



Washington State Department of Agriculture Gypsy Moth Eradication Project

LETTER TO REQUEST BIDS

No. K3277

January 6, 2021

DUE February 16, 2021, 5:00 PM Pacific Standard Time (PST)

Dear Applicant:

The Washington State Department of Agriculture (WSDA) is soliciting bids from individuals and organizations interested in participating on a project to aerially apply *Bacillus thuringiensis v. kurstaki* (Btk) insecticide over certain populated and non-populated areas in western Washington. The purpose of the project is to prevent defoliation of high-value trees by the Asian gypsy moth.

Scope:

It is the purpose and intent of this document to provide specifications for aircraft, insecticide, equipment, application, and other operational requirements necessary for a properly prepared and executed Agreement and for securing properly certified and approved aircraft, dispersal systems, service facilities, qualified ground personnel, and Federal Aviation Administration (FAA) certified and qualified pilots capable of making a proper aerial application of insecticide and performing necessary relate functions.

WSDA is planning a pre-proposal conference, during which potential contractors may obtain a better understanding of the work required. Staff will present the program objectives, information on products to be used, and technology interface requirements, as well as the mechanical and support aspects, including safety and security requirements needed for the successful development and conclusion of the program. The pre-proposal conference will be held via phone or computer on **January 12, 2021; at 1:00 pm. Contractors who wish to participate should register prior to the meeting date by contacting Jessica La Belle, jlabelle@agr.wa.gov (360) 890-0378.**

Questions arising at the pre-bid conference will be documented and answered in a written Q&A form and sent to each prospective contractor who has registered or signed in. Questions should be sent to Jessica La Belle, jlabelle@agr.wa.gov and must be received by **5:00 pm on January 15, 2021**. In the event it becomes necessary to revise part of this Letter to Request Bids, addenda will be provided via WEBS, WSDA Internet site, and email to all individuals who have signed up for the pre-bid conference and made the solicitation coordinator aware of their interest in writing.

Area to be Treated, Application Period, and Starting Date:

Silver Lake, Cowlitz County: 639 acres

The exact size and location of the treatment block are pending the approval of the Environmental Review process. The treatment block map is located on page 11 of this document.

WSDA will conduct three (3) aerial applications of Btk between April and June 2021. Applications will be repeated every 3 – 14 days. Exact treatment dates will depend on accumulated degree days,

foliage development and weather. During application, a release height of 100 to 200 feet above treetops will be maintained.

The WSDA Eradication Coordinator shall determine the spray schedule (day and time).

WEATHER RESTRICTIONS

The WSDA Eradication Coordinator shall determine when treatment operations will be prohibited. Information supplied by the spray block monitors and the pilot is used in making these decisions. The following spray block conditions are used as guidelines in halting treatment operations:

- Wind velocity exceeding ten (10) miles per hour.
- During rain or foggy weather, or when the foliage is dripping wet, or when there is an imminent threat (greater than 50% chance) of rain within four hours. After rain, applications will resume only after foliage is dry.
- When air turbulence (thermal updrafts, etc.) is so great as to seriously affect the normal spray pattern.
- When temperatures and relative humidity conditions are such that proper insecticide application may be hindered. Generally, applications will be halted when temperatures exceed 75 degrees Fahrenheit and/or relative humidity falls below 50%.

DESIGNATED AREAS

Application of the spray material will be confined to the designated treatment block. Spray should not be applied to bodies of water. The contractor will be working under a WSDA NPDES permit for invasive moth control and will be required to comply with the terms and conditions of that permit. Densely populated areas in or near the treatment block will be treated as early in the day as possible. Due to special circumstances, spraying in some areas may be restricted to certain times to mitigate public concerns or avoid unsafe situations. The WSDA will determine these times.

START TIME

The Contractor(s) shall have all aircraft, equipment, pilots, and ground support personnel on the job site at least 45 minutes prior to the start of all scheduled operations.

The period of performance of a contract, if any, resulting from this Letter to Request Bids is tentatively scheduled to begin on or about April 1, 2021 and be in force through June 30, 2021. Possible amendments may extend the period of performance, if necessary, at the sole discretion of WSDA.

The State of Washington encourages participation in all of its contracts by Minority, Women, Small, and Veteran Owned Business Enterprises. Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis.

Obligations of Contractor:

LOADING ZONES OR AIRFIELDS

The selection of a suitable airfield for use as a base of operations is the sole responsibility of the Contractor. Use of the site must not present problems from a legal aspect, and permission to use the site must be obtained by the Contractor. The Contractor must locate and secure permission for an airfield prior to the start of the project and be prepared to provide evidence of such permission to WSDA.

FAA WAIVER FOR CONGESTED AREAS

The Contractor is responsible for reviewing all treatment block maps and for identifying congested areas that would require an FAA waiver in order to conduct low-level flights over them. The Contractor is responsible for filing the required plan and documentation with the appropriate FAA Flight Safety District Office (FSDO) for congested areas so identified, for obtaining the necessary waiver(s), and for providing proof of such to the Eradication Coordinator.

MAINTENANCE

The Contractor must maintain a readily available on-site inventory of commonly needed spare parts and spare equipment including, but not limited to, pumps, pump seals, rotary atomizers to maintain the spray system; the aircraft and its electronic guidance and tracking system; the pumping system; the support trucks, and the storage tanks, and to provide for immediate replacement of critically needed parts and equipment. Scheduled maintenance must be conducted only at times that will not interfere with the spray operation. Non-scheduled maintenance may be conducted but is not to interfere with spray operations for longer than a period of one hour. Only emergency repairs are permitted during scheduled spray hours. Care must be taken to prevent leakage of spray material at all times and a proper spill containment plan must be included in the Contractor's Safety Plan.

