

WASHINGTON ASPARAGUS COMMISSION

REQUEST FOR PROPOSAL (RFP)

RFP NO. K3325

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

PROJECT TITLE: Washington State Asparagus Commission Executive Director Recruitment

PROPOSAL DUE DATE: **March 29, 2021 – 5:00 pm**, Local Time, Olympia, Washington, USA.

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

ESTIMATED TIME PERIOD FOR CONTRACT: **May 1, 2021– Dec. 31, 2023**

The Commission reserves the right to extend the contract for up to three additional years at the sole discretion of the Commission.

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

1. INTRODUCTION..... 3

1.1. PURPOSE AND BACKGROUND 3

1.2. OBJECTIVES AND SCOPE OF WORK..... 3

1.3. MINIMUM QUALIFICATIONS 5

1.4. FUNDING 5

1.5. PERIOD OF PERFORMANCE 6

1.6. DEFINITIONS 6

1.7. ADA..... 6

2. GENERAL INFORMATION FOR BIDDERS..... 6

2.1. RFP COORDINATOR..... 6

2.2. PROPOSER’S RESPONSIBILITIES 6

2.3. SUBMISSION OF PROPOSALS..... 7

2.4. PROPRIETARY INFORMATION & PUBLIC DISCLOSURE 8

2.5. REVISIONS TO THE RFP 8

2.6. DIVERSE BUSINESS PARTICIPATION 8

2.7. ACCEPTANCE PERIOD 8

2.8. RESPONSIVENESS..... 8

2.9. MOST FAVORABLE TERMS..... 9

2.10. CONTRACT AND GENERAL TERMS & CONDITIONS 9

2.11. COSTS TO PROPOSE..... 9

2.12. NO OBLIGATION TO CONTRACT 9

2.13. REJECTION OF PROPOSALS 9

2.14. COMMITMENT OF FUNDS 9

2.15. INSURANCE 9

3. PROPOSAL CONTENTS 11

3.1. ELECTRONIC PROPOSALS:..... 11

3.2. LETTER OF SUBMITTAL (MANDATORY)..... 11

3.3. QUALIFICATIONS AND EXPERIENCE (MANDATORY)..... 12

3.4. CERTIFICATION OF TRUTHFULNESS AND ACCURACY 13

3.5. REFERENCES (MANDATORY)..... 12

3.6. RELATED INFORMATION (MANDATORY) 132

3.7. OMWBE CERTIFICATION 13

3.8. COST PROPOSAL (MANDATORY) 13

4. EVALUATION AND CONTRACT AWARD 13

4.1. EVALUATION PROCEDURE..... 13

4.2. EVALUATION WEIGHTING AND SCORING 145

**4.3. ORAL PRESENTATIONS AND/OR DEMONSTRATIONS MAY BE
REQUIRED..... 15**

4.4. NOTIFICATION TO PROPOSERS..... 15

4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS..... 15

4.6. PROTEST PROCEDURE 15

5. RFP EXHIBITS 16

CERTIFICATIONS AND ASSURANCES..... 17

CONTRACT FOR SERVICES..... 19

GENERAL TERMS AND CONDITIONS 24

1. INTRODUCTION

1.1. PURPOSE AND BACKGROUND

The Washington Asparagus Commission, hereafter called "WAC," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in fulfilling the role of Executive Director of the Washington Asparagus Commission.

The Executive Director of the WAC, under the guidance of the board members, administers all aspects of commission business as set forth in [RCW 15.65](#) and [WAC 16-557](#).

The Washington Asparagus Commission was created in March 1991 by a group of Washington farmers and asparagus growers. The Washington Asparagus Commission's mission is to support the economic and environmental sustainability of the Washington Asparagus industry. The commission is overseen by a board consisting of nine members, of which six are asparagus producers elected from designated districts, one represents fresh handlers of asparagus, one represents processors, and one represents the Washington Department of Agriculture.

