



Washington State
Liquor and Cannabis Board

REQUEST FOR PROPOSAL

K1411 – Pre-Employment Background Investigations

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SCHEDULE of EVENTS: The WSLCB reserves the right to adjust this schedule as it deems necessary.

RFP Release Date	May 1, 2020
Question Period	May 1, 2020 – May 15, 2020 by 2:00 P.M. PST
Questions and Answers Posted to WEBS	May 22, 2020
Proposal Due Date	May 29, 2020, by 2:00 PM, PST
Evaluation Period	June 1, 2020 – June 5, 2020
Announcement of Apparent Successful Bidder	Estimated to be June 12, 2020
Debriefing Request Deadline	Estimated to be June 17, 2020
Award	Estimated to be June 24, 2020
Projected Contract Start Date	July 1, 2020

Proposals must be received via email & electronically date/time stamped on or before the Proposal due date and time in the following inbox:

LCBBIDS@LCB.WA.GOV

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1 DEFINITIONS

Acceptance: The materials, supplies, services, and/or equipment that have passed an appropriate inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document, then acceptance is formalized in writing. If there is no Acceptance Testing, Acceptance will occur when the Product is delivered and inspected by WSLCB.

Acceptance Testing: The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance.

Addendum or Amendment: A change to a legal document. For purposes of a Solicitation, an amendment shall be a unilateral change issued by the WSLCB, at its sole discretion.

Agency: The Washington State Liquor and Cannabis Board (“WSLCB”).

Alternate: A substitute offer of materials, supplies, services and/or equipment that is not at least a functional equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation.

Apparently Successful Bidder or Vendor (ASB/ASV): The bidder selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Applicant/Candidate: Any individual person(s) applying for an employment position or being considered for employment.

Authorized Representative: An individual designated by the Bidder to act on its behalf with the authority to legally bind the Bidder concerning the terms and conditions set forth in the Solicitation and Proposal documents.

Bidder: Individual, company, or firm submitting a proposal in order to attain a Contract with the Agency.

Business Day: Days of the week excluding weekends and state holidays; including but not limited to: New Year’s Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving day, the day after Thanksgiving day, and Christmas.

Business Hours: Normal state business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m., except legislatively mandated furlough days and state holidays.

Contract: The signed agreement, all schedules, exhibits and amendments for the procurement of items of tangible property, services or construction derived from this RFP.

Delivery Date: The date by which the Products/Services ordered must be delivered.

Effective Date: The first date the Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

Evaluation Committee: The body appointed by the WSLCB to perform the evaluation and scoring of submitted proposals.

Firm, Fixed Price: A price that is all-inclusive of direct cost and indirect costs, including, but not limited to: direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction, and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the Statement of Work.

Inspection: An examination of delivered material, supplies, services, and/or equipment prior to Acceptance, aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the Solicitation document and/or as agreed between the parties. Inspection may be acknowledged by an authorized signature of the Agency.

Mandatory: The terms “shall,” “will,” and “is required,” identify a Mandatory item or factor (as opposed to “desirable”). Failure to meet a Mandatory item or factor may result in the rejection of a proposal.

Milestone: A significant event in a project, usually the completion of a major Deliverable.

Optional: The terms “may,” “can,” or “prefers” identify a discretionary item or factor.

Order Document: A written communication, submitted by the WSLCB to the Contractor, which details the specific transactional elements required by WSLCB within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work orders, or other writings as may be designated by the parties hereto. No additional or alternate terms and/or conditions on such written communication shall apply unless authorized by the Contract and expressly agreed to between the WSLCB and Contractor.

Price: Charges, costs, rates, and/or fees charged for the Products and Services under the resulting Contract and shall be paid in United States dollars.

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

Proposal Due Date/Time: Proposals and Letters of Intent are due (must be received by the WSLCB) on the date and at the time specified in the schedule. Any Proposal or Letter of Intent received at any time after the stated date and time (e.g. 2:01 PM PST) will be considered late and **will not** be evaluated.

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

Responsive Bid or Responsive Proposal: An offer or proposal that conforms in all material respects to the requirements set forth in the Solicitation. Material respects of a request for proposals include, but are not limited to: price, quality, quantity, or delivery requirements.

Responsible Bidder or Vendor: A Bidder or Vendor who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the Vendor’s proposal.

Solicitation: The process of notifying prospective Vendors that the WSLCB desires to receive competitive Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes references to the actual documents used for the procurement. The form of this solicitation is an RFP.

Specifications: The technical and other specifications set forth in the RFP, any additional specifications set forth in Vendor's Response, and the specifications set forth in Vendor's product/service documentation, whether or not Vendor produces such documentation before or after this Contract's Effective Date.

State: "State" means State of Washington.

Subcontractor: One not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with the Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

Vendor or VENDOR: Individual or company whose proposal has been accepted by the agency and is awarded a fully executed, written contract. Vendor has full responsibility for the coordination and control of all aspects of the project, including support to be provided by any subcontractor(s). Vendor will be the sole point of contact with WSLCB relative to contract performance.

Veteran-owned business: A business that is certified by Department of Veteran's Affairs to be at least fifty-one percent owned and controlled by (a) A veteran as defined in RCW 41.04.007; or (b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

WEBS: Washington Electronic Business Solutions (<https://fortress.wa.gov/ga/webscust/>) an Internet vendor registration and bid notification system. The system offers one online site where vendors can register to receive government bid notifications.

2 INTRODUCTION

2.1 Background

The WSLCB was formed in 1933 by the Steele Act. The Mission of the WSLCB is to promote public safety by consistent and fair administration of liquor and cannabis laws through education, voluntary compliance, responsible sales and preventing the misuse of alcohol, cannabis and tobacco.

As a limited authority law enforcement agency, the WSLCB makes physical arrests, seizes property and collects evidence to be used in both administrative and criminal proceedings. In 2011, the citizens of Washington State privatized the sale of spirits and in 2012, Initiative 502 was passed, which legalized recreational marijuana sales and mandated the WSLCB to regulate the recreational market.

2.2 Purpose

WSLCB is soliciting proposals from qualified vendor(s) who can provide pre-employment background investigations to help safeguard and maintain the integrity of our Law Enforcement Division. The WSLCB intends to award to a single Bidder, but reserves the right to make multiple awards if it is deemed in the best interest of WSLCB.

2.3 Contract term

The initial term of the Contract resulting from this RFP shall be for Two (2) years from date of award with the option to extend for Four (4) additional One (1) year term(s) or portions thereof.

Extension for each additional term shall be offered at the sole discretion of the WSLCB and are subject to written mutual agreement. The total contract term, including the initial term and all subsequent extensions, shall not exceed six (6) years unless an emergency exists and/or special circumstances require a partial term extension. The WSLCB reserves the right to extend with all or some of the contractors, as solely determined by the WSLCB.

2.4 Acquisition Authority

The Washington State Department of Enterprise services (WSLCB) has delegated the authority to the WSLCB for this procurement activity, acting under the authority of its enabling legislation Revised Code of Washington (RCW) [39.26](#), which establishes WSLCB and regulates the manner in which state agencies may acquire general goods and services.

3 RFP OVERVIEW

3.1 Announcement and Special Information

The RFP, its appendices, attachments, amendments and any incorporated documents, will comprise the entire RFP which will become part of the resulting contract between WSLCB and the awarded Contractor when it is countersigned by WSLCB.

By responding to this RFP, a bidder acknowledges having read and understood the entire RFP and accepts all information contained within the RFP without modification.

3.2 Proposed Contract

The resulting contract will be comprised of Special Terms and conditions as contained in this Solicitation document, as well as, General Terms and Conditions as indicated in Attachment A – General Terms and Conditions.

To be responsive, a Bidder must indicate a willingness to enter into a Contract substantially the same as the proposed Contract by signing and including the Certifications and Assurances (Attachment D) as part of Bidder's response.

Under no circumstances is a Bidder to submit their own standard contract terms and conditions. Instead, a Bidder must review and identify the problematic language, state the issue, and propose alternate language or a proposal for Contract modification.

The foregoing should not be interpreted to prohibit either party from proposing additional terms and conditions during negotiations of the final contract. WSLCB, in its sole discretion, reserves the right to negotiate improvements to responsive and responsible bid submittals.

3.3 Solicitation Amendments

WSLCB reserves the right to revise the schedule or portions of the Solicitation at any time. Any changes or corrections will be by one or more written amendments, dates, attached to or incorporated in and made a part of this Solicitation. All changes must be authorized and issued only by the Procurement Coordinator or their supervisor(s). If there is any conflict between Amendments, or between an Amendment and the Solicitation, whichever document was issued last in time will be controlling. Only Bidders who have properly registered and downloaded the

original Solicitation directly via WEBS will receive notification of Amendments and other correspondence pertinent to the Solicitation.

In the event that a Solicitation Amendment is required as a submittal, Bidder must complete, sign, and scan and include any Solicitation Amendments issued.

3.4 Right to Cancel

WSLCB reserves the right to cancel or reissue all or part of this Solicitation at any time.

3.5 Non-Endorsement and Publicity

In selecting Bidders, WSLCB is not endorsing the Bidder's products or services and is not suggesting that they are the best or the only solution to their needs.

3.6 Minority and Women Owned Business Enterprise

In accordance with the legislative findings and policies set forth in [RCW 39.19](#), the State of Washington encourages participation in all of its Contracts by Minority and Woman Owned Business Enterprise (MWBE) firms certified by the [Office of Minority and Women's Business Enterprises](#) (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community. The authors of the Solicitation have set a goal of 10 percent participation. In addition, the state welcomes participation by self-identified minority and woman owned firms and strongly encourages such firms to become certified by OMWBE.

Participation may be either on a direct basis in Response to this Solicitation or as a subcontractor to a Contractor. However, unless required by federal statutes, regulations, grants, or Contract terms referenced in the original Solicitation, no preference will be included in the evaluation of Bids, no minimum level of MWBE participation shall be required as a condition for receiving an award, and Bids will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original Solicitation will apply. Bidders are encouraged to contact [Office of Minority and Woman Owned Business Enterprise](#) (OMWBE) to obtain information on becoming a certified firm, or to obtain information on other certified firms for potential sub-Contracting arrangements. Nothing in this section is intended to prevent or discourage Bidders from inviting others from participating with non-MWBE firms as well as MWBE firms.

3.7 Veteran-Owned Business Enterprise

WSLCB strongly encourages participation of businesses owned by veterans. No minimum level of veteran-owned business participation is required as a condition of receiving an Award and no preference will be included in the evaluation of Responses in accordance with chapter 43.60A RCW.

3.8 Pricing

Bid prices are based on a Not-To-Exceed Price for each line item requested in the Attachment C1, C2, and C3 Evaluation Criteria.

Failure to identify all costs in a manner consistent with the instructions in this RFP is sufficient grounds for disqualification.

The State makes no volume commitment in this solicitation.

3.9 Prohibition on Pre-Contractual Costs or Charges

Costs or charges incurred before a contract is fully executed will be the sole responsibility of the bidder.

3.10 Single Point of Contact

Contractor will be required to provide a Contract Administrator familiar with all aspects of the contract and the authority to make sales and contracting decisions on behalf of the awarded Contractor.

3.11 Award of Related Contracts

The WSLCB may undertake to award supplemental contracts for work related to this Contract or any portion thereof.

4 TIMELINE

4.1 Projected Procurement Schedule

The dates listed on the cover page represent the projected procurement schedule for this Solicitation. WSLCB reserves the right to change the schedule. Notification of changes to the procurement schedule prior to the Response due date and time will be sent electronically to all properly registered users of Washington's Electronic Business Solution (WEBS) who downloaded this Solicitation from WEBS. Changes to the procurement schedule after the Response due date and time may be communicated to all Bidders reflecting the change.

4.2 Bidder Questions

Questions regarding this Solicitation will be allowed consistent with the dates specified in the procurement schedule on the cover page. All questions must be submitted in writing to the Procurement Coordinator.

Please limit questions to this Solicitation. Details on additional services will be provided in future solicitations.

WSLCB will provide written answers for questions received by the question and answer period's deadline. Answers will be posted to WEBS prior to closing date.

Verbal responses to questions will not be provided. Only written answers posted to WEBS will be considered official and binding. Bidders will not be identified in answers.

When the question and answer period is complete, additional comments will be for the purpose of informing the Procurement Coordinator of an issue only. Questions and comments outside the question and answer period will not be answered or acknowledged.

If interpretations or other changes to this Solicitation are required as a result of inquiries made during the question and answer period, the Solicitation may be amended. Amendments are posted to WEBS.

Complaints: Issues or concerns not resolved to a Bidder's satisfaction during the normal question and answer period may be addressed prior to the Response due date and time through the complaint process listed below.

4.3 Information Availability

In accordance with RCW 39.26.030(2), Response contents (including pricing information) and evaluations are exempt from disclosure until WSLCB announces Apparent Successful Bidders.

4.4 Complaints, Debriefs, and Protests

Complaint: This solicitation offers a complaint period for bidders wishing to voice objections to this solicitation. The complaint period ends five business days before the bid due date. The complaint period is an opportunity for the bidder to voice objections, raise concerns or suggest changes. Failure by the bidder to raise a complaint at this stage may waive its right for later consideration. WSLCB will consider all complaints but is not required to adopt a complaint, in part or full. If bidder complaints result in changes to the RFP, written amendments will be issued and posted on WEBS.

Complaints must be emailed to the Procurement Coordinator located on the face page of this document. Complaints are limited to the following issues:

1. The Solicitation unnecessarily restricts competition;
2. The Solicitation evaluation or scoring process is unfair or flawed; or
3. The Solicitation requirements are inadequate or insufficient to prepare a response.

Complaints must be in writing, emailed to the Procurement Coordinator in a timely manner, should clearly articulate the basis for the complaint, and should include a proposed remedy.

Debrief: Debrief meetings are an opportunity for the bidder and the Procurement Coordinator to meet and discuss the Bidder's Proposal. A debrief is a required prerequisite for a bidder wishing to lodge a protest. Following the evaluation of the bids, WSLCB will issue an announcement of the Apparent Successful bidder (ASB). That announcement may be made by any means, but WSLCB will likely use email to the bidder's email address provided in the bidder's bid. Bidders will have three business days to request a debrief meeting. Once a debrief meeting is requested, WSLCB will offer the requesting bidder one meeting opportunity and notify the bidder of the debrief meeting place, date and time. Please note, because the debrief process must occur before making an award, WSLCB will likely schedule the debrief meeting shortly following the announcement of the ASB and the bidder's request for a debrief meeting. WSLCB will not allow the debrief process to delay the award or be used as a delaying tactic. Therefore, bidders should plan for contingencies and alternate representatives; bidders unwilling or unable to attend the debrief meeting will lose the opportunity to protest.

Discussions will be limited to a critique of the requesting Bidder's Proposal. Comparisons between Proposals or evaluations of other proposals will not be allowed. Debriefing conferences may be conducted in person or by telephone and will be limited to one (1) hours.

Protest: Protests may be made only by Bidders who submitted a response to this Solicitation and who have participated in a debriefing conference. Upon completing the debriefing conference, the

Bidder is allowed five (5) Business Days to file a protest with the Procurement Coordinator. Protests must be received by the Procurement Coordinator no later than 4:00 PM, local time, via email, on the fifth Business Day following the debriefing. The WSLCB shall not accept any protests before the announcement of ASB.

