



State of Washington
Joint Legislative Audit & Review Committee (JLARC)

WSDOT Hybrid-Electric Ferries Design Build Contracting Process

REQUEST FOR PROPOSAL 21-01



Joint Legislative
Audit & Review
Committee

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SECTION I – INTRODUCTION

I-1 Purpose

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

As directed by the 2021 Transportation Budget (SSB 5165), JLARC staff are conducting an independent review of the design-build contracting process for the first hybrid-electric Olympic class ferry. **The review must evaluate Washington State Ferries' cost estimation, contracting, and cost management practices relating to the design and construction of the first hybrid-electric vessel. In addition, the review must include recommendations to benefit the full program for the design and construction of additional hybrid-electric vessels.**

JLARC is requesting proposals from qualified bidders to assist in completing this study within a total contract price of no more than **\$300,000**. The successful bidder will assist JLARC staff by conducting a thorough review of WSF's cost estimation, contracting, and cost management practices for the hybrid-electric ferry design and construction. The work will inform the development of recommendations to improve future hybrid-electric ferry purchases.

The contract will have fixed prices for the specified deliverables, and the amount of the contract will cover all contractor expenses. In addition to the fixed price deliverables, JLARC staff requests that bidders submit hourly rates to allow JLARC staff the option to request additional consulting assistance from the successful bidder on an hourly basis. Payment under the contract will be based on the successful completion of the tasks, work products, and deliverables specified in the contract to JLARC staff's satisfaction.

The contract will run from the date of execution through January 2023, with much of the work to be completed by June 2022. JLARC staff will incorporate the bidder's work into JLARC's final report to the Legislature.

SECTION II – Statement of Work

II-1 Scope of Work

The successful bidder shall assist JLARC staff by conducting an independent review of the cost estimation, contracting, and cost management practices used by Washington State Ferries (WSF) related to the design and construction of the first Olympic class hybrid-electric ferry.

II-2 SERVICES TO BE PROVIDED

The Legislature directed JLARC to review the cost estimation, contracting, and cost management practices related to the design and construction of the first hybrid-electric ferry. The review is intended to provide recommendations to benefit the full program involving four additional electric-hybrid ferries.

For all questions listed below, JLARC staff will work concurrently with Washington State Ferries to obtain data and information needed to conduct the review and address the above questions.

For question #1, the bidder will be required to answer the following questions:

- 1) What contracting methods does WSF use for the design, procurement, and construction of the hybrid electric ferries?
 - a) What are the best practices for ferry vessel procurement contracting and how does WSF's methods align with these best practices?

JLARC staff will answer the following questions and the bidder will review and comment on JLARC's analytic approach and findings:

- b) What type of procurement contracting process does WSF use for the hybrid electric ferries?
- c) Does WSF have documented policies and procedures for ferry vessel procurement?
- d) Do the policies and procedures address risk allocation between WSF and the shipbuilder?
- e) How does WSF's contracting method for the procurement of the hybrid electric ferries align with state policies and regulations?

For question #2 the bidder will be required to answer the following questions:

- 2) How do Washington State Ferries' design and construction cost estimation methods for the hybrid electric ferry align with industry best practices and other appropriate standards?
 - a) How does WSF define all of the cost elements to be included in the project budget?
 - b) How is risk included as a cost element in the design, construction and administration of the hybrid electric vessel procurement?
 - c) How does WSF estimate design cost?
 - d) How does WSF estimate construction cost?
 - e) How does WSF estimate other program costs to support the project?
 - f) What are the industry best practices for marine vessel cost estimating by a procuring entity and does WSF's approach to cost estimation align with these best practices?
 - g) How do the cost estimates compare to the budget request information supplied to the Legislature by WSF?
 - (1) How often do cost estimates change?
 - (2) When and how are cost estimate changes communicated for budget purposes?

JLARC staff will answer the following questions and the bidder will review and comment on JLARC's analytic approach and findings:

- h) Does WSF have documented policies and procedures for cost estimation and do cost estimates align with the policies and procedures?