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

1.2. OBJECTIVES AND SCOPE OF WORK

The objectives of the Executive Director include:

A. FINANCIAL & OPERATIONAL MANAGEMENT

- (1) Effectively manage all aspects of the commission's business, including marketing, assessment collection, and maintenance of financial and operational records, preparing for and conducting WAC meetings, monitoring the performance of contractors and vendors, proper dispersal of WAC funds and effectively facilitating the work of any established committees such as those formed to evaluate research proposals and marketing work.
 - a. Conduct Board meetings (typically four per year) of the WAC ensuring that all announcements and accompanying documents are distributed in a timely fashion and in accordance with the Open Public Meetings Act. These include the agenda, minutes from the previous meeting, the financial report and all accompanying documentation and any other materials necessary to conduct the meeting.
 - b. Conduct an Annual Meeting and an Asparagus Research Field Day once per year.
 - c. Establish and maintain necessary committees as instructed by the Board. Ensure that relevant issues are brought to committees in a timely fashion and that board members are periodically updated on the progress of committees.
 - d. Maintain a current list of Washington State asparagus growers and all handlers inside and outside of Washington that are required to pay annual assessments. Collect assessments and accompanying reports from growers and handlers. Aggressively pursue delinquent assessments up to and including legal action.
 - e. Provide a monthly report to the WAC Board briefly summarizing work undertaken on behalf of the WAC during the month and work anticipated for the coming month.
 - f. Monitor the performance of all contractors and vendors under all contracts entered into on behalf of the WAC.
 - g. Oversee the proper dispersal of WAC funds pursuant to its legal obligations.
 - h. Provide management and oversight for WAC website.
 - i. Establish and maintain commission headquarters.
 - j. Work with board to establish operating policies and procedures.
- (2) Ensure compliance with applicable state and federal policies
 - a. Stay current on all state and federal regulations that affect the funding, and/or operations of the WAC and its programs, to include applicable codes, laws, rules, Governor

- Executive Orders, and requirements of the Department of Enterprise Services. Apprise board of relevant requirements or issues that arise.
 - b. With regard to federal grants, comply with all federal laws and regulations (including the Code of Federal Regulations (CFR)) regarding applications for, accounting of, recordkeeping of, and required reporting related to the use of federal grants.
 - c. Collaborate with relevant state agencies in providing commission oversight, including but not limited to Washington State Department of Agriculture, Department of Enterprise Services, and the Office of the Attorney General.
 - d. Serve as the commission's Public Records Officer.
- (3) Provide financial management/oversight, budgeting, and information/records management, using tight fiscal controls. Provide regular financial updates to the board.
- a. Maintain tight fiscal control of the operating budget and all collected assessments. Fully cooperate with the Washington State auditors during periodically required audits. Designate accounting firm to conduct periodic third party financial audits.
 - b. Provide management and oversight of WAC contracts and grants (such as for research and promotion), including monitoring contracts and proper reporting.
 - c. Work with the board to establish, provide oversight for and management of an annual budget and accurate financial records.
- (4) Provide support for and participate in HR and interpersonal development training with all staff.
- a. Stay current on business trends, provide support for and participate in HR and interpersonal development training with all staff.

B. INDUSTRY RELATIONS

- (1) Provide collective training, outreach and assistance to Washington asparagus growers to help them successfully grow and increase production. Individually contact or visit each grower and packer during the course of the year. Provide a quarterly newsletter to Washington growers and packers.
- (2) Be the primary spokesperson for the commission. Maintain up-to-date information about the industry, market trends, promotional efforts, and growing conditions. Interact with and provide information to relevant industry participants.
- A. Provide input and support in industry and grower events as directed by the board.
 - B. Serve as liaison between commission, agriculture industry and the public. Increase awareness, support and interaction between commission, grower members and affiliated agencies.
 - C. Represent the WAC on national, regional and international asparagus-related associations as approved by the board and report activities to the board when applicable.

C. RESEARCH

- (1) Manage and oversee WAC-funded research projects, including monitoring contracts and reporting to relevant committees and board.
- a. Maintain records of the WAC research projects.
 - b. Stay up to date on current technology and trends, including chemicals and their applications, and food safety requirements related to asparagus.
 - c. Provide annual report of research results to Washington growers and packers in addition to conducting annual field day after harvest.

D. PROMOTION & MARKETING

- (1) Coordinate with board to develop and implement an annual marketing and promotion plan to increase the domestic and international sales of Washington asparagus. Evaluate the performance and effectiveness of WAC marketing programs and projects. Produce reports to the board as needed.

- (2) Monitor trade practices that hinder marketing of Washington asparagus. Identify and recommend solutions where possible.

E. PROCURE & MANAGE GRANTS

- (1) Seek out grants and opportunities relevant to the commission and the asparagus industry, especially relating to promotional opportunities, agronomic issues and food safety.
- (2) Oversee contracts and vendors, monitor grant progress including vendor reports. Provide required reports to grantors and board in a timely manner.

