BIDDER INSTRUCTIONS

WASHINGTON STATE FERRIES

M. V. SNOHOMISH DRYDOCKING

CONTRACT NO. 00-7167

BIDDER INSTRUCTIONS

TABLE OF CONTENTS

SECTION		PAGE
1.	INTRODUCTION	1
2.	BID DUE DATE	1
3.	PREQUALIFICATION	2
4.	IFB PACKAGE AND INTERPRETATION	4
5.	EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK	5
6.	BID FORM	7
7.	ESTIMATED QUANTITIES	7
8.	PREPARATION OF BID	7
9.	SALES OR USE TAX	9
10.	MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES	9
11.	BID SECURITY	9
12.	NONCOLLUSION DECLARATION	10
13.	DELIVERY OF BIDS	10
14.	PROPRIETARY DATA	11
15.	ALTERATIONS, MISREPRESENTATIONS	11
16.	WITHDRAWAL OR REVISION OF BIDS	12

SECTION **PAGE**

17. PUBLIC OPENING OF BIDS 12

18. IRREGULAR BIDS 12

19. NON-RESPONSIBILITY 13

20. PRE-AWARD INFORMATION 14

21. CONSIDERATION OF BIDS 14

22. AWARD OF CONTRACT 15

23. EXECUTION OF CONTRACT 16

24. CONTRACT SECURITY 16

25. FAILURE TO EXECUTE CONTRACT 17

26. RETURN OF BID SECURITY 17

27. PROTEST PROCEDURES 18

28. PRE-IFB REPRESENTATIONS 19

29. PREPARATION COSTS 19

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1. INTRODUCTION

Washington State Ferries, a division of the Washington State Department of Transportation (hereinafter called "WSF"), issues this Invitation For Bids (IFB) and Bid Package for the following described project:

> The Contract Work consists of the following repairs to the passenger-only ferry M.V. Snohomish: U.S. Coast Guard Credit drydocking; sea valve inspection; hull anode renewal; void inspection; fresh water wash of hull; grit blasting and painting below the waterline of the hull; coating of inlet tunnels; tow vessel to the shipyard and tow the vessel back to its mooring at WSF's Eagle Harbor Maintenance Facility on Bainbridge Island, Washington; and other related work, as specified in the IFB Technical Specifications. The vessel is 149'3" x 39'4", and carries 350 passengers. All of the work must be performed within Puget Sound, Washington during the period of August 14 - 18, 2006.

The project work shall hereinafter be called the "Contract Work". A more detailed description of such Contract Work is provided in the IFB Special Provisions. As used elsewhere in the IFB, the terms "State" and "Contracting Agency" shall have the same meaning as "WSF".

2. BID DUE DATE

The closing date for receipt of bids is 11:00 a.m. on Thursday, June 8, 2006. Any bid received after the Bid Due Date shall be rejected and returned to the bidder unopened. See Section 17 for additional information regarding the bid opening.

3. PREQUALIFICATION

A. Standard Prequalification

The prequalification process for WSF's Public Works Contracts is governed by Washington Administrative Code (WAC) Chapter 47039-310 et. seq., copies of which will be supplied upon request from the WSF Contracts Coordinator (see Section 4 herein for address and phone number). Prequalification questions may be addressed to the WSF Contracts Coordinator.

Before being furnished a Bid Form (informational copy enclosed), a prospective bidder must be prequalified at the appropriate financial level under WAC 468-310-050 for Class 82 work, "Drydocking and Hull Repairs". A prospective bidder will not be given a Bid Form unless such bidder has submitted its Standard Prequalification Questionnaire and Financial Statement, and has received a WSF Certification of Prequalification, prior to the Bid Due Date. Standard Prequalification application forms are available upon request from the WSF Contracts Coordinator.

Alternatively, for a project valued at $80,000 or less, a prospective bidder may submit a one-time, project specific Contractor Prequalification Questionnaire and Affidavit for Region Ad and Award Contracts, subject to the procedural requirements described herein.

