

**WASHINGTON STATE
Blueberry Commission**

REQUEST FOR PROPOSAL (RFP)

RFP NO. K2350

NOTE: *If you download this RFP from an agency website located at <http://www.wablueberrycomm.org/> you are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.*

PROJECT TITLE:
Washington State Blueberry Commission Executive Director Recruitment

PROPOSAL DUE DATE: **October 20, 2017, 5:00pm** – Time, *Local Time*, Olympia, Washington, USA.

E-mailed bids will be accepted. Faxed bids will not.

ESTIMATED TIME PERIOD FOR CONTRACT: **Jan 1, 2018 – Dec 31, 2020**
The Commission reserves the right to extend the contract for up to three additional years at the sole discretion of the Commission.

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

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1. INTRODUCTION

1.1. PURPOSE AND BACKGROUND

The Washington Blueberry Commission, hereafter called "WBC," is initiating this Request for Proposals (RFP) to solicit proposals from persons interested in the position of Executive Director for the Blueberry Commission. The Executive Director of the Washington Blueberry Commission (WBC), under the guidance of the elected and appointed board members, administers all aspects of commission business. The Executive Director must have an intimate knowledge of blueberry production in Washington State, have the ability to effectively manage all aspects of the commission's business, including marketing, assessment collection, maintenance of financial and operational records, preparing for and conducting quarterly commission meetings, monitoring the performance of contractors and vendors, proper dispersal of WBC funds and effectively facilitating the work of any established committees such as those formed to evaluate research proposals, marketing and food safety issues. In addition, the Executive Director should have a working knowledge of the laws and rules governing WBC operations and the ability to work cooperatively with the Office of the Attorney General in resolving legal issues. The Executive Director shall have the ability to evaluate the performance and effectiveness of all WBC funded programs, projects and affiliations and produce reports on these when requested to do so.

WBC intends to award one contract to provide the services described in this RFP.

1.2. OBJECTIVES AND SCOPE OF WORK

The objectives of the Executive Director include:

- Advise the commission and carry out programs designed to enhance the reputation and image of Washington State's blueberries.
- Increase the sale and use of Washington State's blueberries in local, domestic, and foreign markets. Explore expanded markets for Washington blueberries particularly in regard to the Asian market.
- Increase consumer knowledge regarding the health-giving qualities and dietetic value of Washington State's blueberries and products.
- Maintain a current list of Washington State blueberry growers and all handlers, inside and outside of Washington, that are required to pay annual assessments. Issue assessment notices in a timely manner; aggressively pursue delinquent assessments up to and including legal action.
- Conduct quarterly meetings of the WBC ensuring that all announcements and accompanying documents are distributed in a timely fashion and in compliance with the Open Public Meetings Act. These include the agenda, minutes from the previous meeting, the financial report and all accompanying documentation and any other materials necessary to conduct the meeting.
- Maintain tight fiscal control of the operating budget and all collected assessments. Fully cooperate with Washington State auditors during periodically required audits. Designate accounting firm to periodically conduct third party financial audits.
- Establish and maintain necessary committees as instructed by the board. Ensure that relevant issues are brought to the committees in a timely fashion and that the board members are periodically updated on the progress of the committees.

- Provide management and oversight of WBC-funded research projects, including monitoring contracts and reporting (research grant awards are determined by a committee appointed by the WBC). Stay up to date on current technology and trends.
- Seek out relevant grants and opportunities appropriate to the WBC and the blueberry industry (especially relating to agronomic issues, food safety, nutrition, promotion, etc.). Oversee contracts & vendors; monitor grant progress and reporting.
- Be the primary spokesperson for the commission and maintain up-to-date information about the industry, market trends, and growing conditions.
- Represent the WBC on national and regional blueberry-related associations as approved by the board and report activities to the board when applicable.
- Provide collective training, outreach and assistance to Washington blueberry growers to help them successfully grow and market their crop.
- Stay current on all state and federal regulations that affect the funding and/or operations of the commission and its programs, to include applicable codes, laws, rules, Governor Executive Orders, and Office of Financial Management requirements.

1.3. MINIMUM QUALIFICATIONS

At a minimum, the Candidate will possess:

- A bachelor's degree in agriculture, business, marketing or a related field
- Strong leadership and organizational skills
- Experience developing a marketing/branding program
- Marketing and public relations experience, preferably in the blueberry industry
- Direct experience in preparing grant proposals
- Experience in successfully developing and managing contracts
- Minimum of 5 years of upper-level management experience
- Understanding of international trade opportunities and challenges for Washington blueberries
- Knowledge of the Washington blueberry industry to include general growing practices and trends
- Be licensed to do business in the State of Washington or provide a commitment to become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.