1.3. MINIMUM QUALIFICATIONS

Minimum qualifications include:

- A. A bachelor's degree in agriculture, business, marketing or a related field.
- B. Strong leadership, organizational, and communication skills and ability to interact with growers and industry stakeholders.
- C. Knowledge of state laws and regulations related to WAC ([RCW 15.65](#) and [WAC 16-557](#)) and to federal laws and regulations governing Washington State Agricultural Commodity Commissions, including those related to grant applications and management (including 2 CFR 200.318 (general procurement standards)).
- D. The ability to work cooperatively with relevant state and federal organizations to achieve the mission of the WAC.
- E. Direct experience preparing and managing successful grant proposals. This includes experience successfully complying with all federal laws and regulations (including the CFR) regarding applications for, accounting of, recordkeeping of, and required reporting on the use of federal grants. Successful compliance includes management of a grant in such a way that it never had to be repaid due to misuse of funds and/or failure to fulfill all grant requirements.
- F. Knowledge of asparagus production in Washington State, including growing practices and industry trends.
- G. Working knowledge of and/or experience in the field of agricultural research.
- H. Ability to effectively manage all aspects of the WAC's business, including assessment collection, maintenance of financial and operational records, preparing for and conducting commission meetings, monitoring the performance of contractors and vendors, successfully developing and managing contracts, proper dispersal of WAC funds, and effectively facilitating the work of any established committees (e.g., research, marketing).
- I. Ability to evaluate the performance and effectiveness of WAC funded programs, projects and affiliations, and produce reports on these when requested to do so.
- J. Licensed to do business in the State of Washington or provide a commitment to become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.

1.4. FUNDING

The expiring contract is currently funded for the amount of \$60,000 annually. This contract is anticipated to have a similar or lower budget. Higher bids would need to clearly substantiate added value.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

The WAC reserves the right to evaluate and adjust compensation on an annual basis. In this case, WAC will issue an amendment and post it to WEBS.

1.5. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about May 1, 2021 and to end on December 31, 2023. Amendments extending the period of performance, if any, shall be at the sole discretion of the WAC. The WAC reserves the right to extend the contract for up to three additional years. Performance will be evaluated on an annual basis.

1.6. DEFINITIONS

Definitions for the purposes of this RFP include:

WAC – The Washington Asparagus Commission is an agency of the state of Washington that is issuing this RFP.

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

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

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

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

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

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

1.7. ADA

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

2. GENERAL INFORMATION FOR BIDDERS

2.1. RFP COORDINATOR

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

Name	Teresa Norman
E-Mail Address	TNorman@agr.wa.gov
Phone Number	360-902-2043 / 360-628-3804

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

2.2. PROPOSER’S RESPONSIBILITIES

- A. Read and understand the solicitation document and all attachments.
- B. Seek clarifications if necessary.
- C. Become familiar with and abide by applicable federal laws and Washington State statutes and regulations as noted in **Section 1.3 MINIMUM QUALIFICATIONS** above.

ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	March 8, 2021
Proposals due	March 29, 2021
Evaluate proposals	April, 2021
Conduct oral interviews or demonstrations with finalists, if required	TBD
Announce "Apparent Successful Contractor"	April 12, 2021
Negotiate contract	TBD
Send notification to unsuccessful proposers	April 12, 2021
Hold debriefing conferences (if requested)	TBD
Begin contract work	May 1, 2021

The WAC reserves the right to revise the above schedule. In this case, WAC will issue an amendment and post it to WEBS.

2.3. SUBMISSION OF PROPOSALS**ELECTRONIC PROPOSALS:**

The proposal must be **received by the RFP Coordinator no later than 5:00 p.m. Local Time, in Olympia, Washington, on March 29, 2021.**

Bidders must submit proposals via email. All times are listed in local time for Olympia, Washington. The file should be clearly marked to the attention of the RFP Coordinator (who is WAC's sole point of contact for this procurement) at the email address noted in Section 2.1. Bidders sending proposals should allow normal delivery time and allow for Internet latency to ensure timely receipt of their proposals. Bidders assume the risk for the method of delivery chosen. The WAC assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission.

