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**INVITATION FOR BIDS
RENEWABLE DIESEL (R99) FUEL
DELIVERY**

IFB #24-025

Issued: December 13, 2024

POINT OF CONTACT:

John Stevens
Procurement Process Consultant
Civic Initiatives LLC, on behalf of Skagit
Transit
Contact only via the Beacon Bids platform

Advertised/posted: Skagit Valley Herald – December 13, 2024
Skagit Transit website
<https://www.skagittransit.org/rfp/>
Skagit Station, Mount Vernon, WA
Skagit Transit MOA, Burlington, WA

SKAGIT TRANSIT
IFB #24-025 – RENEWABLE
DIESEL (R99)

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INVITATION FOR BIDS (IFB) #24-025
RENEWABLE DIESEL (R99)

Release Date: December 13, 2024

NOTICE IS HEREBY GIVEN that sealed bids for the provision of Renewable Diesel (R99) Fuel Delivery will be received by Skagit Transit via the Beacon Bids platform (<https://www.beaconbid.com/agency/solicitations/open>) until **Exactly 1:00 p.m. PST January 10, 2025**, which shall also be the date and time for the opening of bids for the **Renewable Diesel (R99) Fuel Delivery on a keep-full as-needed basis. Contract No. 24-025. Opening of bids can be observed only via Zoom Meeting ID: 846 0117 1422, Passcode: 784569; Dial by your location +1 253 215 8782 US (Tacoma)**

Oral, telephonic, telegraphic or faxed bids will not be accepted. Bids must be submitted using the Beacon Bids platform and on the forms provided in the IFB by the deadlines specified. All submittals become the property of Skagit Transit and are subject to public disclosure.

This Firm Fixed Price contract will be funded in whole or in part with Federal Transit Administration (FTA) funds. See Section 3.11, "Fuel Pricing," for the pricing methodology. The initial contract term is three (3) years and includes two (2) automatic one-year extensions, estimated at \$6,000,000. Quantities and dollar amounts mentioned are estimates only and impose no obligation on Skagit Transit, either minimum or maximum, to purchase all goods contained in the IFB or that Contractor is guaranteed sales in such amounts.

Bid Documents will be available at www.skagittransit.org under "About Us" in the "Procurement" section and on the Beacon Bids platform at <https://www.beaconbid.com/agency/solicitations/open>. Questions, requests for clarification, or approved alternates must be submitted via the Beacon Bids platform **before 1:00 p.m. on December 20, 2024**. Official responses will be written Addenda sent to all registered bidders. Responses will also be visible on the "Q&A" tab of the solicitation in Beacon.

Equal Opportunity: It is Skagit Transit's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from federally assisted programs and activities and in the award and administration of all contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, are encouraged to submit bids.

END OF BID NOTICE

SKAGIT TRANSIT

INVITATION FOR BIDS #24-025

**RENEWABLE DIESEL
(R99) FUEL DELIVERY**

SECTION 2

INSTRUCTIONS TO BIDDERS

- 2.1 Definitions:** The abbreviation “IFB” means Invitation For Bids; the term “Bidder” means a person, firm or corporation that has made an offer in response to the IFB; “Bid Documents” means the IFB in its entirety; the “Successful Bidder” is the lowest responsive and responsible Bidder to whom award of the Contract is made; and the “Contractor” is the successful Bidder who was awarded the Contract and has subsequently entered into a contract with Skagit Transit
- 2.2 Bidder Acknowledgments:** Bidder agrees that signing and submitting a bid in response to this solicitation shall be conclusive evidence to Skagit Transit that the Bidder agrees to be bound by all legal requirements and contract terms and conditions contained in this solicitation, and that Bidder has thoroughly examined and fully understands all requirements of the ENTIRE solicitation package, including any Addenda issued and the work required to complete the Contract, and has made allowances for such in preparing figures to provide the required services. The failure or neglect of a Bidder to receive or examine any solicitation document or any part thereof shall in no way relieve the Bidder from its obligations with respect to its bid or to the Contract. No claim for additional compensation shall be allowed which is based upon a lack of knowledge thereof.
- 2.3 Subcontracting:** Bidders must be equipped and staffed to perform the services herein or have agreements with qualified subcontractors to perform the Work at the same standards agreed upon with Skagit Transit. The successful Bidder will be responsible and liable for all subcontracted work.
- 2.4 Small and Disadvantaged Businesses:** Skagit Transit takes reasonable steps to facilitate fair competition by incorporating small business concerns into its federal procurement practices. Skagit Transit seeks bids from qualified small businesses and DBEs and encourages prime contractors to provide subcontracting opportunities of a size and nature that small businesses can reasonably compete and perform effectively.
- 2.5 Calendar of Events:** Following is the procurement schedule from issuance of the IFB through contract performance beginning. Skagit Transit will notify Bidders of any schedule changes by Addendum. All times are stated in Pacific local time.

Invitation for Bids Published	December 13, 2024
Questions/Requests for Clarification due by	December 20 at 1 PM
Bid Due Date and Bid Opening	January 10, 2025 at 1 PM
Intent to Award Notice by	January 14, 2025
Bid Protest Deadline	January 21, 2025 at 1 PM
Board of Directors Award of Contract	January 22, 2025
Final Award Notice to Bidders	January 22, 2025
Contract Documents Returned by	January 28, 2025
Contract Term Begins	February 1, 2025 at 12:01 a.m.