SECURITY

The Contractor must abide by any current regulations issued by the FAA with regard to aircraft and insecticide safeguarding and security, as well as any rules and/or recommendations that are issued by state agencies, the Environmental Protection Agency, the USDA Forest Service, the Department of Homeland Security or any other responsible agency. At a minimum, the Contractor must provide the following:

- Chain-of-custody documentation (and/or shipping manifest) from the point of manufacture to delivery to the Contractor for the insecticide utilized.
- All spray aircraft must be disabled when not in use so that they cannot be started by anyone other than authorized personnel.
- All insecticide holding containers, hoppers, mix tanks, pumps, hoses, and similar equipment must be flushed prior to the start of operations and must have all possible points of entry sealed and secured when not in use.
- All spray aircraft and any associated insecticide and insecticide-handling equipment must be attended or guarded at all times, unless located on a restricted access secure airfield or if a waiver for the contract year is issued by WSDA.
- Access to the insecticide loading and storage areas must be restricted to authorized personnel of the Contractor and WSDA.

SPILL CLEANUP EXPENSES

The Contractor is solely responsible for all cleanup activity and costs resulting from any contamination caused by the accidental or intentional spilling, leakage, or dumping of insecticide, fuel, oil, or any other contaminant from Contractor-supplied equipment.

Product requirements:

The only product approved for use under this project is:

- Foray® 48B (Valent BioSciences, EPA reg. No. 73049-427)

Application rate for this project is ½ gallon (64 oz.) per acre – undiluted (neat)

The contractor must keep a copy of the product label and Safety Data Sheet (SDS) available on site throughout the course of the project to be made readily available, if necessary.

The contractor is responsible for purchasing, storage, transportation, security, and loading of the insecticide used for this project. The contractor must assure that adequate supplies of insecticide are strategically located in or near the project area at least 24 hours prior to the start of spraying.

The contractor is responsible for the proper disposal of all empty insecticide containers according to label requirements and state laws and regulations.

Aircraft and Dispersal System Requirements:

WSDA requires fixed wing aircraft (Air Tractor, Thrush, or similar) for this project.

Please provide a description of the overall system performance including a history of design, development, testing, modification(s), use and maintenance records and results of system in field tests and/or operational projects.

Every aircraft furnished for this contract must be properly licensed and airworthy under regulations of the Federal Aviation Regulations for commercial operations.

NAVIGATIONAL AIDS

All aircraft will be equipped with a working navigation/tracking, differentially corrected, global positioning system (GPS). The pilot must have a working knowledge of the GPS system installed in the aircraft. WSDA is responsible for determining and, if necessary, editing the treatment area boundaries and the associated exclusions, by utilizing a GIS. The contractor is responsible for transferring the GIS data created by WSDA personnel into the digital file format required by use of the contractor's installed GPS. In addition, the contractor is responsible for uploading the data into the application aircraft's GPS. Each day after spraying is completed; the recorded flight files will be downloaded for analysis for WSDA.

The guidance system being used will allow the flight log to be downloaded to an on-site computer for post-flight analysis and review. The flight log must show the entire flight of the aircraft from takeoff to landing and differentiate between spray on and spray off when viewed on the computer monitor. The software must have the capability to zoom to any portion of the flight for viewing in greater detail and a method to determine distance between each flight lane. The system must be able to calculate and show total acres treated during the flight. The software must be compatible with color printers and differentiate between spray on and spray off on the printed copy.

AUTOMATED FLIGHT FOLLOWING

Satellite based aircraft tracking hardware is required in all aircraft. The aircraft tracking hardware shall be powered by the aircraft's electrical system, installed per the manufacturer's installation manual, and operational in all phases of flight.

AIRCRAFT SPRAY SYSTEM

GENERAL SPECIFICATIONS

TANKS - Leak-proof, corrosion-resistant tanks with exterior filler openings must be used. The location and size of tanks must be so as to not impair airworthiness by overloading or displacing the center of gravity beyond acceptable limits. Filler openings or necks must be large enough to prevent surging during filling. Tanks must be vented to the outside of the fuselage.

EMERGENCY DUMP SYSTEM - Each aircraft must be equipped with an emergency jettisonable load-dumping system or emergency nonleaking dump valves of adequate capacity and adequately vented to dump the load and installed so as to prevent blowback into the fuselage. In no case must the ratio between gallons carried and the surface area of the dump-valve opening as measured in square inches be greater than 7.65 to 1. Exposed valve-control linkage must be protected to prevent unintentional opening of the valve in any manner. The control lever must be substantially mounted in the cockpit within easy reach of the pilot when properly wearing the shoulder harness.

PUMPING SYSTEM - The pumping system must be securely attached and capable of maintaining the pressure required to insure the even distribution of the insecticide. All plumbing and pumps must be large enough to handle the required flow. All parts, including pump seals, must be chemically and abrasively resistant to the spray material being used.

PRESSURE GAUGE - An accurate liquid-filled spray pressure gauge must be located so that the pilot can easily read it.

SHUTOFF - To avoid contamination of areas not scheduled for treatment, the entire spray system must be leak-proof and have a positive shutoff mechanism capable of eliminating dripping from the nozzles when shut off.

SYSTEM CLEANING - The aircraft spray system, including tanks, must be cleaned of all foreign material and flushed with water prior to the start of the spray operation. The spray system must be flushed following spraying on a daily basis to prevent drying of spray material from becoming a problem. The Contractor must clean all screens, check for leaks and clogs, verify pump pressure, and monitor flow rate (daily).

STRAINER - Each aircraft must be equipped with an in-line strainer (no finer than 30 mesh) to filter all material before it enters the spray boom.

SPRAY TIMER - Each aircraft must be equipped with an electronic flow-metering system that is activated automatically when the spray switch is operated.

The system must be capable of providing an accurate measurement of the cumulative spray time in minutes and tenths or minutes and seconds as well as an accurate measurement of the volume of spray material dispensed.