The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits and conform to the format specified by the WAC. Proposals must provide information in the same order as presented in this document with the same headings (See Section 3). The cover page will show the proposal number, title of the procurement, and submission date. Each section will be labeled clearly and separated from the next. This will not only help evaluation of the proposal, but should assist the Bidder in preparing a thorough response.

Electronic signatures will be accepted. The electronic version of the proposal must be submitted in Word or PDF format. When scanning documents to be submitted in PDF format, scanner resolution should be set to at least 200 dots per inch. Email submissions must not exceed 10MB. **To keep file sizes to a minimum, Consultants are cautioned not to use unnecessary graphics in their Responses. If your Response approaches or exceeds 10MB, you must break it up and send it by more than one email so that no single email exceeds 10MB.**

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of WAC and will not be returned.

In the event it becomes necessary to revise any part of this RFP, addenda will be published and made available to all who receive the RFP via WEBS.

2.4. PROPRIETARY INFORMATION & PUBLIC DISCLOSURE

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

Any information contained in the proposal that the bidder desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56, must be clearly designated. Please cite the statute and briefly explain how it applies to the proprietary information supplied in the proposal. The page and the particular exception/s from disclosure upon which the bidder is making the claim must be identified. Each page claimed to be exempt from disclosure must be clearly identified by the word "confidential" printed on the lower right hand corner of the page. Marking the entire proposal as confidential will be neither accepted nor honored and may result in disclosure of the entire proposal. The bidder must be reasonable in designating information as confidential. After the contract is signed, the proposal shall be deemed public records as defined in RCW 42.56. Confidentiality is available only to the limited extent allowed in state law. The WAC can choose to disclose despite information being marked as confidential.

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

2.5. REVISIONS TO THE RFP

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

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

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

2.6. DIVERSE BUSINESS PARTICIPATION

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

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

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

2.7. ACCEPTANCE PERIOD

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

2.8. RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements, which should include verification of meeting all minimum qualifications and instructions that are specified in this RFP. The Bidder is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

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

2.9. MOST FAVORABLE TERMS

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

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

2.10. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful Contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Bidder to submit its own standard contract terms and conditions in response to this solicitation. The Bidder may submit exceptions as allowed in the Certifications and Assurances, and Executive Order 18-03 form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances, and Executive Order 18-03 form. The WAC will review requested exceptions and accept or reject the same at its sole discretion.

2.11. COSTS TO PROPOSE

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

2.12. NO OBLIGATION TO CONTRACT

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

2.13. REJECTION OF PROPOSALS

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

2.14. COMMITMENT OF FUNDS

The WAC Board or its Chair are the only individuals who may legally commit the WAC to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15. INSURANCE

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

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

Commercial General Liability Insurance Policy:

Contractor shall maintain general liability insurance, including contractual liability, and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each

occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

1. **Automobile Liability:** As applicable, the Contractor shall maintain business automobile liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.
2. **Professional Liability Insurance:**
The CONTRACTOR will obtain professional liability ("Errors and Omissions") insurance appropriate to the scope of work provided under this Contract, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall include negligent and non-negligent acts and omissions.

Worker's Compensation Coverage:

Workers' Compensation and employer's liability coverages with Washington statutory limits and limits of not less than \$500,000 for employer's liability. The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of the contract.

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

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

1. **Employers Liability ("Stop Gap") Insurance** – In addition, the CONTRACTOR will buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
2. **Additional Provisions**
Additional Insured. The insurance required will be issued by an insurance company/ies authorized to do business within the State of Washington, and will name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies will be primary to any other valid and collectable insurance.
 - **Cancellation.**
WAC shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

For Insurers subject to Chapter 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): When possible, the insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given no less than 10 days advance notice of cancellation.

For Insurers subject to Chapter 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given no less than 10 days advance notice of cancellation.

- **Identification.** Policy must reference the state’s contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by the WC the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.
- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the state in this contract.

3. PROPOSAL CONTENTS

3.1. ELECTRONIC PROPOSALS:

Proposals must be written in English and submitted electronically to the RFP Coordinator in compliance with section 2.3 above.

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 Bidder in preparing a thorough response.

Items in this solicitation document marked “(MANDATORY)” must be included as part of the proposal for the proposal to be considered responsive.