2.6 Questions and Communications:

- All communications regarding this solicitation or offers must be directed to Skagit Transit’s Procurement and Contracts “Point of Contact” (POC) identified on the cover page of this solicitation via the Beacon Bids platform. Bidders who risk seeking to obtain information, clarification, or interpretations from any other agent or representative of Skagit Transit are advised that such actions are prohibited and may be cause for disqualification.

- 2) To be given consideration, any and all requests for information, clarifications, material or product substitutions, or exceptions to any requirement or any bid aspect concerning this solicitation must be explicitly, fully, and separately submitted in writing using only the form provided as **Section 10, “Request For Clarifications/Approved Alternates”** and received by the POC before the date and time specified above in Section 2.6.
- 3) This process will be the only opportunity for prospective Bidders to ask questions before bid submittal. Skagit Transit **WILL NOT** provide binding verbal interpretations, explanations, or instructions as to the meaning or interpretation of any of the solicitation documents.
- 4) A request to change any requirement must be fully supported with technical data, test results, or other pertinent information showing evidence that the exception will result in a condition equal to or better than that required by the Specifications without a substantial increase in cost or time requirements. Bidders are cautioned to limit exceptions, conditions, and limitations to the provisions of this solicitation as such may be determined so fundamentally as to cause the rejection of the Bid for failure to meet the requirements.

2.7 **Addenda:**

- 1) Skagit Transit’s official response to inquiries is made by a written Addendum automatically sent to all potential Bidders registered for this solicitation on the Beacon Bids platform. No Addenda will be issued for any request or inquiry submitted after the deadline for receiving questions or bids unless Skagit Transit, at its sole discretion, deems additional information is necessary for bid submittal, or if the lack of information would be prejudicial to other prospective Bidders.
- 2) Bidders **MUST** indicate that they have received all issued Addenda on their Bid Form. Failure to acknowledge receipt of the Addenda issued may invalidate a bid as non-responsive. Bidders shall ensure that they have received all Addenda by contacting the Contracts Administrator listed on the cover page of this solicitation, or checking the appropriate website where the Bid Documents are posted. Skagit Transit is not liable for Bidder’s failure to obtain the Addenda issued.

2.8 Non-Submittal: If you decide not to submit a bid, please complete and return the **Section 11, No Bid Notice** form. Please state why a bid could not be submitted at this time.

2.9 **Specifications:**

- 1) All specifications in this solicitation are designed to enable a Bidder to satisfy a requirement for a product, material, process, or service. A specification may be expressed as a standard, a part of a standard, or independent of a standard. No specification is intended to unnecessarily limit competition by eliminating items capable of satisfactorily meeting the actual needs of the procurement. The fact that a manufacturer or supplier chooses not to produce or supply equipment, supplies, or services to meet these specifications will not be considered sufficient cause to adjudge these specifications as restrictive. Bidders shall bid on equipment, supplies and services which they believe comply with these specifications.
- 2) If a Bidder deviates from these specifications, reasons must be stated for such deviation and state why, in their opinion, the equipment, supplies and services they bid will render equivalent reliability, coverage, performance and service. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire bid. Any Bidder believing a specification is unnecessarily restrictive must indicate as such on the form provided as **Section 10, “Request for Clarifications/Approved Alternates”** and be received by the POC before the deadline specified in Section 2.5.

2.10 Brand Names:

- 1) The use of any brand names, manufacturer, make or catalog number does not restrict the Bidder. Such use is to identify the standards of desired characteristics, quality and performance equivalence of the product on which bids are submitted. Alternates may be submitted before the Bid Due Date by requesting Skagit Transit's approval on the form provided as **Section 10, "Request For Clarifications/Approved Alternates"** and be received by the POC before the deadline specified in Section 2.5.
- 2) Skagit Transit reserves the right to decide whether or not proposed alternates are equivalent to the product described in the solicitation, of which decision shall be final. Any substitutions must, without exception, be manufactured of the same basic materials, meet or exceed all specification requirements of structural, functional, dimensional and appearance without deviation. Skagit Transit reserves the right to reject any and all substitutions.

2.11 Bid Preparation:

- 1) Bids must be legible, written in ink, or typed on only the forms provided in the Bid Documents, and contain no erasures or crossed-out items. Bids received on alternate forms will be immediately rejected as non-responsive. Unless otherwise specified (i.e. optional use forms), failure to provide any of the following documents will deem your bid non-responsive and, therefore, invalid.
 - a) Section 5 – Bid Form
 - b) Section 6 – Bidders Affidavit
 - c) Section 7 – Buy America Certification
 - d) Section 8 – Lobbying Certification
 - e) Section 9 – DBE/SBE Bidders List
 - f) Manufacturer's information or brochure for the fuel required.
 - g) Written warranty stating the scope and duration of the warranty period, if applicable.
- 2) Each bid must be signed in longhand by the Bidder or Bidder's authorized representative, notarized where indicated, and uploaded to the Beacon Bids platform with the name of the Bidder, address identified, and displaying the title of the solicitation, "**RENEWABLE DIESEL #24-025.**" All submissions become the property of Skagit Transit.