BOOM SYSTEM - Each aircraft must be equipped with an FAA-approved boom system of the type most commonly employed for the delivery system being used. This system must have:

- (a) Nozzles located so as to minimize the spraying of insecticide onto any part of the aircraft structure.
- (b) All nozzles rigidly attached to the boom without flexible dropper hoses.
- (c) Bleeder lines installed at the ends of the boom feeding back to the outboard nozzle if that nozzle is installed more than five inches from the boom end.

PUMP PRESSURE - The pump must have an effective operating pressure range of 20-50 PSI.

AUTOMATIC ON/OFF OF SPRAY BOOM - The aircraft spray system must be equipped with an automatic on/off of spray boom that is controlled by the aircraft's GPS guidance system. The ability to manually over-ride the automatic on/off system must be available.

AUTOMATIC FLOW CONTROL (OPTIONAL) - The aircraft spray system must be equipped with automatic flow control that is controlled by the aircraft's GPS guidance system.

ROTARY ATOMIZERS - Micronair®, Beecomist®, or similar WSDA-approved rotary atomizers are acceptable provided that the units have the capability of adjusting the screen rotation speed in order to change the droplet size. All rotary atomizers on an aircraft must be of the same type.

NUMBER AND SIZE - A minimum of six (6) rotary atomizers of the proper size and type must be provided for the particular aircraft being utilized in order to produce a uniformly dispersed spray cloud with a droplet volume median diameter (VMD) of 80-100 microns for Btk application.

INSTALLATION/ADJUSTMENT/CALIBRATION - The installation, adjustment, and calibration of the rotary atomizers, must be made in strict accordance with the manufacturer's recommendations to permit the application of the specified spray volume per acre. The flow rate for each individual rotary atomizer installed on a boom must not deviate ± 10 percent from the average flow rate for all rotary atomizers installed on the boom. Any rotary atomizer that deviates by more than ± 10 percent must be replaced. All units must be properly cleaned and serviced and be in good working condition when reporting on site for calibration verification.

CALIBRATION/CHARACTERIZATION - The Contractor's spray aircraft must arrive on site properly calibrated for the insecticide and rate of application specified. WSDA will verify the calibration by checking the flow rate of each aircraft prior to the start of the operation. If the calibration is incorrect, the Contractor must correct it immediately without causing any delay in the start of operations.

Dependent upon the delivery system and the application rate of the insecticide being used, calibration verification will be made using either water or the insecticide slated for application. The flow rate from the spray system will be monitored periodically during the spray operation and must be maintained within ± 5 percent of the desired flow rate.

Flights over card lines to characterize spray swath and droplet size may be required prior to the start of spray operations for certain aircraft as determined by WSDA. Standardized characterization techniques, including the use of a nonpermanent dye in the spray material, will be utilized. There will be no separate additional charge to WSDA for flights or for the insecticide used in making calibration or characterization checks.

Contractor Personnel:

PROJECT SUPERVISOR - The Contractor must designate one of its personnel to serve as the on-site project supervisor and to represent the company in all contractual matters that require prompt attention. This person must be familiar with all equipment being used and, as necessary, must be certified or registered as required by the Washington Pesticide Control Act rules and regulations of WSDA. If the project involves the use of no more than one loading zone at any given time, a spray pilot, observation pilot, or ground-support person may serve as the project supervisor. If the project involves the simultaneous use of two or more loading zones, the project supervisor must not be assigned to regularly fly an aircraft or serve as ground support for any aircraft. The project supervisor may, if qualified, be used as an alternate spray pilot if the regular pilot is debilitated or otherwise unavailable.

GROUND-SUPPORT PERSONNEL - The Contractor must supply sufficient numbers of properly trained and qualified ground-support personnel to drive all necessary support vehicles, handle insecticides, operate and maintain the equipment used to transfer insecticides, and properly fuel, service, and maintain each aircraft. All ground-support personnel must be familiar with the aircraft's spray system and knowledgeable of calibration techniques. All personnel provided by the Contractor must be experienced and fully trained in their duties and understand and be fluent in English. All ground personnel involved with the handling of insecticide must be supervised, certified, or registered as required by WSDA.

All ground-support personnel must be equipped and trained to take proper action in an emergency. These people must observe all safety precautions in handling the insecticide and in refueling the aircraft. The Contractor is required to replace any ground-support person who, in the opinion of WSDA, does not demonstrate the knowledge and capability to perform his/her duties.

PILOTS

FAA QUALIFICATIONS - The Contractor must provide pilots that are FAA qualified to operate the aircraft specified in the bid.

PESTICIDE APPLICATOR CERTIFICATION - Each spray pilot must be certified in the appropriate category by WSDA for the type of spraying being done. In the event any pilot does not hold a current applicator license, it must be obtained within ten (10) days after notification of award of contract.

WSDA'S RIGHT TO REJECT - WSDA reserves the right to reject the Contractor's use of any pilot who, in WSDA'S opinion, has performed unsatisfactorily in previous operations whether in the state of Washington or elsewhere. WSDA reserves the right to permanently reject any pilot who, in WSDA'S opinion, violates these Contract Specifications, is unsafe, or otherwise performs unsatisfactorily.

PILOT RESPONSIBILITY - The spray pilot is responsible for the accurate and proper application of the insecticide spray to the designated site using good application delivery procedures as generally recognized as correct by professionals in the aerial application industry.

The pilot is responsible for being able to proficiently operate all of the aircraft's electronic equipment including, but not limited to, radios and GPS guidance system.

The pilot is responsible at all times for the safe operation of the aircraft. WSDA will not require flying in fog, dense smoke, or under any other adverse conditions, which a prudent pilot would avoid, nor is the pilot required to operate from any site, which the pilot considers unsafe.