The Questionnaire (Standard or ≤ $80,000) enables WSF to decide whether or not the bidder is qualified to perform ship repair and/or construction work. The Questionnaire shall be sworn to before a person authorized to take oaths.

On the basis of the Questionnaire, WSF will either specify the type and amount of work it considers the prospective bidder prequalified to perform or advise the prospective bidder of the reasons they failed to be prequalified. To remain prequalified under the Standard Prequalification requirements, the bidder must submit an updated Questionnaire once a year and supplements whenever required by WSF.

A submittal deadline applies to any prospective bidder not prequalified or from whom a supplemental Questionnaire is due. To receive consideration for issuance of a Bid Form on a specific project, the Questionnaire (or supplement) must be received by WSF no less than fifteen (15) days prior to the scheduled Bid Due Date, unless otherwise specified by WSF.

WSF may withdraw a bidder's prequalification or reduce its amount if:

1. The extent of other work the bidder has under contract (WSF or otherwise) justifies such action, or

2. Past or present work on a WSF contract has been less than satisfactory.

If a bidder's Questionnaire does not contain sufficient information, WSF may refuse to provide a Bid Form and disregard any bid submitted. After opening bids, WSF may decide that a prequalified bidder is not responsible and may refuse to accept the bid on that basis. Such a refusal will be conclusive unless the bidder appeals within five days to the Superior Court of Thurston County. Any appeal shall be heard within ten days after it is filed and shall provide at least five days' notice to WSF.

The bidder shall ensure that the combination of the bid amount and other contract work with WSF does not exceed the prequalification amount. If this combination does exceed the prequalification amount, WSF may determine the bidder to be not responsible and refuse to award a contract.

Two or more prospective bidders may, in a joint venture, prequalify and bid jointly on a single contract. Each shall have filed a "Standard Questionnaire and Financial Statement". Together they shall also file a standard form of "Individual Project Statement of Joint Venture" and a joint venture agreement in a form acceptable to WSF.

To bid jointly on a continuous joint venture on more than one contract, two or more prospective bidders shall submit:

1. A "Standard Prequalification Questionnaire and Financial Statement" compiled for the joint venture;

2. A "Standard Prequalification Questionnaire and Financial Statement" for each member (if WSF has no copy on file); and

3. A copy of the "Joint Venture Agreement" signed by each member of the joint venture and naming each person authorized to sign documents on its behalf. (If any member is a corporation, a corporate resolution shall accompany the agreement. This resolution shall authorize the joint venture agreement and name the officer(s) authorized to sign the joint venture agreement or contract on behalf of the corporation.)

WSF will treat the continuing joint venture as a new firm and decide its prequalification on that basis.

Any joint venture and each of its members is subject to the Non-Responsibility Section herein.

4. IFB PACKAGE AND INTERPRETATION

Copies of the IFB Package may be purchased for the **non-refundable** fee of $10.00 each by contacting:

Mailing Address:

Washington State Ferries
Legal Services & Contracts Department
2901 Third Avenue, Ste. 500
Seattle, Washington 98121 – 3014

Phone: (206) 515-3606 (recording)
Fax: (206) 515-3605

Address for Pick-up of IFB Packages:

Washington State Ferries **(NW Corner of Third & Broad)**
5th Floor Main Reception Area

Attn.: Eileen Parks / Contracts Coordinator
Phone: (206) 515-3603
Fax: (206) 515-3605
E-Mail: parks@wsdot.wa.gov
(cc: olson@wsdot.wa.gov)

To facilitate timely responses, WSF will accept questions during the bid process only from prospective bidders (i.e., prime contractors). WSF will not accept, and has no obligation to respond to, inquiries from subcontractors or suppliers. Prospective bidders should submit each question by both telefax and e-mail only, to WSF's Contracts Coordinator (see above). Prospective bidders should also send a courtesy copy (cc) of each e-mailed question to a second WSF Contracts Coordinator, as indicated above. If there is any discrepancy between the faxed and e-mailed versions of a question, then the faxed version will control. Questions must be submitted soon enough to allow: (i) development and issuance of a written response; and (ii) consideration of the response by all prospective bidders before submission of their bids.