2.12 Bid Prices:

- 1) Except as may be provided for herein elsewhere, the Total Bid Price shall include everything necessary for the prosecution and completion of the Work. All prices shall be stated in US currency and shall be in legible figures written in ink or typed.
- 2) Freight shall be **FOB Destination, Prepaid and Allowed** and included in the Bid Price. No surcharges or other extraneous charges will be allowed unless specified herein or prior written approval has been granted by Skagit Transit.
- 3) Washington State Sales Tax shall be shown as a separate line item on the Bid Form and not be included in the unit prices. Skagit Transit shall pay Washington State Sales Tax or Use Tax, as applicable, to the Contract Price upon payment of invoices. Skagit Transit is exempt from Federal Excise Tax.

- 2.13 Bid Effectiveness:** All bids shall be a firm bid effective for a minimum period of 60 Calendar Days after the Bid Opening date. Skagit Transit reserves the right to request extensions for bid effectiveness.

- 2.14 Collusion:** By signing a bid, the Bidder certifies that its bid is non-collusive and not made in the interest of any person not named, and that the Bidder has not induced or solicited others to submit a sham offer, or to refrain from proposing. If Skagit Transit determines that collusion has occurred among bidders, none of the bids of the participants in such collusion will be considered. Skagit Transit's determination shall be final.
- 2.15 Bid Submittal:** Submit the complete bid packet before the Bid Due Date stated in Section 2.5 above. Bids will be uploaded to the Beacon Bids platform by 1:00 p.m. Any bid submitted at 10:00 a.m. *exactly* or thereafter will be rejected as non-responsive and returned unopened to the Bidder. The Bidder accepts all risks of late delivery of uploaded bids regardless of fault. Faxed, telegraphic, or electronic bids will not be accepted. **Opening of bids can be observed only via Zoom Meeting ID: 846 0117 1422, Passcode: 784569; Dial by your location [+1 253 215 8782](tel:+12532158782) US (Tacoma)**
- 2.16 Modifications:** No bid may be altered *after* the deadline specified for submitting bids. Submitted bids may only be changed if Skagit Transit receives a written request *before* the specified submittal deadline. The request must be signed by an individual authorized to submit bids on behalf of the company and be accompanied by the modification presented in the same form and manner as the original bid. Nothing in this section shall be construed to permit the Bidder to alter its bid after it has been submitted pursuant to the terms of this solicitation.
- 2.17 Withdrawal:** Except for claims of error granted by Skagit Transit, no bid may be withdrawn *after* the deadline specified for submitting bids, unless award is delayed by Skagit Transit for a period exceeding 60 days from the submittal deadline. Any bid not so timely withdrawn prior to specified submittal deadline shall constitute an irrevocable offer, for a period of 60 days, to provide Skagit Transit the goods and services described herein, or until one or more of the bids have been approved by Skagit Transit, whichever occurs first.
- 2.18 Extension or Cancellation:** Skagit Transit reserves the right to cancel this solicitation or extend the deadline for submitting bids and opening bids by written Addendum at any time *prior to* the deadline specified for submitting and opening bids. If a Bidder pursues a protest or a request for reconsideration, its bid is deemed extended until Skagit Transit executes the Contract or until the protest or request for reconsideration is withdrawn by the Bidder.
- 2.19 Bid Opening:** Immediately after the specified closing time for bids to be received, only the name of the bidder and amount of their bid will be read aloud and recorded. The apparent low bidder will be announced after all bids have been opened. The reading does not determine award of the contract, responsibility of the Bidder, or responsiveness of the Bid. The record of bids opened (Bid Opening Summary) will be made available for viewing by those Bidders present and posted to the website specified for posting Bid Documents. This document is not an award notice or a list of final bid results. Bidder attendance at bid openings is not required.
- 2.20 Bid Evaluation:** Bids will be evaluated on the **Total Price per Gallon** by the lowest priced responsive and responsible Bidder in **Part 5.2 of Section 5, Bid Form**. Full reviews for accuracy, content and contractor responsibility will be conducted therefore, the apparent low bidder at the time of Bid Opening may not necessarily be recommended for award if they are determined to be non-responsive or their bid is disqualified as non-responsive. Skagit Transit reserves the right to request additional information from Bidders to further determine responsibility or to clarify items in a bid.
- 2.21 Responsiveness:** Skagit Transit will consider all the material submitted by Bidders to determine whether bids are in compliance with the provisions of this solicitation. A determination of responsiveness will then be made. Skagit Transit reserves the right to reject non-responsive bids.
- 2.22 Errors and Administrative Corrections:** Skagit Transit will not be responsible for errors in bids and reserves the right to make mathematical corrections that are due to minor administrative errors or irregularities such as typing errors, number transposition and incorrect calculations. Skagit Transit may waive these irregularities as immaterial. In the case of error in the extension of prices, the unit price shall govern.