The pilot is responsible for the identification and avoidance of all flight hazards en route to, from, and within the operation area. **The pilot must make a reconnaissance flight over the spray block to identify and locate any such hazards or congregations of people prior to treating the block.**

The pilot is responsible for maintaining radio communication with WSDA'S treatment block monitors. The pilot must contact, via radio, the treatment block monitors when the pilot begins spraying the block, when the block is finished, and when a spray load is finished. Failure to maintain proper radio communications may result in the removal of the pilot from spray operations. In situations when the distance of the treatment block from the loading zone inhibits the ability for the pilot to communicate with the Eradication Coordinator, the pilot may communicate via radio with assigned treatment block monitors, if applicable.

Proposal Content:

The proposal is to be brief but should include:

1. Names, addresses, and telephone numbers of three business references, as well as staff qualifications, experience, resources and capacity.
2. Copies of all applicable licenses.
3. Project approach, work plan and schedule.
4. Cost or fees per acre.
5. Signed WSDA Certifications, Assurances, and Executive Order 18-03 form (Attachment A)

Proposals will be evaluated by WSDA based on the response to the information requested above. All items must be addressed for the proposal to be considered responsive. WSDA reserves the discretion to waive minor administrative irregularities.

Procurement Evaluation for Executive Order 18-03 (Firms without Mandatory Individual Arbitration Clauses)

Pursuant to RCW 39.26.160(3) (best value criteria) and consistent with Executive Order 18-03 Supporting Workers' Rights to Effectively Address Workplace Violations (dated June 12, 2018), WSDA will evaluate bids for best value and provide a bid preference in the amount of five (5) % to any bidder who certifies, pursuant to the certification attached as Attachment A – Certifications, Assurances, and Executive Order 18-03, that their firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.

Project Deliverables:

It is WSDA's desire to enter into a fixed price, deliverable-based (cost per acre) contract with a Contractor to provide the services requested in this **Letter to Request Bids**. The Contractor is requested to provide the insecticide (product named above) and its cost must be included in the per acre bid price. The proposed per acre fee must be an all-inclusive fee based on the total costs for providing the service.

All deliverables will be considered "completed" when the approving authority for WSDA has received the deliverable from the Contractor and has signed-off on the deliverables in writing.

Proposal Submission:

All bids must be submitted electronically to Rian Wojahn, Eradication Coordinator. Please reference LRB No. K3277 in the subject line of your response. **The deadline for submission of responses is February 16, 2021, 5:00 PM Pacific Standard Time (PST)** to the email address listed below. Late bids will not be accepted and will automatically be disqualified from consideration.

Email proposals to:

Attn. Rian Wojahn, rwojahn@agr.wa.gov
Reference LRB No. K3277 in the subject line

Late proposals will not be accepted and will be automatically disqualified from further consideration. Time extensions will not be granted.

Bidders assume the risk for the method of delivery chosen. WSDA assumes no responsibility for delays caused by any delivery service or for problems with Bidder's email.

The following weights will be assigned for bid evaluation purposes:

References/Experience/Staff Qualifications/Resources and Capacity	30 points
Project Approach/Work Plan/Schedule	35 points
Cost per acre	30 points
Signed Certifications, Assurances, and Executive Order 18-03 form (Attachment A)	5 points
TOTAL	100 points

WSDA reserves the right at its sole discretion to reject any or all bids prior to the execution of a contract. WSDA may award multiple contracts to multiple Contractors. This **Letter to Request Bids** does not obligate WSDA to contract for the services specified herein. The final selection, if any, will be the bid that in the opinion of WSDA best meets the requirements set forth in the **Letter to Request Bids** and is in the best interest of the state of Washington. WSDA is not obligated to select the lowest price bid. WSDA shall not be responsible for any costs associated with a bidder's preparation of a bid in response to this **Letter to Request Bids**.

WSDA may at its sole discretion, after evaluating the written proposals, elect to select the top-scoring firms as finalists for an oral presentation or interview. Should oral presentations or an interview become necessary, WSDA will contact the top-scoring firm(s) from the written evaluation to schedule a date, time, and location. Any commitments made by the Proposer at the oral interview will be considered binding. The oral presentation, if used, may be conducted over the telephone and will determine the apparent successful Contractor(s).

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. Complaints and protests may be made only by Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. This procedure constitutes the sole administrative remedy available to Consultants under this procurement.

In submitting a bid in response to this **Letter to Request Bids**, the bidder agrees to accept the terms set forth in the sample contract and general terms & conditions attached herein (Attachment B).

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.