3.2. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

Along with introductory remarks, the Letter of Submittal is to include the following information about the Bidder, including all key personnel and proposed subcontractors:

- A. Name, address (physical address and mailing address if different), phone number, and e-mail address of legal entity or individual with whom proposed contract would be written.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
- C. Legal status of the Bidder (sole proprietorship, partnership, corporations, etc.) and the year the entity was organized to do business and the entity now substantially exists.
- D. Location of the facility from which the Bidder would operate and maintain WAC headquarters.
- E. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Bidder does not have a UBI number, the Bidder must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- F. Identify any state employees or former state employees employed or on the firm’s governing board as of the date of the proposal. Include their position and responsibilities within the Bidder’s organization. If following a review of this information, it is determined by the WAC

that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

The Bidder must commit that key personnel identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the WAC.

3.3. CERTIFICATION OF TRUTHFULNESS AND ACCURACY

Under the penalties of perjury of the State of Washington, Bidder affirms the truthfulness of the statements presented in this submission and acknowledges its current and continued compliance with this certification as part of its RFP response and any resulting contract that may be awarded by WAC.

3.4. QUALIFICATIONS AND EXPERIENCE (MANDATORY)

Individual/company profile, including resumes of key personnel who would be assigned to the potential contract. Identify expertise and experience that clearly demonstrate ability to meet the scope of work and qualifications outlined in section 1.2 and 1.3.

Description of experience providing executive-level support to a board or commission.

Include a list of contracts the Bidder has had during the last five years that relate to the Bidder's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

3.5. REFERENCES (MANDATORY)

List names, addresses, phone numbers and e-mail addresses of three (3) business references for the firm and/or key personnel who will be assigned to this contract, and briefly describe the business relationship. Do not include current WAC board members as references. The Bidder and the lead staff person must grant permission to the WAC to contact the references and others who may have pertinent information regarding the Bidder's and the lead staff person's qualifications and experience to perform the services required by this RFP. The WAC may evaluate references at the WAC'S discretion.

3.6. RELATED INFORMATION (MANDATORY)

- A. If the Bidder or any subcontractor contracted with the state of Washington during the past 36 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
- B. If the Bidder's staff or subcontractor's staff was an employee of the state of Washington during the past 36 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.
- C. If the Bidder 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 Bidder'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.
- D. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The WAC will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

3.6 OMWBE CERTIFICATION

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

Self-certified or small or veteran owned businesses should so indicate as well.

3.7 COST PROPOSAL (MANDATORY)

Identification of Costs

Bidders are to submit an all-inclusive fee that identifies all costs including expenses to be charged for performing the services necessary to accomplish the objective of the contract. The selected candidate will be required to cover any customary business expenses such as office space, staff, equipment, general office supplies, telephone, accounting services, and travel costs for regular board meetings and Commission events. However, the WAC may choose to pay the contractor's travel costs directly or choose to reimburse the contractor for any additional travel costs. They may also choose to pay for any printing and postage costs for materials and/or events beyond the normal scope of business. The following costs may be reimbursable at allowable state rates:

- Mileage allowance
- Lodging and meal expenses
- Air travel
- Cost of printing materials
- Cost of postage
- Any other expenses which the WAC, in its sole discretion, deems justifiable under the circumstances.

Any potential reimbursable item, shall be accompanied with a receipt and will need advance approval (prior to purchase or arrangement) by the Commission.

4. EVALUATION AND CONTRACT AWARD

4.1. EVALUATION PROCEDURE

Bidder responsiveness, performance requirements, cost factors, and responsibility, will be evaluated based on the process described herein.

Any bidder whose bid is determined to be non-responsive will be rejected and will be notified of the reasons for this rejection.

WAC reserves the right to: (1) Waive any informality; (2) Reject any or all bids, or portions thereof; (3) Accept any portion of the items bid unless the bidder stipulates all or nothing in their bid; (4) Request clarification of any bid; (5) Cancel the Competitive Solicitation and re-solicit bids; and/or (6) Negotiate with the lowest responsive and responsible bidder(s) to determine if such bid can be improved.

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 WAC, which will determine the ranking of the proposals.

a. Bid Responsiveness; Administrative Review: Stage 1.

All Responses will be reviewed by the Coordinator to determine compliance with administrative and minimum qualification requirements and instructions specified in this Solicitation. WAC may reject a Response as nonresponsive at any time for any of the following reasons:

- Incomplete Response;
- Submission of a Response that proposes services that deviate from the scope and technical requirements set forth in this document and Exhibit B, Sample Contract, except as permitted in an Amendment to this Solicitation;'
- Failure to meet the minimum Bidder qualifications or to comply with any requirement set forth in this Solicitation Document, including Attachments;'

- Submission of incorrect, misleading, or false information; or
- History of prior unsatisfactory contractual performance, including but not limited to affirmative responses included in Section 3.6, Related Information.

