

STATE OF WASHINGTON  
JOINT TRANSPORTATION  
COMMITTEE

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**REQUEST FOR PROPOSALS**

**MAY 17, 2017**



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**JTC EXECUTIVE COMMITTEE**

**REPRESENTATIVES**

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

Ed Orcutt  
Ranking Member

**SENATORS**

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Co-Chair

Steve Hobbs  
Ranking Member

**REQUEST FOR PROPOSALS**

**WASHINGTON STATE  
BOARD OF PILOTAGE COMMISSIONERS  
BEST PRACTICE REVIEW**

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**I. BACKGROUND**

The Washington State Legislature seeks a review of the governance; licensing and regulation of pilots; and tariff- and fee-setting practices of the Washington State Board of Pilotage Commissioners. The review will include the identification of best practices and recommendations for: analytically driven tariff- and fee-setting processes; increased pilot diversity; board make-up; and the most effective agency oversight.

The 2017-2019 Transportation Budget (ESB 5096) includes a substantial increase in the self-insurance premium for the Board of Pilotage. The increase is due to the settlement of a recent discrimination lawsuit. The issues of concern raised include diversity in recruitment and training, as well as public financial management of marine pilotage-related revenues.

The Board of Pilotage Commissioners was created in 1888 to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment. The Board must achieve these goals while also maintaining and developing Washington state's competitive position for waterborne commerce, in relation to other ports and nations of the world.

The Board's authorizing statutes ([Chapter 88.16 RCW](#)) describe its membership. The Board includes nine members representing: domestic and foreign shipping companies, pilots, environmental organizations concerned with marine waters, the state Department of Ecology, Washington State Ferries (WSF), and the public at large. The designee of the WSF Assistant Secretary must serve as chair.

The Board licenses and regulates all pilots serving Washington waters in Puget Sound and Grays Harbor. The major responsibilities of the Board are to license pilots, identify potential pilot trainees through an examination process, develop an appropriate training program, set tariffs for pilotage services, and investigate marine incidents.

According to the Board's 2015 Annual Report, there were 53 pilots serving in the Puget Sound district and 2 pilots serving in Grays Harbor. For both districts combined, there were 7,988 piloting assignments. Pilots are responsible for an annual license fee of \$6,500.

The most recent exam for entry into the pilot training program was held in 2016. Prior to that, the 2012 exam yielded 16 successful candidates. As of the 2015 report, seven had been licensed as pilots and seven had entered the training program.

Tariff rates are set by [rule](#) by the Board and are adjusted annually. Base rates are set based on the length of the vessel being piloted and the distance of the vessel movement. Additional fees are charged for numerous specific pilotage services. Current law prohibits tariff rates from being increased until at least July 1, 2019.

Pilotage tariff revenues for the two districts totaled \$34.2 million in 2015. After deducting the expenses of the board and two districts, pension and other benefits, \$23.2 million was available for distribution to pilots, resulting in an average pilot distribution of not less than \$419,000 (which includes benefits and expense reimbursements).

Since 2015, the state transportation budget has included language directing the WSF Board representative, acting as chair, to ensure that the Board files its annual report to the Governor and Legislature and that the report include the establishment of policies and procedures necessary to increase the diversity of pilots, trainees, and applicants, including a diversity action plan. The diversity action plan must articulate a comprehensive vision of the board's diversity goals and the steps it will take to reach those goals.

The 2017-2019 transportation budget includes an appropriation to the Board of Pilotage to pay a portion of the biennial increase in its self-insurance premiums, which is now \$2 million/biennium, resulting from a \$6 million dollar settlement from a discrimination lawsuit. Prior to the lawsuit, the annual self-insurance premium was just \$1,025. This \$2 million premium was funded with \$1.1 million from general transportation funds and \$900,000 from the Pilotage Account. The Pilotage Account revenues will be drawn from three sources: existing fund balance; a portion of current tariffs paid by shipping companies required to use pilot services to navigate local waterways; and a self-insurance premium surcharge for pilotage services. (See [ESB 5096](#), Section 108, for details).

