

**STATE OF WASHINGTON RECREATION
AND CONSERVATION OFFICE
OLYMPIA, WASHINGTON**

**REQUEST FOR QUALIFICATIONS ~~AND QUOTATIONS (RFQQ)~~
RFQQ NO. RCO 2103**

If you download this RFQQ from the Recreation and Conservation Office (RCO) web site located at <https://rco.wa.gov/about-us/employment-and-contracts/> you are responsible for sending your name, address, e-mail address and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ amendments or bidder questions/RCO answers.

PROJECT TITLE: Family Forest Fish Passage Program Engineering Assistance

PROPOSAL DUE DATE: May 14, 2021 – 4:00 pm, Local Time, Olympia WA
Only e-mailed bids will be accepted.

EXPECTED TIME PERIOD FOR CONTRACT: July 1, 2021 - June 30, 2023

CONSULTANT ELIGIBILITY: This procurement is open to Professional Engineers licensed in the State of Washington with extensive experience in designing and implementing fish passage projects in the forestland environment.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Consultants
3. Proposal Contents
4. Evaluation and Award
5. Exhibits
 - A. Certification and Assurances
 - B. Workers' Rights Certification
 - C. Sample Personal Service Contract with General Terms and Conditions

Contents

1. INTRODUCTION	6
1.1 BACKGROUND AND PURPOSE	6
1.2 PARTICIPATING AGENCIES	6
1.3 OBJECTIVE	7
1.4 SCOPE OF WORK	7
1.5 MINIMUM QUALIFICATIONS	7
1.6 FUNDING AND COMPENSATION	8
1.7 PERIOD OF PERFORMANCE	8
1.8 DEFINITIONS	9
1.9 AMERICANS WITH DISABILITIES ACT	9
2. GENERAL INFORMATION FOR CONSULTANTS	9
2.1 RFQ COORDINATOR	9
2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES	9
2.3 COMPLAINT PROCEDURE	10
2.4 SUBMISSION OF PROPOSALS	11
2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE	11
2.6 REVISIONS TO THE RFQ	12
2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION	12
2.8 ACCEPTANCE PERIOD	12
2.11 RESPONSIVENESS	12
2.12 MOST FAVORABLE TERMS	13
2.13 CONTRACT AND GENERAL TERMS & CONDITIONS	13
2.14 COSTS TO PROPOSE	13
2.15 NO OBLIGATION TO CONTRACT	13
2.16 REJECTION OF PROPOSALS	13
2.17 COMMITMENT OF FUNDS	14
2.18 INSURANCE COVERAGE	14
3. PROPOSAL CONTENTS	16
3.1 LETTER OF SUBMITTAL (SCORED)	16
3.2 QUALIFICATIONS SECTION	17
3.2.1. BUSINESS INFORMATION (MANDATORY)	17
3.2.2. EXPERIENCE (SCORED)	18
3.2.3. COMPLETED PROJECTS (SCORED)	18

3.2.4. SCHEDULE (SCORED) 18

3.2.5. STAFFING (SCORED) 18

3.2.6. REFERENCES (MANDATORY) (SCORED) 19

3.2.7. OMWBE CERTIFICATION (Optional And Not Scored) 19

4. EVALUATION AND CONTRACT AWARD 20

4.1 EVALUATION PROCEDURE 20

4.2 EVALUATION WEIGHTING AND SCORING 20

4.3 ORAL PRESENTATIONS MAY BE REQUIRED 20

4.4 NOTIFICATION TO PROPOSERS 21

4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS 21

4.6 PROTEST PROCEDURE 21

5. RFQ EXHIBITS 23

EXHIBIT A 24

EXHIBIT B 25

EXHIBIT C 26

1. INTRODUCTION

1.1 BACKGROUND AND PURPOSE

The Washington State Recreation and Conservation Office, hereafter called “AGENCY,” is seeking statements of qualifications from licensed professional engineers to provide engineering services on potential and funded projects under the Family Forest Fish Passage Program (FFFPP).

The purpose of the RFQ is two-fold. First, the FFFPP may require engineering services to develop preliminary design concepts and cost estimates for potential high priority projects. Engineering services may also be needed once the project is funded to assist local sponsors with implementation. This could potentially cover a number of engineering tasks including but not limited to: preparing bid documents, final design, contractor contract negotiations, construction management, construction supervision and inspection, and guidance on challenging projects.

Second, the FFFPP wishes to create a “short list” list of up to five qualified consulting engineers that local sponsors can select from for implementing funded projects.

Family Forest Fish Passage Program, which was created in May 2003 by passage of Second Substitute House Bill 1095 (SSHB 1095). The FFFPP program assists small forest landowners in complying with “Forests and Fish Rules” related to Road Maintenance and Abandonment Plans (RMAPs), through technical and financial assistance to landowners correcting fish passage barriers.

In general, the law provides that:

- The state will create a cost-sharing program and provide 75%-100% of the cost of repairing fish passage barriers.
- No small forest landowner will be required to pay for any part of repairing or replacing a fish passage barrier before submitting a Forest Practices Application for harvesting trees.
- All fish barriers must be prioritized and repaired on a “worst-first” basis.

1.2 PARTICIPATING AGENCIES

The FFFPP is a statewide effort co-managed by the Department of Natural Resources (DNR), the Washington Department of Fish and Wildlife (WDFW), and the AGENCY. Together, these three state agencies have created a Fish Passage Team that implements the program as follows:

- The DNR’s Small Forest Landowner Office (SFLO) is responsible for implementing the FFFPP and is the primary point of contact for anyone who is interested in learning more about the program. The SFLO is also responsible for selecting which of the prioritized projects will be funded.
- The WDFW is responsible for identifying and prioritizing fish passage barriers

on small forestlands.

- The AGENCY is responsible for administering the grant program.
- Washington Farm Forestry Association (WFFA): The WFFA serves in an advisory capacity to the Program and is responsible for ongoing policy development on behalf of family forest landowners statewide.