Additionally, if a prospective bidder requires an explanation, clarification, or interpretation of any part of the Contract Documents, it may submit to the WSF Contracts Coordinator a written request for an interpretation thereof. All requests for interpretation are subject to the inquiry limitations specified in the preceding paragraph. WSF will not be responsible for any other explanations or interpretations of the Contract Documents. Oral explanations, interpretation, or instructions given by anyone before award of the Contract will not be binding on WSF.

Any information given to a prospective bidder concerning any of the Contract Documents will be furnished to all prospective bidders as an IFB Addendum if WSF deems that information to be necessary in submitting bids or if WSF concludes that the lack of the information would be prejudicial to other prospective bidders.

5. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

The bidder shall carefully examine the Contract Documents and the Bid Form. Submittal of a bid shall be conclusive evidence that the bidder has made its examination and understands all requirements for the performance of the Contract Work. The bidder further warrants, agrees and acknowledges by submitting a bid that it:

A. Has taken steps reasonably necessary to ascertain the nature and scope of the Contract Work; and understands that failure to do so will not be justification for a Change Order, protest or claim against WSF;

B. Has investigated and satisfied itself as to the general and local conditions which can affect the Contract Work or its cost, including but not limited to:

1. Conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials;

2. The availability of labor, materials, water, electric power, access roads and parking;

3. Uncertainties of weather, tides, wind, or similar physical conditions at the work site; and

4. The character of equipment and facilities needed preliminary to and during performance of the Contract Work.

C. Has satisfied itself as to the adequacy of time allowed for the completion of the Contract Work;

D. Has not discovered any patent ambiguities, other than those identified in writing to WSF, that would be discovered by a prudent contractor in preparing its bid; and

E. Has read, fully understands and intends to sign the Contract, without modification.

Any failure of the bidder to take the actions acknowledged above shall not relieve the bidder from responsibility of estimating properly the difficulty and cost of successfully performing the Contract Work, or from proceeding to successfully perform the Contract Work without additional expense to WSF.

The bidder agrees that WSF shall not be liable to it on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the bidder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

The bidder shall be familiar and comply with all Federal, State, and local laws, ordinances, and regulations which might affect those engaged in the Contract Work. WSF will not consider any plea of misunderstanding or ignorance of such requirements.

Bid prices shall reflect what the bidder anticipates to be the cost of completing the work, including methods, materials, labor, and equipment. Except as the Contract may provide, the bidder shall receive no payment for any costs that exceed those in the bid prices.

Prospective bidders are advised that projects with work on or adjacent to water, the Contractor shall make the determination as to whether works over the water may be covered by:

A. The Longshoremen's and Harbor Worker's Compensation Act (administered by U.S. Department of Labor), and/or

B. The State Industrial Insurance (administrated by the Washington State Department of Labor and Industries).

The Contractor shall bear all cost for such insurance, as provided in: (i) Section 1-07.10, Worker Benefits, of the Standard Specifications for Road, Bridge and Municipal Construction of the State of Washington – English; and/or (ii) the Contract.

No Claim shall be allowed because of any ambiguity in the Contract if:

A. The bidder discovers an ambiguity but fails to notify WSF; or

B. The bidder failed to discover a patent ambiguity that would be discovered by a reasonably prudent contractor in preparing its bid.

For an explanation or interpretation of the bid documents, please refer to the IFB Package and Interpretation Section herein.

6. BID FORM

At the request of a prequalified bidder, WSF will provide a Bid Form for any project on which the bidder is eligible to bid. The Bid Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices. The bidder shall complete spaces on the Bid Form that call for unit prices, extensions, the total bid amount, signatures, date, acknowledgment of Addenda, and the bidder's address. The required certifications are included as part of the Bid Form.