- 2.23 Rejection and Consideration of Bids:** Skagit Transit reserves the sole discretionary right to: Accept or reject any or all bids, portions or parts thereof; Waive minor bid errors, informalities, or immaterial irregularities when it is in Skagit Transit's best interest and does not result in displacement of a low bidder; Republish the call for bids; Revise or cancel the Work or require the Work to be done in another way; Decline award based on available funding for the Contract; and award in whole or in part to the lowest responsive and responsible Bidder as best serves the interest of Skagit Transit. Bidder, in consideration for Skagit Transit's review and evaluation of its bid, waives and releases any claims against Skagit Transit arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation of bids submitted in response to this solicitation.
- 2.24 Tied Bids:** If two or more of the lowest responsive bids are exactly equal, then a tiebreaker will be determined with a draw. Only those Bidders who submitted a bid total that is exactly equal to the lowest responsive bid are eligible to participate. Two or more slips of paper will be marked with the names of the tied firms, folded, placed inside a box, and shaken up. One authorized representative of Skagit Transit shall draw one slip from the box and announce the name of the successful Bidder.
- 2.25 Single Bid:** If Skagit Transit receives a single responsive and responsible bid, it may request an extension of the bid acceptance period up to an additional 60 days, or consider accepting the bid by performing a price or cost analysis, as applicable, on the single bid to determine if a fair and reasonable price was offered. Bidder shall promptly provide all cost or pricing data, supporting documentation and explanations requested by Skagit Transit to assist in such analysis. Skagit Transit shall not be obligated to accept the single bid by conducting such analysis and reserves the right to reject the bid or any portion thereof.
- 2.26 Bid Results:** As soon as practical after Bid Opening, a list of final bid results from all responsive bidders will be compiled and sent to all and posted for public viewing on the website specified for posting Bid Documents. The Bid Tabulation is not an award notice.
- 2.27 Responsibility:** In order to determine whether a Bidder or Proposer is capable of successfully completing contracts of this type, magnitude, and within the time stated in the solicitation documents, factors considered may include, but not limited to: past performance with Skagit Transit or other customers, references, contractor qualifications, sufficient capital, facilities, personnel and plant, bonding capacity, credit ratings, safety record, payment of taxes, outstanding claims against retainage, bonds, lawsuits, debarment, suspension, or exclusion from participating in federal or state procurements, etc.. Failure to respond to any requests for information by Skagit Transit either with the submitted response or shortly thereafter may result in a bid or proposal being rejected as non-responsive.
- 2.28 Award:** The single lowest responsive and responsible bidder will be recommended for Contract Award. All bidders will receive a Notice of Intent to Award which shall also be posted to the website specified for posting the Bid Documents. Skagit Transit reserves the right to make award within 60 Calendar Days from the Bid Due Date. Should award, in whole or part, be delayed beyond the 60-day period, such award shall be conditioned upon Bidder's acceptance. Skagit Transit will have no obligations to the successful Bidder until after contract execution and an order is placed, or a purchase is made, or a Notice To Proceed is given.
- 2.29 Award Documents:** After the award recommendation is approved by the Skagit Transit Board of Directors, a final award notice will be sent to all responsive Bidders and posted to the website specified for posting Bid Documents. The successful Bidder will receive an award package and must immediately sign and return all requested documents to the Contracts Administrator within 10 Calendar Days, unless indicated otherwise. Bidders should already have preparations in place to notify their insurance broker and surety to immediately obtain the required documents.
- 2.30 Failure to Execute a Contract:** Should the successful Bidder fail to execute the Contract within the requested time, Skagit Transit reserves the right to terminate award and attempt to negotiate a satisfactory contractual agreement with the next lowest responsive and responsible Bidder. The Bidder failing to execute the Contract may be removed from Skagit Transit's bid list for any future contracting opportunities.

2.31 Bids as Public Record: Except to the extent permitted by Washington State public disclosure laws RCW Chapter 42.56, Skagit Transit will regard bids as public records which will be available for public inspection or copying regardless of any markings or notices contained in the Bid. Information will not be released by Skagit Transit *prior to* contract award in order to protect the integrity of the procurement process, unless otherwise required by law. All bids will remain confidential until a contract is awarded and fully executed by all parties involved. If a Bidder considers portions of its Bid to be protected under Washington State law, the Bidder shall clearly identify and mark such portions as “CONFIDENTIAL” or “PROPRIETARY” and submit such portions in a sealed envelope separate from the rest of the Bid. It is not usually reasonable or legally defensible to mark an entire bid as “confidential” or “proprietary”. Marking the entire bid as such will not be honored and the bid may be rejected as non-responsive. Skagit Transit shall make bid submittals available to the public after contract award except, to the extent consistent with RCW 42.56 those portions marked “Confidential” according to the above requirement. If a member of the public or another competitor demands to review portions of a bid marked “Confidential”, Skagit Transit will notify the affected Bidder of the request and the date that such records will be released, unless the Bidder obtains a court order enjoining that disclosure. The Bidder is responsible to protect the confidentiality of any information submitted in its Bid and shall take such legal action as it may determine to be necessary to protect its interest. If the Bidder has not commenced such action within 5 Calendar Days after receipt of the notice, Skagit Transit will make the requested portions available for review and copying by the Requestor. The Bidder will assume all liability and responsibility for any information declared confidential and shall defend and hold Skagit Transit harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. Skagit Transit assumes no responsibility or liability for any losses or damages which may result from the information contained in the bid. By submitting a bid, the Bidder has thereby agreed to the provision of this Section.