The Coordinator(s) may contact any Bidder for clarification of the Response. If a Response is deemed non-responsive, it shall be removed from further consideration. WAC shall notify non-responsive Bidder(s) of this determination and the supporting reasons. Bidders whose Responses are found to be non-responsive shall be disqualified from further evaluation and shall be notified in writing.

If a Response meets all administrative and Bidder qualification requirements and submittal instructions, WAC shall continue with the Written Evaluation and, if applicable, the Oral Evaluation.

b. Performance Requirements Evaluation: Stage 2

WAC will evaluate each bid that passes Stage 1 (Administrative Review). WAC reserves the right to request additional information or perform tests and measurements before selecting the Apparent Successful Consultant. A bidder's failure to provide requested information to WAC within ten (10) business days may result in disqualification.

c. Bid Cost Evaluation: Stage 3\

WAC will evaluate bids – to identify the lowest evaluation total – by reviewing and comparing the submitted bid prices provided in Exhibit C. The price shall include the all-inclusive fee as mentioned in 3.7 Cost Proposal. The calculation to determine the bid cost is:

Lowest total bid evaluation cost divided by another bidder's cost (bid that is being evaluated) multiplied by number of available points equals the cost factor evaluation points. Points will be rounded to three places to the right of the decimal point using standard rounding method.

Sample Calculation using Bidder A = \$100 and Bidder B = \$110

Bid A calculation: $\$100(A) / \$100(A) = 1.0 \times 100$ (max points available) = 100 Cost points (rounded to three places to the right of the decimal point using standard rounding).

Bid B calculation: $\$100(A) / \$110(B) = 0.909 \times 100$ (max points available) = 90.9 Cost points (rounded to three places to the right of the decimal point using standard rounding).

Bidder A has the lowest total bid evaluation cost, so it would be assigned the maximum points.

d. Selection of Apparently Successful Contractor: Stage 4

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

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

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

4.2. EVALUATION WEIGHTING AND SCORING

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

Item	Total Points
Part One: Administrative Pass/Fail	P/F
If Bidder passes administrative review, score the bid in Part 2	
Part Two: Scored Bid Review	
3.2 Letter of Submittal	25
3.3 Qualifications and Experience	30
3.4 References	20
Part Three: Scored Cost Proposal (30 possible points)	
3.7 Cost Proposal	25

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

4.3. ORAL PRESENTATIONS AND/OR DEMONSTRATIONS MAY BE REQUIRED

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

4.4. NOTIFICATION TO PROPOSERS

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

4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

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

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

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

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

4.6. PROTEST PROCEDURE

Protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:30 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.

Bidders 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 Bidders under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

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

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or WAC 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) WAC'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 WAC. The WAC Chair, or an entity delegated by the Chair who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

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

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the WAC's action; or
- Find only technical or harmless errors in the WAC's acquisition process and determine the WAC to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the WAC 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 WAC determines that the protest is without merit, the WAC will enter into a contract with the apparently successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

- Exhibit A Certifications and Assurances and Executive Order 18-03 form
- Exhibit B Services Contract Format including
- Exhibit C General Terms and Conditions (GT&Cs)

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal for RFP K3325 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. Bidder certifies that Bidder has read, thoroughly examined, and fully understands all of the provisions in the Competitive Solicitation (including all exhibits) and the terms and conditions of the Contract and any amendments or clarifications to the Competitive Solicitation, and agrees to abide by the same.
3. Bidder certifies that Bidder has carefully prepared and reviewed its bid and fully supports the accuracy of the same. Bidder further understands and acknowledges that WAC shall not be responsible for any errors or omission on the part of Bidder in preparing its bid. Bidder certifies that the facts declared here are true and accurate. Bidder further understands and acknowledges that the continuing compliance with these statements and all requirements of the Competitive Solicitation are conditions precedent to the award of the resulting Contract.
4. 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.
5. The attached proposal is a firm offer for a period of 90 days following receipt, and it may be accepted by the WAC without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
6. 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.
7. Bidder Responsibility Criteria; Bidder certifies that Bidder has not, within the three-year period immediately preceding the date of release of this competitive solicitation, been determined by a final and binding citation and notice of assessment issued by the state of Washington Department of Labor and Industries or through a civil judgment to have willfully violated state minimum wage laws (RCW 49.38.082; Chapters 49.46 RCW, 49.48 RCW, or 49.52 RCW). Bidder attests under penalty of perjury that the foregoing statement is true and correct.
8. The Bidder has not had a contract or agreement terminated for default in the last five years as either the party named in the contract or when acting as an agent of the entity in default. Termination for default is defined as receiving notice to stop performance under a contract or agreement due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to the admission of the Bidder, or (b) litigated and such litigation determined that the Bidder was in default.
9. I/we understand that the WAC will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the WAC, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
10. 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.
11. 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.
12. 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.