For question #3, the bidder will be required to answer the following questions:

- 3) What factors drive WSF's cost estimates, are the estimates accurate, and how do they compare to those from other domestic shipbuilding programs?
 - a) What are the primary factors that affect the cost of designing and constructing the hybrid electric ferry? How much do these factors affect the cost estimates?
 - b) How do the WA state requirements (e.g., Build in WA, apprenticeship, etc.) affect cost estimates and the procurement process?
 - c) How does WSF's design-build contracting process affect cost estimates?

- d) How do changes in materials, propulsion system technology, labor, regulatory requirements, etc. in WA affect cost estimates?
- e) How do each of the primary factors deviate from the original cost estimate?
- f) How does WSF address cost estimate uncertainty and risk?
- g) What is the expected range of costs for project components in WA vs. other domestic shipbuilding locations?
- h) What best practices exist for increasing the accuracy of cost estimates?

For question #4. the bidder will be required to answer the following questions:

- 4) What cost management practices does WSF use in its design-build contracts for the hybrid electric ferry?
 - a) What cost control provisions does WSF include in its design-build contracts to ensure hybrid electric ferry procurement is efficient and economical?
 - (1) How do contracts for the hybrid electric Olympic class ferries compare to the earlier contracts for the diesel Olympic class ferries?
 - b) How does WSF address project risks and opportunities associated with cost and schedule?
 - c) What best practices exist for cost management for marine vessel procurement and does WSF's contracting process align with these best practices?

JLARC staff will answer the following questions and the bidder will review and comment on JLARC's analytic approach and findings:

- d) How does WSF manage changes in scope and schedule and the associated impact on cost?
- e) How are cost increases communicated to the Legislature and other stakeholders?
 - (1) Are there opportunities to improve communication?

II-3 REPORTING AND DELIVERY REQUIREMENTS

A. Detailed Work Plan

All work shall be in accordance with a work plan approved by the Legislative Auditor:

- 1) Within fifteen (15) calendar days after the date of the contract execution, the bidder shall submit an initial detailed work plan to meet the work requirements of this RFP, and any changes made necessary by additional information or input provided by JLARC staff. The work plan shall include:
 - The specific tasks and sub-tasks to be performed.
 - The expected duration and level of effort in hours by person.
 - The specific data that will be needed, along with data sources.
 - A schedule for performing the tasks.
 - The milestone dates.
 - The management, supervisors, staff, and affiliates assigned to the tasks and subtasks, and the amount of time each person will spend on each task and subtask.
- 2) Within fourteen (14) calendar days after the initial work plan is submitted, an adjusted work plan will be submitted based on discussions with JLARC staff and secondary consultant. Changes to priorities and tasks will be negotiated with JLARC staff prior to submittal of the adjusted work plan.

- 3) The detailed work plan and adjustments to the work plan are subject to approval by the Legislative Auditor. Any subsequent changes shall also require approval by the Legislative Auditor.

B. Deliverables

Major deliverables are due according to the following schedule:

#	Due Date	Deliverable
1)	12/10/2021	Initial detailed work plan (as specified above).
2)	12/15/2021	Initial meeting with JLARC staff and secondary consultant to review methodology and discuss data needs.
3)	12/21/2021	Adjusted detailed work plan (as specified above).
4)	Bi-weekly throughout the project	<p>Bi-weekly meetings that identify:</p> <ul style="list-style-type: none"> • Accomplishments of each reporting period. • Any issues or challenges that need to be overcome. • Plans to overcome any challenges. • Assistance needed from JLARC staff to overcome any challenges. • Provide any completed drafts of work papers, spreadsheets, models, and other data analysis. <p>Bi-weekly meetings may be conducted virtually (via Zoom or Teams) or email.</p>
5)	3/1/2022	Progress report and presentation describing preliminary results of work on question 1, supported by relevant work papers, spreadsheets, models, and other data analysis.
6)	3/23/2022	Progress report and presentation describing preliminary results of work on question 2, supported by relevant work papers, spreadsheets, models, and other data analysis.
7)	4/13/2022	Progress report and presentation describing preliminary results of work on question 3, supported by relevant work papers, spreadsheets, models, and other data analysis.
8)	5/4/2022	Progress report and presentation describing preliminary results of work on question 4, supported by relevant work papers, spreadsheets, models, and other data analysis.
9)	5/18/2022	Synthesis of findings and draft report outline.
10)	6/1/2022	Draft report provided to JLARC staff.
11)	6/29/2022	Final report that synthesizes reports for deliverables 5 through 7, answers all the research questions contained in Section II-2 –Services to Be Provided, and includes any revisions requested by JLARC staff.
12)	12/7/2022	Attend JLARC meeting and be available to answer member questions.
12)	1/4/2023	Attend JLARC meeting and be available to answer member questions.