2.32 Bid Protests:

- 1) **Right to Protest:** Any actual or prospective bidder, proposer, or contractor who is aggrieved in connection with the solicitation or award of a contract due to a matter of law or procedural flaw may file a Notice of Protest, in writing, with Skagit Transit’s Chief Executive Officer (CEO), or designee, *prior to* the closing date for receiving bids or proposals. The written and signed notice of protest must address which law or procedure was not followed or violated, how it has affected the aggrieved, and a description of the relief or corrective action desired. If the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the closing date for bids or proposals, the protest shall be submitted within 7 calendar days after the aggrieved person knew or could have known of the facts giving rise thereto. A timely Notice of Protest shall be handled as follows:
 - a) A meeting will be called within 5 Business Days from receipt of the protest that will include representatives from Skagit Transit and the Protestor to discuss the issue(s) related to the protest. The meeting may be conducted by telephone conference.
 - b) A decision of the protest will be made by the CEO, or designee, within 7 Business Days of the final meeting. The Protestor shall be notified of the decision in writing by the CEO, or designee, by regular mail.
 - c) The CEO, or designee, may extend the limits of time outlined herein at his/her sole discretion.
 - d) The decision of the CEO, or designee, shall be final unless appealed as provided herein.
 - e) A request for reconsideration may be allowed if data becomes available that was not previously known, or there has been an error of law or regulation.
 - f) If the Protestor is not satisfied with the solution of the CEO or designee, a written appeal may be filed with the Board of Directors. Appeals to the Board of Directors filed more than 7 calendar days following the receipt of the CEO, or designee’s, written determination will not be accepted.

- 2) **Appeals:** A Protester may appeal the CEO, or designee's, decision to the Skagit Transit Board of Directors by submitting a written Notice of Appeal to the Board Chairperson within 7 calendar days of receipt of the CEO, or designee's, decision which shall be deemed received within 3 days, exclusive of Sundays and holidays, of the date of posting of the decision or sooner in the event of actual receipt of personal service or fax confirmation. The appeal shall be based solely upon the record before the CEO, or designee. Appeals filed outside of this window of opportunity will not be accepted. A three-member committee of the Skagit Transit Board, as appointed by the Board Chairperson, shall decide the appeal. The Protestor must submit their written argument to the Committee. The Committee may affirm or reverse the decision of the CEO, or designee, or affirm or reverse the decision in part. The decision of the Committee shall be final.
- 3) **Validity of a Protest:** Bidders and Proposers are advised that to be considered a valid protest, subject matter can only address issues associated with the Procurement Action, as defined below. Accordingly, the protest cannot be associated with or challenge Skagit Transit personnel or the Evaluation Committee's recommendation of a potentially successful Bidder/Proposer. In other words, a protest can be put forth that Skagit Transit staff did not follow their own policies or procedures that govern a Procurement Action and, accordingly, a Bidder/Proposer was unfairly treated.
- 4) **Procurement Action:** Meaning specific procurement steps, such as setting the calendar of events, producing the solicitation document, advertising the proposal in a legal paper of record, maintaining a vendor bid list or Planholders' list, responding to all inquiries received in the specified manner by the appropriate time and date, issuing Addenda straightforwardly to all Bidders, enforcing closing time and date, providing proctoring services to the Project Manager and Evaluation Committee, setting criteria weights, conducting interview process with top-scoring Bidders (if applicable), assembling an Evaluation Committee, issuing award/non-award letters, and maintaining a written record of the procurement.
- 5) **Entitlement of Costs:** In addition to any other relief, when a protest is sustained and the protesting respondent should have been awarded the contract under the solicitation, but is not, then the incurred costs in connection with the solicitation, including bid preparation costs, but other than attorney's fees, shall be paid by Skagit Transit.

2.33 Contract Claims:

- 1) All claims by a contractor against Skagit Transit relating to a contract, except bid protest, shall be submitted in writing to the CEO for a decision. Claims include, without limitation, controversies arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.
- 2) The decision of the CEO shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the Contractor. The reasons for the decision reached shall be stated and shall inform the Contractor of its appeal rights under Section 2.32(2) above (Procurement Policy Section 13- 102).
- 3) The CEO's decision shall be final and conclusive unless, within 7 Calendar Days from the date of receipt of the decision, the Contractor mails or otherwise delivers a written appeal to the Skagit Transit Board of Directors or commences an action in a court of competent jurisdiction.
- 4) If the CEO does not issue a written decision regarding any contract controversy within 7 Calendar Days after written request for a final decision, or within such longer period as may be agreed upon between the Parties, then the aggrieved party may proceed as if any adverse decision had been received.

Failure of the Protestor to submit a written Notice of Protest in accordance with the specified timelines contained herein shall constitute a waiver of all right to protest.