Bidders who do not meet minimum qualifications may be rejected as non-responsive and may not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

1.4. FUNDING

The expiring contract is currently funded for the amount of \$65,000 annually. This contract is anticipated to have a similar budget. Higher bids would need to clearly substantiate added value.

1.5. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about January 1, 2018 and to end on December 31, 2020. Amendments extending the period of performance, if any, shall be at the sole discretion of the WBC. The WBC reserves the right to extend the contract for one three-year period. Performance will be evaluated on an annual basis.

1.6. DEFINITIONS

Definitions for the purposes of this RFP include:

WBC – The Washington Blueberry Commission is an agency of the state of Washington that is issuing this RFP.

Apparent Successful Contractor – The consultant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Consultant – Individual or company interested in the RFP and that may or does submit a proposal in order to attain a contract with the WBC.

Contractor – Individual or company whose proposal has been accepted by the WBC and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Proposer - Individual or company that submits a proposal in order to attain a contract with the WBC.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

1.7. ADA

The WBC complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the WBC for this procurement. All communication between the Consultant and the WBC upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Rebecca Weber
E-Mail Address	rweber@agr.wa.gov
Phone Number	509-735-3666

Any other communication will be considered unofficial and non-binding on the WBC. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

2.2. PROPOSER’S RESPONSIBILITIES

- A. Read and understand the solicitation document and all attachments.
- B. Seek clarifications if necessary.
- C. Become familiar with and abide by applicable federal laws and Washington State statutes and regulations.

ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	September 29, 2017
Proposals due	October 20, 2017
Evaluate proposals	October 23, 2017
Conduct oral interviews or demonstrations with finalists, if required	TBD
Announce “Apparent Successful Contractor”	November 3, 2017
Negotiate contract	Dec. 1, 2017
Send notification to unsuccessful proposers	TBD
Hold debriefing conferences (if requested)	TBD
Begin contract work	Jan 1, 2017

The WBC reserves the right to revise the above schedule.

2.3. SUBMISSION OF PROPOSALS

ELECTRONIC PROPOSALS:

The proposal must be **received by the RFP Coordinator** no later than **5:00 p.m.** Local Time, in Olympia, Washington, on **Oct. 20, 2017**.

Proposals must be submitted electronically as an attachment to an e-mail to Rebecca Weber, the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word, Excel or PDF format. Zipped files cannot be received by the WBC and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. The WBC does not assume responsibility for problems with Consultant’s e-mail. If the WBC’S email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration, unless the WBC’S e-mail is found to be at fault. All proposals and any accompanying documentation become the property of the WBC and will not be returned.

2.4. PROPRIETARY INFORMATION & PUBLIC DISCLOSURE

Proposers are discouraged from submitting proprietary materials in their proposal. In order to protect the integrity of the contracting process, which is a vital state interest, proposals will not be disclosed until after award and signing of the contract. It is the WBC’s duty to conduct the state’s business in such a way as to protect the public. In order to so protect, the WBC will not disclose proposals before a contract is signed. This will ensure fair competition without undue advantage to any bidder leading to private gain and public loss.

Any information contained in the proposal that the bidder desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56, must be clearly designated. Please cite the statute and briefly explain how it applies to the proprietary information supplied in the proposal. The page and the particular exception/s from disclosure upon which the bidder is making the claim must be identified. Each page claimed to be exempt from disclosure must be clearly identified by the word “confidential” printed on the lower right hand corner of the page. Marking the entire proposal as confidential will be neither accepted nor honored and may result in disclosure of the entire proposal. The bidder must be reasonable in designating information as confidential. After the contract is

signed, the proposal shall be deemed public records as defined in RCW 42.56. Confidentiality is available only to the limited extent allowed in state law. The WBC can choose to disclose despite information being marked as confidential.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.5. REVISIONS TO THE RFP

2. In the event it becomes necessary to revise any part of this RFP, addenda will be published via WEBS. Addenda will also be e-mailed to all individuals, who have made the RFP Coordinator aware of their interest. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFP and will be placed on WEBS and the website.

If you downloaded this RFP from the WBC website located at: <http://www.wablueberrycomm.org/> you are responsible for sending your name, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP addenda.