7. ESTIMATED QUANTITIES

The quantities shown in the Bid Form and the Contract forms are estimates and are stated only for bid comparison purposes. WSF does not warrant expressly or by implication, that the actual quantities of work will correspond with those estimates. Payment will be made on the basis of the actual quantities of each item of work completed in accordance with the Contract requirements.

8. PREPARATION OF BID

Each bid shall be submitted only on the Bid Form furnished by WSF and shall be signed by the bidder. This official Bid Form will be furnished to all firms who are prequalified by WSF as required for this project. All prices, acknowledgments, and signatures shall be legibly entered in the spaces provided on the Bid Form, typed or in ink, and without alteration.

A sample Bid Form is enclosed herewith. This sample form is for bidders' guidance only, and is not to be used for bidding, unless otherwise approved in writing by WSF.

Bid prices shall reflect what the bidder forecasts to be the cost of completing the Contract Work at the time of performance, including methods, materials, labor and

equipment. There will be no adjustment in the Total Contract Price due to either upward or downward changes in the rate of inflation. The bidder must project any changes in cost/price during the term of the Contract and include such projection in its bid price. Except as the Contract may provide, the bidder shall receive no payment for any costs that exceed those in the bid prices.

Any unit price that is left blank or does not contain numeric figures will be considered no charge for that bid item. The extension for that bid item will also be treated as no charge and reflected as such in the total contract price regardless of what has been placed in the extension column.

All prices shall be in legible figures (not words) written in ink or typed. The bid shall include:

A. A unit price for each item (omitting digits more than four places to the right of the decimal point),

B. An extension for each unit price (omitting digits more than two places to the right of the decimal point), and

C. The total contract price (the sum of all extensions).

In the space provided on the signature sheet, the bidder shall confirm that all IFB Addenda have been received.

The bidder shall submit a completed "Disadvantaged, Minority or Women's Business Enterprise Certification" if it applies.

The bidder shall submit with the bid a list of:

A. Subcontractors who will perform the work of heating, ventilation and air conditioning, plumbing as described in Chapter 18.106 RCW and electrical as described in Chapter 19.28 RCW; and

B. The work those subcontractors will perform on the Contract.

The bidder shall not list more than one subcontractor for each category of work identified, except, when subcontractors vary with bid alternates, in which case the bidder shall identify which subcontractor will be used for which alternate. If no subcontractor is listed, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work;

Bids of corporations shall be signed by the officer or officers having authority to sign them. If a bidder is a partnership, the bid shall be signed by an authorized member of

the partnership. When the bidder is a joint venture, the bid shall be signed by one or more individuals as authorized by the Joint Venture.

9. SALES OR USE TAX

In accordance with RCW 82.08.0285 and 82.12.0279, Washington State sales or use taxes shall not be included in any bid prices since neither sales nor use taxes are applicable to: sales of ferry vessels to the State of Washington for transportation within or outside territorial waters; sales of tangible property which becomes a component part of such vessels; and sales or charges for labor or services rendered in the construction or improving such vessels. WSF will provide any available Exemption Certificate to the successful bidder, upon request.

10. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

WSF encourages Minority and Women-Owned Business Enterprise (MWBE) participation on this Contract. However, there is no MWBE goal established for this Contract. Please refer to **Exhibit "A"**, MWBE Participation, attached hereto and by this reference incorporated herein.

11. BID SECURITY

Each bid shall be accompanied by Bid Security equal to at least five percent (5%) of the Total Bid Price, as shown on the Bid Form. Bid Security shall be in the form of (i) cash, a certified check, cashier's check, or project Bid Bond, or (ii) an annual Bid Bond. Checks shall be payable to Washington State Ferries.