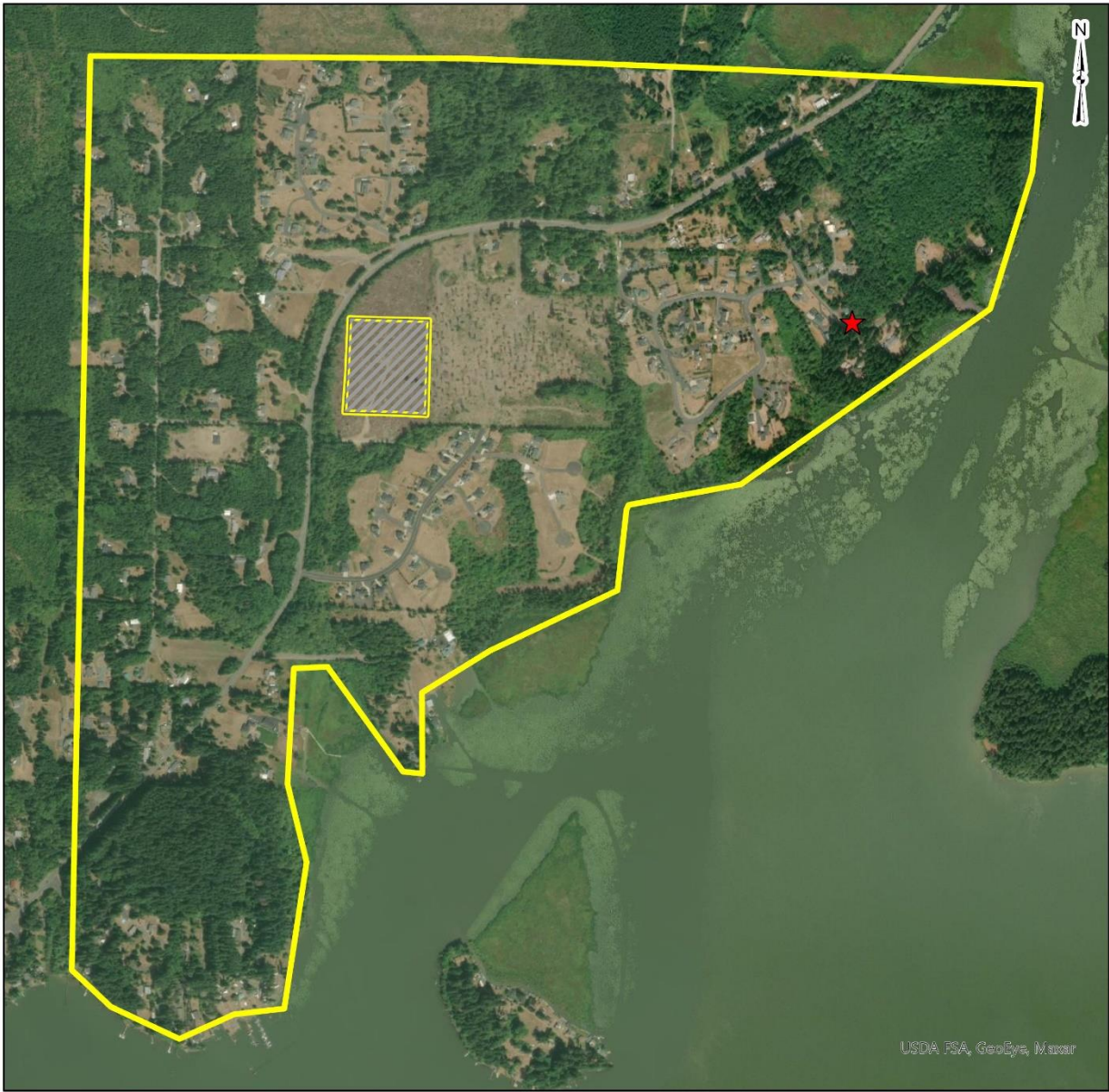
Any questions or requests for information about this project are to be directed to the Eradication Coordinator.

Thank you for considering this solicitation.

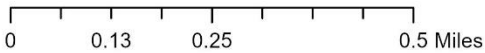
Sincerely,

Rian Wojahn

Proposed 2021 Gypsy Moth Treatment - Silver Lake, Cowlitz County



USDA FSA, GeoEye, Maxar



Approximately: 639 Acres



Legend

- Proposed Eradication Boundary
- Area will not be treated
- Asian Gypsy Moth Detection

Note:
Bodies of water will not be treated



ATTACHMENT A**CERTIFICATIONS, ASSURANCES, AND EXECUTIVE ORDER 18-03**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, K3277, 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 WSDA 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 WSDA will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the WSDA, 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 WSDA the right to contact references and others, who may have pertinent information regarding the ability of the Vendor and the lead staff person to perform the services contemplated by this RFP.
11. The proposer will identify if any firm principal is a participant in the Washington State 2008 Early Retirement Factor program: Yes No
12. WORKERS' RIGHTS (EXECUTIVE ORDER 18-03). Bidder certifies as follows (must check one):
 NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE

ACTION WAIVERS FOR EMPLOYEES. Bidder does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. Bidder requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

13. 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.

BIDDER NAME: _____

Print Name of Bidder – Print full legal entity name of the firm submitting the Bid

By: _____

Signature of Bidder’s authorized person

Print Name of person making certifications for Bidder

Title: _____

Title of person signing certificate

Place: _____

Print city and state where signed

Date: _____

ATTACHMENT B

SAMPLE CONTRACT FOR SERVICES

BETWEEN

WASHINGTON STATE

DEPARTMENT OF AGRCULTURE

AND

(Contractor's Name)

Contract Number _____ is made and entered into by and between the Washington State Department of Agriculture (hereinafter called "WSDA"), and X (hereinafter called "Contractor").

Contractor Name:

Address:

Telephone:

Facsimile:

Email:

Employer TIN # (Federal ID):

WA State UBI #:

PURPOSE

It is the purpose of this Contract to _____ (e.g., provide, obtain, etc.)

In consideration of the terms and conditions contained herein, the parties agree as follows:

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the following: *Special Terms & Conditions* contained in the text of this Contract; the *General Terms and Conditions*, Attachment A, the *Statement of Work*, Attachment B, the *Budget*, and Attachment C which is attached hereto and incorporated herein, and WSDA's *Request for Proposal (RFP)* and the Contractor's Bid which are incorporated by reference herein.

SPECIAL TERMS & CONDITIONS

STATEMENT OF WORK

The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of work set forth in the *Statement of Work*, Attachment B, attached hereto and incorporated herein.

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 WSDA'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.

PERIOD OF PERFORMANCE

This Contract shall begin on _____ or upon execution whichever is later, and end on _____, unless terminated sooner or extended by WSDA as provided herein.

WSDA reserves the right at its discretion, to extend the contract for up to (i.e., three, etc.) additional (i.e., one-year, etc.) periods.

COMPENSATION

WSDA shall pay an amount not to exceed \$_____ for the performance of all things necessary for or incidental to the performance of work as set forth in the *Statement of Work*, Attachment B, and in accordance with the *Budget*, Attachment C, which is attached hereto and incorporated by reference herein.

Within the total compensation WSDA intends to issue Task Orders for the work as it unfolds (see Exhibit B – Task Order Form). As deliverables are identified and level of effort to complete each deliverable is collaboratively estimated, Task Orders will be issued for specific deliverables and value.