END OF SECTION 2

SKAGIT TRANSIT

INVITATION FOR BIDS #24-025

**Renewable Diesel
(R99) FUEL DELIVERY**

SECTION 3

SCOPE OF WORK

3.1 SUMMARY

- 1) Cleaned, purged, dedicated piping, and tank storage are not required. Skagit Transit has an 8,000-gallon holding tank on-site at the MOA; however, only up to 7,200 gallons are stored. Approximately 4,800 to 5,500 gallons of RENEWABLE DIESEL (R99) per delivery, on an average of one delivery each week, will be provided to the MOA facility located at 600 County Shop Lane, Burlington, WA.
- 2) Tank fuel deliveries will be routine delivery orders set up as a “keep full” service as needed. Contractor shall monitor tank inventory levels to effectively manage tank inventories. If fuel is required in the event of an emergency, notice shall be given at any time.
- 3) Contractor should have total first party control of fueling operations, meaning the Contractor will own or lease all fuel delivery trucks and directly employ all drivers; however, Vendors who do not own their own trucks and utilize common carriers will not be excluded from submitting a proposal.
- 4) No fuel surcharges or additional shipping and handling fees will be permitted. All goods delivered under the Contract shall be FOB Destination, Prepaid and Allowed. Any claim submitted by the Contractor to a carrier for loss, injury, or destruction of goods in transit shall not release the Contractor from any other contractual obligations.

3.2 INDEFINITE DELIVERY – INDEFINITE QUANTITY

Skagit Transit does not guarantee any specific minimum or maximum amount of fuel to be delivered under the Contract. Quantities are estimates only and cannot be construed as firm or guaranteed purchasing obligations on behalf of Skagit Transit. Skagit Transit’s on-site fuel tank cannot accommodate a full truck and trailer load in accordance with industry-standard best Practices. Contractor shall monitor tank inventory levels to effectively manage tank inventories.

3.3 FUEL SPECIFICATIONS

- 1) All RENEWABLE DIESEL (R99) fuel supplied must meet or exceed the most current ASTM D975 specification, as may be amended, and relevant to this type of fuel to be delivered. Skagit Transit reserves the right to test fuel samples to verify specification compliance. Failure to supply fuel that meets the minimum specifications may result in contract termination.
- 2) Upon Skagit Transit’s demand, fuel not meeting the specification requirements shall be immediately removed from the tank by the Contractor at Contractor’s expense or, at the option of Skagit Transit, the fuel may be removed by another Vendor and charged back to the Contractor.
- 3) All petroleum products shall be free from impurities, including algae, dirt, water, harmful oils, and other petroleum products or contaminants that cause damage. In the case of damage directly traceable to contamination, Contractor shall be responsible for any and all costs incurred. Periodic quality surveillance checks will be made as required by various Intergovernmental entities.

3.4 RESPONSIBILITIES OF THE PARTIES

1) Contractor shall:

- a) Provide and deliver Renewable Diesel (R99), taking all reasonable efforts and precautions necessary to minimize fuel contamination and spillage. All fuel must meet Washington state fuel quality standards as provided by Washington's Motor Fuel Quality Act, RCW 19.112, as administered by the Washington State Department of Agriculture (WSDA). Current WSDA rules adopt the national standard for the definitions and requirements for standard fuel specifications: Uniform Engine Fuels and Automotive Lubricants Regulation as adopted by the National Conference on Weights and Measures and published in NIST Handbook 130, 2016 Edition. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation. The national standards are developed by ASTM, the national voluntary standards organization formed to develop standards on the characteristics and performance of fuels and other materials, products, systems and services. Any reference to an ASTM shall mean the most current version of the ASTM fuel standard as adopted by the Washington State Department of Agriculture.
- b) Renewable Diesel. RCW 19.112.010 Renewable diesel means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.
 - (1) The product must be free of contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the renewal diesel at Contractor's expense.
 - (2) Must be filter-cleaned to 20 microns or less.
 - (3) If requested by Purchaser, Contractor shall provide a product transfer document (PTD) detailing the type and source of feedstocks producer of the fuel, and carbon intensity ("CI"), if available, for all gallons of renewable diesel sold and delivered to a Purchaser.
 - (4) The product shall have a Carbon Intensity (CI) of 60 or less. Co-mingled feedstock production shall be calculated on a mass balance basis and shall not exceed an overall CI score of 60. The CI scores will conform to the Current Certified CI values provided by the California Air Resources Board in support of low-carbon fuel standards in California and Oregon.
- c) Skagit Transit's normal business hours for receiving deliveries are Monday to Friday, 8:00 a.m. to 4:00 p.m. Delivery will be deemed complete when fuel is placed in the holding tank.
- d) **KEEP-FULL ORDERING REQUIREMENTS**
 - (1) Setup and Order Placement. The contractor guarantees that their supply agreements provide sufficient capacity to satisfy the Purchaser's needs. In general, Skagit expects that tank levels never fall below 20% of capacity before refueling occurs. Skagit will be allowed to adjust this percentage up or down in their subsequent Keep-Full agreement depending upon their own unique business requirements. Tanks that are 35% full (15 percentage increments of tank capacity above the lower threshold) will not incur a fee other than the price of the fuel unless otherwise agreed in the Keep-Full agreement.
 - (2) Keep-Full Inventory Management. Contractor shall monitor tank inventory levels to effectively manage tank inventories. Skagit will be responsible for providing tank level data to the Contractor in a mutually agreed upon method. Purchasers will notify Contractor of any anticipated unusual increases in fuel demand. Contractor shall identify how often tank level data should be communicated relevant to Purchaser's fuel demand and the preferred communication method. If Keep-Full tanks are equipped with an electronic tank level monitoring system, Skagit may choose to grant Contractor remote access to the data. If both parties agree, Contractor may equip tanks with electronic tank level monitoring equipment. Contractor will be responsible for the cost of maintaining the equipment unless otherwise agreed to by the Purchaser.
 - (3) Keep-Full Contract Additions. Skagit may activate additional tanks or initiate Keep-Full

coverage for additional fuel sites. Skagit and Contractor will mutually agree on any changes to their agreement to include added sites or tanks.