The Bid Security shall be submitted as evidence of good faith and as a guarantee that, if awarded the Contract, the bidder will execute and deliver the Contract and provide the required Contract Security. Failure to furnish the required Bid Security shall make the bid nonresponsive and shall cause the bid to be rejected by WSF.

If a project or annual Bid Bond is selected, it must be submitted on a Bid Bond form furnished or approved by WSF and signed by the bidder and its surety. A Bid Bond shall not be conditioned in any way to modify the required five percent (5%) amount. The surety shall: (i) be registered with the Washington State Insurance Commissioner; and (ii) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner. See Section 26, Return of Bid Security, for related information.

Should the successful bidder fail to enter into the enclosed Contract with WSF and furnish satisfactory Contract Security within the time period specified, the Bid

Security shall be forfeited as liquidated damages, unless WSF approves a delay in writing.

12. NONCOLLUSION DECLARATION

When required by Section 112(c) Title 23, United States Code, a declaration shall be provided certifying that the bidder has not taken part in collusion or other action that would restrain competitive bidding.

The Code of Federal Regulations [23 CFR Part 635.107(i)(I)] requires that: "Each proposer shall file a sworn or unsworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the Proposal, certifying that such persons, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted Proposal. Failure to submit the sworn or unsworn statement as part of the Proposal package will make the Proposal nonresponsive and not eligible for award consideration". In addition, 23 CFR Part 635.107(i) requires that WSF provide the form for the declaration to prospective bidders and that the declaration shall be executed by such persons, firm, association, or corporation under penalty of perjury under the laws of the United States.

Therefore, by signing the bid, the bidder will be deemed to have signed and agreed to the requirements of the Noncollusion Declaration.

13. DELIVERY OF BIDS

Bids must be submitted in a sealed envelope, together with the required Bid Security, properly addressed as follows:

Mailing Address:

Washington State Ferries
2901 Third Avenue, Ste. 500
Seattle, Washington 98121 - 3014

Attn: Legal Services & Contracts Department

RE: BID FOR M. V. SNOHOMISH
DRYDOCKING CONTRACT

Address for Delivery of Bid Packages

Washington State Ferries **(Corner of Third & Broad)**
5th Floor Main Reception Area

All bidders are advised that the Contract and Contract Security should **not** be executed at the time of submitting a bid.

14. PROPRIETARY DATA

Any document(s) or information which a bidder believes is exempt from public disclosure (RCW 42.17.310) shall be clearly identified by the bidder and placed in a separate envelope marked with the IFB project name, the bidder's name, and the words "Proprietary Data" along with a statement of the basis for such claim of exemption. WSF's sole responsibility shall be limited to maintaining the above data in a secure area and to notify such bidder of any request(s) for disclosure within a period of five (5) years from the award date. Failure to so label such materials, or failure to provide a timely response after notice of request for public disclosure has been given, shall be deemed a waiver by a bidder of any claim that such materials are, in fact, so exempt.

Notwithstanding such limitations, all bids submitted under this IFB shall be considered confidential until WSF has awarded the Contract.

15. ALTERATIONS, MISREPRESENTATIONS

Except as otherwise provided herein, bids which are incomplete, conditioned in any way, contain alterations or items not called for on the Bid Form, or which are not in conformity to the law, will be rejected as non-responsive. Additionally, a bidder shall not misrepresent its Prequalification status, the amount of its bid, or its ability to perform the Contract Work. Misrepresentation may be cause for: (i) rejection of a bid; (ii) cancellation of Contract award; or (iii) termination of the Contract.

16. WITHDRAWAL OR REVISION OF BIDS

After submitting a bid to WSF, the bidder may withdraw or revise it if:

A. The bidder submits a written request signed by an authorized person; and

B. WSF receives the request before the Bid Due Date.

The original bid may be revised and resubmitted as the official bid if WSF receives it before the Bid Due Date.

17. PUBLIC OPENING OF BIDS

The bids will be publicly opened and read on the Bid Due Date specified in Section 2 herein, unless the Bid Due Date has been delayed or canceled. Bidders, their authorized agents, and other interested parties are invited to be present.