The WSLCB shall consider only those protest concerning the following:

1. A matter of bias, discrimination, or conflict of interest on the part of the evaluator;
2. Errors in computing the scores; or
3. Non-compliance with procedures described in the procurement document or agency protest process or DES requirements.

Failure to cite the basis of the protest will result in rejection of the protest. Protests must be writing, emailed to Procurement Coordinator, and must state the RFP name and number, the grounds for the protest with specific facts and complete statement(s) of action being protested and any other supporting information on which the protesting party is relying.

Upon receipt of a valid, formal protest, the Agency will postpone signing a Contract with the ASB until the Bidder protest has been resolved. The WSLCB will perform an objective review of the protest, by individuals not involved in the acquisition being protested. The review will be based on the written protest material submitted by the Bidder.

The Procurement Coordinator will render a written decision within ten (10) Business Days after receipt of the protest, unless more time is needed. The protesting Bidder shall be notified, in writing, if additional time is necessary.

The Agency determination is limited to the following options:

1. Find the protest lacking in merit and uphold the Agency's action;
2. Find only technical or harmless errors in the Agency's acquisition process, determine the Agency to be in substantial compliance, and reject the protest;
3. Find merit in the protest and provide the Agency with options that may include:
 - a. Correct errors and reevaluate all Proposals,
 - b. Reissue the Solicitation; or
 - c. Make other findings and determine other courses of action as appropriate.

In no instance shall a determination require the Agency to award the Contract to a protesting party or any other vendor, regardless of the outcome.

5 INSTRUCTIONS TO BIDDERS

5.1 Authorized Communication

Upon release of this Solicitation, all Bidder communications concerning this Solicitation must be directed to the Procurement Coordinator listed on the front page of this Solicitation. Unauthorized contact regarding this Solicitation with other state employees or customer advisory team members involved with the Solicitation may result in disqualification. All oral communications will be

considered unofficial and non-binding. Bidders should rely only on written statements issued by the Procurement Coordinator, such as Solicitation Amendments.

5.2 Bidder Communication Responsibilities

During the RFP process, all bidder communications about this RFP must be directed to the Procurement Coordinator. Unauthorized contact regarding this RFP with other state employees involved with the RFP may result in disqualification. All oral and written communications will be considered unofficial and non-binding on WSLCB. Bidders should rely only on written amendments issued by the Procurement Coordinator.

Bidders are encouraged to make any inquiry as early in the process as possible to allow WSLCB to consider and respond; however, no response is required from the Procurement Coordinator.

If a bidder does not notify WSLCB of an issue, exception, addition, or omission, WSLCB may consider the matter waived by the bidder for protest purposes.

If bidder inquiries result in changes to the RFP, written amendments will be issued and posted on WEBS.

5.3 Bidder Authorized Representative

Bidder must designate an authorized representative who will be the principal point of contact for the Procurement Coordinator for the duration of the Solicitation process. Designation shall be made in the Bidder Profile.

5.4 Washington Electronic Business Solution

Bidders are solely responsible for:

1. Properly registering with Washington's Electronic Business Solution (WEBS) at <https://fortress.wa.gov/ga/webs/>, and maintaining an accurate vendor profile in WEBS.
2. Downloading the RFP packet consisting of the RFP, all appendices, and incorporated documents related to the RFP for which you are interested in bidding.
3. Downloading all current and subsequent amendments to the RFP to ensure receipt of all RFP documents.

Notification of amendments to the RFP will only be provided to those vendors who have registered with WEBS and have downloaded the RFP from WEBS. Failure to do so may result in a bidder having incomplete, inaccurate, or otherwise inadequate information and bid.

5.5 Bidder Responsiveness

Bidders are to respond to each question/requirement contained in this RFP. Failure to comply with any applicable item may result in a bid being deemed non-responsive and disqualified.

WSLCB reserves the right to determine the actual level of bidders' compliance with the requirements specified in this RFP and to waive informalities in a bid. An informality is an immaterial variation from the exact requirements of the competitive RFP, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial, to bidders.

5.6 Withdrawal or Modification of Response

Bidders are liable for all errors or omissions contained in their Responses.

- After Response submittal but prior to Response due date and time: The Bidder may modify or withdraw their Response.
- After Response due date and time: No Response shall be altered or amended.
- A Bidder, who is offered a contract yet fails to enter into a Contract with WSLCB, may not participate in bidding on WSLCB solicitations until the next calendar year, and no less than six months later.

WSLCB reserves the right to contact Bidder for clarification.

5.7 Proprietary or Confidential Information

All Responses submitted become the property of WSLCB and a matter of public record after WSLCB announces Apparent Successful Bidders.

Any information contained in the Response that is proprietary or confidential must be clearly designated. Marking of the entire Response or entire sections of the Response as proprietary or confidential will not be accepted nor honored. WSLCB will not honor designations by the Bidder where pricing is marked proprietary or confidential.

6 BIDDER QUALIFICATIONS

6.1 Established Business

Prior to commencing performance, or prior to that time if required by WSLCB, law or regulation, Bidder must be an established business firm with two years of directly applicable experience, all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Bidder shall maintain compliance with these requirements throughout the life of this Contract.

WSLCB reserves the right to require receipt of proof of compliance with said requirements within 10 calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

6.2 Federal Restrictions on Lobbying

The Bidder certifies, by submittal of a Response to this Solicitation, that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

6.3 Debarment

The Bidder certifies, by submittal of a Response to this Solicitation, that neither it nor its “principals” (as defined in 49 CFR. 29.105 (p) or RCW 39.26.010 (9) or other state statute, regulation or policy) is presently debarred by any Federal or state department or agency.

6.4 Bidder Qualification Submittals

Bidder shall respond to all attachments requiring a response. This includes, but is not limited to: rates/prices, Bidder qualification questions, and requested proof of Bidder qualifications.

7 PRICING

7.1 Overview

Response prices must include all cost components needed to provide services as described in this Solicitation. All costs associated with services must be incorporated into the price of the Bidder’s Response.

Failure to identify all costs in a manner consistent with the instructions in this Solicitation will result in rejection.

There is no volume commitment specified in this Solicitation.

7.2 Financial Grounds for Disqualification

Failure to identify all pricing quotations in a manner consistent with the instructions in this Solicitation is sufficient grounds for disqualification.

7.3 Taxes

Contractor must collect and report all applicable state taxes.

7.4 Price Quotation

Bidder must provide a not-to-exceed hourly rate in accordance with the instructions detailed in Attachment C Evaluation criteria for Each Category.

Bidder agrees that rates quoted in the Response and included as part of any Contract assumes work is performed at WSLCB Headquarters location in the State of Washington during normal Business Days and Hours. Normal Business Hours are to be 8:00 am to 5:00 pm Monday through Friday. Exceptions are holidays recognized by the State of Washington. Overtime rates are not allowed unless required by state or federal law. Further, prices are to be considered all-inclusive hourly rates to include all expenses (e.g., overhead, insurance, and administration including but not limited to the management fee) except, in limited circumstances.

7.5 Miscellaneous Expenses

Expenses related to day-to-day performance under any Contract, including but not limited to, travel, lodging, meals, incidentals will **not** typically be reimbursed to the Bidder. Notwithstanding the forgoing, WSLCB recognizes that there may be additional occasions when a Bidder will be required by WSLCB to travel. In such case, WSLCB must provide written pre-approval of such expenses on a case-by-case basis. Any such reimbursement shall be at rates not to exceed the

guidelines for state employees set forth in the [Washington State Administrative and Accounting Manual](#), and not to exceed expenses actually incurred.

7.6 Price Adjustments

Price adjustments will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices such as the U.S. Department of Labor's Consumer Price Index. The grant of any price adjustment will be at the sole discretion of WSLCB. The Contractor shall be notified in writing by the Contract Specialist of any price adjustment granted and such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by WSLCB shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

8 PREPARATION OF BIDS

8.1 Bid Submittals Checklist

The following checklist identifies the submittals which will comprise a bid. Any bid received without an item identified in this checklist and designated as **REQUIRED** will be rejected as being non-responsive. Please identify each page of the submittals and any supplemental materials with your company name or other identifiable company mark. Bidders must submit separate bids for each category that your firm is bidding on. Please clearly identify what category your firm is bidding on.

- ☐ **Non-Cost Submittals**
- ☐ **Cost Submittal**
- ☐ **Certifications and Assurances**
- ☐ **Bidder Profile**

8.2 Cost of Proposal Preparation

The WSLCB will not reimburse any Bidder costs associated with preparing or presenting any proposal in response to this Solicitation.

8.3 Submission of Proposals

Complete Proposals must be received electronically on or before **May 29, 2020, 2:00 PM, Pacific Time**. Bidder must submit one (1) electronic copy of their complete Proposal to LCBBIDS@LCB.WA.GOV. In the following manner:

- a. Clearly mark the subject line of the email: **RFP K1411, Vendor Name**.
- b. The preferred software formats are Microsoft Word 2010 and PDF. If this presents a problem or issue, contact the Procurement Coordinator immediately.
- c. It is preferred that electronic signatures appear on all documents requiring signature. However, an email date stamp will be accepted as signed by the legally authorized representative of the firm for the purpose of this Solicitation only.

Time of receipt will be determined by the email date and time received at the WSLCB's mail server in the email inbox indicated above. The "receive date/time" posted by the WSLCB's email system will be used as the official time stamp. The WSLCB is not responsible for problems or delays with email when the WSLCB's systems are operational. Late proposals will not be accepted and will be automatically disqualified from further consideration. Requests for extension of this date/time will not be granted.

8.4 Confidentiality, Proprietary Material(s), and Trade Secrets

All documents submitted by bidders to WSLCB as part of this procurement will become public records. They are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) [42.56](#) (The Public Records Act).

Confidential documents: WSLCB strongly discourages submittal of confidential material. WSLCB considers confidential material to be any portion of your submittal clearly marked all or in part "Confidential," "Proprietary" or "Trade Secret" (or the equivalent).

- WSLCB reserves the right to return, reject or disqualify any submittal that include WSLCB confidential material.

Public records requests: If a public records request seeks to view or obtain a copy of your RFP submittal, and if your submittal includes content clearly marked "Confidential," "Proprietary" or "Trade Secret" (or the equivalent), WSLCB will:

- Notify you of the date WSLCB will disclose the requested records;
- Give you an opportunity to seek a court order that stops WSLCB from disclosing the records.

WSLCB will not:

- Evaluate or defend your claim of confidentiality. It is your responsibility to support your claim and take appropriate legal action to do so;
- Withhold or redact your documents without a court order.

Questions about the confidentiality of your submittal can be directed to the WSLCB Public Records Officer at (360) 664-1769 or PUBLCRECORDS@LCB.WA.GOV.

9 EVALUATION AND AWARD

9.1 General Provisions

Bidder responsiveness, responsibility, and cost factors will be evaluated based on the evaluation process described in this section. A single Bidder will be awarded. However, the WSLCB, at its sole discretion, may choose to make multiple awards.

Bidders whose bids are determined to be non-responsive will be rejected and will be notified of the reasons for rejection.

After bids have been submitted, WSLCB may require individual bidders to appear at a time and place determined by WSLCB to discuss contract requirements. Any such meeting should not be construed as negotiations or an indication of WSLCB's intention to award.

WSLCB 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) Cancel an RFP and re-solicit bids.

References: WSLCB reserves the right to use references to confirm satisfactory customer service, performance, satisfaction with service/product, knowledge of products/service/industry and timeliness. Any negative or unsatisfactory reference may be reason for rejecting a bidder as non-responsible. WSLCB reserves the right to waive the reference check. WSLCB reserves the right to interview additional references of their choosing.

Interviews: WSLCB reserves the right to conduct oral interviews of prospective Bidders. WWSLCB reserves the right to waive oral interviews or interview additional Bidders.

9.2 Evaluation Steps

The scoring criteria will be as follows:

Step 1: Initial determination of Responsiveness, as described below, based on bid submittal only. If it appears responsive, move to Step 2.

Step 2: Responsibility, as described below.

Step 3: Cost Evaluation. The bids will be evaluated on cost factors described below.

Step 4: Vendor Certification as required by [Executive Order 18-03](#).

9.3 Determination of Responsiveness

Bids will be reviewed initially on a pass/fail basis to determine compliance with administrative requirements as specified herein.

Bidder must respond to each question/requirement contained in this RFP. Failure to comply with any applicable item may result in the Proposal being deemed non-responsive and disqualified.

Failure to provide adequate information to demonstrate to the evaluators that your firm meets the requirements may constitute grounds for disqualification and may be established by any of the following conditions:

1. The Bidder states the requirements cannot be met.
2. The Bidder fails to include information requested.
3. The Bidder fails to include sufficient information to substantiate that a given requirement can be met.

WSLCB reserves the right to determine at its sole discretion whether a bidder's response to a minimum RFP requirement is sufficient to pass. However, if all bidders fail to meet any single RFP requirement, WSLCB may reject all bids and cancel the RFP or waive the requirement from the RFP's criteria for responsiveness.

9.4 Determination of Responsibility

During evaluation, WSLCB reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include, but are not limited to, financial statements, credit ratings, references, record of past performance, clarification of bidder's offer, and on-site inspection of bidder's or subcontractor's facilities. Failure to respond to these request(s) may result

in a bid being rejected as non-responsive. WSLCB may also re-examine the bid to determine whether the bid is truly as responsive as initially believed.

9.5 Price Evaluation

Evaluated price from responsive bids will be calculated as described in Attachment C1, C2, and C3. Bidders must submit information for all required line items as instructed; failure to do so will result in disqualification from award.

9.6 Vendor Certification as Required by Executive Order 18-03

Vendor must submit certification that their employees are not required to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers, as required per [Executive Order 18-03](#).

9.7 Selection of Apparent Successful Bidder

The responsive and responsible Bidder that meets all of the RFP requirements will be the Apparent Successful Bidder/Vendor(s) (“ASB/ASV”).

WSLCB may determine, at their sole discretion, if a multiple award is beneficial to the Agency.

WSLCB reserves the right to request additional information or perform tests and measurements as part of the evaluation process before award. Failure to provide requested information within 10 business days may result in disqualification.

Before award, WSLCB may negotiate with an Apparent Successful Bidder to determine if a bid can be improved.

Designation as an Apparent Successful Bidder does not imply issue of an award to your firm. It merely suggests that at this moment in time, WSLCB believes your bid to be responsive. The bidder must not construe this as an award, impending award, attempt to negotiate, etc. If a bidder acts or fails to act as a result of this notification, it does so at its own risk and expense. A Formal award letter will be sent by WSLCB following the complaint, debrief, and protest period.

9.8 Announcement of Apparent Successful Bidder

All Bidders responding to this Solicitation will be notified when WSLCB has determined the Apparent Successful Bidder(s). The date of announcement of the Apparent Successful Bidder will be the date of the notification from WSLCB.

9.9 Award

An award, in part or full, is made by WSLCB signature on the signature page of the resulting Contract. In some circumstances, WSLCB may include an award letter which further defines the award and is included by reference to accompany the signature page.

WSLCB reserves the right to award on an all-or-nothing consolidated basis.

Following the award, all bidders will receive a Notice of Award, usually through a WEBS notification.

9.10 Statewide Payee Desk

In order to receive payment, Contractors are required to be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington State agencies cannot make payments to Contractors until the Contractors are registered.