JLARC staff will review the deliverables and reports to ensure that the bidder’s analysis is supported by relevant, sufficient, and credible evidence. JLARC staff shall submit comments on the draft report within 14 calendar days of receipt. The final report shall incorporate all changes made necessary, as determined by JLARC staff.

C. Confidentiality

- 1) The bidder's final report and all working papers supporting it are confidential until JLARC's final report is officially released to the public. Prior to the official release of the final report, working paper access shall be limited to JLARC staff, its secondary consultant (if applicable), and the bidder. JLARC staff will coordinate communication about the report and between the bidder and relevant state agencies.

D. Working Paper Requirements

- 1) The bidder shall obtain and document in writing sufficient, and relevant corroborating data to support the analysis in its report, models, spreadsheets, or other data analysis.
- 2) In order to facilitate reviews of working papers by JLARC staff, the bidder shall exercise strict control over the preparation and maintenance of working papers.
- 3) Working papers are to be organized, numbered, and cross-referenced in a logical manner to enable easy crosswalk between the work plan, working paper sections, conclusions, findings, and source documents.
- 4) All working papers resulting from this study shall be owned by JLARC and shall be retained for a period of at least six years or until any claim brought under this RFP is settled. It is JLARC's expectation that the bidder will use standard, commercially available software that is in wide use or readily available to JLARC staff and other agencies. The bidder may retain a copy of working papers supporting this study.

E. Progress Reporting

The bidder shall provide JLARC staff with bi-weekly written reports outlining the following:

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

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

In addition to the bi-weekly progress reports, the bidder will prepare the four project progress presentations (see deliverables 5-8 in II-3b). These presentations do not substitute for the bi-weekly progress reports.

F. Draft and Final Reports to JLARC

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

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

SECTION III - BIDDER QUALIFICATIONS

III-1 MANDATORY MINIMUM QUALIFICATIONS

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

- A. At a minimum, the bidder must agree to provide the services as detailed in Section II, "Statement of Work," as well as all other requirements stated in the RFP.
- B. The bidder must provide assurance that the key professionals and/or the organization do not have a material conflict of interest with the subject of ferry cost estimating, contracting, or cost management within the state of Washington, JLARC, or any personal, external, or organizational impairments as described in the *Government Auditing Standards GAO-12-331G, as issued by the United States Government Accountability Office* (<http://www.gao.gov/assets/590/587281.pdf>).
- C. Current contracts or agreements with entities that could provide the appearance of an impairment to independence must be disclosed and explained in the bidder's proposal.
- D. The bidder must have demonstrated expertise, experience, knowledge, and abilities in the following specific areas:
 1. At least one team member must have an advanced degree in a relevant scientific field such as naval architecture or marine engineering.
 2. Bidder's staff and/or organization must have the appropriate knowledge, experience, qualifications, and resources (or ability to obtain them) which will ensure timely and successful achievement of the project. Relevant areas include, but are not limited to:
 - a. Government contracting for new construction shipbuilding.
 - b. New ship construction programs including project budgeting and project management of new ship construction programs.
 - c. Shipyard planning and scheduling.
 - d. Ship design and construction cost estimating.
 - e. Risk management of shipbuilding programs.
 - f. Cost schedule control and earned value management system (EVMS) in shipbuilding programs.
 - g. Purchasing processes in shipbuilding programs.
 - h. Change control in shipbuilding programs.
 - i. Financial analysis capability.
 - j. Requirements and configuration control management.
 3. Past performance in successfully completing and managing past assistance agreements, and history of meeting reporting requirements.