All bid openings shall be held at WSF's administrative offices located at 2901 Third Ave., Suite 500, in downtown Seattle unless otherwise specified by WSF.

18. IRREGULAR BIDS

A. A bid **will** be considered irregular and **will** be rejected by WSF if:

1. The bidder is not prequalified;

2. The Bid Form furnished or authorized by WSF is not used, or is altered;

3. The completed Bid Form contains any unauthorized additions, deletions, alternative bids, or conditions;

4. The bidder adds any provisions reserving the right to reject or accept the award, or enter into the Contract;

5. A price per unit (if applicable) cannot be determined from the bid;

6. The Bid Form is not properly executed;

7. The bidder fails to submit or properly complete the Bid Form Attachments; or

8. The bid does not constitute a definite and unqualified offer to meet the material terms of the IFB.

B. A bid **may** be considered irregular and **may** be rejected by WSF if:

1. WSF deems any of the bid prices to be excessively unbalanced, either above or below the amount of a reasonable bid for the item of work to be performed, to the potential detriment of WSF;

2. Receipt of Addenda is not acknowledged on the Bid Form;

3. A member of a joint venture and the joint venture both submit bids for the same project (in such an instance, both bids may be rejected); or

4. Bid entries are not legibly typed or made in ink.

19. NON-RESPONSIBILITY

A. WSF, at its discretion, **may** reject a bid if it determines that a bidder is not responsible for any of the following reasons:

1. More than one bid on the same project is received from a bidder under the same or different names;

2. Evidence of collusion with any other bidder or bidders is found. Participants in such collusion will be disqualified from submitting bids on any further work;

3. A bidder is not prequalified for the work or to the full extent of the bid;

4. An unsatisfactory performance record exists based on past or current WSF or WSDOT work;

5. There is uncompleted work (WSF or otherwise) which might hinder or prevent the prompt completion of the Contract Work;

6. The bidder fails to pay or settle bills for labor or materials on past or current contracts;

7. The bidder has failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract;

8. The bidder is unable, financially or otherwise, to perform the Contract Work;

9. The bidder is not authorized to do business in the State of Washington; or

10. There are any other reasons deemed proper by WSF.

20. PRE-AWARD INFORMATION

Before awarding the Contract, WSF may require one or more of these items or actions of the apparent successful bidder:

A. A complete statement of the origin, composition, and manufacture of any or all materials to be used;

B. Samples of these materials for quality and fitness tests;

C. A breakdown of costs assigned to any bid item;

D. Attendance at a conference with WSF or its representatives;

E. A progress schedule showing the order of and time required for various phases of Contract Work; and/or

F. Any other item or action deemed appropriate by WSF to complete the bid evaluation.

21. CONSIDERATION OF BIDS

A. After opening and reading the bids, WSF will verify the bids for correctness of form, compliance with bid terms set forth herein, and the extensions and totals of the unit prices. WSF may reject a bid or disqualify a bidder for those reasons set forth herein. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. The total of extensions, corrected where necessary, will be used by WSF for bid evaluation, and to determine the amount of the Contract Bond.

B. WSF reserves the right to: waive informalities in the bidding process, accept the bid of the responsible bidder whose bid offers the lowest TOTAL BID PRICE; reject any or all bids (see next paragraph); republish the call for bids; revise or cancel the Contract Work to be performed; or to do the Contract Work otherwise, if in its sole judgment, the best interests of WSF is served thereby.

C. Bidders are notified that WSF reserves the right to reject any or all bids, without cause or for any reason, including rejection where the lowest responsive and responsible bid exceeds WSF's good faith estimate by an unreasonable amount. In the event all bids are rejected, the project may be deferred indefinitely for re-advertisement, or otherwise.