Registration materials are available here: [Receiving Payment from the State](#).

10 CONTRACT INFORMATION

10.1 Incorporated Documents and Order of Precedence

A bid submitted to this RFP is an offer to contract with WSLCB.

A bid becomes a contract only when awarded and accepted by signature of WSLCB and bidder on the Authorized Offer and Contract Signature page. The documents listed below are, by this reference, incorporated into a contract resulting from this RFP as though fully set forth herein. No other statements or representations, written or oral, are a part of the contract.

- a. The RFP
- b. The contract
- c. The awarded vendor's bid
- d. All appendices
- e. RFP amendments (if any)
- f. Award letter (if any).

10.2 Authority to Bind

The signatories to this contract represent that they have the authority to bind their respective organizations to this contract.

10.3 Counterparts

This contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate will be deemed an original copy of this contract signed by each party, for all purposes.

10.4 Changes

WSLCB reserves the right to modify the resulting contract (including but not limited to adding or deleting products/services) by mutual agreement between WSLCB and the contractor. Alterations to any of the terms, conditions or requirements of this contract will only be effective upon written issuance of a mutually-agreed contract amendment by WSLCB. Changes to point-of-contact information may be updated without the issuance of a mutually accepted contract amendment.

10.5 Miscellaneous Expenses

Expenses related to day-to-day contract performance (including but not limited to travel, lodging, meals, and incidentals) will not be reimbursed to the contractor. However, WSLCB recognizes that there may be occasions when the purchaser requires the bidder to travel. In such cases the

purchaser must provide written pre-approval of such expenses on a case-by-case basis. Any such reimbursement will be at rates not to exceed the guidelines for state employees published by the Washington State Office of Financial Management set forth in the [Washington State Administrative & Accounting Manual](#), and not to exceed expenses actually incurred.

11 CONTRACT SPECIAL TERMS AND CONDITIONS

11.1 Warranties and Reservations

- a. Each service provided pursuant to this Contract shall be conducted in accordance with generally accepted practice in the industry. Contractor shall comply with all state and federal laws.
- b. Contractor shall maintain all files pertaining to WSLCB candidates for five (5) years following the background investigation, in accordance with the Fair Credit Reporting Act statute of limitations. The Contractor expressly agrees and warrants that all tests and written materials utilized have been acquired by the Contractor in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws.
- c. Contractor shall abide by all directives and requirements of the Fair Credit Reporting Act, 15 U.S.C. § 1681.

Attachment A

General Terms and Conditions

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1 Assignment

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

2 Assurances

The WSLCB and Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

3 Advertising and Publicity

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

4 Commencement of Work

No work shall be performed by Contractor until this Contract is executed by the Contractor and the WSLCB.

5 Benefit of Upgrades

If Contractor upgrades or modifies its commercial product(s) or services provided to additional clients during the term of this Contract, WSLCB shall have the immediate benefit of the upgrades or modifications. Contractor shall send notice for major releases to the WSLCB Contract Administrator with the upgrades or modifications within five (5) days of said modification or upgrade.

6 Price Increases

Contractor requests for adjustments in pricing will be considered at sole discretion of the WSLCB only after expiration of the firm and fixed price period, and then on a pass through basis only that does not produce a higher profit margin for Contractor than that established by the original contract pricing.

Contractors may not make extensions contingent on price adjustments.

Price Increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices and/or the result of increases at the manufacturer's level, incurred after contract commencement date. The grant of any price adjustment will be at the sole discretion of the WSLCB and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original contract pricing. Any adjustments in pricing shall be set forth in a written amendment to the contract. Price adjustments granted by the WSLCB shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

7 Changes and Modifications

The WSLCB or Contractor may, from time to time, request changes in the services to be performed, or in the project undertaken. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by and between the WSLCB and the Contractor shall be incorporated in written modifications to this Contract.

Alteration of the terms of this Contract shall be valid only when in writing and signed by the authorized representatives of both parties.

8 Survivorship

The terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, expiration, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Date Warranty; Contractor Commitments; Protection of WSLCB's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Contractor's Proprietary Information; Disputes; and Limitation of Liability, Legal Notices, Hold Harmless, Withholding, Termination Procedure, Attorneys Fees and Costs, Non-Exclusive Remedies, shall survive the termination of this Contract.

9 Severability

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

10 Conflict of Interest

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

If Contractor, or any of its staff or subcontractors that performs services under this Contract, has an ownership interest in a marijuana or liquor business entity, then Contractor must immediately disclose the relationship to WSLCB. WSLCB shall determine, in its sole discretion, whether the relationship is a Conflict of Interest.

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

11 Conformance

If any provision of this Contract is in conflict with or 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.

12 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 agent maintained by the Contractor for the purpose of securing business. The WSLCB shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover by other means the full

amount of such commission, percentage, brokerage or contingent fees. In no event shall the WSLCB be liable for any brokerage or contingent fees.

13 Pricing, Invoice and Payment

13.1 Advance Payment Prohibited

No advance payment shall be made for the Services furnished by Contractor pursuant to this Contract.

13.2 Price Warranty

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.

13.3 Pricing

- a) Contractor agrees to provide the Products and Services at the Prices set forth in this contract and no other Prices shall be payable to Contractor for implementation of Contractor's Response.
- b) Prices shall not be increased during the term of the Contract unless otherwise provided herein.
- c) If Contractor reduces its Prices for any of the Services provided to additional clients during the term of this Contract, WSLCB shall have the immediate benefit of such lower Prices for new purchases. Contractor shall send notice to the WSLCB Contract Administrator with the reduced Prices within 15 Business Days of the reduction taking effect.

13.4 Miscellaneous Expenses

The WSLCB may reimburse Contractor for travel and related expenses as identified in this Contract, or as authorized in writing, in advance by the WSLCB in accordance with the current rules and regulations set forth in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/default.asp>), and not to exceed expenses actually incurred. No payment of travel expenses will be made to Contractor for routine travel to and from the WSLCB's location. Contractor may be required to provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

13.5 Taxes

- a) WSLCB will pay sales and use taxes, if any, imposed on the Products acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. WSLCB, as an agency of Washington State government, is exempt from property tax.
- b) Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract, except sales and use taxes as stipulated above.

13.6 Statewide Vendor Registration System

In order to receive payment, Contractors are required to be registered with the Statewide Payee Desk maintained by WaTech for processing Contractor payments. Purchasers who are Washington State agencies cannot make payments to Contractors until the Contractors are registered. Registration materials are available here: [Receiving Payment from the State](#).

13.7 Invoicing, Billing, and Payment(s)

- a) Incorrect or incomplete invoices will be returned by WSLCB to Contractor for correction and reissue.
- b) The WSLCB Contract number must appear on all bills of lading, packages, and correspondence relating to this Contract.
- c) WSLCB shall not honor drafts, nor accept goods or services on a sight draft basis.
- d) Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within 30 calendar days of Acceptance of the Software or receipt of Contractor's properly prepared invoice, whichever is later.

Billing Procedures and Payment

The WSLCB will pay Contractor upon acceptance of goods and/or services provided and receipt of properly completed invoices, which should be submitted electronically to: HQSupply@lcb.wa.gov.

If Contractor is unable to submit invoices electronically, invoices may be submitted by mail to:

Washington State Liquor and Cannabis Board
Attn: Support Services
PO Box 43090
Olympia, WA 98504

Each invoice shall be identified with the following items:

- a) State "INVOICE"
- b) Identify the invoice number and date
- c) Be identified by Contract Number K1411
- d) Identify Contractor's Statewide Vendor registration number assigned by WATECH.
- e) Be in U.S. dollars
- f) Identify the applicable prompt payment discount and/or volume discount(s)
- g) Identify payee name and address in compliance with U.S. Postal regulations
- h) Describe and document, to the WSLCB'S satisfaction, a description of the goods provided and/or work performed, including dates
- i) Be accompanied by documentation that confirms that services were performed or products were received

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

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

Payment shall be considered timely if made by the WSLCB within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by WSLCB and be redeemable in U.S. dollars. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

In the event that the Contractor overcharges the WSLCB, checks shall be mailed with the hard copy credit memos PO BOX 43085 Olympia WA 98504.

13.8 Duplication of Billed Costs

The Contractor shall not bill the WSLCB for costs if Contractor is being paid by another funding source for those same costs.

13.9 Overpayments to Contractor

Contractor shall, at WSLCB's option, refund or credit WSLCB, the full amount of any erroneous payment or overpayment under this Contract within 30 calendar days' written notice. If Contractor fails to make timely refund, WSLCB may charge Contractor one percent per month on the amount due, until paid in full.

14 Power and Authority

Contractor represents and warrants that it has the full power and authority to grant to the WSLCB the rights described in this Contract.

15 Protection of WSLCB's Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency or third party source code or object code and associated documentation, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSLCB's express written consent or as provided by law. Contractor shall not disclose or make available any statutorily exempt confidential information to any third parties. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSLCB. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Contractor shall, at WSLCB's option: (i) certify to WSLCB that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSLCB; or (iii) take whatever other steps WSLCB requires of Contractor to protect WSLCB's Confidential Information.

Contractor, shall, upon request, provide documentation of the following: any Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to

inspection, review or audit in accordance with Review of Contractor's Records. Contractor shall also make the Deliverables and Services being provided by Contractor available for inspection and review in a Project repository at any reasonable time by representatives of the WSLCB.

WSLCB reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this Section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

15.1 Injunctive Relief and Indemnity

Contractor will immediately report to the WSLCB any and all unauthorized disclosures or uses of the WSLCB's Confidential Information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the WSLCB's Confidential Information to others may cause immediate and irreparable harm to the WSLCB. If Contractor should publish, use or disclose such Confidential Information to others without authorization, the WSLCB shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify and hold harmless the WSLCB from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) to the extent caused by or arising from Contractor's failure to fulfill its obligations related to the WSLCB's Confidential Information.

15.2 Nondisclosure of Other State Information

The use or disclosure by Contractor, or Contractor's subcontractor(s), of any WSLCB or State information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of the WSLCB. The parties shall use the information described in this Agreement solely for the purpose stated in this Agreement. All intellectual property rights to the hosted data shall remain the exclusive property of the WSLCB. The Contractor has limited access to the WSLCB's data as provided in this Agreement solely for the purpose of performing its system hosting obligations.

15.3 Right of Inspection

The Contractor shall provide right of access to its facilities to the WSLCB, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

15.4 Security Requirements

Each party, and its officers, employees, subcontractors and agents shall at all times comply with all applicable security standards, practices, and procedures which are equal to or exceed those of WSLCB, including but not limited to the Washington State Office of the Chief Information Officer IT Standards.

16 Disputes and Remedies

16.1 Disputes

- a) The parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. When a dispute arises between the WSLCB and

Contractor, both parties will attempt to resolve the dispute pursuant to this Section and will continue without delay to carry out all their respective responsibilities under this Contract.

- b) The WSLCB and Contractor will use their best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each party's staff with appropriate authority to resolve such disputes. When a dispute arises between the WSLCB and Contractor which cannot be resolved in the normal course of business, the Contractor and the WSLCB shall each notify the other of the dispute, with the notice specifying the disputed issues. The parties shall use their best, good faith efforts to resolve the dispute within five business days of submission by either party to the other of such dispute notice.
- c) Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in litigation, subject to applicable State and Federal law. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in a lawsuit.
- d) Continued Performance. Contractor and the WSLCB agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract, and the parties will have the right to exercise their rights and remedies during the dispute resolution process.
- e) When a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing. The parties shall agree to a mediator to preside over the dispute hearing. Each party shall provide names and information of at least one neutral party mediator, and the parties must agree to the mediator. Each party will bear half of the cost of hiring a mediator.
 - a. The request for a dispute hearing must:
 - i. Be in writing;
 - ii. State the disputed issue(s);
 - iii. State the relative positions of the parties;
 - iv. State the Contractor's name, address, and contract number; and
 - v. Be mailed to the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
 - b. The responding party shall send a written answer to the requester's statement to the requester within 5 working days.
 - c. The mediator shall review the written statements and reply in writing to both parties within 10 working days. The mediator may extend this period if necessary by notifying the parties.
 - d. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
 - e. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable Alternative Dispute Resolution ("ADR") method in addition to the dispute resolution procedure outlined above.

16.2 Attorney Fees and Costs

If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

16.3 Cost of Remedy

Cost of remedying defects: all defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

16.4 Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law and equity.

16.5 Withholding

The WSLCB shall have the right to delay or withhold payments to Contractor, in whole or in part, if Contractor fails to perform its obligations set forth in this Contract within ten Business Days after receiving written notice of such failure.

16.6 Reductions in Payments Due

Amounts due to WSLCB by Contractor, including but not limited to damages, or claims for damages, may be deducted or set off by the WSLCB from any money payable to Contractor pursuant to this Contract.

16.7 Cover

If, in the reasonable judgment of the WSLCB, a default by Contractor is not so substantial as to require termination and reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within ten calendar days of receipt of Notice from the WSLCB, and the default is capable of being cured by the WSLCB or by another resource without unduly interfering with continued performance by Contractor, the WSLCB may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the WSLCB for such Services. In addition, Contractor must cooperate with these resources.

16.8 Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, WSLCB shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days or other appropriate time period from the date of the written notice Contractor still has not performed, then WSLCB may withhold all monies due and payable to Contractor, without penalty to WSLCB, until such Failure to perform is cured or otherwise resolved.

17 Indemnification

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

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

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

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

18 Liens, Claims, and Encumbrances

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if WSLCB requests, a formal release of same shall be delivered.

19 Limitation of Liability

The parties agree that neither Contractor nor WSLCB shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to breach of confidentiality or security, bodily injury or death, or a claim or demand based on a patent, copyright, or other intellectual property right infringement or misappropriation, and other indemnity obligations, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding remedies or damages or any other conditions as are elsewhere agreed to herein between the parties.

IN NO EVENT SHALL the WSLCB'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE TOTAL AMOUNT OF THE CONTRACT.

19.1 Force Majeure

Neither Contractor nor WSLCB shall be liable for damages or responsible for delays or failures in performance resulting or arising from causes beyond the reasonable control and without the fault or negligence of such party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSLCB acting in its sovereign capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors), but in every case the delays or failures in performance must be beyond the reasonable control and without fault or negligence of such party or their respective subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

20 Suspension and Termination

20.1 Suspension Due to Breach

In the event the WSLCB, in its reasonable judgment, determines that a material breach of Contract has occurred in Contractor's compliance with the conditions of this Contract or if the WSLCB has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of Contractor under this Contract, and the situation is deemed by the WSLCB to merit corrective action, the following sequential suspension procedure may be implemented by the WSLCB:

- The WSLCB will notify Contractor in writing by registered mail to Contractor's last known address with a return receipt to the WSLCB of a perceived compliance breach describing the WSLCB's concerns.
- Contractor will respond to the WSLCB's concerns by letter describing proposed corrective actions and proposing completion dates for bringing this Contract into compliance. Such response will be sent by registered mail and delivered to the WSLCB within ten (10) calendar days of the date of receipt of the WSLCB's letter.
- The WSLCB will notify Contractor in writing by registered mail to Contractor's last known address with a return receipt to the WSLCB as to the WSLCB's final disposition of the WSLCB's concerns.
- Upon receipt of Notice of final disposition by Contractor, the WSLCB reserves the right to suspend all, or part of, this Contract, and to withhold further payments, or to prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by Contractor or a decision by the WSLCB to terminate in accordance with this Section or Section 21.