When the AGENCY solicited bids in 2016, five million dollars were appropriated for project work during the 2015-2017 budget. The 2021-2023 budget has not been established at this time, but this program anticipates an allocation of \$5.9 Million.

1.3 OBJECTIVE

The objective of this document is to obtain statements of qualification and hourly rates (in dollars) from individuals or organizations with the education, training, and experience suitable for design and implementation of fish passage projects on small forestland landowner sites. A range of engineering services may be needed.

The AGENCY may award one or more contracts to the highest-ranking organizations or consultants who submit proposals as a result of this RFQ.

1.4 SCOPE OF WORK

A successful contractor will be expected to:

- Provide written documentation of project reviews and site visits including comments on the general site conditions and correction alternatives.
- Work directly with the Fish Passage Team who will provide specific details and scope of work for engineering services on each project.
- Provide all equipment to perform the engineering tasks.
- Provide transportation to sites (will reimburse mileage at state rate).

1.5 MINIMUM QUALIFICATIONS

For the purposes of this RFQ, individual consultants or organizations may respond.

The engineer must have two licenses: a State of Washington business license, and a State of Washington license as a professional engineer.

The following minimum qualifications apply for all candidates:

- Working knowledge of the publication *Water Crossing Design Guidelines 2013 Edition* (WDFW).
- At least five years of experience in one or more of the following fields: salmon recovery, natural resources, fisheries, or environmental engineering.

- Ability to provide clear and concise design memos or plans to the Fish Passage Team.
- Ability to evaluate project site conditions and develop cost effective design alternatives.
- Ability to accomplish tasks on time and within budget.
- Ability to work with landowners, contractors, local sponsors, and state agencies to implement projects.
- Ability to design projects to meet the WDFW Fish Passage Criteria in a cost effective way.
- Experience working with Conservation Districts, Tribes, Regional Fisheries Enhancement Groups, and landowners.
- Extensive field experience in implementing successful fish passage projects.
- Ability to communicate clearly with landowners, sponsors, and the Fish Passage Team.
- Willingness to travel.

Bidders who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated and no score will be assigned.

1.6 FUNDING AND COMPENSATION

The budget for FFFPP has not been appropriated by the legislature at the time of posting this RFQ. It is anticipated the budget will be around \$5.9 million for the program, with an average of \$16,000 spent per project.

The CONSULTANT shall be compensated for professional services on an hourly basis per the rate schedule provided in the proposal. The funding available includes travel costs and will be reimbursed at the current government rates in effect at the time of travel.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. In the event additional funding becomes available, any contract awarded may be negotiated to provide additional related services.

A final budget will be established during contract negotiation.

1.7 PERIOD OF PERFORMANCE

The period of performance resulting from this RFQ will begin on or about **July 1, 2021** and to end on **June 30, 2023**. The AGENCY reserves the option at its sole discretion to extend the contract for up to three additional years in annual increments.

1.8 DEFINITIONS

Definitions for the purposes of this RFQ include:

AGENCY – The Recreation and Conservation Office (RCO) is the AGENCY of the State of Washington that is issuing this RFQ.

CONSULTANT – Individual submitting a proposal in order to attain a contract with the AGENCY.

CONTRACTOR – Individual whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

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

Request for Qualifications (RFQ) – Formal procurement document in which AGENCY needs are identified and firms are invited to provide their qualifications to deliver such services and their hourly rates.

1.9 AMERICANS WITH DISABILITIES ACT

The AGENCY complies with the Americans with Disabilities Act (ADA). Prospective CONSULTANTS may contact the RFQ Coordinator to receive this Request for Qualifications and Quotations in an alternative format.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1 RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the CONSULTANT and the AGENCY upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Julia Marshburn, Contract Specialist
E-mail	julia.marshburn@rco.wa.gov

Any other communication will be considered unofficial and non-binding on the AGENCY. CONSULTANTS are to rely on written statements issued by the RFQ Coordinator. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the CONSULTANT.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	April 7 ²⁸ , 2021
Question and Answer Period	April April 28 7 May 3 14 , 2021
Issue addendum to RFQ (if applicable)	April 19 May 4 , 2021
Deadline for receiving complaints	April 19 May 4 , 2021 4:00 p.m.

Formatted: Highlight

Proposals due	May 14, 2021 4:00 p.m.
Evaluate proposals	May 17⁰ 21¹⁴ 2021
Conduct oral interviews with finalists, if necessary	May 4 21 , 2021
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	May 24 18 , 2021
Hold debriefing conferences (if requested)	May 25 19 27 24 , 2021
Negotiate contract	May 24 18 – June 2 4 , 2021
Begin contract work	July 1, 2021

The AGENCY reserves the right to revise the above schedule.

2.3 COMPLAINT PROCEDURE

The complaint process is available to CONSULTANTS interested in this solicitation. The complaint process allows CONSULTANTS to focus on the solicitation requirements and evaluation process and raise issues with these processes early enough in the process to allow the AGENCY to correct a problem before proposals are submitted and time expended on evaluations.

A CONSULTANT may submit a complaint based on any of the following:

- The solicitation unnecessarily restricts competition;
- The solicitation evaluation or score process is unfair or flawed; or
- The solicitation requirements are inadequate or insufficient to prepare a response.

CONSULTANTS may submit complaints up to five business days prior to the proposal due date noted in the Estimated Schedule of Procurement Activities. However, CONSULTANTS are encouraged to submit complaints as soon as possible so the AGENCY can rectify the issue(s) early in the process. Complaints must be submitted to the RFQ Coordinator. In order to be considered a valid complaint, the complaint must meet the following requirements:

- Must be in writing.
- Must be sent to the procurement coordinator, or designee, in a timely manner.
- Should clearly articulate the basis for the complaint.
- Should include a proposed remedy.