RETAINAGE

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

BILLING PROCEDURES

WSDA will pay the Contractor within 30 calendar days of receipt of properly completed invoice vouchers. Invoices shall include such information as is necessary for WSDA to determine the date and exact nature of all expenditures. Each voucher will clearly reference **Contract Number** _____ and the Contractor's Statewide Vendor Registration number assigned by Washington State Office of Financial Management (OFM). If Contractor does not have an invoice template to request payment, Contractor can request a copy of a Certified State Invoice Voucher (Form A-19) from WSDA. **Invoices shall be submitted to WSDA's Contract Manager.**

Payment shall be made after acceptance by WSDA'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 WSDA. Claims for payment submitted by the Contractor to WSDA 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 WSDA within 30 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, <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.

Timely payment. Payment by WSDA 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 WSDA; or
- Statewide Vendor Registration.

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 WSDA 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:
 - a. \$1,000,000 Per Occurrence, using a Combined Single Limit for bodily injury and property damage.
3. **Professional Liability Insurance:**
 - a. 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. WSDA 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 WSDA 30 calendar days advance notice of any insurance cancellation or non-renewal action.

Identification – Policy must reference the WSDA's contract number and the WSDA 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 WSDA'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 WSDA 30 days advance notice of any insurance cancellation.

Submit to WSDA 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.

SITE SECURITY

While on WSDA's premises, contractor, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

MEMO OF UNDERSTANDING (Memo)

Any communications that either Contract Manager determines to address more than day-to-day concerns, but do not modify the terms of this Contract, shall be documented by a written, numbered *Memo of Understanding*.

ASSURANCES

WSDA and the Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable federal, state and local laws, rules, regulations and WSDA policy.

GOVERNANCE

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.

ORDER OF PRECEDENCE

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and Washington State Statutes and Regulations;
2. *Special Terms & Conditions* as contained in the basic Contract;
3. *General Terms & Conditions*, Attachment A;
4. *Statement of Work*, Attachment B, *Budget*, Attachment C, *Performance Measurement Report*, Attachment D;
5. WSDA's *Request for* _____ (RF__) No. _____, _____ dated _____, _____, 20XX;
6. Contractor's proposal, dated ____, _____, 20XX;
7. Any other provisions of the Contract incorporated by reference or otherwise.

SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, or part thereof if such remainder conforms to the terms and requirements of applicable law and the intent of this Contract, and to this end the provisions of this Contract are declared to be severable.

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.

The Contract Manager for the CONTRACTOR is:	The Contract Manager for WSDA is:
<hr/> <p>(Contract Manager's Name)</p>	<hr/> <p>(Contract Manager's Name)</p>
<hr/> <p>(Contractor's Name)</p>	<p>Department of Agriculture PO Box 42560 Olympia WA 98504-2560</p>
<hr/> <p>(Address)</p>	<p>Phone: (____) _____</p>
<p>Phone: (____) _____</p>	<p>FAX: (____) _____</p>
<p>FAX: (____) _____</p>	<p>E-Mail: _____@agr.wa.gov</p>
<p>E-Mail: _____</p>	

ALL WRITINGS CONTAINED HEREIN

This Contract consists of _____ (____) pages including the following attachments:

- A = General Terms & Conditions
- B = Statement of Work (if used as an attachment)]

This Contract sets forth in full all the terms and conditions agreed upon by the parties. Any other agreement, representation, or understandings, verbal or otherwise, regarding the subject matter of this Contract shall be deemed to be null and void and of no force and effect whatsoever. Parties executing this contract by signing below warrant they have the authority to execute the contract on behalf of the Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Contractor

**Washington State Department of
Agriculture**

(Print Name)

(Print Name)

(Title)

(Title)

(Signature)

(Signature)

(Date)

(Date)

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this Contract, the following terms have the following meanings:

Agency means the Washington State Department of Agriculture, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.

Confidential Information means information identified as confidential or exempt from public disclosure. The term also includes Personal Information regardless of whether such information has been identified as confidential or exempt from disclosure.

Contract Manager means the representative identified in the Special Terms & Conditions of the Contract who is delegated the authority and responsibility to administer the Contract.

Contractor means that firm, provider, organization, individual or other entity performing service(s) under this contract, and includes all employees of the Contractor.

Director means the Agency's Director or any delegate authorized to act on the Director's behalf.

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 or Protected Health Information as defined by the federal Health Insurance Portability and Accountability Act Pub. L. No. 104-191, § 264, 110 Stat. 1936, any financial identifiers, and other information that may be exempt from public disclosure or other unauthorized persons under state and federal statutes.

Subcontractor means 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" mean Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with chapter 39.26 RCW, the Contractor must provide access to data generated under this Contract to the Agency, 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.

ADVANCE PAYMENTS PROHIBITED

Contractor must not request payments in advance of or in anticipation of goods or services to be provided under this Contract.

AMENDMENTS

The parties may amend this Contract by mutual agreement. Such amendments are not binding unless in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336 ("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

The Contractor must not transfer or assign this contract, or any claim arising under this contract, without prior written consent of the Agency.

ATTORNEYS' FEES

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

CALCULATION OF TIME

Unless otherwise specified, a time period prescribed in this Contract is in calendar days, begins to run the day after the date of the triggering act or event, and ends at 5:00 p.m. on the last day of the period. When the last day is a Saturday, Sunday, or legal holiday, the period of time ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may terminate this Contract for cause and without notice of need to take corrective action if the Agency finds that the Contractor is involved in a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute in connection with the procurement of or performance under this Contract. The Agency must provide the Contractor notice and an opportunity to respond to allegations prior to termination.

CONFIDENTIALITY/SAFEGUARDING INFORMATION

The Contractor must not use or disclose any information concerning the Agency for any purpose not directly connected with the administration of this Contract, except with prior written consent of the Agency or as may be required by law.

The Contractor must not release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons, including anyone not directly employed by Contractor, Confidential Information without the express written consent of the Agency or as otherwise required by law. The Contractor must protect Confidential Information, collected, used, or acquired in connection with this Contract against unauthorized use, disclosure, modification or loss. The Contractor must ensure its directors, officers, employees, subcontractors or agents use Confidential Information solely for the purposes of accomplishing the services set forth by this Contract.