- (4) Keep-Full Tank Deactivation. Skagit will immediately notify the Contractor when a fuel storage tank is deactivated and state the last day of Keep-Full service in writing. The contractor shall acknowledge the notification within two business days and cease service to the tank or site as stated by Skagit.
 - e) All deliveries of Renewable Diesel will include a product transfer document (PTD) showing feedstock origin, location and producer of the fuel and CI pathway for all gallons sold. Only certified CI fuel pathway codes approved under the California and/or Oregon state low carbon fuel standard (LCFS) program(s) will be accepted and considered in compliance of this contract requirement. If Washington State adopts an LCFS program during the term of this contract, then those corresponding certified pathways would also be accepted. Co-mingled feedstock production will show gallons sold of each certified pathway and feedstock origin clearly on the PTD in order to verify compliance and allow calculation of lifecycle greenhouse gas emissions of fuel purchased. A temporary fuel pathway code may be referenced if the producer is in the active process of getting feedstock production pathways certified through California and/or Oregon LCFS programs.
 - (1) Feed-stocks will not include palm oil due to CI concerns.
 - f) If third party verification determines that CI documentation or feedstock/batch production exceeded five percent total volume in excess of a CI score of 60, or feedstock production claims were inaccurate or not in compliance with specifications outlined, the Contractor will be liable for damages as outlined in standard terms and conditions of this Master Contract.
 - g) Carbon Intensity Reporting for Renewable Diesel. Certified CI fuel pathway codes approved under the California and/or Oregon State low carbon fuel standard (LCFS) program(s) will be accepted and considered in compliance with reporting requirements under this Master Contract. A temporary fuel pathway code may be referenced if the producer is in the active process of having feedstock production pathways certified through California and/or Oregon LCFS programs. If Washington State adopts an LCFS program during the term of this Contract, then those corresponding certified pathways will be the required documentation.
 - h) On a weekly basis, e-mail a copy of the Oil Price Information Service (OPIS) (“Rack Price”) sheet to Skagit Transit. Each invoice will also be accompanied by the last Rack Price sheet for the week in which deliveries were made. Skagit Transit reserves the right to request price verification more often if the market becomes unstable.
- 2) Skagit Transit shall:
- a) Notify the Contractor of any unusual increases in fuel demand or any delivery schedule changes.
 - b) Initiating Keep-Full. Before initiating Keep-Full coverage, Skagit will provide Contractor with their specific delivery requirements, which identifies information such as:
 - (1) Fuel tank profile information (i.e. site location, site contact, tank size, fuel type, etc.)
 - (2) Available delivery time frames and/or the days and times when deliveries can or cannot occur.
 - (3) Minimum allowable tank level percentage before refueling is to occur.
 - (4) Delivery access procedures, protocols, and or special instructions, if any.
 - (5) Requested activation date (not to exceed five calendar days of request).Note: Bidder will place lower delivery service fees, if any, in the Special Instructions box.
 - c) Place requests for fuel from the Contractor as needed.

3.5 VOLUME VERIFICATION REQUIREMENTS

- 1) The contractor shall certify the actual quantities of fuel delivered by metering and recording stick level readings before and after each delivery. Dispensing meters shall be certified by the Washington State Department of Weights and Measures and delivery volumes shall not be temperature corrected.
- 2) Delivery certification/verification documentation and receipts shall be provided upon delivery.
- 3) Should a Skagit Transit representative be unavailable to sign the delivery receipt, stick-level readings will serve as proof of delivery. In such cases, the driver must note on the receipt that “no one is available to sign” and sign the receipt themselves. Invoices and payments shall be for gross gallons delivered.

3.6 TANK TESTING

There may be occasions when Skagit Transit’s tank needs to be “topped off” for testing purposes. In this instance, Skagit Transit will initiate a “top off” order and provide the Contractor with at least seven (7) days advance notice if testing shall occur on a specific day.

3.7 DELIVERY QUALITY STANDARDS

- 1) Tanks must be filled in accordance with industry-standard best practices and not overfilled so that tank monitoring equipment malfunctions. Skagit Transit may deduct from the Contractor's invoice any costs incurred by Skagit Transit for having to reset tank monitoring equipment in the event that a tank overfill by the Contractor causes the equipment to malfunction.
- 2) Contractor is responsible for verifying delivery hours. If the Contractor arrives outside of the scheduled delivery hours and is unable or denied access to making the delivery, Skagit Transit shall incur no expense and the Contractor shall assume all liability and responsibility for that attempted delivery. If a Skagit Transit representative is unavailable to accept a scheduled delivery within a ½ hour of the agreed-upon scheduled time, the Contractor may invoice Skagit Transit a service fee and then reschedule the delivery.
- 3) Skagit Transit reserves the right to purchase fuel from another supplier should the Contractor fail to meet its delivery requirements. Contractor will be responsible for paying any additional acquisition costs. Habitual late delivery or other non-compliance to the delivery terms shall be grounds for contract termination and recovery of damages.
- 4) Contractor must obtain a receiving signature from a Skagit Transit representative when performing any service or delivering any product. Paperwork bearing such a signature must be provided to approve payment of the invoice.