Complaints not received by the deadline noted in the Estimated Schedule of Procurement Activities will not be reviewed by the AGENCY.

The AGENCY Contracts Administrator or an employee delegated by the Contracts Administrator will review valid complaints and respond to the submitter in writing. The

Formatted: Font: (Default) Arial, 12 pt

Formatted: Normal, Indent: Left: 0.38", No bullets or numbering

response, and any changes to the solicitation, will be posted to WEBS prior to the proposal due date. Any complaint addressed during the complaint process cannot be raised during the protest process.

2.4 SUBMISSION OF PROPOSALS

E-Mail Submittal Only

CONSULTANTS are required to submit an electronic copy in PDF format of their proposal to Julia Marshburn, at julia.marshburn@rco.wa.gov. The proposal must be attached to an email and arrive at the AGENCY no later than **4:00 p.m. on Friday, May 4, 2021**.

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

Proposals may NOT be transmitted in hard copy or by using fax transmission.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract(s), if any, resulting from this RFQ is signed by the Director of the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.56, "Public Records."

Any information in the proposal that the CONSULTANT desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56.270 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the CONSULTANT is making the claim. 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.

The AGENCY will consider a CONSULTANT's request for exemption from disclosure; however, the AGENCY will decide predicated upon Chapter 42.56 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The CONSULTANT must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has

been given an opportunity to seek a court injunction against the requested disclosure. A charge will be made for copying and shipping, as outlined in RCW 42.56.120. No fee shall be charged for inspection of contract files, but 24 hours' notice to the RFQ Coordinator is required. All requests for information should be directed to the RFQ Coordinator.

2.6 REVISIONS TO THE [RFQ](#)

In the event it becomes necessary to revise any part of this RFQ, addenda will be provided via e-mail to all individuals who made the RFQ Coordinator aware of their interest. Addenda will also be published on Washington's Electronic Business Solution (WEBS) for all who downloaded the RFQ from that site.

If you downloaded this [RFQ](#) from the AGENCY web site located at <https://rco.wa.gov/about-us/employment-and-contracts/>, you are responsible for sending your name, e-mail address, and telephone number to the RFQ Coordinator in order for your organization to receive any RFQ addenda.

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

2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in 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. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at omwbe.wa.gov or by phone at (360) 664-9750 to obtain information on certified firms.

2.8 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by the AGENCY from the due date for receipt of proposals.

2.11 RESPONSIVENESS

All proposals will be reviewed by the RFQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQ. The CONSULTANT is specifically notified that failure to comply with any part of the RFQ

may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.12 MOST FAVORABLE TERMS

The AGENCY reserves the right to make its award(s) without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms, which the CONSULTANT can propose. The AGENCY does reserve the right to contact a CONSULTANT for clarification of its proposal.

The CONSULTANT should be prepared to accept this RFQ for incorporation into a contract resulting from this RFQ. Contract negotiations may incorporate some or the CONSULTANT'S entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.13 CONTRACT AND GENERAL TERMS & CONDITIONS

Any apparent successful contractor will be expected to enter into a contract, which is substantially the same as the contract and general terms and conditions described in **Exhibit C**. 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 section, **Exhibit A** to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.14 COSTS TO PROPOSE

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

2.15 NO OBLIGATION TO CONTRACT

This **RFQ** does not obligate the State of Washington or the AGENCY to contract for services specified herein.

2.16 REJECTION OF PROPOSALS

The AGENCY 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 RFQ.

2.17 COMMITMENT OF FUNDS

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

2.18 INSURANCE COVERAGE

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 any negligent or intentional act or omission of the CONTRACTOR or subcontractor, 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. Insurance Required

Prior to commencement of any activity under this Contract, the CONTRACTOR, at the CONTRACTOR's sole expense, shall obtain and maintain in full force and effect during the term of this Contract and during any other period during which the CONTRACTOR is acting pursuant to this Contract, the insurance coverages set forth herein on CONTRACTOR's operations and activities. Failures to purchase, maintain, and provide evidence of the required insurance shall constitute material default.

- a. Insurer.** The CONTRACTOR shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A- Class VII or better, in the most recently published edition of Best's Reports.
- b. Evidence of Coverage.** The CONTRACTOR shall furnish to AGENCY copies of certificates and endorsements of all required insurance within thirty calendar days of this Contract's effective date, and copies of renewal certificates and endorsements of all required insurance within thirty calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this exhibit. Such policies also shall reference this Contract number.
- c. Advance Notice of Revocation.** Such policies shall have a condition that they not be revoked by the insurer until thirty calendar days after notice of intended revocation thereof shall have been given to the AGENCY by the insurer.
- d. Cancellation.** In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, the

CONTRACTOR shall provide written notice of such to the AGENCY within one business day of the CONTRACTOR's receipt of such notice.

- e. Additional Insured.** With the exception of the Professional Liability, Automobile Liability, and Workers Compensation coverages, the AGENCY shall be named as an Additional Insured and the CONTRACTOR shall provide a copy of the policy endorsement(s) designating the AGENCY as an additional named insured.
- f. Primary Insurance.** All insurance provided by the CONTRACTOR shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the AGENCY and shall include a severability of interests (cross-liability) provision.
- g. Subcontractors.** The CONTRACTOR shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit the CONTRACTOR's liability or responsibility.
- h. Contractor's Liability.** By requiring insurance herein, the AGENCY does not represent that coverage and limits will be adequate to protect CONTRACTOR. Such coverage and limits shall not limit CONTRACTOR's liability under this Contract.