4. Skill preparing reports and presentation graphics that effectively communicate study results to non-technical audiences whose primary interest will be the use of study results to improve measuring environmental outcomes and to inform public policy options.

SECTION IV - GENERAL INFORMATION

IV-1 DEFINITIONS

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

“**Apparently successful bidder**” means the bidder selected by the Legislative Auditor as the most qualified entity to perform the stated services.

“**Legislative Auditor**” means the executive officer of the Joint Legislative Audit and Review Committee, whose duties are defined in chapter 44.28 RCW. For purposes of this agreement, the Legislative Auditor carries out duties through JLARC staff.

“**JLARC staff**” means employees who provide support to the Joint Legislative Audit and Review Committee.

“**JLARC**” means the Washington State Joint Legislative Audit and Review Committee.

“**WSF**” means Washington State Ferries.

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

“**Secondary consultant**” means an individual(s) with relevant content expertise hired by JLARC to assist JLARC staff in evaluating and reviewing the primary consultant’s qualifications and deliverables.

Contract definitions are provided in Exhibit D.

IV-2 COMPENSATION AND PAYMENT

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

Joint Legislative Audit and Review Committee
 106 11th Av SW, Suite 2500
 PO Box 40910
 Olympia, WA 98504-0910
jlarc.ac@leg.wa.gov

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

Deliverable	Contract Amount Payable
Initial detailed work plan	7%
Final adjusted detailed work plan	4%
First progress report and presentation (Deliverable 5)	13%
Second progress report and presentation (Deliverable 6)	13%
Third progress report and presentation (Deliverable 7)	13%
Bidder’s synthesis of findings and draft report outline	10%

Bidder's draft final report, meeting, and presentation	17%
Bidder's final report, meeting, and presentation	17%
Final supporting work papers and all models, spreadsheets, and data sets	3%
JLARC's final report and/or presentations	3%
Additional consultation with JLARC staff, beyond base bid, if requested	Hourly rate

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

Contractors are required to be registered in the Statewide Vendor Payment system, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>, prior to submitting a request for payment under this Contract. No payment shall be made until the registration is completed.

IV-3 EXPECTED TIME PERIOD FOR CONTRACT

The period of contract performance is expected to be from November 22, 2021 through January 31, 2023.

IV-4 ELIGIBILITY TO COMPETE

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

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

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

SECTION V - INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

V-1 RFP CONTACT

Throughout the duration of the procurement process, all communications are to be directed to committee staff at the address below. Please reference JLARC RFP 21-01.

Joint Legislative Audit and Review Committee
106 11th Ave SW
PO Box 40910
Olympia, WA 98504-0910
Phone: (360) 786-5171
Email: jlarc@leg.wa.gov
Web: <http://jlarc.leg.wa.gov>

The JLARC staff may require that inquiries be put in writing.

“Letter of Intent to Bid,” in the format of Exhibit B, must be received at the JLARC office by **October 22, 2021 at 4:30 p.m. Pacific Standard Time**. The letter of intent to bid may be submitted electronically via email.

Bidders who submit the “Letter of Intent to Bid” prior to the deadline will be sent any modifications of the RFP and a written record of additional substantive information provided to prospective bidders (such as responses to telephone inquiries). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning October 13, 2021. No inquiries about the RFP will be accepted after October 20, 2021.

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

V-2 SCHEDULE OF PROCUREMENT ACTIVITIES

The following schedule of activities must be adhered to by all bidders.