During the 2017 legislative session, the Legislature sought to reduce the use of general transportation funds included in the Governor's budget and shift more of the cost of the increased self-insurance premiums to Pilotage Board revenues. Proposals considered included increased pilot fees, freezing pilotage tariffs, and a fee on each pilotage assignment. Public testimony on the proposals included concerns about the effect of pilot fee increases on the ability to recruit the best pilots, the effect of tariff freezes on the Board's ability to finance equipment and training activities, and an interest in allocating the costs to the parties most responsible for discriminatory practices. Other testimony included information on tariff revenues increasing generally over time due to vessel size increases and the inter-relationships between tariff revenues, pilot fees, and pilot salaries. At the end of the 2017 regular session, legislative members decided to include a JTC study in the transportation budget bill to explore a number of questions related to marine pilotage practices in the state.

## **II. SCOPE OF WORK**

**Purpose:** The purpose of this study is to review the governance, pilot licensing and regulation, and tariff- and fee-setting practices of the Washington State Board of Pilotage Commissioners and related oversight and governance structures. The study will identify best practices and make recommendations for: analytically driven tariff- and fee-setting processes; increased pilot diversity; and effective oversight, administration, and governance. The governance review should include analyzing board make-up and determining the most effective agency oversight. The study will identify implementation strategies to adopt best practices.

The study must compare the current practices of the Washington Board of Pilotage Commissioners to best practices in marine pilotage, and to other areas in which similar activities are conducted, to the extent they are relevant and useful parallels can be drawn.

A final report is due to the House and Senate Transportation Committees on January 8, 2018.

### **Staff Workgroup**

A Staff Workgroup will provide guidance during the study. The Staff Workgroup will be comprised of staff from the JTC, House and Senate Transportation Committees, and the Governor's Office of Financial Management. The Consultant should expect to work with the Staff Workgroup throughout the study, to solicit input, present draft materials before they are shared publicly, and to review findings, recommendations and draft reports.

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

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

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

### **TASK 1: EXAMINE WASHINGTON BOARD OF PILOTAGE COMMISSIONERS' CURRENT PRACTICES AND OVERSIGHT, ADMINISTRATION AND GOVERNANCE**

In Task 1, the Consultant must describe Board and marine pilotage practices in Washington State relating to:

- The process for developing and setting pilotage tariffs and pilot fees;
- The composition of pilot fees and an analysis of pilot benefits, including retirement;
- The relationships between tariffs, fees, and pilot district expenditures;
- The factors used in determining the total number of pilots, and pilot workload distribution;
- Pilot recruitment, training and review;
- Pilot selection and licensing;
- Implementation of the Board's diversity action plan;
- Reporting to comply with statutory requirements; and,

- Oversight, administration, and governance of these activities; including insurance liability coverage, budgeting/appropriations, and the benefits, if any, of an organizational link to Washington State Ferries.

The Consultant may also identify other areas of practice for review.

Deliverable: White paper

## **TASK 2: IDENTIFY BEST PRACTICES**

In Task 2, the Consultant will identify best practices in marine pilotage elsewhere in the United States in each of the areas of practice described in Task 1. This review shall include both state licensed pilotage and federal pilotage systems with independent contractor, public employee, or private employee pilots. To the extent necessary, the Consultant should also compare Washington practices to those outside of the United States that have particular relevance for Washington's effort to adopt best practices.

The Consultant must include best practices for analytically-driven tariff and fee setting processes, pilot diversity, board make-up, liability insurance coverage, and the most effective agency oversight.

The Consultant will identify and evaluate the benefits, if any, of an organizational link to another state agency that is engaged in similar work or functions (i.e. rate setting, marine navigation, etc.) based on best practices found elsewhere.

Additionally, the Consultant shall also evaluate best practices for similar activities in areas outside of marine pilotage to the extent they provide useful comparisons for marine pilotage in Washington State.

Consultants must include in their proposal how they will choose jurisdictions and non-marine pilotage practices and entities to compare to Washington State.

## **TASK 3: COMPARE WASHINGTON'S PILOTAGE PRACTICES TO BEST PRACTICES**

In Task 3, the Consultant will compare Washington's practices and best practices found elsewhere, and identify those areas where Washington State marine pilotage activities currently meet best practices and those areas where more work is needed.