2. Insurance Coverage: Minimum Acceptable Insurance Policy Limits

The minimum acceptable limits shall be as stated below, with no deductible for each of the following categories:

- a. Commercial General Liability Insurance (including Employers Liability Coverage).** Coverage form shall be equivalent to form CG00001. GL limits of liability shall be least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Employers Liability limits shall be Bodily Injury by Accident: \$1,000,000 each accident/Bodily Injury by Disease: \$1,000,000 policy limit/Bodily Injury by Disease: \$1,000,000 each employee.
- b. Automobile Liability Insurance.** This Insurance shall apply to all owned, non-owned, and hired vehicles. Limits of liability shall not be less than \$1,000,000 combined single limit per accident.
- c. Property Insurance.** The CONTRACTOR shall provide evidence of "All-Risk" property insurance including coverage for Earthquake and Flood for all locations where State of Washington data is held. This coverage shall include all Computer Property. This insurance shall also include coverage for Business Interruption and Extra Expense that extends to the loss of Computer Property. Limits shall be declared and subject to review and approval by the state of Washington.
- d. Umbrella Policy.** Providing excess limits over the primary policies in an amount not less than \$3 million.

- e. Workers' Compensation or Industrial Accident Insurance.** Statutory Workers Compensation insurance for all employees.
- f. Cyber Liability Insurance.** Limits of liability shall not be less than \$5,000,000 per claim for First- and Third-Party coverage.
CONTRACTORs who offer a Software-as-a-Service type solution will be required to provide Cyber Liability Insurance sufficient to cover the costs of a potential data security breach involving all SaaS customer's data at any CONTRACTOR location or downstream CONTRACTOR location.
- g. Professional Liability (Errors and Omissions) Insurance.** Limits of liability shall not be less than \$400,000 per claim and \$400,000 annual aggregate.
- h. Crime Insurance.** To cover computer fraud and/or misuse of Purchaser's data by the CONTRACTOR's personnel or agents. Limits of liability shall not be less than \$1,000,000 per claim.

3. PROPOSAL CONTENTS

Proposals must be submitted by e-mail to the RFQ Coordinator, at the e-mail address in Section 2.1. Proposals are due **Friday, May 4, 2021 by 4:00 p.m. local time, Olympia, WA.**

The three major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A) and Vendor Certification of Workers' Rights (Exhibit B)
2. Qualifications

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 in this section 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.

3.1 LETTER OF SUBMITTAL **(SCORED)**

The Letter of Submittal and the attached forms, Certifications and Assurances form (Exhibit A) and Vendor Certification of Workers' Rights (Exhibit B), 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. Include these forms with the Letter of Submittal. The Vendor Certification of Workers' Rights form is a newly required document as of September 2019 and will be scored on a basis of the answer

Formatted: Highlight

given.

3.2 QUALIFICATIONS SECTION

The Qualifications Section of the proposal must contain information that will demonstrate to the evaluation committee the CONSULTANT'S understanding of the types of services proposed, the CONSULTANT'S ability to accomplish them, and the ability to meet tight timeframes.

The Qualifications response is to be submitted in three sections as follows:

1. Business Information
2. Experience and Staffing
3. Schedule.

The optional fourth section includes proof of certification for minority- and women-owned businesses participating on the project, if applicable.

3.2.1. BUSINESS INFORMATION (MANDATORY)

- A. State the name of the CONSULTANT, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. Provide the CONSULTANT's 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.
- C. Identify any State employees or former State employees employed by the CONSULTANT as of the date of the proposal. Include their position and responsibilities with the CONSULTANT. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists; the CONSULTANT may be disqualified from further consideration for the award of a contract.
- D. If the CONSULTANT 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 agency previously or currently employed by, job title or position held and separation date.
- E. 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.
- F. 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 AGENCY 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.

3.2.2. EXPERIENCE (SCORED)

- A. Summary of firm's qualifications for design of fish passage projects
- B. Describe the training received for evaluating, designing, and implementing fish passage projects.
- C. Describe your fish passage design work completed in the forestland environment the past five years.
- D. Describe your experience with fish passage construction, construction supervision, and construction inspection.
- E. Describe any continuing education or training courses attended within the past five years that are applicable to the services in this [RFQ](#).
- F. Describe services provided by the CONSULTANT that indicate the firm's ability to provide the services described in this [RFQ](#).

3.2.3. COMPLETED PROJECTS (SCORED)

- A. List references for three fish passage projects completed in the last two years. List the project name, contact person, and phone number.
- B. The Applicant must grant permission to the AGENCY to contact the references and others who may have pertinent information.

3.2.4. SCHEDULE (SCORED)

- A. Describe the firm's ability to meet deadlines, especially on a short-time frame, and give examples of how past tight deadlines have been successfully met.

3.2.5. STAFFING (SCORED)

- A. Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- B. Provide the name and a resume' of the person who will be the lead contact for the project. Provide names and resumes for other staff, which includes
- C. information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information.
- D. List any sub-consultants you may want to include to complete your roster of services. Describe what services each would provide. Provide the information in Section 3.2.1 about each.

3.2.6. REFERENCES (MANDATORY) (SCORED)

- A. List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for which work has been accomplished and briefly describe the type of service provided for them.
- B. The CONSULTANT must grant permission to the AGENCY to contact the references and others who may have pertinent information. Do not include current AGENCY staff as references.

3.2.7. OMWBE CERTIFICATION (Optional And Not Scored)

- A. Include proof of certification issued by the Washington State Office of Minority and Women’s Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

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 AGENCY, which will determine the ranking of the proposals.

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

The RFQ 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:

Evaluation Category	Point
<u>Letter of Submittal</u> Experience	<u>35</u> 10
<u>Experience Completed</u> Projects and <u>Schedule</u>	<u>35</u> 25
<u>Completed Projects and Schedule</u> Staff	<u>25</u> 40
<u>Staff Qualifications</u>	<u>10</u> 40
<u>Staff Qualifications</u> Costs	<u>10</u> 40
<u>Project References</u>	15
Workers’ Rights Certification – 5%	5

Formatted: Highlight

Formatted: Indent: First line: 0"

TOTAL	100
--------------	------------

The AGENCY reserves the right to award the contract to the CONSULTANT whose proposal is deemed to be in the best interest of the AGENCY and the state of Washington.