Event Dates

Release of RFP	October 13, 2021
Acceptance of RFP clarification inquiries beginning	October 13, 2021
Deadline for RFP clarification inquiries	October 20, 2021
Letters of intent to bid due to JLARC by 4:30 p.m. PST	October 22, 2021
Distribution of answers to clarification inquiries	October 25, 2021
Proposals due to JLARC by 4:30 p.m. PST	November 12, 2021
Start of finalist oral interviews	November 18, 2021 (anticipated)
Apparently successful bidder notified	November 24, 2021 (anticipated)
Contract execution	November 29, 2021 (anticipated)
Public announcement of successful bidder	November 30, 2021 (anticipated)

V-3 SUBMITTING PROPOSALS

Electronic submission of the proposal is required. Submissions may be emailed as a PDF or Word document. JLARC recognizes electronic signatures shall carry the same authorization as original signatures for purposes of meeting the requirements of this proposal.

If proposal contains confidential information that would potentially need to be redacted, (see section V-5) an electronic redacted copy must be included, be marked “**Copy for Reproduction,**” and **must** be formatted with those pages containing “confidential” information **removed**, but a cover index for this copy attached bearing the bidder’s name setting forth which page(s) has (have) been removed because they contained “confidential” information.

Electronic submissions of the proposal shall be sent via email to jlarc@leg.wa.gov. The deadline for submittal is 4:30 p.m., Pacific Standard Time, November 12, 2021:

Proposals may **not** be transmitted by facsimile transmission. **Late proposals will not be accepted, nor will time extensions be granted.**

Bidders must identify the email subject line of the proposal as “JLARC RFP 21-01.”

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

V-4 PROPOSAL FORMAT AND CONTENT

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

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

SECTION 1: Executive Summary

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

SECTION 2: General Information

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

- A. Name, mailing address, phone, and email of legal entity with whom the contract is to be written.
- B. Name, mailing address, phone, and email of primary contact.
- C. Name, mailing address, email, and phone number(s) of principal officer(s).
- D. Legal status of organization (e.g., sole proprietorship, partnership, corporation, etc.).
- E. Federal employer identification number.
- F. Washington State Department of Revenue Registration Number (UBI number), if applicable.
- G. The location of the facility from which the Offeror will operate.
- H. If the bidder or anyone associated with the bidder has been an employee of the state of Washington during the past two years, indicate his/her job title, agency by which employed, and separation date.
- I. If the bidder or anyone associated with the bidder contracted with the state of Washington during the past two years, identify the agency and contract number and briefly describe the contract.

SECTION 3: Technical Expertise Proposal

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

- 1) Anticipated tasks, levels of effort, schedules, coordination work, and meetings with state agencies, local governments, and private bidders.
- 2) Software to be used in this project, data requirements, and other technical aspects of the bidder's proposal.
- 3) Which individuals will be responsible for each of the tasks listed.
- 4) Key data required to perform each task.

The technical expertise proposal should also include:

- 1) Descriptions of other projects the offer has successfully completed in the last five years in ferry project development, ferry design, ferry cost estimation, ferry construction, and shipbuilding project cost management similar to this project.
- 2) A sample of work that demonstrates the bidder's expertise in this area.

If appropriate, include the contract numbers, period of performance, contact persons, and telephone numbers for previous similar work. Indicate if the bidder within the last five (5) years has had a contract terminated for default, defined as notice to stop performance. Provide full details, including the other party's name, address, and telephone number.

If the bidder has had any other contracts or agreements with the Washington Department of Transportation, Washington State Ferries, and Vigor Industries within the last five (5) years. Bidder must list each contract, indicate the nature of the work for each contract, and provide an explanation as to why the contracted work does not impair the Offeror's independence to perform the work described in Section II – Statement of Work.