D. A bidder who wishes to claim error after the bids have been publicly opened and read as required by RCW 47.28.090 shall promptly notify WSF that an error occurred. The bidder shall submit a notarized affidavit or declaration under penalty of perjury signed by the bidder and accompanied by the work sheets used in the preparation of the bid, requesting relief from the responsibilities of award. The affidavit or declaration shall describe the specific error(s) and certify that the work sheets are the ones used in preparing the bid.

E. The affidavit or declaration shall be submitted no later than 5:00 p.m. on the first business day after the Bid Due Date or the claim will not be considered. WSF will review the affidavit or declaration and the certified work sheets to determine the validity of the claimed error and if the error is of the kind for which the law allows relief from forfeiture of the bid deposit. If WSF concurs in the claim of error and determines that the error is of the kind which allows relief from forfeiture, the bidder will be relieved of responsibility and the bid deposit of the bidder will be returned. If WSF does not concur in the error or determines that the error is not the kind for which the law allows relief, WSF may award the Contract and if the bidder refuses to execute the Contract, the bidder's bid deposit shall be forfeited as required by RCW 47.28.100.

22. AWARD OF CONTRACT

A. The successful bidder will be the responsive and responsible bidder who offers WSF the lowest TOTAL BID PRICE as shown on the Bid Form.

B. The Contract Award amount will be the TOTAL BID PRICE as shown on the Bid Form.

C. In the event two or more bids are equal in amount, WSF will select the successful bid by a coin toss or by lot.

D. Unless all bids are rejected, WSF intends to award the Contract within six (6) calendar days after the Bid Due Date; **Provided**, all bids shall remain in effect for ninety (90) calendar days after the Bid Due Date. Upon mutual consent of the apparent successful bidder and WSF, this period may be extended. If the apparent successful bidder and WSF cannot agree on an extension, WSF reserves the right to award the Contract to the next lowest responsive and

responsible bidder or reject all bids. WSF will notify the successful bidder in writing when it has been awarded the Contract. WSF shall also notify all other bidders that they were not selected.

23. EXECUTION OF CONTRACT

A. The successful bidder shall return the signed Contract, and the required evidence of insurance and Contract Security by the due date specified in the IFB Schedule, as amended, and specified in the Contract Award Notice. Before execution of the Contract by WSF, the successful bidder shall provide any pre-award information WSF may require under the Pre-Award Information section herein.

B. Until WSF signs the Contract, no bid shall bind WSF, nor shall any Contract work begin. The Contractor shall bear all risks for any Contract work begun and for any materials ordered before the Contract is signed by WSF.

C. If the bidder experiences circumstances beyond its control that prevents return of the Contract Documents within the specified number of days after the award date, WSF may grant additional calendar days for return of the Documents, provided WSF deems the circumstances warrant it.

24. CONTRACT SECURITY

As required by Revised Code of Washington ("RCW") 39.08, a bond and/or alternate form(s) of Contract Security shall be provided by the Contractor in an amount adequate to protect one hundred percent (100%) of WSF's exposure to loss associated with the Contract.

All proposed alternate form(s) of Contract Security must be delivered to the WSF Contracts Coordinator for approval no later than five (5) working days before the Bid Due Date. If WSF and the Contractor cannot agree as to the form of Contract Security prior to the Bid Due Date, WSF reserves the right to reject the proposed security.

If the successful bidder provides an executed Contract Bond (or Performance Bond plus Payment Bond) form of Contract Security, the Bond(s) shall:

A. Be on a WSF-furnished form(s), sample copies of which are included in the IFB package;

B. Be signed by an approved surety (or sureties) that:

1. Is registered with the Washington State Insurance Commissioner; and

2. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;

C. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time; and

D. Guarantee that the surety shall indemnify, defend, and protect WSF against any claim of direct or indirect loss resulting from the failure:

1. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the Contract; or

2. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, materialperson, or any other person who provides supplies or provisions for carrying out the work.

WSF may require sureties or surety companies on the Contract Bond to appear and qualify themselves. Whenever WSF deems the surety or sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional surety to cover any remaining work. Until the added surety is furnished, payments on the Contract will stop.