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

The AGENCY may after evaluating the written proposals elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the AGENCY 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.

4.4 NOTIFICATION TO PROPOSERS

The AGENCY will notify the Apparently Successful Contractor of their selection by phone or e-mail 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 RFQ Coordinator within three business days after the Unsuccessful Consultant Notification is e-mailed to the CONSULTANT. Debriefing requests must be received by the RFQ 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 three business days of the request.

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

- Evaluation and scoring of the CONSULTANT's proposal;
- Critique of the proposal based on the evaluation;
- Review of CONSULTANT'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

This procedure is available to 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 business days to file a protest of the acquisition with the RFQ Coordinator. Protests must be received by the RFQ 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 RFQ Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFQ 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 the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or agency 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) the AGENCY'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 AGENCY. The AGENCY 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 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, which submitted a proposal, such CONSULTANT will be given an opportunity to submit its views and any relevant information on the protest to the RFQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY 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 AGENCY determines that the protest is without merit, the AGENCY 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. RFQ EXHIBITS

Exhibit A – Certifications and Assurances

Exhibit B – Workers' Rights Certification

Exhibit C – Sample RCO Contract with General Terms and Conditions

EXHIBIT A

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 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant the AGENCY the right to contact references and other, who may have pertinent information regarding the ability of the CONSULTANT and the lead staff person to perform the services contemplated by this [RFQ](#).
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.12, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

On behalf of the CONSULTANT submitting this proposal, my name below attests to the accuracy of the above statement.

Signature

Title

Date

EXHIBIT B

**VENDOR CERTIFICATION
EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE**

Pursuant to the Washington State Governor’s Executive Order 18-03 (dated June 12, 2018), the Washington State Recreation and Conservation Office is seeking to purchase from or contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.

Solicitation Number: **RFQ RCO 2103**

I hereby certify, on behalf of the firm identified below, as follows (check one):

- NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES.** This CONSULTANT 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.
- MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES.** This CONSULTANT requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

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.

PRINT FULL LEGAL ENTITY NAME OF FIRM

SIGNATURE OF AUTHORIZED PERSON

PRINTED NAME

TITLE

CITY AND STATE WHERE SIGNED

DATE

EXHIBIT C

S A M P L E
CONTRACT FOR PERSONAL SERVICES
BETWEEN
THE STATE OF WASHINGTON
RECREATION AND CONSERVATION OFFICE
AND
(CONTRACTOR)

This Contract is made and entered into by and between the state of Washington, Recreation and Conservation Office hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

(contractor name)

(address)

(city, state zip)

Phone:

Email:

WA State UBI Number:

PURPOSE

The purpose of this scope of work is to provide

SCOPE OF WORK

The specific tasks to be performed and completed are:

PERIOD OF PERFORMANCE

The period of performance is scheduled to begin on or about _____, and to end on _____. The AGENCY reserves the option at its sole discretion to extend the contract for up to six additional months.

COMPENSATION AND PAYMENT

The AGENCY shall pay an amount not to exceed _____ Dollars (\$_____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

The hourly rate for CONTRACTOR services shall be _____ (includes all professional staff expected). These hourly rates shall include all CONTRACTOR labor, office overhead, taxes and profit. Any CONTRACTOR expenses directly related to the work shall be billed at cost (no markup on direct expenses allowed, and no indirect costs shall be billed). Total CONTRACTOR costs would not be authorized above the budget total without a Contract Amendment.

Expenses

The total contract amount includes travel. Travel expenses include: airfare (economy or coach class only), other transportation expenses such as tolls or parking, lodging, and meals necessary during periods of required travel. The CONTRACTOR shall receive reimbursement at current Washington State travel reimbursement rates.

BILLING PROCEDURES AND PAYMENT

The AGENCY will pay the CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the AGENCY not more often than monthly.

The invoices shall describe and document, to the AGENCY’s satisfaction, a description of the work performed, the progress of the project, and fees. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must be retained by the CONTRACTOR for any single expense in the amount of \$50.00 or more.

Invoices shall include the individual performing the work, the number of hours and the hourly rate.

Invoices must be submitted electronically using PRISM online. Information is available on RCO’s Website located at <https://www.rco.wa.gov/grants/post-award-info/billing/> . Contact the AGENCY at ebilling@rco.wa.gov with any questions.

Payment shall be considered timely if made by the AGENCY within thirty calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

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

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

The AGENCY shall withhold **ten percent (10%)** from the final payment until acceptance by the AGENCY of the final report.

PERFORMANCE REPORTING

The CONTRACTOR will complete Progress Reports and Final Reports using PRISM Online. A training video is available at <https://www.rco.wa.gov/grants/apply-for-a-grant/prism/>.

CONTRACT MANAGEMENT

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

CONTRACTOR Contract Manager	AGENCY Contract Manager
Contract Manager’s Name	Contract Manager’s Name
Title	Title
Address	Address
City, State & Zip	City, State & Zip
Phone :	Phone :
Email address:	Email address

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 any negligent or intentional act or omission of the CONTRACTOR or subcontractor, 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. Insurance Required

Prior to commencement of any activity under this Contract, Contractor, at Contractor's sole expense, shall obtain and maintain in full force and effect during the term of this Contract and during any other period during which Contractor is acting pursuant to this Contract, the insurance coverages set forth herein on Contractor's operations and activities. Failures to purchase, maintain, and provide evidence of the required insurance shall constitute material default.