Deliverable: White paper – reporting on Tasks 2 & 3

## **TASK 4: RECOMMENDATIONS FOR IMPLEMENTING BEST PRACTICES IN WASHINGTON**

Based on the analysis in Task 3, the Consultant will make recommendations for best practices to adopt in Washington State for each of the areas examined. In addition, in this task the Consultant will identify strategies to implement the best practices that have succeeded in other jurisdictions. The recommendations and implementation strategies must include addressing the use of analytically

driven tariff- and fee- setting processes, strategies to increase pilot diversity, and structures and methods for effective oversight of marine pilotage activities in Washington State.

Deliverable: White paper

## **TASK 5: WORK WITH STAFF WORKGROUP**

A Staff Workgroup will provide guidance and support throughout the study. The Staff Workgroup will be composed of staff from the JTC, House and Senate Transportation Committees, and the Governor's Office of Financial Management. The Consultant should expect to work with the Staff Workgroup throughout the study, to solicit input, present draft materials before they are shared publicly, and to review findings, recommendations and draft reports. The Consultant should generally expect to provide copies of all materials needed for meetings with the Staff Workgroup.

The Consultant's study proposal must describe how the Workgroup will be incorporated into each task of the study.

## **TASK 6: PRESENTATIONS**

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

- July 20, 2017, JTC meeting in Olympia;
- December 14, 2017, JTC meeting in Olympia -- presentation of a PowerPoint version of the draft report, along with the draft report; and,
- One presentation each to the House and Senate Transportation Committees during the 2018 legislative session, at the Committees' discretion. These two presentations would likely occur on the same day.

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

The Consultant will prepare both a draft and a draft final report for the study, summarizing study findings and recommendations for implementing best practices in pilotage regulation in Washington State. The reports must indicate which statutes, if any, would need to be changed to enact the Consultant's recommendations. The white papers described above may be incorporated into the final report, or may be included in the report appendix.

The Consultant must deliver a draft report to the JTC Project Manager and Staff Workgroup by November 30, 2017. Staff Workgroup comments and suggestions must be considered for incorporation into the draft final report delivered to the JTC by January 2, 2018. The final report is due to the House and Senate Transportation Committees on January 8, 2018.

The Consultant shall work with the JTC Project Manager on review of the draft reports, and incorporate any needed changes.

Deliverable: Draft and final reports

### **III. CONTRACT DELIVERABLES**

The successful Consultant will provide the following services and deliverables:

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

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

2. In conducting the study, the Consultant shall coordinate and facilitate the Staff Workgroup meetings. The Consultant shall provide all meeting materials. JTC staff will be responsible for scheduling meetings, securing meeting locations, and providing food and refreshments for the meetings.
3. The Consultant Project Manager shall have, at a minimum, twice-monthly scheduled conference calls with the JTC Project Manager. Full or partial Consultant team conference calls may be scheduled as needed.
4. The Consultant shall prepare and present to the JTC Project Manager, monthly written progress reports that address and summarize the issues in the Consultant's contracted Scope of Work and Work Plan.
5. The Consultant shall prepare draft white papers as described above in Tasks 1 through 4. These white papers may be used in the Final Report. The Consultant shall present a draft to the JTC Project Manager and Staff Workgroup, for comments and suggestions. The Consultant shall work with the JTC Project Manager on review of the draft white papers and PowerPoints, and incorporate any needed changes.
6. The Consultant shall present a draft report to the JTC Project Manager and Staff Workgroup by November 30, 2017, for comments and suggestions. The Consultant shall work with the JTC Project Manager on review of the draft report, and incorporate any needed changes.
7. The Consultant shall submit the draft final report by January 2, 2018. The draft final report is not final until the four JTC Executive Committee Members have voted to accept it.
8. The Consultant may be requested to make a presentation to the House and Senate Transportation Committees during the 2018 legislative session. The decision will be up to the chairs of the House and Senate Transportation Committees.
9. The Consultant shall deliver copies of the approved Final Report in the following formats:
  - 25 printed and appropriately bound color copies
  - Electronic version suitable as printing "master" (Word and PDF)
  - Electronic version suitable for web-based distribution (PDF)

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

The JTC will have prime oversight for this study. The clients of this study are the four JTC Executive Committee Members (the Chairs and Ranking Members of the House and Senate Transportation Committees), who are represented in day-to-day study activities by the JTC Project Manager. JTC staff will be responsible for the following activities:

- Prepare, publish and administer the RFP process;
- Coordinate the Consultant selection process and negotiate the contract;
- Administer the contract (review and approve invoices, ensure milestones are being met, etc.);
- Attend regularly scheduled briefings with Consultant;
- Receive, evaluate and edit Consultant products; and,
- Oversee communications and meetings between JTC, the Consultant, and the Staff Workgroup.