The WBC also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

2.1. DIVERSE BUSINESS PARTICIPATION

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. For information on certified firms, consultants may contact OMWBE at 360/664-9750 or <http://www.omwbe.wa.gov>.

Small and Veteran owned self-certified businesses are encouraged to participate as well.

However, no preference will be included in the evaluation of proposals, no minimum level of participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

2.2. ACCEPTANCE PERIOD

Proposals must provide 90 days for acceptance by WBC from the due date for receipt of proposals.

2.3. RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The WBC also reserves the right at its sole discretion to waive minor administrative irregularities.

2.4. MOST FAVORABLE TERMS

The WBC reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer procedure. The WBC does reserve the right to contact a Consultant for clarification of its proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate the Consultant's entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter.

2.5. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful Contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this

solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. The WBC will review requested exceptions and accept or reject the same at its sole discretion.

2.6. COSTS TO PROPOSE

The WBC will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

2.7. NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or the WBC to contract for services specified herein.

2.8. REJECTION OF PROPOSALS

The WBC reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.9. COMMITMENT OF FUNDS

The Director of the WBC or his delegate is the only individual who may legally commit the WBC to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.10. ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful Contractor will be provided a form to complete with the contract to authorize such payment method.

2.11. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from acts or omissions of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract.

The Contractor shall provide insurance coverage which the Contractor shall maintain in full force and effect during the term of this Contract as follows:

1. **Commercial General Liability 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.
2. **Automobile Liability:** In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The Contractor shall notify his insurance carrier of the business use and submit to AGR a statement from the carrier acknowledging that the Contractor is insured for such use. This statement may be, for instance, a notation of coverage on the insurance certificate/s. The minimum limit for automobile liability is:
\$1,000,000 Per Occurrence, using a Combined Single Limit for bodily injury and property damage.
3. **Professional Liability Insurance:**
The CONTRACTOR will obtain professional liability ("Errors and Omissions") insurance appropriate to the scope of work provided under this Contract, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall include negligent and non-negligent acts and omissions.
4. **Worker's Compensation Coverage -** Workers' Compensation and employer's liability coverages with Washington statutory limits and limits of not less than \$500,000 for employer's liability. The CONTRACTOR will at all times comply with all applicable worker's 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 terms of the Contract.

5. **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.

6. **Additional Provisions**

Additional Insured. The insurance required will 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 collectable insurance.

Cancellation. WBC will be provided 30 calendar days written notice before cancellation or non-renewal of any insurance referred to herein. CONTRACTOR will instruct the insurers to give WBC 30 calendar days advance notice of any insurance cancellation or non-renewal action.

Identification – Policy must reference the WBC’s contract number and the WBC by name.

Insurance Carrier Rating – 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. Any exception will be reviewed and approved by WBC’s Risks Manager or the Risk Manager of the Office of Financial Management, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Excess Coverage- By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect the CONTRACTOR, and such coverages and limits will not limit CONTRACTOR’s liability under the indemnities and reimbursements granted to the State in this contract.

The insurance required above shall be issued by an insurance company(s) authorized to do business within the state of Washington, and except for Professional Liability or Errors and Omissions Insurance shall name the state of Washington, its agents and employees as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give AGR 30 days advance notice of any insurance cancellation.

Submit to AGR prior to the Contract’s effective date a certificate of insurance which outlines at the least the coverage and limits defined in this section, Insurance, and in the attached General Terms and Conditions, Attachment A. Contractor shall submit renewal certificates on a yearly basis during the term of the Contract.

3. PROPOSAL CONTENTS

3.1. ELECTRONIC PROPOSALS:

Proposals must be written in English and submitted electronically to the RFP Coordinator in the order noted below:

1. Letter of Submittal, including *signed* Certifications and Assurances (Exhibit A to this RFP);
2. Technical Proposal;
3. Management Proposal; and,
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive, however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.2. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant 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 Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail 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 Consultant (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. If the Consultant does not have a UBI number, the Consultant must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
5. Location of the facility from which the Consultant would operate.
6. Identify any state employees or former 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 WBC that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

3.3. TECHNICAL PROPOSAL (MANDATORY) (SCORED)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey Consultant's understanding of the proposed project.
- B. Work Plan** - Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of WBC staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule** - Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
- D. Outcomes and Performance Measurement** – Describe the impacts/outcomes the Consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state WBC.
- E. Risks** - The Consultant must identify potential risks that are considered significant to the success of the project. Include how the Consultant would propose to effectively monitor, manage and mitigate these risks, including reporting of risks to the WBC'S contract manager.