- a. **Insurer.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports.
- b. **Evidence of Coverage.** Contractor shall furnish to Purchaser copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's effective date, and copies of renewal certificates and endorsements of all required insurance within thirty (30) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this exhibit. Such policies also shall reference this Contract number.
- c. **Advance Notice of Revocation.** Such policies shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.
- d. **Cancellation.** In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to Purchaser within one (1) business day of Contractor's receipt of such notice.
- e. **Additional Insured.** With the exception of the Professional Liability, Automobile Liability, and Workers Compensation coverages, the Purchaser shall be named as an Additional Insured and Contractor shall provide a copy of the policy endorsement(s) designating Purchaser as an additional named insured.
- f. **Primary Insurance.** All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Purchaser and shall include a severability of interests (cross-liability) provision.
- g. **Subcontractors.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- h. **Contractor's Liability.** By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under this Contract.

ASSURANCES

AGENCY 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
- Attachment A - General Scope of Work
- Attachment B - General Terms and Conditions
- Request for Qualifications No. RCO_2103
- Contractor's Proposal dated on or before May 4, 2021

- 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 AGENCY'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, is executed by the persons signing below who warrant that they have the authority to execute the contract.

WASHINGTON STATE

(Contractor Name)

RECREATION AND CONSERVATION OFFICE

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME

TITLE DATE

TITLE DATE

ATTACHMENT A

GENERAL SCOPE OF WORK

The CONTRACTOR shall adapt the following scope of work to all projects under this contract. Prior to any work, the AGENCY will notify each project sponsor and the CONTRACTOR that the CONTRACTOR will be contacting the project sponsor to initiate the project design process within two weeks of notice.

The CONTRACTOR shall provide progress reports specified in contract milestones into the AGENCY's PRISM database. An automated email reminder from the PRISM database will prompt the CONTRACTOR 30 days before the report is due. These reports shall summarize major project accomplishments, completion of design stages, and other overall project elements. The AGENCY will periodically review the progress reports to reconcile reimbursement requests with recorded contract performance.

Preliminary Project Design

Preliminary designs advance one or more concepts to a detailed understanding, quantification, and on-site review of the proposed project. The CONTRACTOR will tailor the design process to suit the unique circumstances of each project. The preliminary design report and drawings must describe all major elements of the project and be sufficiently detailed to support project permitting.

A. Site Survey and Mapping

Surveying will be done at each project site to collect site data on topography, soils, vegetation, stream profile, channel characteristics, and other information necessary for project design. A digital file (i.e. AutoCAD) site plan will be prepared as a base map for each project showing the stream(s), existing structures, baseline, topography, benchmark elevation, and other relevant site details accurately scaled from an overhead perspective. Surveying will be sufficient to support the preliminary design, final design, and construction management steps of the project process. Survey data will be adequate to draw and quantify project sections, profiles, and other useful measures for project design.

The preliminary site visit by the CONTRACTOR shall be attended by the project sponsor, and the CONTRACTOR will recommend that the project sponsor invite local representatives of the DNR, WDFW/or Indian Tribe representatives to the preliminary site visit.

If the proposed project is dependent on exact locations for property boundaries, a Professional Licensed Surveyor (PLS) may be required to define these boundaries.

B. Hydrology and Hydraulic Data

Hydrologic, hydraulic, and water level data will typically be defined during preliminary project design; these data will be quantitatively included and presented in the preliminary design report. Project designs on flowing streams or rivers require estimates of low flows, high flows, and the peak design flow event (often the 100-year flood, but may vary among

different elements of the design). There are multiple methods for estimating these flows, and the CONTRACTOR shall select from a wide array of methods to choose from (e.g. Log Pearson Type III for flood flow estimates, correlation of flows from gaged to ungauged basins, etc.).

Hydraulic data for preliminary design will include surveyed water surface elevations for flowing and/or standing waters, water surface profiles, rating curves for channel sections, flood levels on which to select freeboard for culvert or bridge design, and other water measurements considered essential for design. Water level data such as downstream controls, stream water surface profiles, lake or pond elevations and variations, etc. are commonly important for accomplishment of the intended project objectives. Hydrologic and hydraulic information directly relevant to project design will be described and/or quantified in the preliminary design report.

C. Geotechnical and Other Site Data

Collection of sufficient subsurface (e.g. geotechnical) on-site data for all design work is the responsibility of the CONTRACTOR. Information and data include subsurface (geotechnical) data, information on buried utilities, and other site data relevant to the subject project. Depending on the site and proposed type of fisheries improvement project, the CONTRACTOR may retain a SUBCONTRACTOR geotechnical firm to quantitatively evaluate subsurface conditions.

All FFFPP efforts require a cultural resource survey prior to any ground disturbance. The AGENCY will be responsible for scheduling and paying for these required surveys separately from CONTRACTOR's duties under this Contract but the CONTRACTOR shall be required to work within these requirements during the course of the design process.

D. Correction Analysis Form

As soon as possible after collection of site data and presenting options to the project sponsor, the CONTRACTOR shall fill out and submit a Correction Analysis Form (CAF) to the sponsor and the AGENCY contract manager. This form will list up to three alternatives considered for the site (fish passage correction options), along with approximate cost estimates and rationale for selection of a preferred alternative.

The AGENCY (and sponsor) concurrence with a fish passage alternative is required prior to further technical or design work by the CONTRACTOR. The AGENCY may require inclusion of multiple alternatives in the preliminary design report for further consideration.

E. Preliminary Design Drawings

Preliminary design drawings will be prepared for all design projects. For each alternative included in the preliminary design (and report), minimum drawing requirements include preparation of:

- Project Site Plan (overhead view)
- Hydraulic Profile (water surface profile, tidal elevations, etc.)
- Project Section(s) (cross-sections at important project locations)

Additional design drawings at this stage may be required for complex projects, and/or projects with multiple features and/or multiple sites.

All preliminary design drawings will be produced in digital format (e.g. AutoCAD), each drawing will be to scale, and the vertical and horizontal scales on the drawings will be the same.

Preliminary design drawings will be included in the design report (or separately bound 11x17 sheets), with frequent references between the text and drawings for comprehensive understanding of the proposed project(s).