#### **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 governed by an Executive Committee comprised of the Chairs and Ranking Members of the House and Senate Transportation Committees. JTC shall mean the Executive Committee, Committee Coordinator, Project Manager, and/or any other staff of the JTC.
- **JTC Members** – the four Members of the JTC Executive Committee, who are the Chairs and Ranking Member of the House and Senate Transportation Committees.
- **JTC Coordinator** – the Chief Executive Officer of the Joint Transportation Committee.
- **RFP** – this Request for Proposals, any addendum or erratum thereto, Bidder’s written questions and the respective answers, and any related correspondence that is addressed to all Bidders.
- **Contract definitions** are provided in the State of Washington General Terms and Conditions for personal services contracts in Exhibit A.

## **VII. HELPFUL RESOURCES**

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

Board of Pilotage website: <http://pilotage.wa.gov/>

[2015 Board of Pilotage Annual Report](#)

Board of Pilotage Statutes and Rules:

- The Pilotage Act, [Chapter 88.16 RCW](#)
- Board of Pilotage rules, [WAC 363](#)

2017 Legislative Session – Testimony on [SSB 5819](#)

- February 20, 2017 before the Senate Transportation Committee:  
[www.tvw.org/watch/?clientID=9375922947&eventID=2017021413&eventID=2017021413&startStreamAt=4065&stopStreamAt=6990&autoStartStream=true](http://www.tvw.org/watch/?clientID=9375922947&eventID=2017021413&eventID=2017021413&startStreamAt=4065&stopStreamAt=6990&autoStartStream=true)
- April 10, 2017 before the House Transportation Committee:  
<https://www.tvw.org/watch/?eventID=2017041084>

Language directing the study in the 2017-19 Biennial Transportation Budget Bill:  
[ESB 5096](#), Section 204(1)

## **VIII. PROJECT BUDGET**

The budget for this project shall not exceed a maximum of **\$190,000**. 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. INSTRUCTION TO BIDDERS**

### **A. SUBMISSION OF PROPOSAL**

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

1. A Letter of Intent to Bid must be submitted either electronically or by paper copy by 5:00 p.m. on **May 30, 2017**, and must include company name, address and email address.
2. Bidders must submit seven copies of the proposal and one electronic PDF copy on a flash drive or 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 a flash drive or CD.
4. Proposals are due no later than **5:00 p.m. (local time in Olympia) on June 12, 2017**, whether mailed or hand delivered. Late proposals will not be accepted and will be automatically disqualified. Proposals should be submitted to:

Joint Transportation Committee (JTC)  
Sonia Plasencia, RFP Coordinator  
P.O. Box 40937  
606 Columbia Street NW, Suite 105  
Olympia, WA 98504-0937
5. Selected bidders will be required to attend oral interviews on **June 26, 2017**, at JTC's offices in Olympia and provide presentations at their expense. Selected bidders will be notified of the time of their scheduled interview and presentation.
6. All proposals and accompanying documentation become the property of the JTC and will not be returned.
7. JTC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP. The Bidder assumes responsibility for the travel and associated costs of Bidder personnel as they relate to bidding on this project.
8. In the event it becomes necessary to revise any part of this RFP, an addendum or erratum will be provided to all Bidders who submitted a Letter of Intent to bid.
9. After submission, Bidders will not be allowed to amend their proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.
10. Questions regarding this RFP should be directed to Sonia Plasencia, RFP Coordinator, as the single point of contact for this solicitation, **by email only** to [Sonia.Plasencia@leg.wa.gov](mailto:Sonia.Plasencia@leg.wa.gov). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning at 9:00 a.m. on **May 17, 2017**. No inquiries concerning the RFP will be accepted after 5:00 p.m., on **May 30, 2017**. By **June 2, 2017**, 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. The names of any Washington State employees or former Washington State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the JTC that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