Immediately upon expiration or termination of this Contract, Contractor will destroy all Confidential Information not required to be retained by professional standards.

Any breach of this provision may result in termination of the Contract and the demand for return of all Confidential Information. The Contractor indemnifies and holds harmless the Agency for any damages related to the Contractor's unauthorized use of Confidential Information.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this Contract are "works for hire," as defined by the U.S. Copyright Act, and owned by the Agency. The Agency is considered the author of such materials. To the extent the materials are not "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all

materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials in this provision 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. Data includes, but is not limited to, all information that supports the findings, conclusions, and recommendations of the Contractor's reports, data extracts, reports or information provided by the Agency. Ownership includes, but is not limited to, the right to use, copyright, patent, register and the ability to transfer these rights.

For materials delivered under the Contract that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to publish, translate, reproduce, deliver, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the 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 must 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 Contractor must provide the Agency with 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 has 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 commercial or selling agents maintained by the Contractor for the purpose of securing business. In the event of Contractor's breach of this clause, the Agency has the right to annul this Contract without liability. In lieu of annulling the Contract, the Agency may deduct the full amount of such commission, percentage, brokerage or contingent fee from the Contract price or consideration.

CUMULATIVE RIGHTS AND REMEDIES

The rights and remedies of the Agency provided for in this Contract are cumulative and not exclusive. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies is available at law, regardless of whether the right or remedy is available at the time of Contract execution.

DEBARMENT, SUSPENSION AND INELIGIBILITY

The Contractor certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by the State of Washington and, if federal funds are a source of funding for this Contract, any federal department or agency.

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties' Contract

Managers that cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director.

The request for a dispute hearing must:

1. Be in writing;
2. State the disputed issue(s);
3. State the relative positions of the parties;
4. State the Contractor's name, address, and Contract Number; and
5. Be mailed to the Director and the other party's (respondent's) representative within 3 days after the parties agree that they cannot resolve the dispute.

The respondent must send a written answer to the requester's statement to the Director and the requester within 5 days. The Director must review the written statements and reply in writing to both parties within 10 days. The Director may extend this period by notifying the parties.

This dispute process precedes any action in a judicial or quasi-judicial tribunal. Nothing in this Contract limits the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

Contractor must not charge the Agency for services and expenses that Contractor has charged or will charge to the State of Washington or any other party under any other contract or agreement. The Agency is not liable for payment of such charges.

EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS

As previously certified in Contractor's bid, quotation and/or proposal submission, Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that during the term of this Contract, Contractor will not require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers as a condition of employment.

GOVERNING LAW AND VENUE

This Contract must be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought in connection with this Contract is proper only in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, the Contractor must indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees, from and against all claims for injuries or deaths arising out of or resulting from the performance of this Contract. "Claim," as used in this Contract, means any financial loss, claim, suite, 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 thereby.

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

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim

arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless the State is not eliminated or reduced by any actual or alleged concurrent negligence of State and its agencies, officials, agents, or employees.

The 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 this Contract to create an independent contractor relationship. The Contractor and its employees or agents performing under this Contract are not employees or agents of the Agency. The Contractor will not hold itself out as, nor claim to be, an officer or employee of the Agency or of the State of Washington by reason of this Contract, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Contractor is solely responsible for conduct and control of the work.

INDUSTRIAL INSURANCE COVERAGE

The Contractor must 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, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency 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 must comply with all applicable local, state, and federal licensing and accrediting requirements / standards, necessary in the performance of this Contract.

LIMITATION OF SIGNATURE AUTHORITY

Except in the case of an extension of time, only the Agency's delegate by writing (delegation to be made prior to action) has the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. No alteration, amendment, modification, or waiver of any clause or condition of this Contract is effective or binding unless made in writing and signed by the Agency.

NONDISCRIMINATION & CIVIL RIGHTS

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Agency must give Contractor reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the Disputes clause set forth by this Contract.

OVERPAYMENTS AND ASSERTION OF LIEN

Contractor must refund to Agency any amount of overpayment or erroneous payment. The Agency may secure repayment, plus interest, by the filing of a lien against the Contractor's real

property or by requiring Contractor to post a bond, assignment of deposit, or some other form of security acceptable to the Agency.

PROPRIETARY INFORMATION

The Agency is subject to chapter 42.56 RCW, the Public Records Act. This Contract and any documents Contractor submits to the Agency under this Contract is a public record as defined in RCW 42.56. If the Contractor submits any information to the Agency that the Contractor claims to be confidential or proprietary, Contractor must be clearly identify the information as such. To the extent consistent with chapter 42.56 RCW, the Agency will maintain the confidentiality of all such information marked confidential or proprietary. If the scope of a request made pursuant to RCW 42.56 includes the Contractor's proprietary or confidential information and the Agency intends to release the information, the Agency will notify the Contractor of the request and the date the records will be released to the requester. If Contractor desires to prevent disclosure, Contractor must obtain a court order enjoining disclosure. If the Contractor fails to obtain such court order, the Agency will release the requested information.

PUBLICITY

The Contractor must submit to the Agency all advertising and publicity matters relating to this Contract in which the Agency's identity is named, inferred, or implied. The Contractor must not publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECAPTURE

If the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the Agency reserves the right to recapture funds in an amount to compensate the Agency for the noncompliance.

RECORDS, DOCUMENTS, AND REPORTS

The Contractor must maintain books, records, documents and other evidence relating to this Contract and performance of the services described by this Contract, 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. At no additional cost, these records, including materials generated under the Contract, are subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Agency, the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or any of its Subcontractors.