F. Preliminary Design Report and Construction Cost Estimate

The CONTRACTOR will prepare a preliminary design report to include a summary of all of the relevant data and information generated during data collection steps, preliminary design drawings, and an estimate of project construction costs (for each alternative carried to this stage). The report will document and explain the design development and rationale to reviewers.

Design reports will include the following contents:

- **Introduction:** An explanation of the purpose of the project and its specific habitat or fisheries restoration objectives.
- **Site Conditions:** A detailed description of the project site conditions that may be relevant to project design. These conditions typically include topography, hydrology, subsurface conditions, existing salmon habitat, other aquatic and terrestrial habitat, baseline site conditions, existing infrastructure, and existing land use.
- **Design Parameters:** An identification and explanation of the design and engineering variables that affect the layout and design of the project. Typical design and engineering variables include water velocities, depths and flow rates, fish passage criteria, sediment transport dynamics, and others. Non-engineering parameters such as constraints with surrounding land uses (agriculture, recreation, residential, etc.), general landowner and community expectations, construction constraints, long-term operation or maintenance requirements, and other relevant variables will also be included.
- **Preliminary Design Alternatives:** An identification and description of one or more design alternatives that will be considered for achieving the project objectives. Some project sites may only have one "best alternative."

If more than one alternative is considered, an evaluation of the design alternatives with respect to the parameters listed above will be included. A comparison of estimated construction costs of each alternative will be included.

- **Preferred Alternative:** The preferred alternative should not be presented in the preliminary design report; the pros and cons of each concept should be presented as objectively as possible. Input from AGENCY, sponsor staff, and one or more

regulatory agencies will be considered in selecting a preferred alternative.

- **Preliminary Design Drawings:** A project site plan (overhead view), hydraulic profile (water surface profile), and project section(s) (cross-sections at important project locations) will be included.
- **Construction Quantities and Detailed Cost Estimates**
- **References**

G. Review of Preliminary Design Report and Drawings

The CONTRACTOR will send the preliminary design report and drawings to the project sponsor and the AGENCY. The project sponsor will provide the preliminary design report and drawings to stakeholders for review.

CONTRACTOR will work with the project sponsor to identify project layout with staking, flagging, surveying, identifying with ground paint, or otherwise marking the on-site proposed locations and elevations of project features. CONTRACTOR will attend an on-site stakeholder review of design plans coordinated by the project sponsor.

The CONTRACTOR is responsible for collection of all on-site review comments.

H. Permit Assistance

Permits required include a Forest Practices Act permit (WDNR), and/or a Hydraulic Project Approval (WDFW). The CONTRACTOR will provide technical assistance to the project sponsor for preparing permit applications.

Final Project Design

Final project design will be developed with consideration of comments provided by stakeholders, project sponsor, AGENCY, and/or permit agencies regarding the preliminary design report and on-site review. The final project design will be a stand-alone, comprehensive set of final design drawings (construction drawings) and technical specifications for project construction.

A. Final Design Deliverables

CONTRACTOR will tailor the design process to the circumstances of each project. The following are typical required project deliverables for final designs:

- Final Design Drawings
- Technical Specifications
- Final Construction Quantity and Cost Estimate
- Contract Bidding Documents and General Contract Conditions

B. Final Design Drawings

Design drawings from preliminary design will be revised to address review and permitting comments, as needed. Additional detailed drawings will be prepared to clarify the design of specific work items. Final design drawings for a typical fish passage project may include the

following:

- Location Map & Drawing List
- Water Diversion, Clearing & Site Preparation
- Project Site Plan (from preliminary design)
- Profile and Details (from preliminary design)
- Cross-Sections and Details (from preliminary design)
- Culvert or Bridge Details
- Reinforced Concrete Details

All design drawings will be produced on 11x17 inch paper to avoid reduction in size.

C. Technical Specifications

The CONTRACTOR will prepare technical specifications for all required project components. Project specifications will complement design drawings, list the specific technical requirements for materials (e.g. type of culvert), and list requirements for work (e.g. soil compaction method). There are multiple formats that can be successfully used for written specifications. However, the specifications must document the types and qualities of work and materials to be included in the project.

All work shown on project drawings will be supported with one or more technical specifications to further describe and/or control the work. The CONTRACTOR will provide clear and detailed technical specifications to reduce potential for on-the-ground adjustments and changes that may deviate from the original project objectives.

D. Estimate of Quantities and Cost Estimate for Construction

The final design will include a detailed list of project quantities such as cubic yards of soil excavation, tons of gravel & sand to be placed, pounds of aluminum fabrication, lump sum cost for project de-watering, and other items. The list of work items and quantities will be compiled into a Bid Form to be used by general contractors to develop a cost estimate (bid) for the construction work.

A detailed breakdown of work quantities will typically include 10 to 30 separate work items, matched with respective estimated quantities. For projects to be competitively bid, a construction cost estimate will be generated for comparison with contractor bids ("Engineer's Estimate").

E. Contract Bidding Documents and General Contract Conditions

Unless the project sponsor has an established construction contract template and/or force account construction is proposed, the CONTRACTOR will develop contract bidding documents to include: a Bid Form, a proposed agreement (to be between sponsor and construction contractor), general conditions, special provisions, technical specifications, and the project drawings. The project sponsor will be consulted on all topics to be included in the contract for each project such as Tribal Employment Rights Ordinance (TERO) requirements, performance bond, month(s) allowed for in-channel work, etc. The project sponsor is responsible for construction contractor selection. CONTRACTOR will provide technical support to the project sponsor during any contractor selection process.

Construction Management

The CONTRACTOR may observe and review construction contractor performance for conformance with design plans and specifications.

The CONTRACTOR will not directly manage any construction project.

The CONTRACTOR may be involved in a supervisory role during construction. All changes made during construction must be in writing in the form of instructions, minor changes or change orders. Substantial changes during construction must be reviewed and approved by the CONTRACTOR prior to implementation.

CONTRACTOR will prepare and submit as-built drawings to the project sponsor after project completion.