20.2 Suspension for Convenience

The WSLCB may, for valid reason and in lieu of termination, unilaterally issue a stop order directing the Vendor to suspend, delay, or interrupt all or any part of its performance of work under the contract for a specific time. The Vendor shall be paid for accepted work performed until the effective date of the stop order. The Vendor shall resume work upon the date specified in the stop order or upon such other date as WSLCB's Project Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Vendor's approved schedule of performance. The WSLCB and Contractor shall negotiate an equitable adjustment, if any, to the contract price, scope, or schedule.

20.3 Termination for Breach

If Contractor materially breaches this Contract, then the WSLCB shall give Contractor written Notice of such breach. Contractor shall correct the breach within 15 calendar days or as otherwise mutually agreed. If the breach is not corrected, this Contract may be terminated immediately by written Notice from the WSLCB to Contractor. The option to terminate shall be at the sole discretion of the WSLCB.

If the WSLCB fails to pay Contractor for undisputed, material Charges when due under the Contract and fails to make such payments within 30 days of receipt of Notice from Contractor of the failure to make such payments, unless the WSLCB is withholding amounts as provided in these terms, Contractor may, by giving Notice to the WSLCB, terminate this Contract as of a date specified in the Notice of Termination. In addition: (i) if the WSLCB prevents Contractor from performing its obligations for meeting the Critical Events in accordance with the Schedule, (ii) then Contractor shall give the WSLCB Notice of such breach, (iii) the WSLCB shall correct such

action within 30 calendar days or as otherwise mutually agreed in writing, and (iv) if the action is not corrected, this Contract may be terminated immediately by Notice from Contractor to the WSLCB. Contractor shall not have the right to terminate the Contract for the WSLCB's breach of the Contract or other acts or omissions except as provided in this Section.

In the event of termination of this Contract under this Section by the WSLCB, the WSLCB shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, subject to the terms of this Contract's Cover Section and this Section, including, but not limited to: (1) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (2) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (3) any other costs to the WSLCB resulting from Contractor's breach. The WSLCB shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe the WSLCB for Contractor's default.

If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

This Section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

20.4 Termination for Convenience

When it is in the best interest of the WSLCB, the WSLCB may terminate this Contract, in whole or in part, by 30 Business Days' written notice to Contractor. Invocation of Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds shall be deemed a Termination for Convenience but will not require such 30 calendar days' Notice.

If this Contract is terminated for convenience, the WSLCB is liable only for payments required by the terms of this Contract for Services for which the WSLCB has given its Acceptance.

During this 30 Business Day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the WSLCB from such winding down and cessation of Services. If this Contract is so terminated, the WSLCB shall be liable only for payment in accordance with the terms of this Contract and for Services rendered prior to the effective date of termination.

In case of such termination for convenience, the WSLCB shall pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by the WSLCB, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the agreed upon payment schedule.

20.5 Termination for Withdrawal of Authority

In the event that WSLCB's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSLCB may terminate this Contract by seven calendar days or other appropriate time period by written notice to Contractor. No penalty shall accrue to WSLCB in the event this Section shall be exercised. This Section shall not be construed to permit WSLCB to terminate this Contract in order to acquire similar Services from a third party.

20.6 Termination for Non-Allocation of Funds

If funds are not allocated to WSLCB to continue this Contract in any future period, WSLCB may terminate this Contract by seven calendar days' written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. WSLCB will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WSLCB agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSLCB in the event this Section shall be exercised. This Section shall not be construed to permit WSLCB to terminate this Contract in order to acquire similar Services from a third party.

20.7 Termination for Conflict of Interest

WSLCB may terminate this Contract by written notice to Contractor if WSLCB determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSLCB shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

20.8 Termination Procedure

In addition to the procedures set forth below, if WSLCB terminates this Contract, Contractor shall follow any procedures WSLCB specifies in WSLCB's Notice of Termination or on expiration, as applicable.

Upon termination of this Contract, WSLCB, subject to the terms of this Contract, may require Contractor to deliver to WSLCB any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled Treatment of Assets shall apply in such property transfer.

Unless otherwise provided herein, WSLCB shall pay to Contractor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by WSLCB, provided that in no event shall WSLCB pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. WSLCB may withhold from any amounts due Contractor such sum as WSLCB determines to be necessary to protect WSLCB from potential loss or liability.

Contractor shall pay amounts due WSLCB as the result of termination within 30 calendar days of notice of amounts due. If Contractor fails to make timely payment, WSLCB may charge interest on the amounts due at one percent per month until paid in full.

After receipt of notice of termination, and except as otherwise directed by the WSLCB, Contractor shall:

- Stop work under this Contract on the date, and to the extent specified, in the Notice;
- 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 this Contract that is not terminated;
- As soon as practicable, but in no event longer than 30 calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the WSLCB to the extent required, which approval or ratification shall be final for the purpose of this Section;

- Complete performance of such part of this Contract as shall not have been terminated by the WSLCB;
- Take such action as may be necessary, or as the WSLCB Contract Manager may direct, for the protection and preservation of the Property related to this Contract which is in the possession of Contractor and in which the WSLCB has an interest;
- On termination, transfer title to the WSLCB and deliver in the manner, at the times, and to the extent directed by the WSLCB Contract Manager, any Property which is required to be furnished to the WSLCB and which has been accepted or requested by the WSLCB; and
- Provide written certification to the WSLCB that Contractor has surrendered to the WSLCB all said Property.

20.9 Transition Support

Contractor must provide for reasonable transition assistance requested by the WSLCB, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the WSLCB or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The WSLCB shall pay the Contractor for any resources utilized in performing such transition assistance at the rates included in the Proposal. On expiration or termination of the Contract, Contractor shall provide or make available to the WSLCB a copy of all Data with instructions and software necessary to decrypt the Data, if it is encrypted.

21 Treatment of Assets

21.1 Ownership

WSLCB shall retain title to all Property furnished by WSLCB to Contractor under this contract. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract excluding intellectual property provided by the Contractor, shall pass to and vest in the WSLCB upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the WSLCB upon (i) issuance for use of such property in the performance of this contract, (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the WSLCB, in whole or in part, whichever occurs first.

21.2 Use of Property

Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the WSLCB Project Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the Equipment shall be subject to WSLCB's security, administrative and other requirements.

The parties shall use the information described in this Agreement solely for the purpose stated in this Agreement. All intellectual property rights to the hosted data shall remain the exclusive property of the WSLCB. The Contractor has limited access to the WSLCB'S data as provided in this Agreement solely for the purpose of performing its system hosting obligations.

21.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair

or make good any damage, destruction, personal injury or loss at the Facility or Sites caused by Contractor's acts or omissions.

21.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the Contract Manager thereof and shall take all reasonable steps to protect that Property from further damage.

21.5 Surrender of Property

Contractor will ensure that the Property will be returned to WSLCB in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall surrender to WSLCB all Property upon the earlier of expiration or termination of this Contract.

21.6 Proprietary Information

Contractor acknowledges that WSLCB is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, WSLCB shall maintain the confidentiality of all such information marked or otherwise identified in the Contract or on the Project as Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, WSLCB will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WSLCB will release the requested information on the date specified.

Any specific information that is claimed by WSLCB to be Proprietary Information must be clearly identified as such by WSLCB. To the extent consistent with chapter 42.56 RCW, Contractor shall maintain the confidentiality of all such information marked or otherwise identified in the Contract or on the Project as Proprietary Information.

22 Save Harmless

Contractor shall defend, indemnify, and save WSLCB harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties to the extent caused by the intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

For all obligations of Contractor to defend the WSLCB as described in the Contract, the WSLCB shall promptly give Contractor notice of such claim or action and shall cooperate in the defense of such claims at Contractor's expense. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

23 Insurance

Contractor shall, during the term of this Contract, maintain the insurance described in this Section in full force and effect. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to WSLCB within five Business Days of Contractor's receipt

of such notice. Failure to buy and maintain the required insurance may, at WSLCB's sole option, result in this Contract's termination.

All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

Contractor shall furnish to WSLCB copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide evidence of coverage may, at WSLCB's sole option, result in this Contract's termination.

By requiring insurance herein, WSLCB does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to WSLCB in this Contract.

For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall continue such coverage for two years beyond the expiration or termination of this Contract and providing WSLCB with certificates of insurance on an annual basis.

Contractor shall pay premiums on all insurance policies. Such insurance policies shall reference this Contract number and shall have a condition that they not be revoked by the insurer until 30 calendar days after notice of intended revocation thereof shall have been given to WSLCB by the insurer.

23.1 Minimum Acceptable Limits

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

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3

million;

- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon this Section, and coverage of not less than \$1 million per occurrence or claim/\$2 million general aggregate; and Industrial Insurance coverage (see Section 23.2).

23.2 Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSLCB will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

24 Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

25 OSHA/WISHA

Contractor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Contractor agrees to indemnify and hold WSLCB harmless from all damages assessed against WSLCB as a result of the failure of the Products furnished under this Contract to so comply.

26 Uniform Commercial Code (UCC) Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

Software, in whole and in part is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Washington, for purposes of this Contract.

27 Antitrust Violations

Contractor and WSLCB recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by WSLCB. Therefore, Contractor hereby assigns to WSLCB any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to WSLCB resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

28 Compliance with Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law against Discrimination. In the event of 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 under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with WSLCB.

29 Debarment and Suspension

The Contractor certifies that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and Debarment and Suspension, codified at 29 CFR part 98.

30 Governing Law

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

31 Independent Capacity of Contractor

The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the WSLCB. The Contractor and its employees or subcontractors will not hold itself/himself/herself/them self out as, nor claim to be an officer or employee of, the WSLCB or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

32 Licensing and Accreditation

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

33 Limitation of Signature Authority

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

34 Lobbying Activities

The Contractor certifies that it is in compliance with the requirements of 29 CFR Part 93, restricting lobbying activities. The Contractor shall also make available upon request required disclosure information if the Contractor participates in lobbying activities during the Contract period.

35 Site Security

While on WSLCB premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

36 Subcontracting

The Contractor shall not subcontract work or services contemplated under this Contract and/or use an outside consultant except as provided for in the Statement of Work without obtaining the prior written approval of the WSLCB for the authority to enter into subcontracts. Contractor acknowledges that such approval for any subcontract does not relieve the Contractor of its obligations to perform hereunder. The WSLCB retains the authority to review and approve or disapprove all subcontracts. At the WSLCB's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Subcontractor the Contractor shall:

- a) Be responsible for Subcontractor compliance with these General Terms and Conditions and the subcontract terms and conditions; and
- b) Ensure that the Subcontractor follows the WSLCB's reporting formats and procedures as specified by the WSLCB.

Contractor further agrees that WSLCB has sole discretion in determining whether a Subcontractor is not in compliance with this contract. If WSLCB determines that a Subcontractor is not in compliance with this Contract, Contractor shall provide a substitute Subcontractor with equal qualifications and experience as the original Subcontractor and said Subcontractor will not perform services under this contract without the prior written approval of the WSLCB. If substitution is permitted, it shall be at no additional cost to WSLCB.

The Contractor shall remain wholly responsible for performance of the entire Contract regardless of whether a Subcontractor is used. The WSLCB will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from any contract. Any and all Subcontractors must follow all requirements of the contract, including confidentiality expectations. The WSLCB may require the Contractor to end a Subcontract related to the Contract at any time.

37 Use of Name Prohibited

The Contractor shall not in any way contract on behalf of or in the name of the WSLCB, nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the WSLCB.

38 Waiver

Failure or delay of the WSLCB to insist upon strict performance of any term or condition of the Contract, or to exercise any right or remedy provided in the Contract or by law; or the WSLCB's acceptance of, or payment for, materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the WSLCB to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of the Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by WSLCB of any existing or future right and/or remedy available by law.

39 Materials and Workmanship

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

40 Warranties

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, services and/or equipment, and inspection incidental thereto, by the WSLCB shall not alter or affect the obligations of the Contractor or the rights of the WSLCB.

41 Legal Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, facsimile, or electronic mail, to the Contract Administrator provided in this Contract. For the purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a WSLCB approved digital signature provider, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above. In the event that a subpoena or other legal process commenced by a third party in any way concerning the equipment or services provided pursuant to this Contract is served upon Contractor or WSLCB, such party agrees to notify the other party in the most expeditious fashion as possible following receipt of such subpoena or other legal process. Contractor and WSLCB further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

42 Jurisdiction and Venue

The laws of the State of Washington shall govern the interpretation and application of all provisions of this Contract without regard to conflict of law provisions. Contractor agrees to submit to personal jurisdiction of the courts of Thurston County, Washington and that any claim or controversy at law or equity that arises out of this Contract will be heard in the courts of Thurston County.

43 Sovereign Immunity.

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by WSLCB or the State of Washington of any immunities from suit or from liability that WSLCB or the State of Washington may have by operation of law.



REQUEST FOR PROPOSAL

K1411 – Pre-Employment Background Investigations

ATTACHMENT B

STATEMENT OF WORK

1. Background and Purpose

The Washington State Liquor and Cannabis Board (“WSLCB”) was formed in 1933 by the Steele Act. The Mission of the WSLCB is to promote public safety by consistent and fair administration of liquor and cannabis laws through education, voluntary compliance, responsible sales and preventing the misuse of alcohol, cannabis and tobacco.

As a limited authority law enforcement agency, the WSLCB makes physical arrests, seizes property and collects evidence to be used in both criminal and administrative proceedings. In 2011, the citizens of Washington State privatized the sale of spirits and in 2012, Initiative 502 was passed, which legalized recreational marijuana sales and mandated the WSLCB to regulate the recreational market.

WSLCB is soliciting proposals from qualified vendor(s) who can provide pre-employment background investigations, polygraph tests, and psychological evaluations to help safeguard and maintain the integrity of our Law Enforcement Division. The WSLCB intends to award to a single Bidder per Category, but reserves the right to make multiple awards if it is deemed in the best interest of WSLCB

2. Scope of Work

The resulting Contract will be for WSLCB’s Enforcement Division only. Vendor may be required to perform all or some of the functions listed below for each candidate being considered for employment by WSLCB. Vendor is expected to provide services statewide. The WSLCB may be awarding contracts for a total of three categories. The WSLCB reserves the right to award to one or multiple Vendors per category. This RFP will be awarded on the following three Categories:

- **Category 1 – Background Investigations**

- Estimated 40-50 background checks per year.
- A. Meet with WSLCB to discuss the scope of each work request, important attributes to screen for, and any additional tasks that may be required to complete a project.
- B. Vendor may be required to conduct the following checks for each candidate:
 - i. Employment Verification
 - ii. Public Records Check



Washington State
Liquor and Cannabis Board

iii. Education Verification

C. Provide a Background Investigation Summary Report.

- **Category 2 – Polygraph Examinations**

- A. Meet with WSLCB to discuss the scope of each work request, important attributes to screen for, and any additional tasks that may be required to complete a project.
- B. Conduct polygraph examinations.
- C. Provide the WSLCB with results report for each Polygraph Examination.

- **Category 3 – Psychological Evaluations**

- A. Meet with WSLCB to discuss the scope of each work request, important attributes to screen for, and any additional tasks that may be required to complete a project.
- B. Conduct pre-job offer psychological evaluations.
- C. Provide the WSLCB with results report for each Psychological Evaluation.

