant	August 4, 2011
Estimated Contract Start Date	August 9, 2011
Present Preliminary findings to JTC	October 19, 2011
Present Findings and Recommendations to JTC	November 16, 2011
Draft Report Due	November 28, 2011
Draft Final Report Due	December 16, 2011
Presentations to House and Senate Transportation Committees	2012 legislative session, likely in January

## XII. PROPRIETARY INFORMATION

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

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

## XIII. JTC RIGHTS

1. Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the JTC. The JTC reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.
2. The JTC reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the JTC, without any penalty to the JTC.

3. The JTC intends to award the contract to the Bidder with the best combination of attributes based on the evaluation criteria listed in Section X of this RFP. This RFP does not, however, obligate the JTC to contract for services herein.
4. Should the JTC fail to negotiate a contract with the Apparently Successful Bidder, the JTC reserves the right to negotiate and contract with the next most qualified Bidder.
5. The JTC reserves the right to waive specific terms and conditions contained in this RFP.
6. It shall be understood by Bidders that their proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Bidder has obtained such a waiver, in writing, from the JTC prior to submission of the proposal. Any such waiver will be granted to all Bidders.
7. The JTC reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any Bidder's proposal.

*Thank you for your interest.*

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**GENERAL TERMS AND CONDITIONS**

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

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

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

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

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

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

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

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

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

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

TREATMENT OF ASSETS --

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

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

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

settlement, and make them available for inspection by persons authorized under this provision.

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

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

RIGHTS IN DATA AND INTELLECTUAL PROPERTY -- Unless otherwise provided, data and intellectual property 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 and intellectual property shall include, but not be limited to: models, methods, processes, 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 and intellectual property 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 and intellectual property 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 and intellectual property delivered under this contract. JTC shall have the right to modify or remove any restrictive markings placed upon the data and intellectual property 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