- F. Deliverables** – Fully describe deliverables to be submitted under the proposed contract. Deliverables must support the requirements set forth in Section 1.2, Objectives and Scope of Work.

3.4. MANAGEMENT PROPOSAL (MANDATORY)

A. Project Management (SCORED)

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** - Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes' for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the WBC.

B. Experience of the Consultant (SCORED)

1. Indicate the experience the Consultant and any subcontractors have in the following areas associated with:
 - a. Agricultural marketing including international marketing
 - b. Fiscal control and budgeting
 - c. Direct blueberry industry experience
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

C. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the WBC previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The WBC will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past

experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

D. References (MANDATORY)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references for the Consultant, (Optional) and three (3) business references for the lead staff person for whom work has been accomplished and briefly describe the type of service provided. Do not include current WBC staff as references. The Consultant and the lead staff person must grant permission to the WBC to contact the references and others who may have pertinent information regarding the Consultant's and the lead staff person's qualifications and experience to perform the services required by this RFP. The WBC may evaluate references at the WBC'S discretion.

E. OMWBE Certification (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s), will be participating on this project. For information: <http://www.omwbe.wa.gov>. Self-certified or small or veteran owned businesses should so indicate as well.

3.5. COST PROPOSAL (MANDATORY)

A. Identification of Costs (SCORED)

Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington state sales and use taxes, as applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals which are consistent with state government efforts to conserve state resources.

4. EVALUATION AND CONTRACT AWARD

4.1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the WBC, which will determine the ranking of the proposals.

WBC, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.2. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal: 60%

Project Approach/Methodology	15 points (maximum)
Quality of Work Plan	15 points (maximum)

Project Schedule	15 points (maximum)
Deliverables / Outcomes	15 points (maximum)
Management Proposal: 20%	
Project Team Structure and Internal Controls	5 points (maximum)
Staff Qualifications and Experience	10 points (maximum)
Experience of the Consultant or Firm	5 points (maximum)
Cost Proposal: 20%	20 Points (maximum)

WBC reserves the right to award the contract(s) to the Consultant(s) whose proposal is deemed to be in the best interest of the WBC and the state of Washington.

4.3. ORAL PRESENTATIONS

The WBC may after evaluating the written proposals elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the WBC will contact the top-scoring firm(s) from the written evaluation to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding. The oral presentation will determine the apparent successful Contractor.

4.4. NOTIFICATION TO PROPOSERS

The WBC will notify the Apparently Successful Contractor of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail.

4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Consultant Notification is e-mailed to the Consultant. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the transmittal of the Unsuccessful Consultant Notification. The debriefing must be held within five (5) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm’s proposal;
- Critique of the proposal based on the evaluation;
- Review of proposer’s final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.6. PROTEST PROCEDURE

Protests may be made only by Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the debriefing. Protests may be submitted by e-mail, but must then be followed by the document with an original signature.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with

specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or WBC policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) WBC'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the WBC. The WBC Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that also submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the WBC's action; or
- Find only technical or harmless errors in the WBC's acquisition process and determine the WBC to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the WBC options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If the WBC determines that the protest is without merit, the WBC will enter into a contract with the apparently successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Services Contract Format including
- Exhibit C General Terms and Conditions (GT&Cs)

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:

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 90 days following receipt, and it may be accepted by the WBC without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-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. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. Bidder Responsibility Criteria; Bidder certifies that Bidder has not, within the three-year period immediately preceding the date of release of this competitive solicitation, been determined by a final and binding citation and notice of assessment issued by the state of Washington Department of Labor and Industries or through a civil judgment to have willfully violated state minimum wage laws (RCW 49.38.082; Chapters 49.46 RCW, 49.48 RCW, or 49.52 RCW). Bidder attests under penalty of perjury that the foregoing statement is true and correct.
6. I/we understand that the WBC will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the WBC, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
7. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
8. 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.
9. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we grant the WBC the right to contact references and others, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFP.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.11) If Contract exceptions are being submitted, I/we have attached them to this form.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

***If electronic, also include:* We are submitting a scanned signature of this form with our proposal.**

Signature of Proposer
Title

Date

Print Name

Place

City and State where signed

SAMPLE CONTRACT

**CONTRACT FOR SERVICES
BETWEEN
THE WASHINGTON BLUEBERRY COMMISSION
AND**

This Contract is made and entered into by and between the Washington Blueberry Commission, hereinafter referred to as "WBC", and the below named firm, hereinafter referred to as "Contractor,"