The Contractor must retain all books, records, documents, and other materials relevant to this Contract for six years following the date of final payment. If additional litigation, claim or audit is started before the expiration of the six (6) year period, the Contractor must retain all records until all litigation, claims, or audit findings involving the records are resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor must comply with the Washington State law requiring registration with the Department of Revenue.

SEVERABILITY

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

Contract.

SITE SECURITY

While on the Agency premises, Contractor, its agents, employees, or subcontractors must conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTS

The Contractor must not enter into subcontracts for any of the work contemplated under this Contract without prior written approval of the Agency. Contractor must prohibit Subcontractors from further subcontracting without prior written approval of the Agency. The existence of the subcontract does not operate to release or reduce the liability of the Contractor to the Agency 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.

The Contractor must ensure that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

SURVIVAL

The terms, conditions, and warranties in this Contract that by their sense and context are intended to survive beyond performance, survive the expiration, cancellation, or termination of this Contract.

TAXES

The Contractor is solely responsible for payment of all taxes due on payments under this Contract. The Contractor is solely responsible for all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor.

TERMINATION OR SUSPENSION FOR CONVENIENCE

The Agency may terminate or suspend this Contract for convenience, in whole or part, upon 10 days written notice. If this Contract is so terminated, the Agency is liable only for payments required under the terms of this Contract for services rendered or goods provided prior to the effective date of termination.

TERMINATION OR SUSPENSION FOR CAUSE

If the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency must notify the Contractor in writing of the need to take corrective action, unless such notice of corrective action is otherwise excused by this Contract. The Agency may suspend all or part of the Contract or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach or the time Contractor takes for corrective action. If the Contractor does not take required corrective action within 30 days, the Agency may immediately, or upon a date determined by the Agency, terminate the Contract. If so terminated, the termination is deemed a "Termination for Convenience" if the Agency determines that failure to perform was outside the control of the Contractor and the Contractor is not otherwise in default, at fault, or negligent.

In the event of termination or suspension for cause, the Contractor is 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.

TERMINATION OR SUSPENSION FOR LOSS OF FUNDING OR GOVERNMENT SHUTDOWN

If funding from any source is withdrawn, reduced, or limited in any way after the effective date of

this Contract and prior to normal completion, the Agency may immediately terminate or suspend the Contract without advance notice. In lieu of termination or suspension, the parties may amend the Agreement to reflect the new funding limitations and conditions. If temporary federal or state government shutdowns occur for any reason, the Agency may suspend this Contract or delay payments due under it without advance notice.

TERMINATION PROCEDURE

Upon termination of this Contract, the Contractor must deliver to the Agency any property specifically produced or acquired for the performance of this Contract in accordance with the Treatment of Assets provision.

The Agency must 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 the following:

1. Completed work and services for which no separate price is stated;
2. Partially completed work and services;
3. Other property or services which are accepted by the Agency; and
4. The protection and preservation of property, unless the termination is for cause, in which case the Director will determine the extent of the liability. The Agency may withhold from any amounts due the Contractor such sum as the Director determines to be necessary to protect the Agency against potential loss or liability.

After receipt of a notice of termination, and except as otherwise directed by the Agency's Contract Manager, the Contractor must:

1. Stop work under the Contract on the date, and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency's Contract Manager all of the rights, titles, 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 Agency's Contract Manager to the extent he or she may require, which approval or ratification is 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, if any, as directed by the Agency's Contract Manager, 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 that has not been terminated; and
7. Take such action as may be necessary, or as the Agency's Contract Manager 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

Title to all property furnished by the Agency remains in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, passes to and vests in the Agency upon delivery of such property by the

Contractor. The title passes to the Contractor only if the Agency specifically agrees to grant title in this Contract for asset(s) purchased.

Contractor must use any property furnished by the Agency only for the performance of this Contract, unless otherwise provided by this Contract or approved by the Agency in writing.

Contractor must return property to the Agency in same condition as when it was furnished to the Contractor, normal wear and tear excepted. The Contractor is responsible for any loss or damage to property of the Agency that results from the Contractor's negligence or the Contractor's failure to maintain the property in accordance with sound management practices.

If any Agency property is lost, damaged or destroyed, the Contractor must notify the Agency and take all reasonable steps to protect that property from further damage.

The Contractor must surrender to the Agency all property of the Agency upon completion, termination or cancellation of this Contract.

All reference to the Contractor under this clause includes any employees, agents or Subcontractors.

U. S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL


The Agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>. Compliance with OFAC payment rules ensures that the Agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Agency will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, the Agency reserves the right to: 1) make a determination of "reasonability" before taking the positive match to a higher authority, 2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, 3) comply with an OFAC investigation, if required, and/or 4) if the positive match is substantiated, notify the Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. The Agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

Failure to insist on strict performance by either party does not constitute a waiver of the other party's obligations. Waiver of any right must be in writing and signed by an authorized representative of the party waiving the right.

Exhibit B

TASK ORDER Washington State Department of Agriculture (WSDA) 	Task Order #	Contract #
	Type of Services	Date Issued

Title:

This Task Order is issued under the provisions of WSDA contract _____. The services authorized are within the scope of services set forth in the Purpose of the contract. All rights and obligations of the parties shall be subject to and governed by the terms of the contract, including any subsequent modifications, which are hereby incorporated by reference.

Purpose

The purpose of this Task Order is to provide (*one of the deliverables*) _____ to the Washington State Department of Agriculture for...

Statement of Work

TASK 1:

Objective:

Deliverables:

Deliverables are subject to review and approval by WSDA prior to payment. Approval and payment of deliverables will indicate acceptance of complete deliverables.

Start Date		End Date	
Budget			
Description / Task		Est. Hours	Unit Cost
1			
2			
3			
4			
WSDA shall pay an amount up to but not to exceed			
Contractor's Approval		Department of Agriculture Approval	
(Signature) Contractor's Authorized Representative (Date)		(Signature) WSDA Authorized Representative (Date)	
Name		Name	
Telephone No.		Telephone No.	
Email:		Email:	