3. Work Requirements

Employment Verification

Vendor will conduct an employment verification check on the candidate's two most recent jobs. Vendor will obtain, at a minimum, the following information: dates of employment, job title(s), responsibilities, reason for leaving, eligibility for rehire, employee rating, and pay rate.

Public Records Check

Vendor will check, obtain, and provide candidate's public records, to include non-criminal suits filed by individuals or corporations, including product-liability suits, civil-rights violations, judgments for non-payment of goods, and litigation related to divorce and child custody.

Education Verification

Vendor will provide confirmation of a candidate's current and previous education history including: school name, school type, city, state, phone number, highest grade completed/degree, graduation date, major, and dates attended.

Polygraph Examinations

Vendor will utilize a certified polygraph examiner, whether employed or contracted with, with experience in pre-employment testing of law enforcement, corrections and other public safety candidates to conduct examinations. Vendor will coordinate with candidate and WSLCB the time, date, and place to conduct each polygraph test. Results of each polygraph test will be provided directly to WSLCB.

Psychological Examinations

Vendor will conduct pre-job offer psychological evaluations. The psychological evaluations must be conducted by a licensed psychologist with experience in pre-employment testing of law



Washington State Liquor and Cannabis Board

enforcement, corrections, and other public safety candidates. Vendor will coordinate with candidate and WSLCB the time, date, and place to conduct each psychological test. Results of each psychological test will be provided directly to WSLCB.

4. Period of Performance

The initial term of the Contract resulting from this RFP shall be for Two (2) years from date of award with the option to extend for additional One (1) year term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the WSLCB and are subject to written mutual agreement. The WSLCB reserves the right to extend with all or some of the contractors, solely determined by the WSLCB.

5. Place of Performance

The majority of work performed under this Contract will take place at Vendor's place of business. Contractor establishes place to conduct interviews, and Skype or virtual interviews must be cleared through WSLCB.

6. Customer Supplied Items/Information

WSLCB will provide Vendor with relevant information for each candidate including a copy of the candidate's employment application, waivers, special requests, and any filing tracking numbers or references WSLCB would like Vendor to include in a report.

Additionally, WSLCB will provide Vendor with any information that came up in WSLCB's prescreen that WSLCB would like Vendor to follow up on.

7. Deliverables for Categories C1, C2, and C3

- **Category 1 (C1)**

Upon completion of an investigation, Vendor will provide WSLCB with the following:

- Summary of interviews
- Findings from all verifications
- Public Record check reports
- Any other certificates or documents that may be pertinent to a hiring decision

- **Category 2 (C2)**

Upon completion of a Polygraph Examination, Vendor will provide WSLCB with the following:

- Polygraph test results for each Examination

- **Category 3 (C3)**



Washington State Liquor and Cannabis Board

Upon Completion of a Psychological Evaluations, Vendor will provide WSLCB with the following:

- Psychological evaluation report for each evaluation

8. Reporting and Communication

Vendor shall collaborate with WSLCB for status updates. During the course of a Work Request, Vendor shall be responsible for notifying WSLCB immediately if any additional documentation or information is needed from WSLCB or the Applicant for Vendor to complete the Work Request.

9. Acceptance Criteria

Vendor shall provide WSLCB with the Deliverables described in Section 7. WSLCB shall determine whether all reports and/or verifications requested are included in the final report. If all reports and/or verification are not included, WSLCB shall notify Vendor immediately. Upon notification of missing reports and/or verifications, Vendor shall have five (5) business days to produce missing reports and/or verifications. Upon receipt of all reports and/or verifications requested by WSLCB, Vendor shall invoice WSLCB for all amounts owed.

ATTACHMENT C1 – CATEGORY 1

EVALUATION CRITERIA AND REQUIRED SUBMITTALS

Responsive proposals will be evaluated strictly in accordance with the requirements stated in Attachment A and any amendments or addenda subsequently issued. The evaluation of proposals shall be accomplished by an evaluation team designated by WSLCB which will determine the ranking of the proposals. WSLCB, at its sole discretion, may elect to select two top-scoring finalists for reference checks. The Procurement Coordinator may contact the Bidder for clarification of any portion of the Bidder's proposal. The WSLCB reserves the right to award to multiple vendors for the Polygraph and Psychological Exams. The WSLCB has current Contracts for these two services and these will be awarded on a backup basis for the WSLCB.

Category 1 – Background Investigations

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

Mandatory Minimum Requirements	Pass/Fail
Experience and Qualifications – 37%	70 Points Possible
Technical Proposal – 26%	50 Points Possible
Management Proposal – 21%	40 Points Possible
Cost Proposal – 16%	30 Points Possible

Category 2 – Polygraph Examinations

Category 3 – Psychological Evaluations

MANDATORY REQUIREMENTS - PASS/FAIL

Unless otherwise indicated, each line item in this section represents a mandatory requirement for this RFP. To be considered responsible, Bidder must check each box below to demonstrate compliance with each requirement. This Section will not be scored, but will be evaluated on a pass/fail basis. Failure to mark each box, will result in rejection of your bid.

- ☐ Bidder is licensed to do business in the state of Washington
- ☐ Bidder has been in the business of conducting pre-employment background checks for a minimum for 5 consecutive years.
- ☐ Neither Bidder nor any of its employees and/or subcontractors performing services under this contract have been named on any state or federal debarment list

- ☐ WSLCB anticipates entering into a contract for pre-employment background investigations by July 1, 2020.
- ☐ Bidder can conduct all checks and verifications described in the Statement of Work in all 50 states and U.S. territories.
- ☐ Bidder certifies that their employees are not required to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers.

EXPERIENCE AND QUALIFICATIONS – 70 POINTS POSSIBLE

Experience and Qualifications – 37%	70 Points Possible
Bidder's depth of experience in the relevant business.	40 Points Maximum
Provide a short biography of the principals of your firm.	25 Points Maximum
Bidder accreditations.	5 Points Maximum

1. Describe the background and experience of your firm, including the length of time your company has been in the business of conducting background checks.
2. Provide a short biography of the principals of your firm.
3. Provide any accreditations Bidder has achieved relevant to the services provided under this Contract.

TECHNICAL PROPOSAL – 50 POINTS POSSIBLE

This portion of the evaluation is worth a maximum of 50 points, or 26% of the total possible points. Bidders must submit each of the documents listed below.

Technical Proposal – 26%	50 Points Possible
Key personnel and supporting infrastructure to fulfill the requirements of the Statement of Work.	5 Points Maximum
Turnaround timeframes	5 Points Maximum
Resources to fulfill the requirements of the Statement of Work.	20 Points Maximum
Ordering and results communication.	10 Points Maximum
Breadth and detail of sample report	10 Points Maximum

1. Provide a table of turnaround time-frames for each report and notification procedures of there will be a delay.

2. Who, within your organization, determines reportable findings and describe the methodology used to determine whether it is reportable.
3. Provide your firm's timeframes to schedule and conduct all requirements set forth in the Statement of Work.
4. Describe your ordering process and results communication (Is it electronic, do you provide reports as they come in or all at once, how an employer is kept advised of status, etc.)
5. Specify at what point you discontinue efforts in attempting to verify information?
6. Provide a sample report.

MANAGEMENT PROPOSAL – 40 POINTS POSSIBLE

This portion of the evaluation is worth a total of 40 points. Bidder must submit the following documents and will be evaluated according to the table located below. Failure to provide a submittal for each question will render your submittal nonresponsive.

Management Proposal – 21 %	40 Points Possible
Privacy and data security practices.	15 Points Maximum
Employee/subcontractor onboarding and continuous training.	15 Points Maximum
Quality Assurance.	10 Points Maximum

1. Does your firm have a Privacy and Data Security policy? If so, please provide.
2. Describe your quality control procedures to ensure accuracy in your reporting.
3. What protocols do you have in place to ensure customers are limited to their candidate's data only?
4. Does your firm utilize home-based workers who have access to Personally Identifiable Information ("PII"), and if so, describe how PII is protected?
5. Describe your process for ensuring that your employees/subcontractors understand laws that govern pre-employment screening and how your firm keeps updated on these laws.
6. Describe the process when an Applicant questions the accuracy of a report, including the response time.

COST PROPOSAL – 30 POINTS POSSIBLE

Vendor must submit a Not-To-Exceed price for each of the line items listed below. Each line item has been assigned a weight. The Vendor with the lowest cost submitted for each line item will receive the maximum points allocated to that line item. Each successive bidder will receive points proportionate to the lowest bidder.

Bidder may offer "Other Services" if they wish. Other Services will not be scored or evaluated, however, if awarded a contract, Bidder will be held to the Other Services and their corresponding prices.

PRICING TABLE TYPE OF SERVICE	WEIGHT	STANDARD PRICE PER UNIT
Employment Verification (2 most recent)-Joint Commission	10 Points	\$
Public Records Check	10 Points	\$
Education Verification	10 Points	\$

OTHER SERVICES OFFERED	PRICE OFFERED
	\$
	\$
	\$

INTERVIEWS- PASS/FAIL

The top five (5) scoring vendors may be asked to participate in oral interviews conducted by a team of WSLCB employees. The interview must be in person at 1025 Union Ave SE, Olympia, WA. There will not be the option to Schedule remote interviews.

REFERENCES – PASS/FAIL

Please use the attached Reference Form to provide contact information for three (3) references for the Background Investigations. The WSLCB may conduct reference checks on the top five (5) scoring bidders. Reference checks will be evaluated on a Pass/Fail basis. WSLCB reserves the right to contact addition references not provided by the vendor or contact only some of the reference provided.

REFERENCE FORM

Bidder submission of this form constitutes permission for Customer to contact the reference indicated herein	
Contact Name of Reference:	Contact's E-mail:
Contact's Phone Number:	Who is this reference for?:
Time Frame of Services Provided:	Budget for Services Performed by Bidder:
Description of Services Performed:	
(This space reserved for Customer use)	

ATTACHMENT C2 – CATEGORY 2

EVALUATION CRITERIA AND REQUIRED SUBMITTALS

Due to the nature of the background investigation purposes, this RFP will be broken down, and awarded, by three categories. **Categories 2 and 3 will be awarded as an as needed backup service for the WSLCB:**

Category 1

Background Investigations

Category 2

Polygraph Examinations

Non- Cost Proposal – 75%	100 points Possible
Cost Proposal – 25%	50 Points Possible

Category 3

Psychological Evaluations

MANDATORY REQUIREMENTS – PASS/FAIL

Unless otherwise indicated, each line item in this section represents a mandatory requirement for this RFP. To be considered responsible, Bidder must check each box below to demonstrate compliance with each requirement. This Section will not be scored, but will be evaluated on a pass/fail basis. Failure to mark each box, will result in rejection of your bid.

- ☐ Bidder is licensed to do business in the state of Washington.
- ☐ Bidder has been in the business of conducting pre-employment Polygraph Examinations for a minimum for 5 consecutive years.
- ☐ Neither Bidder nor any of its employees and/or subcontractors performing services under this contract have been named on any state or federal debarment list.
- ☐ WSLCB anticipates entering into a contract for Polygraph Examinations by April 3, 2017. These services will be on a backup as needed basis.

NON-COST EVALUATION – 100 POINTS POSSIBLE

This portion of the evaluation is worth a total of 100 points. Bidder must submit the following documents and will be evaluated according to the table located below.

Polygraph Technician Experience	100 Points Maximum
Bidder's depth of experience in the relevant business.	45 Points Maximum
Provide a short Biography of the Principals of your firm	45 Points Maximum
Bidder accreditations	10 Points Maximum

1. Describe the background and experience of your firm, including the length of time your company has been in the business of conducting Polygraph Examinations.
2. Describe your process for ensuring that certified polygraph performing services under this Contract have experience in evaluating law enforcement, corrections, or other public safety candidates.
3. Provide any accreditations Bidder has achieved relevant to the services provided under this Contract.

COST/PRICE – 50 POINTS POSSIBLE

Vendor must submit a Not-To-Exceed price for each of the line items listed below. Each line item has been assigned a weight. The Vendor with the lowed cost submitted for each line item will receive the maximum points allocated to that line item. Each successive bidder will receive points proportionate to the lowest bidder.

Bidder may offer "Other Services" if they wish. Other Services will not be scored or evaluated, however, if awarded a contract, Bidder will be held to the Other Services and their corresponding prices.

PRICING TABLE TYPE OF SERVICE	WEIGHT	STANDARD PRICE PER UNIT
Polygraph Examinations	50 Points	\$

OTHER SERVICES OFFERED	PRICE OFFERED
	\$
	\$
	\$

INTERVIEWS- PASS/FAIL

The top five (5) scoring vendors may be asked to participate in oral interviews conducted by a team of WSLCB employees. The interview must be in person at 1025 Union Ave SE, Olympia, WA. There will not be the option to Schedule remote interviews.

REFERENCES – PASS/FAIL

Please use the attached Reference Form to provide contact information for three (3) references for the Polygraph Examinations. The WSLCB may conduct reference checks on the top five (5) scoring bidders. Reference checks will be evaluated on a Pass/Fail basis. WSLCB reserves the right to contact additional references not provided by the vendor or contact only some of the reference provided.

REFERENCE FORM

Bidder submission of this form constitutes permission for Customer to contact the reference indicated herein	
Contact Name of Reference:	Contact's E-mail:
Contact's Phone Number:	Who is this reference for?:
Time Frame of Services Provided:	Budget for Services Performed by Bidder:
Description of Services Performed:	
(This space reserved for Customer use)	

ATTACHMENT C3 – CATEGORY 3

EVALUATION CRITERIA AND REQUIRED SUBMITTALS

Due to the nature of the background investigation purposes, this RFP will be broken down, and awarded, by three categories. **Categories 2 and 3 will be awarded as an as needed backup service for the WSLCB:**

Category 1

Background Investigations

Category 2

Polygraph Examinations

Category 3

Psychological Evaluations

Non-Cost Evaluation – 75%	100 Points possible
Cost Proposal – 25%	50 Points Possible

MANDATORY REQUIREMENTS - PASS/FAIL

Unless otherwise indicated, each line item in this section represents a mandatory requirement for this RFP. To be considered responsible, Bidder must check each box below to demonstrate compliance with each requirement. This Section will not be scored, but will be evaluated on a pass/fail basis. Failure to mark each box, will result in rejection of your bid.

- ☐ Bidder is licensed to do business in the state of Washington.
- ☐ Bidder has been in the business of conducting pre-employment Psychological Examination for a minimum for 5 consecutive years.
- ☐ Neither Bidder nor any of its employees and/or subcontractors performing services under this contract have been named on any state or federal debarment list.
- ☐ WSLCB anticipates entering into a contract for Psychological Examination by April 3, 2017. These services will be on a backup as needed basis.

NON-COST EVALUATION- 100 POINTS POSSIBLE

This portion of the evaluation is worth a total of 100 points. Bidder must submit the following documents and will be evaluated according to the table located below:

Psychologist Technician Experience - 75%	100 Points Maximum
Bidder's depth of experience in the relevant business.	45 Points Maximum
Provide a short Biography of the Principals of your firm.	45 Points Maximum
Bidder accreditations.	10 Points Maximum

1. Describe the background and experience of your firm, including the length of time your company has been in the business of conducting Psychological Examinations.
2. Describe your process for ensuring that licensed psychologists performing services under this Contract have experience in evaluating law enforcement, corrections, or other public safety candidates.
3. Provide any accreditations Bidder has achieved relevant to the services provided under this Contract.