(Contractor Name)

(Address)

(City, State Zip)

Phone: [REDACTED]

Email: [REDACTED]

Federal ID No.: [REDACTED]

WA State UBI No.: [REDACTED]

PURPOSE

The purpose of this contract is to

SCOPE OF WORK

The Contractor will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Option 1: Identify all tasks, work elements, deliverables, outcomes expected, and objectives of the contract, and timetables by which major parts of the work are to be completed. Identify all cost associated with the deliverables, task, or outcomes to be paid for upon completion. The scope of work may be included within the text of the contract or attached as a separate exhibit as shown in Option 2 below.

Option 2: as included in the CONTRACTOR's Proposal dated _____ attached as Exhibit B, and the WBC'S Request for Proposals attached as Exhibit C.

The Contractor shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the Contract Manager, in accordance with the schedule above.

Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the WBC and the CONTRACTOR, and specific obligations of both parties.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance of this contract will be from _____ or date of execution, whichever is later, through _____, unless sooner terminated or extended as provided herein.

COMPENSATION AND PAYMENT

WBC will pay the Contractor within 30 calendar days of receipt of properly executed invoice vouchers. Requests for payment under this Contract shall be submitted by the Contractor on a Certified State Invoice Voucher (Form A-19) provided, or similar. Invoices shall include such information as is necessary for WBC to determine the date and exact nature of all expenditures. Each voucher will clearly reference WBC Contract Number _____ and the Contractor’s Statewide Vendor Registration number assigned by Washington State Office of Financial Management (OFM). Invoices shall be submitted to WBC’s Contract Manager.

Payment shall be made after acceptance by WBC’s Contract Manager of each deliverable as described in the Statement of Work. No payment in advance or in anticipation of services or supplies under this Contract shall be made by WBC. Claims for payment submitted by the Contractor to WBC for costs due and payable under this Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by WBC within 90 days after the expiration date.

Statewide Vendor Registration. The Washington State Office of Financial Management (OFM) maintains a central Contractor registration file for Washington State agencies to use for processing Contractor payments. This allows many Contractors to receive payments by direct deposit. Contractors are required to be registered in the Statewide Vendor Payment system, <http://www.ofm.wa.gov/isd/vendors.asp> prior to submitting a request for payment under this Contract. No payment shall be made until the registration is completed.

Timely payment. Payment by WBC will be considered timely if it is postmarked or deposited within 30 days of the following, whichever is later:

- Receipt of properly executed invoice vouchers;
- Acceptance of deliverables by WBC; or
- Statewide Vendor Registration.

The WBC may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

RETAINAGE

~~Ten percent of each payment will be withheld pending completion of the Contract. Thirty days after the final product is accepted the WBC Contract Manager will authorize payment in full of all retainages. However, if the contractor complete the work satisfactorily WBC may chose not to compensate the contractor for any of the work performed under this contract.~~

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

Contractor Contract Manager:	WBC Contract Manager:
Enter Contract Manager's Name	Enter Contract Manager's Name
Enter Name of CONTRACTOR and Address	Enter WBC and Address
Enter City, State & Zip Code	Enter City, State & Zip Code
Phone : ()	Phone: ()
Fax: ()	Fax: ()
Email address:	Email address:

INSURANCE

The Contractor shall provide insurance coverage as set out in this section (or as set forth in the Request for Proposals No. ____). The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontract, or agents of either, while performing under the terms of this contract.

The Contractor shall provide insurance coverage which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability 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.
2. Automobile Liability – In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall 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

3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give WBC 30 days advance notice of any insurance cancellation.

The Contractor shall submit to WBC within ten days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in this section, *Insurance*, and in the attached *General Terms and Conditions*, Attachment A. The Contractor shall submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

WBC and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B - Request for Proposals No. ____
- Exhibit C – Contractor’s Proposal dated _____
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the WBC'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _____ pages and _____ attachment(s), is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

Washington State Blueberry Commission

Signature

Signature

Title

Date

Title

Date

GENERAL TERMS AND CONDITIONS

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

- A. "WBC" shall mean the Washington Blueberry Commission, any division, section, office, unit or other entity of the WBC, or any of the officers or other officials lawfully representing that WBC.
- B. "Agent" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- 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.
- D. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 164.50 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state and federal statutes.