13. I/we grant the WAC the right to contact references and others, who may have pertinent information regarding the ability of the Bidder and the lead staff person to perform the services contemplated by this RFP.

14. The proposer will identify if any firm principal is a participant in the Washington State 2008 Early Retirement Factor program: Yes No

15. WORKERS' RIGHTS (EXECUTIVE ORDER 18-03). Proposer certifies as follows (must check one):

No MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. Proposer does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

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

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

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

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

Signature of Proposer

Title

Date

Print Name

Place

City and State where signed

SAMPLE CONTRACT
CONTRACT FOR SERVICES
BETWEEN
THE WASHINGTON ASPARAGUS COMMISSION
AND
[CONTRACTOR]

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

(Contractor Name)

(Address)

(City, State Zip)

Phone: [redacted]

Email: [redacted]

Federal ID No.: [redacted]

WA State UBI No.: [redacted]

PURPOSE

The purpose of this contract is to

SCOPE OF WORK

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

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

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

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

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

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

PERIOD OF PERFORMANCE

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

COMPENSATION AND PAYMENT

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

BILLING PROCEDURES

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

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

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

- Receipt of properly executed invoice vouchers;
- Acceptance of deliverables by WAC.

The WAC 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.

CONTRACT MANAGEMENT

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

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

INSURANCE

The Contractor shall, at Contractor’s own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below and in the attached General Terms and Conditions. Contractor shall submit renewal certificates on a yearly basis during the term of the contract.

A copy of the Certificate of Insurance shall be forwarded to the Contract Manager within fifteen (15) days of the contract effective date.

Liability Insurance

Commercial General Liability Insurance (CGL): Contractor shall maintain general liability insurance, including contractual liability, and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Business Auto Policy: As applicable, the Contractor shall maintain business automobile liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of “Any Auto.” Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Professional Liability Insurance: The Contractor will obtain professional liability (“Errors and Omissions”) insurance appropriate to the scope of work provided under the Contract, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall include negligent and non-negligent acts and omissions.

Employers Liability (“Stop Gap”) Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

- **Additional Insured.** The WAC, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state. All policies will be primary to any other valid and collectable insurance.
- **Cancellation.** The WAC shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the state’s contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

Workers' Compensation and employer's liability coverages with Washington statutory limits and limits of not less than \$500,000 for employer's liability. The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of the contract.

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

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

MEMO OF UNDERSTANDING

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

ASSURANCES

WAC 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.

GOVERNANCE

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

ORDER OF PRECEDENCE

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

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.

CONTRACT MANAGEMENT

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

The Contract Manager for the <u> </u> CONTRACTOR is:	The Contract Manager for WAC is:
_____	_____
(Contract Manager's Name)	(Contract Manager's Name)
_____	Washington Asparagus Commission
(Contractor's Name)	Address
_____	Address
(Address)	Phone: (_____) _____
Phone: (_____) _____	FAX: (_____) _____
FAX: (_____) _____	Email: _____
Email: _____	

ALL WRITINGS CONTAINED HEREIN AND APPROVAL

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

- A = General Terms & Conditions
- B = Statement of Work (if used as an attachment)]
- C = Budget
- D = Performance Measurement Report
- E = WAC Request for Proposal No. _____
- F = Contractor's Proposal dated _____
- G = Any other provision, term or material incorporated herein by reference or otherwise incorporated.

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

IN WITNESS WHEREOF, the parties have executed this Contract.

[CONTRACTOR'S NAME]

Washington Asparagus Commission

Signature

Signature

Title

Date

Title

Date

GENERAL TERMS AND CONDITIONS**DEFINITIONS**

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

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

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

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

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

Board means the Agency's Board of Commissioners or any Commissioner authorized to act on the Board's behalf.