COST/PRICE – 50 POINTS POSSIBLE

Vendor must submit a Not-To-Exceed price for each of the line items listed below. Each line item has been assigned a weight. The Vendor with the lowed cost submitted for each line item will receive the maximum points allocated to that line item. Each successive bidder will receive points proportionate to the lowest bidder.

Bidder may offer "Other Services" if they wish. Other Services will not be scored or evaluated, however, if awarded a contract, Bidder will be held to the Other Services and their corresponding prices.

PRICING TABLE TYPE OF SERVICE	WEIGHT	STANDARD PRICE PER UNIT
Psychological Evaluation	50 Points	\$

OTHER SERVICES OFFERED	PRICE OFFERED
	\$
	\$
	\$

INTERVIEWS- PASS/FAIL

The top five (5) scoring vendors may be asked to participate in oral interviews conducted by a team of WSLCB employees. The interview must be in person at 1025 Union Ave SE, Olympia, WA. There will not be the option to Schedule remote interviews.

REFERENCES – PASS/FAIL

Please use the attached Reference Form to provide contact information for three (3) references for the Psychological Evaluations. The WSLCB may conduct reference checks on the top five (5) scoring bidders. Reference checks will be evaluated on a Pass/Fail basis. WSLCB reserves the right to contact additional references not provided by the vendor or contact only some of the reference provided.

REFERENCE FORM

Bidder submission of this form constitutes permission for Customer to contact the reference indicated herein	
Contact Name of Reference:	Contact's E-mail:
Contact's Phone Number:	Who is this reference for?:
Time Frame of Services Provided:	Budget for Services Performed by Bidder:
Description of Services Performed:	
(This space reserved for Customer use)	



Attachment D

Work Request K1411

CERTIFICATIONS AND ASSURANCES

Bidders must print, sign and return both pages of Attachment D with their Response.

Under the penalties of perjury of the State of Washington, we make the following certifications and assurances as a required element of our Response for K1411. We affirm the truthfulness of these facts and acknowledge our current and continued compliance with these certifications and assurances as part of our Response and any resulting Contract award with WSLCB.

1. We declare that all answers and statements made in the Response are true and correct.
2. We certify that the prices and/or cost data contained in our Response: (a) have been determined independently, without consultation, communication or agreement with others for the purpose of restricting competition, and (b) have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Work Order/Contract award, except to the extent that we have joined with other individuals or organizations for the purpose of preparing and submitting a joint Response or unless otherwise required by law.
3. Our Response is a firm offer for a period of 180 days following receipt, and it may be accepted by WSLCB with or without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 180-day period. In the case of a protest, the Bidder's Response will remain valid for 210 days or until the protest is resolved, whichever is later.
4. We certify that our firm is currently not in bankruptcy proceedings or waiting for a summary judgment decision.
5. We have not been assisted by any current or former WSLCB employee whose duties relate (or did relate) to this solicitation and who assisted in other than his or her official, public capacity.

If there are any exceptions to these assurances or we have been assisted, we will identify on a separate page attached to this document each individual by:

- a) Name
 - b) Current address and telephone number
 - c) Current or former position with WSLCB
 - d) Dates of employment with WSLCB
 - e) Detailed description of the assistance provided by that individual
6. We acknowledge that WSLCB will not reimburse us for any costs incurred in the preparation of our Response. All Responses become the property of WSLCB and we claim no proprietary right to the ideas, writings, items or samples.



**Washington State
Liquor and Cannabis Board**

7. We acknowledge that any resulting Contract award will incorporate Special Terms and Conditions, Statement of Work, and General Terms and Conditions substantially similar to those outlined in this Work Request.

8. We will comply with these or substantially similar Special Terms and Conditions, Statement of Work, and General Terms and Conditions if awarded a Contract, and will negotiate in good faith any changes or modifications.

9. We acknowledge that if awarded a Contract with WSLCB, we are required to comply with all applicable state and federal civil rights and other laws. Failure to comply may result in Work Order/Contract termination. We agree to submit additional information about our nondiscrimination policies, at any time, if requested by WSLCB.

10. We certify that we have a current Washington Business License, and agree to promptly provide a copy of the license if we are awarded a Contract.

11. We made no attempt, nor will make any attempt, to induce any other person or firm to submit, or not submit, a Response for the purpose of restricting competition.

12. We acknowledge and authorize WSLCB to conduct a financial assessment and/or background check of our organization if WSLCB considers such action necessary or advisable.

13. We acknowledge our obligation to notify WSLCB of any changes in the certifications and assurances above.

Signature:	
Title:	
Organization Name:	
Date:	

ATTACHMENT E

K1411 Pre-Employment Background Checks

BIDDER PROFILE

1. COMPANY INFORMATION:

(a)	Firm Legal Name*		
	Street Address		
	Mailing Address:		
	Delivery Address		
	City, State, ZIP		

***Firm Legal Name:** The State requires the legal name of your company as it is registered in the State of Washington or the state in which your company was registered. Enclose proof of the legal name of your company from the Secretary of State's Office, Washington State Business Licensing Service (<http://bls.dor.wa.gov/>) or your state equivalent if not a Washington business.

(b)	DBA (if any)		
	Telephone Number		
	Area Code:	Number:	Extension:

(c)	Toll Free Number		
	Area Code:	Number:	Extension:

(d)	Email Address

(e)	Provide a list identifying which parties of the organization have the authority to sign contracts/amendments on behalf of the firm.
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(f)	Names, addresses, e-mail addresses and telephone numbers of the sole proprietor, partners, or principle officers as appropriate to the organization		
	Name & Title:		
	Address:		
	Email Address:		
	Telephone Number		
	Area Code:	Number:	Extension:

(g)	Primary Contact Person for Questions/Contract Negotiations, including address if different than above		
	Name & Title:		
	Address:		
	Email Address:		
	Telephone Number for Contact Person		
	Area Code:	Number:	Extension:

Double-Click in checkbox to select

(h)	Legal Status	<input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Corporation <input type="checkbox"/> LLC
		<input type="checkbox"/> Government <input type="checkbox"/> Sole Proprietorship
		<input type="checkbox"/> S-Corporation <input type="checkbox"/> Non Profit (501c3)*

*Organizations claiming status under Section 501(c)(3) of the Internal revenue code must provide a copy of the determination letter that recognizes that status.

(i)	Currently Involved in or planning a merger or divestiture?	<input type="checkbox"/> YES <input type="checkbox"/> NO
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Include a statement of the likelihood of merger, acquisition, or restructuring in the next 5 years

(j)	WA State UBI	
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Bidder must be licensed in the state of Washington before any resulting contract is executed. If no current UBI affirm that your organization will obtain a business license before executing contract.

☐ YES ☐ NO

If the State of Washington has exempted your business from state licensing, submit proof of that exemption.

(k)	Federal Tax Identification Number	
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(l)	Dun & Bradstreet Number	
-----	-------------------------	--

(m)	MWBE Certification Number	
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Proof of certification by the Washington State Office of Minority & Women's Business Enterprises for your business or for subcontractors must be attached to your letter of submittal.

(n)	Subcontractor (s)	<input type="checkbox"/> YES <input type="checkbox"/> NO (if yes then complete and provide an information sheet for each)
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A Bidder's failure to provide this information may cause the state to consider their proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of WSLCB. The contractor is liable and responsible for all subcontractor work.

If any subcontractor is a minority owned, women owned, veteran owned, or disadvantaged business, include the percentage and dollar amount of their participation.

2. PROCUREMENT OR FINANCIAL-RELATED CONVICTIONS

	Indicate whether the Bidder or subcontractor, or any of the bidder or subcontractor principle owners, officers or partners has been convicted within the last ten (10) years of any of the following:	<input type="checkbox"/> YES <input type="checkbox"/> NO
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(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state Medicaid fraud false claims act, chapter [74.66](#) RCW, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

Submit full details of the terms of the incident including the customer and/or other adverse party name, address, and telephone number. Present the Bidder's position on the matter. WSLCB reserves the right to contact the customer or other adverse party and their representatives for further investigation of the incident. WSLCB will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past conviction.

If no such criminal conviction has been experienced by the Bidder or subcontractor in the past ten (10) years, so indicate.

3. TERMINATION FOR DEFAULT

	Has Bidder or Bidder's subcontractors had a contract terminated for default within the last five years?	<input type="checkbox"/> YES <input type="checkbox"/> NO
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If yes, submit full details including the other party's name, address, and telephone number. The Bidder must specifically grant WSLCB permission to contact any and all involved parties and access to any and all information WSLCB determines is necessary to satisfy its investigation of the termination. WSLCB will evaluate the circumstances and may, at its sole discretion bar the participation of the Bidder from this solicitation. *If discovered post contract award, failure to disclose any termination for default will result in termination of the contract with liquidated damages.*

4. FEDERAL & STATE DEBARMENT CERTIFICATION

	Is the Bidder, including any of its officers or holder of controlling interest; or proposed subcontractors presently or been previously debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal or state contracts or grants by any federal or state department or agency?	<input type="checkbox"/> YES <input type="checkbox"/> NO
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5. CONFLICT OF INTEREST INFORMATION:

(a)	Were any of your employees, officers or subcontractor's employees or officers employed by the State of Washington during the last two years?	<input type="checkbox"/> YES <input type="checkbox"/> NO
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If yes, state their positions within your organization, proposed duties under any resulting contract, their duties and position during their employment with the state and the date of their termination from state employment.

Indicate whether individual providing services retired using the 2008 Early Retirement Factors (ERF) or whether the company is owned by an individual who retired under the ERF and receiving compensation as a result of the contracted service.

Failure to fully disclose any real or potential conflict of interest may result in disqualification of the Bidder or Termination for Default of any contract with the Bidder resulting from this solicitation if discovered post contract award.

(b)	Is any owner, key officer or key employee of the Bidder related by blood or marriage to an employee of WSLCB or has close personal relationship to same?	<input type="checkbox"/> YES <input type="checkbox"/> NO
-----	--	--

If yes, identify the parties, identify their current or proposed positions and describe the nature of the relationship

(c)	Is the Bidder aware of any other real or potential conflict of interest?	<input type="checkbox"/> YES <input type="checkbox"/> NO
-----	--	--

If yes, disclose the nature and circumstance of such potential conflict of interest. If after review of the information provided and the situation, WSLCB determines that a potential conflict of interest exists, WSLCB may, at its sole discretion, disqualify the Bidder from participating in this procurement.

6. PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

	Does your proposal contain any proprietary or confidential information? Are you claiming an exemption under the Public Records Act?	<input type="checkbox"/> YES <input type="checkbox"/> NO
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If yes, identify by document name, page number, and location on page where the proprietary information is in the response. Each page claimed to be exempt from disclosure must reference the specific basis claimed under Chapter [42.56 RCW](#), the Public Records Act. Stating or marking the entire proposal or entire sections as proprietary will not be honored. WSLCB will not accept proposals where pricing is marked as proprietary.

AUTHORIZED SIGNATURES:

By signing below you hereby certify that you are an authorized representative of your firm/company and empowered to negotiate, enter into, and execute, in the name and on behalf of your firm/company, any agreements or documents associated with this RFP and to bind your firm/company to the obligations stipulated therein.

	Name:	Title:
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	Signature:	Date:
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Contract Number K1411
For
Pre-Employment Background Investigations
Between the
Washington State Liquor and Cannabis Board
and
CONTRACTOR

This Contract is made and entered into by and between the Washington State Liquor and Cannabis Board, hereinafter referred to as the “**WSLCB**”, and the below named Company, hereinafter referred to as “**Contractor**”, for the purpose of providing Pre-Employment Background Investigations for the WSLCB Enforcement Division.

Contractor Name

Address

Address

Phone:

Email:

Federal TIN:

WA State UBI Number:

1. PURPOSE

The purpose of this contract is to enter into an agreement for the as needed acquisition of Pre-Employment Background Investigations for the WSLCB Enforcement Division.

2. DEFINITION

Addendum or Amendment: A change to a legal document. For purposes of a Contract, an amendment shall be a unilateral change issued by the WSLCB, at its sole discretion.

Agency: The Washington State Liquor and Cannabis Board.

Alternate: A substitute offer of materials, supplies, services and/or equipment that is not at least a functional equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation.

Authorized Representative: An individual designated by the Contractor to act on its behalf with the authority to legally bind the Contractor concerning the terms and conditions set forth in this Contract.

Business Day: Days of the week excluding weekends and state holidays; including but not limited to: New Year’s Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving day, the day after Thanksgiving day, and Christmas.

Business Hours: Normal state business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m., except legislatively mandated furlough days and state holidays.

Contract: This signed agreement, all schedules, exhibits and amendments for the procurement of items of tangible property, services or construction derived from this RFP K1411.

Deliverable: Any measurable, tangible, verifiable outcome, result, or item that shall be produced to complete a project or part of a project and to receive payment. A Deliverable may be composed of one or more interrelated project Work Products.

Delivery Date: The date by which the Products/Services ordered must be delivered.

Effective Date: The first date the Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

Firm, Fixed Price: A price that is all-inclusive of direct cost and indirect costs, including, but not limited to: direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction, and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the Statement of Work.

Inspection: An examination of delivered material, supplies, services, and/or equipment prior to Acceptance, aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the Solicitation document and/or as agreed between the parties. Inspection may be acknowledged by an authorized signature of the Agency.

Order Document: A written communication, submitted by the WSLCB to the Contractor, which details the specific transactional elements required by WSLCB within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work orders, or other writings as may be designated by the parties hereto. No additional or alternate terms and/or conditions on such written communication shall apply unless authorized by the Contract and expressly agreed to between the WSLCB and Contractor.

Price: Charges, costs, rates, and/or fees charged for the Products and Services under the resulting Contract and shall be paid in United States dollars.

State: means State of Washington.

Subcontractor: One not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

Work Product: The documented results of the Statement of Work activities developed and reviewed per the requirements stated within the RFP. One or more Work Products collectively form a Deliverable. Work Product include WSLCB data and products produced under any Contract resulting from this RFP, including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, WSLCB signs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

3. STATEMENT OF WORK

The Contractor will provide goods, services, and staff, and otherwise do all things necessary for or incidental to the performance of work. The Contract will be for WSLCB’s Enforcement Division only. Vendor may be required to perform all or some of the functions listed below for each candidate for employment by WSLCB. Vendor is expected to provide services statewide.

- a. Meet with WSLCB to discuss the scope of each work request, important attributes to screen for, and any additional tasks that may be required to complete a project.
- b. Vendor may be required to conduct the following checks for each candidate:
 - i. Employment Verification
 - ii. Public Records Check
 - iii. Education verification
- c. Provide a Background Investigation Summary Report.

4. Warranties and Reservations

- A. Contractor shall perform all Services diligently and in a good, workmanlike, and professional manner, using quality materials and equipment and sufficient trained personnel (including supervisors where appropriate) to complete the Services in a safe and timely manner which does not unduly interfere with the operation of WSLCB or the business functions therein. Contractor shall obtain and maintain, at its own expense and at all times during the term of this Contract, all necessary licenses, permits, training or other authorizations which may be necessary to perform Services.
- B. Each service provided pursuant to this Contract shall be conducted in accordance with generally accepted practice in the industry. Contractor shall comply with all state and federal laws.
- C. Contractor shall maintain all files pertaining to WSLCB candidates for five (5) years following the background investigation, in accordance with the Fair Credit Reporting

Act statute of limitations. The Contractor expressly agrees and warrants that all tests and written materials utilized have been acquired by the Contractor in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws.