PROJECT(S) SCOPE OF WORK AND PROJECT BUDGET(S)

A. [ENTER PROJECT A NAME AND PROJECT NUMBER]

Project Description

[enter description of design and engineering work to be performed]

Objectives

[enter design and engineering objectives]

Find more information about the project at [PRISM Project Search - Washington State Recreation and Conservation Office](#)

Deliverables:

Task	Contractor Hours at \$ [enter hourly rate]	Contractor Travel Hours at \$ [enter travel rate]	Expenses	Total Cost
BUDGET TOTAL				

Schedule:

[enter schedule for completion of deliverables]

B. [ENTER PROJECT B NAME AND PROJECT NUMBER]

Project Description:

[enter description of design and engineering work to be performed]

Objectives:

[enter design and engineering objectives]

Find more information about the project at [PRISM Project Search - Washington State Recreation and Conservation Office](#)

Deliverables

Task	Contractor Hours at \$ [enter hourly rate]	Contractor Travel Hours at \$ [enter travel rate]	Expenses	Total Cost
BUDGET TOTAL				

Schedule:

[enter schedule for completion of deliverables]

ATTACHMENT B

GENERAL TERMS AND CONDITIONS

DEFINITIONS

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

- A. "AGENCY" shall mean the Recreation and Conservation Office of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that Agency.
- 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.
- D. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this Contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- E. "STATE" shall mean the state of Washington. The AGENCY is included within the term STATE, as are all other agencies, departments, boards, or other entities of state government.

ACCESS TO DATA

The CONTRACTOR shall 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

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

AMENDMENTS

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

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

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

ASSIGNMENT

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

ATTORNEYS' FEES

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

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, 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.

CONFLICT OF INTEREST

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

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

COPYRIGHT PROVISIONS

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

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

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that 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 shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this Contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage,

brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

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

DEBARMENT AND CERTIFICATION

By signing the Contract with the AGENCY, the CONTRACTOR certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the CONTRACTOR agrees not to enter into any arrangements or contracts related to this Contract with any party that is on the "Contractors not Allowed to Bid on Public Works Projects" list.

DISALLOWED COSTS

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

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the 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 three (3) working calendar 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 five (5) working calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within ten (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 alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

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

GOVERNING LAW

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

INDEMNIFICATION

The CONTRACTOR shall defend, indemnify, and hold the STATE and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the

actual or alleged acts, errors, omissions or negligence of, or the breach of any obligation under this Contract by the CONTRACTOR or the CONTRACTOR'S agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONTRACTOR may be legally liable.

Provided that nothing herein shall require the CONTRACTOR to defend or indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this Contract by the STATE, its agents, officers, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE may be legally liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONTRACTOR or the CONTRACTOR'S agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONTRACTOR is legally liable, and (b) the STATE, its agents, officers, employees, sub consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE may be legally liable, the indemnity obligation shall be valid and enforceable only to the extent of the CONTRACTOR'S negligence or the negligence of the CONTRACTOR'S agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONTRACTOR may be legally liable.

This provision shall be included in any agreement between CONTRACTOR and any sub consultant, subcontractor and vendor, of any tier.

The CONTRACTOR shall also defend, indemnify, and hold the STATE and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONTRACTOR or the CONTRACTOR'S agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONTRACTOR may be legally liable, in performance of the Work under this Contract or arising out of any use in connection with the agreement of methods, processes, designs, information or other items furnished or communicated to STATE, its agents, officers and employees pursuant to the Contract; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE'S, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the STATE, its agents, officers and employees by the CONTRACTOR, its agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONTRACTOR may be legally liable.

The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees or its agents against the STATE and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

This provision was the result of mutual negotiation between the parties.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The CONTRACTOR and his or her employees or agents performing under this Contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof,

nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

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, 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 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.

NON-AVAILABILITY OF FUNDS

The obligation of the AGENCY to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Contract are not appropriated to the AGENCY for expenditure for this Contract in any biennial fiscal period, the AGENCY shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If the AGENCY'S participation is suspended under this section for a continuous period of one year, the AGENCY'S obligation to provide any future funding under this Contract shall terminate. Termination of the Contract under this section is not subject to appeal by the CONTRACTOR.

NON-COMPLIANCE WITH NONDISCRIMINATION LAWS

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

NON-DISCRIMINATION

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

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. The CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. The CONTRACTOR and its subcontractors agree not

to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as otherwise required by law.

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

PUBLICITY

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

RECORDS MAINTENANCE

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

The CONTRACTOR shall retain such records for a period of nine (9) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the nine (9) 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 AGENCY, 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.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the AGENCY may terminate the Contract under the "Termination for Convenience" clause, without the ten (10) day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

SEVERABILITY

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

SITE SECURITY

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

SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to 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.

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

SUSPENSION

The obligation of the AGENCY to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium, the AGENCY reserves the right to suspend the Contract, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the Contract must cease until such time funds are obligated to the AGENCY and the AGENCY provides notice to continue work.

TAXES

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

TERMINATION FOR CAUSE

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

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

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

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

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the AGENCY may, by ten (10) calendar 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 AGENCY shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

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

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

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

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

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

TREATMENT OF ASSETS

- A. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this Contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this Contract, or (ii)

- commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- B. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this Contract.
 - C. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
 - D. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
 - E. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY 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.

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 <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.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 the AGENCY and statewide vendor files. In the event of a positive match, the AGENCY reserves the right to: (i) make a determination of "reasonability" before taking the positive match to a higher authority, (ii) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (iii) comply with an OFAC investigation, if required, and/or (iv) 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

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

WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION) The CONTRACTOR represents and warrants, as previously certified in the CONTRACTOR's bid submission, that the 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. The CONTRACTOR further represents and warrants that, during the term of this Contract, the CONTRACTOR shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.