Personal Information means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers or Protected Health Information as defined by the federal Health Insurance Portability and Accountability Act Pub. L. No. 104-191, § 264, 110 Stat. 1936, any financial identifiers, and other information that may be exempt from public disclosure or other unauthorized persons under state and federal statutes.

Subcontractor means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with chapter 39.26 RCW, the Contractor must provide access to data generated under this Contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

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

AMENDMENTS

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

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

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

ASSIGNMENT

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

ATTORNEYS' FEES

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

CALCULATION OF TIME

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

CONFLICT OF INTEREST

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

CONFIDENTIALITY/SAFEGUARDING INFORMATION

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

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

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

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

COPYRIGHT PROVISIONS

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

Materials in this provision means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Data includes, but is not limited to, all information that supports the findings, conclusions, and recommendations of the Contractor's reports, data extracts, reports or information provided by the Agency. Ownership includes, but is not limited to, the right to use, copyright, patent, register and the ability to transfer these rights.

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

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

The Contractor must provide the Agency with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Agency has the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agents maintained by the Contractor for the purpose of securing business. In the event of Contractor's breach of this clause, the Agency has the right to annul this Contract without liability. In lieu of annulling the Contract, the Agency may deduct the full amount of such commission, percentage, brokerage or contingent fee from the Contract price or consideration.

CUMULATIVE RIGHTS AND REMEDIES

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

DEBARMENT, SUSPENSION AND INELIGIBILITY

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

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties' Contract Managers that cannot be resolved by direct negotiation, either party may request a dispute hearing with the Board.

The request for a dispute hearing must:

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

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

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

DUPLICATE PAYMENT

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

EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS

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

GOVERNING LAW AND VENUE

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

INDEMNIFICATION

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

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

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

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

INDEPENDENT CAPACITY OF THE CONTRACTOR

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

INDUSTRIAL INSURANCE COVERAGE

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

LICENSING, ACCREDITATION, AND REGISTRATION

The Contractor must comply with all applicable local, state, and federal licensing and accrediting requirements / standards, necessary in the performance of this Contract.

LIMITATION OF SIGNATURE AUTHORITY

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

NONDISCRIMINATION & CIVIL RIGHTS

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

OVERPAYMENTS AND ASSERTION OF LIEN

Contractor must refund to Agency any amount of overpayment or erroneous payment. The Agency may secure repayment, plus interest, by the filing of a lien against the Contractor's real property or by requiring Contractor to post a bond, assignment of deposit, or some other form of security acceptable to the Agency.

PROPRIETARY INFORMATION

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

PUBLICITY

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

RECAPTURE

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

RECORDS, DOCUMENTS, AND REPORTS

The Contractor must maintain books, records, documents and other evidence relating to this Contract and performance of the services described by this Contract, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under the Contract, are subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Agency, the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or any of its Subcontractors.

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

REGISTRATION WITH DEPARTMENT OF REVENUE

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

SEVERABILITY

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

SITE SECURITY

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

SUBCONTRACTS

The Contractor must not enter into subcontracts for any of the work contemplated under this Contract without prior written approval of the Agency. Contractor must prohibit Subcontractors from further subcontracting without prior written approval of the Agency. The existence of the subcontract does not operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

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

SURVIVAL

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

TAXES

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

TERMINATION OR SUSPENSION FOR CONVENIENCE

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

TERMINATION OR SUSPENSION FOR CAUSE

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

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

TERMINATION OR SUSPENSION FOR LOSS OF FUNDING OR GOVERNMENT SHUTDOWN

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

TERMINATION PROCEDURE

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

The Agency must pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency and the amount agreed upon by the Contractor and the Agency for the following:

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

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

1. Stop work under the Contract on the date, and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency's Contract Manager all of the rights, titles, and interest of the Contractor under the orders and

subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency's Contract Manager to the extent he or she may require, which approval or ratification is final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent, if any, as directed by the Agency's Contract Manager, any property which, if the Contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work that has not been terminated; and
7. Take such action as may be necessary, or as the Agency's Contract Manager may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by the Agency remains in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, passes to and vests in the Agency upon delivery of such property by the Contractor. The title passes to the Contractor only if the Agency specifically agrees to grant title in this Contract for asset(s) purchased.

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

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

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

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

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

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

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

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

WAIVER

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