- D. Contractor shall abide by all directives and requirements of the Fair Credit Reporting Act, 15 U.S.C. § 1681 and Chapter 19.182 RCW.

5. ORDER PLACEMENT AND DELIVERY

Orders for these services shall be placed using a purchase order on an as needed basis by the WSLCB. Upon receipt of an order, Contractor must confirm receipt of order, in writing, within one (1) Business Day.

6. PERIOD OF PERFORMANCE

The period of performance under this contract will be from July 1, 2020, or date of execution, whichever is later, through June 30, 2022, with the option to extend for Four (4) additional One (1) year term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the WSLCB and are subject to written mutual agreement. The total contract term, including the initial term and all subsequent extensions, shall not exceed six (6) years unless an emergency exists and/or special circumstances require a partial term extension. The WSLCB reserves the right to extend with all or some of the contractors, solely determined by the WSLCB.

7. COMPENSATION

Total compensation for goods and services rendered shall be as needed per instance and not exceed the following:

Item Description	Price
Employment Verification (2 most recent) - Joint Commission	\$XX per hour for investigative and administrative work related to the pre-employment background investigation. Background investigations vary in complexity and time involved. Total time ranges from 20-35 hours (typically).
Public Records Check	\$XX Records checks for candidates that reside outside of the State of Washington may be higher, depending on the State. Whatever those additional costs are, they are billed at cost plus 4%.
Education Verification	\$XX per report. Pricing varies depending on the institutions participating in the education verification clearing house.

Travel Expenses Reimbursement	Expenses must be pre-approved by the WSLCB and must not exceed the current GSA per diem rates and Federal mileage rates of \$0.535 per mile. The WSLCB may reimburse for ferry fees, bridge tolls, and parking. The amount charged per mile is calculated and changes on an annual basis.
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Optional Other Services	Price
Personal History Questionnaire (PHQ) - an online questionnaire that produces an electronic report to the Customer related to hiring risk factors and potential disqualifying information. An initial screening tool. The PHQ contains 255 questions that cover all important aspects of an applicant's background (including education, employment, military experience, and law enforcement experience, driving record, financial history, criminal record, substance use, and general information). The PHQ asks questions clearly, in language that is easy for applicants to understand. The PHQ contains detailed response categories, specifically chosen to be appropriate for background investigations of law enforcement applicants.	\$XX per report
Eye Detect Lie Detection - Eye Detect is the first ocular-motor deception detection solution. It's an accurate, cost-effective, efficient, secure and nonintrusive method that detects deception in 40 minutes by analyzing eye behavior. The same scientists credited with computerizing the polygraph in 1991 developed Eye Detect. It is a new way for organizations to manage risk and ensure workplace integrity, and for law enforcement agencies and governments to detect deception. May be used in the early, initial screening of candidates to make screening process more efficient and cost effective. 40-minute administration time; report available in 10 minutes. Accuracy rates equal/better than the polygraph. Does not replace the polygraph but when used in conjunction with the polygraph in a multiple hurdle hiring process, truth verification accuracy rates improve to 95% and higher.	\$XX per test

CONTRACT ADMINISTRATION

All authorized communication regarding this contract shall occur between the Contractor's Authorized Representative or designee and the WSLCB Contract Administrator or designee.

Contractor's Authorized Representative	WSLCB Contract Administrator
Name	Michael Walker
Contractor	Washington State Liquor and Cannabis Board
Address	PO Box 43090
Address	Olympia, WA 98504
Phone:	Phone: (360) 664-1781
Email address:	Email address: Michael.Walker@lcb.wa.gov

ORDER OF PRECEDENCE

Each of the exhibits listed below is 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:

1. Applicable federal and state of Washington statutes and regulations
2. Special terms and conditions as contained in this basic contract instrument
3. Exhibit A – General Terms and Conditions
4. Exhibit B – Request for Proposal No. K1411
5. Exhibit C – Contractor's Proposal dated (DATE)
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

APPROVAL

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

For Contractor:		Contract Manager for WSLCB:	
<hr/>		<hr/>	
<i>(Contractor Authorized Representative Signature) (Date)</i>		<i>(Signature) (Date)</i>	
Contractor Name		Agency Name	Washington State Liquor and Cannabis Board
Print Name		Print Name	Justin Nordhorn
Telephone No.		Telephone No.	(360) 664-1726
Email		Email	Justin.Nordhorn@lcb.wa.gov
Authorizing WSLCB Signer			
Print Name	Matt Hanson	Date	
Signature		Email	Matt.Hanson@lcb.wa.gov
		Phone	(360) 664-1733

Exhibit A

General Terms and Conditions

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1 Assignment

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

2 Assurances

The WSLCB and Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

3 Advertising and Publicity

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

4 Commencement of Work

No work shall be performed by Contractor until this Contract is executed by the Contractor and the WSLCB.

5 Benefit of Upgrades

If Contractor upgrades or modifies its commercial product(s) or services provided to additional clients during the term of this Contract, WSLCB shall have the immediate benefit of the upgrades or modifications. Contractor shall send notice for major releases to the WSLCB Contract Administrator with the upgrades or modifications within five (5) days of said modification or upgrade.

6 Price Increases

Contractor requests for adjustments in pricing will be considered at sole discretion of the WSLCB only after expiration of the firm and fixed price period, and then on a pass through basis only that does not produce a higher profit margin for Contractor than that established by the original contract pricing.

Contractors may not make extensions contingent on price adjustments.

Price Increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices and/or the result of increases at the manufacturer's level, incurred after contract commencement date. The grant of any price adjustment will be at the sole discretion of the WSLCB and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original contract pricing. Any adjustments in pricing shall be set forth in a written amendment to the contract. Price adjustments granted by the WSLCB shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

7 Changes and Modifications

The WSLCB or Contractor may, from time to time, request changes in the services to be performed, or in the project undertaken. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by and between the WSLCB and the Contractor shall be incorporated in written modifications to this Contract.

Alteration of the terms of this Contract shall be valid only when in writing and signed by the authorized representatives of both parties.

8 Survivorship

The terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, expiration, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Date Warranty; Contractor Commitments; Protection of WSLCB's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Contractor's Proprietary Information; Disputes; and Limitation of Liability, Legal Notices, Hold Harmless, Withholding, Termination Procedure, Attorneys Fees and Costs, Non-Exclusive Remedies, shall survive the termination of this Contract.

9 Severability

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

10 Conflict of Interest

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

If Contractor, or any of its staff or subcontractors that performs services under this Contract, has an ownership interest in a marijuana or liquor business entity, then Contractor must immediately disclose the relationship to WSLCB. WSLCB shall determine, in its sole discretion, whether the relationship is a Conflict of Interest.

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

11 Conformance

If any provision of this Contract is in conflict with or 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.

12 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 agent maintained by the Contractor for the purpose of securing business. The WSLCB shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover by other means the full

amount of such commission, percentage, brokerage or contingent fees. In no event shall the WSLCB be liable for any brokerage or contingent fees.

13 Pricing, Invoice and Payment

13.1 Advance Payment Prohibited

No advance payment shall be made for the Services furnished by Contractor pursuant to this Contract.

13.2 Price Warranty

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.

13.3 Pricing

- a) Contractor agrees to provide the Products and Services at the Prices set forth in this contract and no other Prices shall be payable to Contractor for implementation of Contractor's Response.
- b) Prices shall not be increased during the term of the Contract unless otherwise provided herein.
- c) If Contractor reduces its Prices for any of the Services provided to additional clients during the term of this Contract, WSLCB shall have the immediate benefit of such lower Prices for new purchases. Contractor shall send notice to the WSLCB Contract Administrator with the reduced Prices within 15 Business Days of the reduction taking effect.

13.4 Miscellaneous Expenses

The WSLCB may reimburse Contractor for travel and related expenses as identified in this Contract, or as authorized in writing, in advance by the WSLCB in accordance with the current rules and regulations set forth in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/default.asp>), and not to exceed expenses actually incurred. No payment of travel expenses will be made to Contractor for routine travel to and from the WSLCB's location. Contractor may be required to provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

13.5 Taxes

- a) WSLCB will pay sales and use taxes, if any, imposed on the Products acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. WSLCB, as an agency of Washington State government, is exempt from property tax.
- b) Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract, except sales and use taxes as stipulated above.

13.6 Statewide Vendor Registration System

In order to receive payment, Contractors are required to be registered with the Statewide Payee Desk maintained by WaTech for processing Contractor payments. Purchasers who are Washington State agencies cannot make payments to Contractors until the Contractors are registered. Registration materials are available here: [Receiving Payment from the State](#).

13.7 Invoicing, Billing, and Payment(s)

- a) Incorrect or incomplete invoices will be returned by WSLCB to Contractor for correction and reissue.
- b) The WSLCB Contract number must appear on all bills of lading, packages, and correspondence relating to this Contract.
- c) WSLCB shall not honor drafts, nor accept goods or services on a sight draft basis.
- d) Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within 30 calendar days of Acceptance of the Software or receipt of Contractor's properly prepared invoice, whichever is later.

Billing Procedures and Payment

The WSLCB will pay Contractor upon acceptance of goods and/or services provided and receipt of properly completed invoices, which should be submitted electronically to: HQSupply@lcb.wa.gov.

If Contractor is unable to submit invoices electronically, invoices may be submitted by mail to:

Washington State Liquor and Cannabis Board
Attn: Support Services
PO Box 43090
Olympia, WA 98504

Each invoice shall be identified with the following items:

- a) State "INVOICE"
- b) Identify the invoice number and date
- c) Be identified by Contract Number K1411
- d) Identify Contractor's Statewide Vendor registration number assigned by WATECH.
- e) Be in U.S. dollars
- f) Identify the applicable prompt payment discount and/or volume discount(s)
- g) Identify payee name and address in compliance with U.S. Postal regulations
- h) Describe and document, to the WSLCB'S satisfaction, a description of the goods provided and/or work performed, including dates
- i) Be accompanied by documentation that confirms that services were performed or products were received

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

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

Payment shall be considered timely if made by the WSLCB within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by WSLCB and be redeemable in U.S. dollars. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

In the event that the Contractor overcharges the WSLCB, checks shall be mailed with the hard copy credit memos PO BOX 43085 Olympia WA 98504.

13.8 Duplication of Billed Costs

The Contractor shall not bill the WSLCB for costs if Contractor is being paid by another funding source for those same costs.

13.9 Overpayments to Contractor

Contractor shall, at WSLCB's option, refund or credit WSLCB, the full amount of any erroneous payment or overpayment under this Contract within 30 calendar days' written notice. If Contractor fails to make timely refund, WSLCB may charge Contractor one percent per month on the amount due, until paid in full.

14 Power and Authority

Contractor represents and warrants that it has the full power and authority to grant to the WSLCB the rights described in this Contract.

15 Protection of WSLCB's Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency or third party source code or object code and associated documentation, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSLCB's express written consent or as provided by law. Contractor shall not disclose or make available any statutorily exempt confidential information to any third parties. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSLCB. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Contractor shall, at WSLCB's option: (i) certify to WSLCB that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSLCB; or (iii) take whatever other steps WSLCB requires of Contractor to protect WSLCB's Confidential Information.

Contractor, shall, upon request, provide documentation of the following: any Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to

inspection, review or audit in accordance with Review of Contractor's Records. Contractor shall also make the Deliverables and Services being provided by Contractor available for inspection and review in a Project repository at any reasonable time by representatives of the WSLCB.

WSLCB reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this Section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

15.1 Injunctive Relief and Indemnity

Contractor will immediately report to the WSLCB any and all unauthorized disclosures or uses of the WSLCB's Confidential Information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the WSLCB's Confidential Information to others may cause immediate and irreparable harm to the WSLCB. If Contractor should publish, use or disclose such Confidential Information to others without authorization, the WSLCB shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify and hold harmless the WSLCB from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) to the extent caused by or arising from Contractor's failure to fulfill its obligations related to the WSLCB's Confidential Information.

15.2 Nondisclosure of Other State Information

The use or disclosure by Contractor, or Contractor's subcontractor(s), of any WSLCB or State information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of the WSLCB. The parties shall use the information described in this Agreement solely for the purpose stated in this Agreement. All intellectual property rights to the hosted data shall remain the exclusive property of the WSLCB. The Contractor has limited access to the WSLCB's data as provided in this Agreement solely for the purpose of performing its system hosting obligations.

15.3 Right of Inspection

The Contractor shall provide right of access to its facilities to the WSLCB, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

15.4 Security Requirements

Each party, and its officers, employees, subcontractors and agents shall at all times comply with all applicable security standards, practices, and procedures which are equal to or exceed those of WSLCB, including but not limited to the Washington State Office of the Chief Information Officer IT Standards.

16 Disputes and Remedies

16.1 Disputes

- a) The parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. When a dispute arises between the WSLCB and

Contractor, both parties will attempt to resolve the dispute pursuant to this Section and will continue without delay to carry out all their respective responsibilities under this Contract.

- b) The WSLCB and Contractor will use their best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each party's staff with appropriate authority to resolve such disputes. When a dispute arises between the WSLCB and Contractor which cannot be resolved in the normal course of business, the Contractor and the WSLCB shall each notify the other of the dispute, with the notice specifying the disputed issues. The parties shall use their best, good faith efforts to resolve the dispute within five business days of submission by either party to the other of such dispute notice.
- c) Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in litigation, subject to applicable State and Federal law. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in a lawsuit.
- d) Continued Performance. Contractor and the WSLCB agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract, and the parties will have the right to exercise their rights and remedies during the dispute resolution process.
- e) When a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing. The parties shall agree to a mediator to preside over the dispute hearing. Each party shall provide names and information of at least one neutral party mediator, and the parties must agree to the mediator. Each party will bear half of the cost of hiring a mediator.
 - a. The request for a dispute hearing must:
 - i. Be in writing;
 - ii. State the disputed issue(s);
 - iii. State the relative positions of the parties;
 - iv. State the Contractor's name, address, and contract number; and
 - v. Be mailed to the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
 - b. The responding party shall send a written answer to the requester's statement to the requester within 5 working days.
 - c. The mediator shall review the written statements and reply in writing to both parties within 10 working days. The mediator may extend this period if necessary by notifying the parties.
 - d. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
 - e. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable Alternative Dispute Resolution ("ADR") method in addition to the dispute resolution procedure outlined above.

16.2 Attorney Fees and Costs

If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

16.3 Cost of Remedy

Cost of remedying defects: all defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

16.4 Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law and equity.

16.5 Withholding

The WSLCB shall have the right to delay or withhold payments to Contractor, in whole or in part, if Contractor fails to perform its obligations set forth in this Contract within ten Business Days after receiving written notice of such failure.

16.6 Reductions in Payments Due

Amounts due to WSLCB by Contractor, including but not limited to damages, or claims for damages, may be deducted or set off by the WSLCB from any money payable to Contractor pursuant to this Contract.