## **C. PROPOSAL FORMAT**

Seven copies of the proposal must be submitted on eight and one-half by eleven (8 1/2x11) inch paper with tabs separating the major sections of the proposal and one electronic PDF copy on a flash drive or 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
  - The Technical Approach should respond to Tasks 1-7 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, the Letter of Submittal or signed Certifications and Assurances form.
  - The Technical Approach should describe the approaches, methodologies, and techniques that will be used to undertake each of these tasks and produce the deliverables; and shall identify each person responsible for each task. It should describe in as much detail as possible the anticipated tasks, levels of effort, schedules, and coordination work required to undertake the Tasks.
3. Management Approach
  - The Management Approach shall describe how your firm proposes to organize, manage, control, and report on the status of the study. Identify all critical milestones. It should include the following:
    - A statement of qualifications to conduct this work.
    - Identification of the individual(s) who will do the actual work being proposed, with attached professional resumes. Please keep resumes as concise as possible.

- An organization chart indicating the lines of authority for all personnel involved in performance of the potential contract.
  - A description of staff responsibilities and the amount of time they will devote to the project by task or topic area.
  - Bidders must include 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 a flash drive or 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 shall identify projected work hours and hourly rate(s) for each employee, by name and task, who will be assigned to this project.
5. References
- Include three references with whom your firm and the proposed Consultant Project Manager has done similar work. For each reference, include name, title, organization, address, phone number and email address. References shall not include staff of the Joint Transportation Committee, nor Washington State House or Senate Transportation Committee staff.

## **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 (45%)
  - Proposed project approach and methodology
  - Quality of work plan
  - Feasibility of proposed schedule
  - Description of proposed deliverables
- Management Approach (50%)
  - Project team structure internal controls
  - Staff qualifications & resumes
  - Relevant experience with projects of similar complexity & type
  - Other applicable experience
- Cost Approach (5%)
  - Quality of detailed budget
  - Reasonableness of cost approach
  - Total project cost

**XI. ESTIMATED SCHEDULE OF ACTIVITIES**

Letters of Intent to Bid due	May 30, 2017
Due date for proposals	June 12, 2017
Oral Interviews	June 26, 2017
Announce apparently successful Bidder	Approximately June 29, 2017
Estimated contract start date	July 7, 2017
Kick-off meeting with Staff Workgroup	The week of July 10, 2017 or as soon thereafter as possible; the Consultant may consider scheduling this for July 19 <sup>th</sup> , the day before the JTC presentation below
Study introduction to JTC	July 20, 2017 in Olympia, Washington
Present draft report to JTC	December 14, 2017, in Olympia, Washington
Final report draft due	January 2, 2018
Potential presentations to House and Senate Transportation Committees	Likely in January 2018 (both presentations likely on the same day)

**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 law. Bidders are advised that the permissible exemptions from public disclosure pursuant to Chapter 42.56 RCW are very narrow in scope and will be strictly construed. In the event that a bidder desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that bidder to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. ***Designating the entire proposal as confidential is not acceptable and will not be honored.***

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

### **XIII. JTC RIGHTS**

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

*Thank you for your interest.*

**GENERAL TERMS AND CONDITIONS**

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

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

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

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

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

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

CHANGES AND MODIFICATIONS -- The JTC may, at any time, by written notification to the Contractor, make changes in the general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; *provided*, however, that the JTC may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

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

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

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

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

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

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

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

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

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

INDUSTRIAL INSURANCE COVERAGE -- The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract as required under Title 51 RCW. JTC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and services under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

TERMINATION FOR CAUSE -- In the event the JTC determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the JTC has the right to suspend or terminate this contract. In such event the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the mailing, advertising, and staff time.

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

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

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

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

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

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

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

TREATMENT OF ASSETS--

1. Title to all property furnished by JTC shall remain in JTC's office. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in JTC upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in JTC upon (i) issuance for use of such property in the performance of this contract, or (ii)

commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by JTC in whole or in part, whichever first occurs.

2. Any property of JTC furnished to the Contractor shall, unless otherwise provided herein or approved by the JTC, be used only for the performance of this contract.
3. The Contractor shall be responsible for any loss or damage to property of JTC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. If any JTC property is lost, destroyed or damaged, the Contractor shall notify JTC immediately and shall take all reasonable steps to protect that property from further damage.
5. The Contractor shall surrender to JTC all property of JTC prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents, or Subcontractors.

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

**Exhibit B**

**CERTIFICATIONS AND ASSURANCES**

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

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

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Signature of Bidder

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Title Date