A more complete discussion of Contract Security is set forth in the IFB "Special Provisions".

25. FAILURE TO EXECUTE CONTRACT

Failure to return evidence of insurance and approved Contract Security with the signed Contract as required herein, or failure to provide Disadvantaged, Minority or Women's Business Enterprise information if required in the Contract, or failure or refusal to sign the Contract shall result in forfeiture of Bid Security. If this should occur, WSF may then award the Contract to the responsive and responsible bidder who offers WSF the second lowest TOTAL BID PRICE, or reject all remaining bids. If the second lowest responsible bidder fails to return the required documents as stated above within the time provided after award, the Contract may then be awarded successively in a like manner to the remaining lowest responsive and responsible bidders until the above requirements are met or the remaining bids are rejected.

26. RETURN OF BID SECURITY

All Bid Security will be held until the executed Contract and the Contract Security have been provided to WSF. At such time, all Bid Security in the form of cash or checks not subject to forfeiture, including the successful bidder's, shall be returned. Bid Bonds shall be returned upon request.

27. PROTEST PROCEDURES

A. Form and Substance

All bidder protests regarding any contents or portion of this Bid Package must be submitted to WSF as soon as possible after the bidder/protestant becomes aware of the reason(s) for the protest. All protests must be in writing and signed by the bidder/protestant or an authorized agent. Such writing must state all facts and arguments on which the bidder/protestant is relying as the basis for its action. Such bidder/protestant shall also attach, or supply on demand by WSF, any relevant exhibits referenced in the writing. Copies of all protests and exhibits shall be mailed or delivered by the bidder/protestant to the bidder against whom the protest is made (if any) at the same time such protest and exhibits are submitted to WSF. All protests shall be directed to:

Washington State Ferries
Legal Services & Contracts Department
2901 Third Avenue, Ste. 500
Seattle, Washington 98121 - 3014

Attn.: Mr. Tim McGuigan, Director of Legal Services & Contracts
Phone: (206) 515-3601
Fax: (206) 515-3605

B. Pre-award Protests

To allow sufficient response time, all pre-award protests must be received by WSF no later than the 3:00 p.m. of the second business day starting the next day after the Bid Due Date. If the protest is mailed after the Bid Due Date and before the pre-award protest deadline, the bidder/protestant shall immediately notify WSF's Director of Legal Services & Contracts by telephone, or some other means of rapid communication, that a protest has been made.

WSF shall consider all the facts available to it, and issue a decision in writing within five (5) business days after receipt of the protest, unless, in WSF's sole discretion, more time is needed. The bidder/protestant and the bidder(s) against whom the protest is made will be notified if a longer time is necessary;

and if the additional time required affects the Bid Due Date or the award date, all bidders shall be notified.

WSF's decision shall be final and conclusive. Selection of the successful bidder, if one is to be made, will be postponed until after WSF has issued its decision.

C. Post-award Protests

WSF shall immediately notify all unsuccessful bidders of WSF's award decision. The award decision is conclusive unless appeal is taken by an aggrieved party to the Superior Court of Thurston County within five (5) calendar days after receiving notice of the award decision. The Court shall hear any such appeal on WSF's administrative record for the project. The Court may affirm the decision of WSF, or it may reverse the decision if it determines the action of WSF was arbitrary and capricious.

Post-award protests which do not comply with the above-specified procedures will not be considered.

28. PRE-IFB REPRESENTATIONS

All project information previously provided by WSF to interested parties, whether verbal or in writing, is superseded by the contents of this IFB and all Addenda thereto. WSF shall not be liable to any party for: (i) any prior representations made by WSF or its agents; or (ii) the contents of any preliminary documents issued prior to this IFB.

29. PREPARATION COSTS

WSF shall not be liable to any bidder for its bid preparation costs or any other direct or indirect costs arising from a response to this IFB.

(END)