16.7 Cover

If, in the reasonable judgment of the WSLCB, a default by Contractor is not so substantial as to require termination and reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within ten calendar days of receipt of Notice from the WSLCB, and the default is capable of being cured by the WSLCB or by another resource without unduly interfering with continued performance by Contractor, the WSLCB may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the WSLCB for such Services. In addition, Contractor must cooperate with these resources.

16.8 Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, WSLCB shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days or other appropriate time period from the date of the written notice Contractor still has not performed, then WSLCB may withhold all monies due and payable to Contractor, without penalty to WSLCB, until such Failure to perform is cured or otherwise resolved.

17 Indemnification

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

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

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

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

18 Liens, Claims, and Encumbrances

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if WSLCB requests, a formal release of same shall be delivered.

19 Limitation of Liability

The parties agree that neither Contractor nor WSLCB shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to breach of confidentiality or security, bodily injury or death, or a claim or demand based on a patent, copyright, or other intellectual property right infringement or misappropriation, and other indemnity obligations, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding remedies or damages or any other conditions as are elsewhere agreed to herein between the parties.

IN NO EVENT SHALL the WSLCB'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE TOTAL AMOUNT OF THE CONTRACT.

19.1 Force Majeure

Neither Contractor nor WSLCB shall be liable for damages or responsible for delays or failures in performance resulting or arising from causes beyond the reasonable control and without the fault or negligence of such party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSLCB acting in its sovereign capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors), but in every case the delays or failures in performance must be beyond the reasonable control and without fault or negligence of such party or their respective subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

20 Suspension and Termination

20.1 Suspension Due to Breach

In the event the WSLCB, in its reasonable judgment, determines that a material breach of Contract has occurred in Contractor's compliance with the conditions of this Contract or if the WSLCB has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of Contractor under this Contract, and the situation is deemed by the WSLCB to merit corrective action, the following sequential suspension procedure may be implemented by the WSLCB:

- The WSLCB will notify Contractor in writing by registered mail to Contractor's last known address with a return receipt to the WSLCB of a perceived compliance breach describing the WSLCB's concerns.
- Contractor will respond to the WSLCB's concerns by letter describing proposed corrective actions and proposing completion dates for bringing this Contract into compliance. Such response will be sent by registered mail and delivered to the WSLCB within ten (10) calendar days of the date of receipt of the WSLCB's letter.
- The WSLCB will notify Contractor in writing by registered mail to Contractor's last known address with a return receipt to the WSLCB as to the WSLCB's final disposition of the WSLCB's concerns.
- Upon receipt of Notice of final disposition by Contractor, the WSLCB reserves the right to suspend all, or part of, this Contract, and to withhold further payments, or to prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by Contractor or a decision by the WSLCB to terminate in accordance with this Section or Section 21.

20.2 Suspension for Convenience

The WSLCB may, for valid reason and in lieu of termination, unilaterally issue a stop order directing the Vendor to suspend, delay, or interrupt all or any part of its performance of work under the contract for a specific time. The Vendor shall be paid for accepted work performed until the effective date of the stop order. The Vendor shall resume work upon the date specified in the stop order or upon such other date as WSLCB's Project Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Vendor's approved schedule of performance. The WSLCB and Contractor shall negotiate an equitable adjustment, if any, to the contract price, scope, or schedule.

20.3 Termination for Breach

If Contractor materially breaches this Contract, then the WSLCB shall give Contractor written Notice of such breach. Contractor shall correct the breach within 15 calendar days or as otherwise mutually agreed. If the breach is not corrected, this Contract may be terminated immediately by written Notice from the WSLCB to Contractor. The option to terminate shall be at the sole discretion of the WSLCB.

If the WSLCB fails to pay Contractor for undisputed, material Charges when due under the Contract and fails to make such payments within 30 days of receipt of Notice from Contractor of the failure to make such payments, unless the WSLCB is withholding amounts as provided in these terms, Contractor may, by giving Notice to the WSLCB, terminate this Contract as of a date specified in the Notice of Termination. In addition: (i) if the WSLCB prevents Contractor from performing its obligations for meeting the Critical Events in accordance with the Schedule, (ii) then Contractor shall give the WSLCB Notice of such breach, (iii) the WSLCB shall correct such

action within 30 calendar days or as otherwise mutually agreed in writing, and (iv) if the action is not corrected, this Contract may be terminated immediately by Notice from Contractor to the WSLCB. Contractor shall not have the right to terminate the Contract for the WSLCB's breach of the Contract or other acts or omissions except as provided in this Section.

In the event of termination of this Contract under this Section by the WSLCB, the WSLCB shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, subject to the terms of this Contract's Cover Section and this Section, including, but not limited to: (1) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (2) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (3) any other costs to the WSLCB resulting from Contractor's breach. The WSLCB shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe the WSLCB for Contractor's default.

If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

This Section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

20.4 Termination for Convenience

When it is in the best interest of the WSLCB, the WSLCB may terminate this Contract, in whole or in part, by 30 Business Days' written notice to Contractor. Invocation of Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds shall be deemed a Termination for Convenience but will not require such 30 calendar days' Notice.

If this Contract is terminated for convenience, the WSLCB is liable only for payments required by the terms of this Contract for Services for which the WSLCB has given its Acceptance.

During this 30 Business Day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the WSLCB from such winding down and cessation of Services. If this Contract is so terminated, the WSLCB shall be liable only for payment in accordance with the terms of this Contract and for Services rendered prior to the effective date of termination.

In case of such termination for convenience, the WSLCB shall pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by the WSLCB, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the agreed upon payment schedule.

20.5 Termination for Withdrawal of Authority

In the event that WSLCB's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSLCB may terminate this Contract by seven calendar days or other appropriate time period by written notice to Contractor. No penalty shall accrue to WSLCB in the event this Section shall be exercised. This Section shall not be construed to permit WSLCB to terminate this Contract in order to acquire similar Services from a third party.

20.6 Termination for Non-Allocation of Funds

If funds are not allocated to WSLCB to continue this Contract in any future period, WSLCB may terminate this Contract by seven calendar days' written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. WSLCB will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WSLCB agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSLCB in the event this Section shall be exercised. This Section shall not be construed to permit WSLCB to terminate this Contract in order to acquire similar Services from a third party.

20.7 Termination for Conflict of Interest

WSLCB may terminate this Contract by written notice to Contractor if WSLCB determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSLCB shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

20.8 Termination Procedure

In addition to the procedures set forth below, if WSLCB terminates this Contract, Contractor shall follow any procedures WSLCB specifies in WSLCB's Notice of Termination or on expiration, as applicable.

Upon termination of this Contract, WSLCB, subject to the terms of this Contract, may require Contractor to deliver to WSLCB any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled Treatment of Assets shall apply in such property transfer.

Unless otherwise provided herein, WSLCB shall pay to Contractor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by WSLCB, provided that in no event shall WSLCB pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. WSLCB may withhold from any amounts due Contractor such sum as WSLCB determines to be necessary to protect WSLCB from potential loss or liability.

Contractor shall pay amounts due WSLCB as the result of termination within 30 calendar days of notice of amounts due. If Contractor fails to make timely payment, WSLCB may charge interest on the amounts due at one percent per month until paid in full.

After receipt of notice of termination, and except as otherwise directed by the WSLCB, Contractor shall:

- Stop work under this Contract on the date, and to the extent specified, in the Notice;
- 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 this Contract that is not terminated;
- As soon as practicable, but in no event longer than 30 calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the WSLCB to the extent required, which approval or ratification shall be final for the purpose of this Section;

- Complete performance of such part of this Contract as shall not have been terminated by the WSLCB;
- Take such action as may be necessary, or as the WSLCB Contract Manager may direct, for the protection and preservation of the Property related to this Contract which is in the possession of Contractor and in which the WSLCB has an interest;
- On termination, transfer title to the WSLCB and deliver in the manner, at the times, and to the extent directed by the WSLCB Contract Manager, any Property which is required to be furnished to the WSLCB and which has been accepted or requested by the WSLCB; and
- Provide written certification to the WSLCB that Contractor has surrendered to the WSLCB all said Property.

20.9 Transition Support

Contractor must provide for reasonable transition assistance requested by the WSLCB, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the WSLCB or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The WSLCB shall pay the Contractor for any resources utilized in performing such transition assistance at the rates included in the Proposal. On expiration or termination of the Contract, Contractor shall provide or make available to the WSLCB a copy of all Data with instructions and software necessary to decrypt the Data, if it is encrypted.

21 Treatment of Assets**21.1 Ownership**

WSLCB shall retain title to all Property furnished by WSLCB to Contractor under this contract. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract excluding intellectual property provided by the Contractor, shall pass to and vest in the WSLCB upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the WSLCB upon (i) issuance for use of such property in the performance of this contract, (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the WSLCB, in whole or in part, whichever occurs first.

21.2 Use of Property

Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the WSLCB Project Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the Equipment shall be subject to WSLCB's security, administrative and other requirements.

The parties shall use the information described in this Agreement solely for the purpose stated in this Agreement. All intellectual property rights to the hosted data shall remain the exclusive property of the WSLCB. The Contractor has limited access to the WSLCB'S data as provided in this Agreement solely for the purpose of performing its system hosting obligations.

21.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair

or make good any damage, destruction, personal injury or loss at the Facility or Sites caused by Contractor's acts or omissions.

21.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the Contract Manager thereof and shall take all reasonable steps to protect that Property from further damage.

21.5 Surrender of Property

Contractor will ensure that the Property will be returned to WSLCB in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall surrender to WSLCB all Property upon the earlier of expiration or termination of this Contract.

21.6 Proprietary Information

Contractor acknowledges that WSLCB is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, WSLCB shall maintain the confidentiality of all such information marked or otherwise identified in the Contract or on the Project as Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, WSLCB will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WSLCB will release the requested information on the date specified.

Any specific information that is claimed by WSLCB to be Proprietary Information must be clearly identified as such by WSLCB. To the extent consistent with chapter 42.56 RCW, Contractor shall maintain the confidentiality of all such information marked or otherwise identified in the Contract or on the Project as Proprietary Information.

22 Save Harmless

Contractor shall defend, indemnify, and save WSLCB harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties to the extent caused by the intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

For all obligations of Contractor to defend the WSLCB as described in the Contract, the WSLCB shall promptly give Contractor notice of such claim or action and shall cooperate in the defense of such claims at Contractor's expense. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

23 Insurance

Contractor shall, during the term of this Contract, maintain the insurance described in this Section in full force and effect. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to WSLCB within five Business Days of Contractor's receipt

of such notice. Failure to buy and maintain the required insurance may, at WSLCB's sole option, result in this Contract's termination.

All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

Contractor shall furnish to WSLCB copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide evidence of coverage may, at WSLCB's sole option, result in this Contract's termination.

By requiring insurance herein, WSLCB does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to WSLCB in this Contract.

For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall continue such coverage for two years beyond the expiration or termination of this Contract and providing WSLCB with certificates of insurance on an annual basis.

Contractor shall pay premiums on all insurance policies. Such insurance policies shall reference this Contract number and shall have a condition that they not be revoked by the insurer until 30 calendar days after notice of intended revocation thereof shall have been given to WSLCB by the insurer.

23.1 Minimum Acceptable Limits

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

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3

million;

- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon this Section, and coverage of not less than \$1 million per occurrence or claim/\$2 million general aggregate; and Industrial Insurance coverage (see Section 23.2).

23.2 Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSLCB will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

24 Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

25 OSHA/WISHA

Contractor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Contractor agrees to indemnify and hold WSLCB harmless from all damages assessed against WSLCB as a result of the failure of the Products furnished under this Contract to so comply.

26 Uniform Commercial Code (UCC) Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

Software, in whole and in part is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Washington, for purposes of this Contract.

27 Antitrust Violations

Contractor and WSLCB recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by WSLCB. Therefore, Contractor hereby assigns to WSLCB any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to WSLCB resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

28 Compliance with Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law against Discrimination. In the event of 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 under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with WSLCB.

29 Debarment and Suspension

The Contractor certifies that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and Debarment and Suspension, codified at 29 CFR part 98.

30 Governing Law

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

31 Independent Capacity of Contractor

The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the WSLCB. The Contractor and its employees or subcontractors will not hold itself/himself/herself/them self out as, nor claim to be an officer or employee of, the WSLCB or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

32 Licensing and Accreditation

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

33 Limitation of Signature Authority

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

34 Lobbying Activities

The Contractor certifies that it is in compliance with the requirements of 29 CFR Part 93, restricting lobbying activities. The Contractor shall also make available upon request required disclosure information if the Contractor participates in lobbying activities during the Contract period.

35 Site Security

While on WSLCB premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

36 Subcontracting

The Contractor shall not subcontract work or services contemplated under this Contract and/or use an outside consultant except as provided for in the Statement of Work without obtaining the prior written approval of the WSLCB for the authority to enter into subcontracts. Contractor acknowledges that such approval for any subcontract does not relieve the Contractor of its obligations to perform hereunder. The WSLCB retains the authority to review and approve or disapprove all subcontracts. At the WSLCB's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Subcontractor the Contractor shall:

- a) Be responsible for Subcontractor compliance with these General Terms and Conditions and the subcontract terms and conditions; and
- b) Ensure that the Subcontractor follows the WSLCB's reporting formats and procedures as specified by the WSLCB.

Contractor further agrees that WSLCB has sole discretion in determining whether a Subcontractor is not in compliance with this contract. If WSLCB determines that a Subcontractor is not in compliance with this Contract, Contractor shall provide a substitute Subcontractor with equal qualifications and experience as the original Subcontractor and said Subcontractor will not perform services under this contract without the prior written approval of the WSLCB. If substitution is permitted, it shall be at no additional cost to WSLCB.

The Contractor shall remain wholly responsible for performance of the entire Contract regardless of whether a Subcontractor is used. The WSLCB will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from any contract. Any and all Subcontractors must follow all requirements of the contract, including confidentiality expectations. The WSLCB may require the Contractor to end a Subcontract related to the Contract at any time.

37 Use of Name Prohibited

The Contractor shall not in any way contract on behalf of or in the name of the WSLCB, nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the WSLCB.

38 Waiver

Failure or delay of the WSLCB to insist upon strict performance of any term or condition of the Contract, or to exercise any right or remedy provided in the Contract or by law; or the WSLCB's acceptance of, or payment for, materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the WSLCB to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of the Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by WSLCB of any existing or future right and/or remedy available by law.

39 Materials and Workmanship

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

40 Warranties

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, services and/or equipment, and inspection incidental thereto, by the WSLCB shall not alter or affect the obligations of the Contractor or the rights of the WSLCB.

41 Legal Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, facsimile, or electronic mail, to the Contract Administrator provided in this Contract. For the purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a WSLCB approved digital signature provider, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above. In the event that a subpoena or other legal process commenced by a third party in any way concerning the equipment or services provided pursuant to this Contract is served upon Contractor or WSLCB, such party agrees to notify the other party in the most expeditious fashion as possible following receipt of such subpoena or other legal process. Contractor and WSLCB further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

42 Jurisdiction and Venue

The laws of the State of Washington shall govern the interpretation and application of all provisions of this Contract without regard to conflict of law provisions. Contractor agrees to submit to personal jurisdiction of the courts of Thurston County, Washington and that any claim or controversy at law or equity that arises out of this Contract will be heard in the courts of Thurston County.

43 Sovereign Immunity.

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by WSLCB or the State of Washington of any immunities from suit or from liability that WSLCB or the State of Washington may have by operation of law.