SECTION 4: Management Proposal

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

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

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

Identify the staff that will be assigned to the project, including those who will lead each of the 4 topic areas (see deliverables 5-8 in II-3b), the interactions with state implementing and oversight agencies, and those who will conduct the on-site fieldwork. While on-site visits with the shipbuilder are optional and at the bidder's discretion, any on-site fieldwork must meet the State of Washington's requirements for in-person working conditions during the COVID-19 pandemic (see, e.g., <https://lni.wa.gov/forms-publications/F414-164-000.pdf>), which may include masking, social distancing, and vaccination requirements, in addition to any requirements imposed at the site

location in response to the COVID-19 pandemic. Discuss staff responsibilities and the amount of time they will devote to the project by task or topic area. Succinctly state each person's qualifications and relevant experience. Attach resumes for each person who will lead a topic area. **[Note: Care should be taken to keep resumes as concise as possible.]**

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

SECTION 5: Cost Proposal

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

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

SECTION 6: Certifications and Assurances Form

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

V-5 PROPRIETARY INFORMATION

All proposals received shall be public records but shall remain confidential until the Legislative Auditor or his/her designee announces the successful bidder resulting from this RFP, if any. Thereafter, proposals shall be available for public inspection and copying as required by Chapter 42.56 RCW (the principal Washington State statute pertaining to accessibility to public records) except as exempted in that chapter or by another. Bidders are advised that the permissible exemptions from public disclosure 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.**

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

NOTE: The proposal of the successful bidder may be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the *entirety* of the successful 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 Legislative Auditor shall comply with the court order. The burden is upon a 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.

V-6 RECORDS RETENTION

After the date of the announcement of the apparently successful bidder, the Legislative Auditor will retain the electronic copy of each proposal received for a period of six (6) years or until any claim brought under this RFP is settled.

V-7 PREPARATION AND TRAVEL COSTS

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

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

V-8 ADDENDA TO THE RFP

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

V-9 SUBMISSION LIMIT

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

SECTION VI - EVALUATION OF PROPOSALS

VI-1 EVALUATION PROCEDURE

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

The selection will be accomplished through the following process:

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

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

JLARC staff reserves the right to ask for re-submittals of RFPs by finalists, as determined by the Legislative Auditor. Finalists in the RFP process may be asked to make oral presentations using virtual meeting software (e.g., Microsoft Teams, Zoom, etc.) to the evaluation panel and/or JLARC regarding their proposal. If finalists are asked to make an oral presentation, the final selection of the successful bidder may be based on a combination of the evaluation of the written RFP and the oral presentation.

SECTION VII - JLARC RIGHTS

VII-1 PROPOSAL REJECTIONS

Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the Legislative Auditor or his/her designee. The Legislative Auditor reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

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

VII-2 CONTRACT AWARD

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

Should the Legislative Auditor fail to negotiate a contract with the apparently successful bidder, the Legislative Auditor reserves the right to negotiate and contract with the next most qualified bidder.

VII-3 PUBLICITY

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

VII-4 WAIVERS

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

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

Any waiver granted, prior to formal negotiation with the apparently successful bidder, will be granted to all bidders.

SECTION VIII - MISCELLANEOUS TERMS AND CONDITIONS

VIII-1 SUCCESSFUL OFFEROR NOTIFICATION

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

VIII-2 CONFERENCE FOR UNSUCCESSFUL OFFERORS

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

VIII-3 GENERAL CONTRACT TERMS AND CONDITIONS

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

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

Exhibit A – Certifications and Assurances

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

1. INDEPENDENT PREPARATION AND COST DETERMINATION

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

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

2. PRICE WARRANTY

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

3. NO CONFLICT OF INTEREST

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

4. CURRENT CONTRACTS/AGREEMENTS

The bidder does not have current contracts or agreements related to ferry design or ferry cost estimation or cost management.

However, if the bidder has current contracts or agreements related to ferry design or ferry cost estimating and cost management, the following information is required:

- a. If the bidder has current contracts or agreements with state or local governments related to ferry design or ferry cost estimation and cost management, list contracts or agreements and explain why these do not impair the bidder’s independence.
- b. If the bidder has current contracts or agreements with private entities for the purpose of assisting those entities with ferry design or ferry cost estimation and cost management, explain why these do not impair the bidder’s independence.

5. PRIOR CONTRACT(S)

The bidder has not had any contract(s) or agreement(s) with the Washington Department of Transportation, Washington State Ferries, or Vigor Industries in the past five (5) years.