ACCESS TO DATA - In compliance with RCW 39.26, the Contractor shall provide access to data generated under this contract to WBC, the Joint Legislative Audit and Review Committee, and the state auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

Contractor agrees to make personal information covered under this agreement available to WBC for inspection or to amend the personal information. Contractor shall, as directed by WBC, incorporate any amendments to the personal information into all copies of such personal information maintained by the Contractor or its subcontractors.

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 WBC.

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 shall any claim arising under this Contract, be transferred or assigned by the Contractor without prior written consent of the WBC.

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

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning the WBC, or information which may be classified as confidential, for any

purpose not directly connected with the administration of this contract, except with prior written consent of the WBC, or as may be required by law.

CONFLICT OF INTEREST - Notwithstanding any determination by the Executive Ethics Board or other tribunal, the WBC 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 WBC 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 WBC 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.

CONTRACTOR'S PROPRIETARY INFORMATION - The Contractor acknowledges that the WBC is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract shall be a public record as defined in RCW 42.56. Any specific information submitted to the WBC and claimed by the Contractor to be confidential or proprietary, must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the WBC shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's proprietary information and the WBC intends to release the information, the WBC will notify the Contractor of the request and notify the Contractor of the date that such records will be released to the requester. It will be the responsibility of the Contractor to obtain any necessary court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the WBC will release the requested information.

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 WBC. The WBC 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 WBC 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 WBC 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 WBC.

The Contractor shall exert all reasonable effort to advise the WBC, 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 which was not produced in the performance of this contract. The WBC 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 WBC 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 the purpose of securing business. The WBC 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.

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

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the Contractor's name, address, and contract number; and
 - Be mailed to the agent and the other party's (respondent's) contract manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working 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.

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. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

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

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

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

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

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

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

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the WBC. 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.

Overpayments and Assertion of Lien - In the event that the WBC establishes overpayments or erroneous payments made to the Contractor under this contract, the WBC may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the WBC or by doing both.

PRIVACY - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. 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 WBC or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The WBC reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the Contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the WBC. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

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 WBC for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY - The Contractor agrees to submit to the WBC all advertising and publicity matters relating to this Contract wherein the WBC's name is mentioned or language used from which the connection of the WBC's name may, in the WBC'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 WBC.

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 which 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 WBC, personnel duly authorized by the WBC, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

REGISTRATION WITH DEPARTMENT OF REVENUE - The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to the WBC, 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.

The Contractor shall make available information necessary for WBC to comply with the client's right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor's internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this contract shall be made available to WBC and the U.S. Secretary of the Department of Health & Human Services, upon request.

SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this agreement. The Contractor and its SubContractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of WBC or as otherwise required by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data in any form. The Contractor shall make the Personal Information available to amend as directed by WBC and incorporate any amendments into all the copies maintained by the Contractor or its SubContractors.

The Contractor shall certify its return or destruction upon expiration or termination of this Contract and the Contractor shall retain no copies. If the Contractor and WBC mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or required by state and federal laws.

WBC reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by WBC. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

The Contractor shall notify WBC in writing within 5 working days of becoming aware of any unauthorized access, use or disclosure. The Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to indemnify and hold harmless WBC for any damages related to unauthorized use or disclosure by the Contractor, its officers, directors, employees, SubContractors or agents.

Any breach of this clause may result in termination of the contract and the demand for return of all Personal Information.

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 WBC may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the WBC'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 WBC 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 WBC. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the WBC 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 WBC or as provided by law.

TAXES - All payments accrued on account 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 WBC determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the WBC has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the WBC shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The WBC 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 WBC to terminate the Contract. A termination shall be deemed to be 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 WBC 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 WBC may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the WBC shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this contract, the WBC, in addition to any other rights provided in this contract, may require the Contractor to deliver to the WBC 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 WBC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the WBC, and the amount agreed upon by the Contractor and the WBC 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 the WBC, 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 WBC. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The WBC may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the WBC against potential loss or liability.

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

TREATMENT OF ASSETS -

- A. Title to all property furnished by the WBC shall remain in the WBC. 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 WBC 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 WBC 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 WBC in whole or in part, whichever first occurs.
- B. Any property of the WBC furnished to the Contractor shall, unless otherwise provided herein or approved by the WBC, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the WBC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any WBC property is lost, destroyed or damaged, the Contractor shall immediately notify the WBC and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the WBC all property of the WBC prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or SubContractors.

WAIVER - Waiver of any default or breach shall not be deemed to be 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 WBC.