However, if the bidder has had any contract(s) or agreement(s) with the Washington Department of Transportation, Washington State Ferries, or Vigor Industries in the past five (5) years, the following information is required:

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

6. PROPOSAL EVALUATION PERIOD

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

7. CONTACTING REFERENCES

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

8. PREPARATION COSTS

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

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

Bidder Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name (typed)

Chief Executive Officer, Signature

Chief Executive Officer, Title (typed)

Date

Exhibit B – Letter of Intent to Bid

On behalf of my bidder, I hereby certify that we intend to submit a proposal to provide consulting services to the Joint Legislative Audit and Review Committee for the Washington State Ferries Cost Estimation and Cost Management study. (JLARC Proposal 21-01). I have read the Request for Proposal for the procurement of these services and accept the conditions set forth therein.

Bidder Name (typed)

Legal Name (typed)

Telephone Number (typed)

Address (typed)

Email Address (typed)

Legal Name (typed)

Chief Executive Officer, Name and Title (typed)

Chief Executive Officer, Signature

Date

This letter of Intent to Bid must be received by the Joint Legislative Audit and Review Committee by 4:30 p.m. Pacific Standard Time, October 22, 2021. It may be submitted electronically via email to:

Joint Legislative Audit and Review Committee
106 11th Ave SW, Suite 2500
PO Box 40910
Olympia, WA 98504-0910
Email : jlarc@leg.wa.gov

PLEASE NOTE: If you submit this form and later decide not to submit a proposal, please notify JLARC staff by telephone at (360) 786-5171. Thank you.

Exhibit C – Sample Contract Form

STATE OF WASHINGTON
Joint Legislative Audit and Review Committee
106 11th Ave SW, Suite 2500
PO Box 40910
Olympia WA 98504-0910
(360) 786-5171

CONTRACT NO. 21-__

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

2. CONTRACTOR: _____

ADDRESS: _____

Federal Employer Identification No.: _____

Washington Uniform Business Identification No.: _____

3. SCOPE OF ENGAGEMENT

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

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

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

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

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

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

7. If irregularities, fraud, or other significant audit issues which may impact the audit are suspected, the contractor must immediately notify JLARC staff at jlarc@leg.wa.gov and (360) 786-5171.

8. All instances of noncompliance with state and local laws will be disclosed to JLARC staff at jlarc@leg.wa.gov and (360) 786-5171.

9. The Joint Legislative Audit and Review Committee's contract coordinator is _____, Research Analyst, at _____ [email] and _____ [phone].

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

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

11. EFFECTIVE DATE AND DURATION OF CONTRACT

Subject to other contract provisions, the period of performance under this contract will be from date of execution through January 31, 2023, unless sooner terminated as provided herein.

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

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

- (a) Applicable federal and state statutes and regulations.
- (b) The terms and conditions of this contract.
- (c) Request for Proposal No 21-01.
- (d) The contractor's final approved work plan.
- (e) The contractor's proposal dated _____ to the Joint Legislative Audit and Review Committee's RFP, including all written information provided with the contractor's proposal.
- (f) The General Terms and Conditions and any other provisions of the contract whether incorporated by reference or otherwise.

13. COMPENSATION AND PAYMENT

The contractor agrees that the maximum amount to be paid to the contractor under this contract shall not exceed \$300,000 in total, and shall include full payment for all work specified in the scope of engagement outlined in item 3. The contractor agrees that the Joint Legislative Audit and Review Committee is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the contractor. Any additional services provided by the contractor and/or subcontractors would require a written contract amendment approved and processed through the Joint Legislative Audit and Review Committee's office prior to beginning the additional services.

The contractor may submit invoices for progress billings in accordance with the schedule included in Exhibit A. Payment for each billing will be made upon JLARC's satisfaction with the overall progress of the contractor and the quality of each deliverable. Each invoice will clearly indicate that it is for services rendered in performance under Contract No. 21-07.

All invoices must be submitted for payment to JLARC staff, jlarc.ac@leg.wa.gov and the email subject line must include "JLARC RFP 21-01." Payment shall be considered timely if made by the Joint Legislative Audit and Review Committee within 30 days. If JLARC staff determines that the contractor has not made satisfactory progress in accordance with the work plan, it may withhold payment until the necessary work is completed to JLARC staff's satisfaction. JLARC may, in its sole discretion, withhold payments owed the contractor for services rendered if the contractor fails to satisfactorily comply with any term or condition of the contract.

14. INSURANCE

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

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

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

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

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

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

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

STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

CONTRACTOR

Signature

Signature

Title Date

Title Date

APPROVED AS TO FORM:

By:-----
Assistant Attorney General Date

EXHIBIT D – SAMPLE GENERAL TERMS AND CONDITIONS

DEFINITIONS

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

1. "JLARC" and/or "AGENCY" shall mean the Joint Legislative Audit and Review Committee of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing JLARC.
2. "LEGISLATIVE AUDITOR" or "AGENT" shall mean the Legislative Auditor and/or Chief Executive Officer of JLARC, and/or the delegate authorized in writing to act on his/her behalf.
3. "CONTRACTOR" shall mean that bidder, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
4. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

ACCESS TO DATA

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

ADVANCE PAYMENTS PROHIBITED

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

AMENDMENTS

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

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

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

ASSIGNMENT

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

ASSURANCES

The CONTRACTOR shall perform all work pursuant to this agreement in accordance with all applicable federal, state and local laws, rules and regulations as they currently exist or as amended.

ATTORNEYS' FEES

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

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

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

COPYRIGHT PROVISIONS

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

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

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

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

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The

AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISALLOWED COSTS

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

DISPUTES

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

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

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

DUPLICATE PAYMENT

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

GOVERNING LAW

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

INDEMNIFICATION

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

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

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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

"Claim" as used in this contract, means financial loss, damage, or expense, including but not limited to attorney's fees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

INSURANCE COVERAGES

CONTRACTOR will provide insurance coverage, which will be maintained in full force and effect during the term of this contract, as follows. The intent of the required insurance is to protect the Joint Legislative Audit and Review Committee should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the contractor or subcontractor, or agents of either, while performing under the terms of this contract. No later than the date of contract signing, CONTRACTOR shall submit to JLARC a certificate of insurance which outlines the coverage and limits defined below:

- A. **Commercial General Liability (CGL) Insurance Policy:** Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity, but no less than \$1,000,000 per occurrence. Additionally, the contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of

subcontracts.

- B. **Automobile Liability:** In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or not owned by the contractor, automobile liability insurance will be required. The minimum limit for automobile liability is: \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- C. **Professional Liability:** Coverages with limits of not less than \$1,000,000 for any one occurrence, including coverage that addresses liability arising from the loss or breach of confidential or proprietary information.
- D. **Workers Compensation Coverage:** Workers compensation coverage with Washington statutory limits and employer's liability coverage of not less than \$500,000 for employers' liability. The contractor will at all times comply with all applicable workers compensation, occupational disease, and occupational health and safety laws, statutes and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the CONTRACTOR or their employees for services performed under the tenants of the contract.
- E. **Employers Liability ("Stop Gap") Insurance:** In addition, the CONTRACTOR will buy employers' liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Employers Liability ("Stop Gap") Insurance is intended to cover gaps between Worker's Compensation and CGL insurance.

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

LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

NONDISCRIMINATION

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

PRIVACY

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

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

PUBLICITY

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

RECORDS MAINTENANCE

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

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

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

REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

SAVINGS

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

SEVERABILITY

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

SITE SECURITY

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

SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to JLARC for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

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

TAXES

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

TERMINATION FOR CAUSE

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

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, advertising and staff time.

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

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

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, terminate or suspend this contract, in whole or in part. If this contract is so terminated or suspended, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination or suspension. A suspension will be considered lifted the business day following notice to the CONTRACTOR that the suspension has been lifted.

TERMINATION PROCEDURES

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

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

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

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

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

6. Complete performance of such part of the work as shall not have been terminated by the AGENT.
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

TREATMENT OF ASSETS

1. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
2. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
3. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
4. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
5. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
6. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

WAIVER

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