3.8 NEGLIGENCE AND SPILL CLEANUP

- 1) Contractor shall be responsible for any and all damage to Skagit Transit property caused by delivery operations resulting from, or contributed to by, the actions of the Contractor, its agents, employees or sub-contractors.
- 2) Contractor shall take all measures legally necessary to prevent fuel spills and assumes all liability and responsibility for the handling and transportation of fuel until it has been placed in Skagit Transit's storage tank. In the event of a fuel spill, leak, or release, Contractor shall be responsible for the required notifications, containment, clean up, and disposal of the oil spilled and agrees to take the following actions:
 - a) If warranted, evacuate and warn those persons that may be affected by the spill.
 - b) Immediately contact the appropriate Emergency Response Agencies as required.
 - c) Notify the Skagit Transit Facilities Department of the spill.
 - d) Clean up the spill in a manner that complies with federal, state and local laws, regulations, rules and standards.
- 3) Any spills or damages caused by the Contractor's negligence shall be remedied at the Contractor's sole expense and to the satisfaction of Skagit Transit. Should the Contractor fail or refuse to take appropriate and timely remedial actions, Skagit Transit may do so and charge back the Contractor for all expenses incurred, including fines levied by appropriate agencies of federal or local governments. If there are no monies due the remediation costs shall be the responsibility of the Contractor or submitted as a claim to its bonding company.

3.9 WORKSITE SAFETY

- 1) The Contractor agrees to comply with all federal, State and local laws, ordinances, and regulations, as may be amended, regarding the safety of persons or property while performing under the Contract. Authorities having jurisdiction include, but are not limited to: Washington Industry Safety and Health Act of 1973 (WISHA); Federal Occupational Safety and Health Acts of 1970 (OSHA); Washington State Department of Labor & Industries General Safety and Health Standards (WAC 296-24-217); National Fire Protection Association (NFPA) Standards; Environmental Protection regulations; etc.

- 2) In any emergency affecting the safety of persons or property, Contractor personnel shall act upon their own discretion to prevent a threat of injury, damage, or loss.
- 3) Right to Know: Pursuant to WAC 296-62-054, Contractor shall provide Skagit Transit with a Safety Data Sheet (SDS) before the first fuel delivery under the Contract which identifies the hazardous material, lists appropriate hazardous warnings, and provides the name and address of the chemical manufacturer, importer, or other responsible party. This will be a one-time request by Skagit Transit to remain on file for the duration of the Contract. A new SDS will be provided by the Contractor if any of the previous mentioned identifiers change. Labor and Industries may levy appropriate fines for non-compliance and agencies may withhold payment pending receipt of a legible copy of the SDS.

3.10 FUEL PRICING

- 1) Fuel prices will fluctuate daily in exact proportion to an established price base; the Oil Price Information Service (OPIS) a Dow Jones Company (aka. the “Rack Price”). No other price change publication shall be considered.
- 2) Contract Base Price: It will be the January 9, 2025 (the day before bids are due) OPIS Contract Average—Anacortes, which will be the basis for establishing contract fuel prices that will correlate to the OPIS Daily Average Price.
- 3) Bid Price: Is the Contractor’s original Price per Gallon Delivered submitted on the Bid Form, Section 6, to provide RENEWABLE DIESEL (R99) Fuel to Skagit Transit in accordance with the Contract Documents. Excluding tax, the price shall be all-inclusive. Taxes and other costs to be charged under the Contract shall be itemized on Bid Form and Contractor’s invoices and shall not be components of the differential price.
- 4) Price Differential: Represents the Contractor’s fixed margin/markup rate over the Daily Average rack price current on the day fuel is delivered. The Price Differential is the difference between the established Contract Base Price and the Bid Price and shall remain constant throughout the Contract Term.

Example:

If a Bid Price to Skagit Transit is \$1.4052 per gallon delivered and the Contract Base Price is \$1.4252 per gallon, then the Price Differential for fuel is:

Contract Base Price	
OPIS Avg. (as of Jan. 5, 2015)	\$1.4252
Bid Price (incl. all costs for delivery)	<u>\$1.4052</u>
Price Differential	(.0200)

The two-cent Price Differential would remain constant throughout the Contract Term. Examples below show the price that would be charged to Skagit Transit for three separate periods had this been in effect for the fall of 2006:

OPIS Publication Date	10/10/06	10/17/06	10/24/06
OPIS Daily Average Price	\$1.7922	\$1.7724	\$1.7333
Price Differential	<u>\$.0200</u>	<u>\$.0200</u>	<u>\$.0200</u>
New Contract Price	\$1.7722	\$1.7524	\$1.7133
Effective Period	Oct. 10-16	Oct. 17-23	Oct. 24-30

- 5) Contract Fuel Price: The 10:00am ET Daily Average rack price appearing in each Monday’s OPIS for Anacortes, as modified by the Price Differential; in effect from midnight that day through midnight of the following Monday.

3.11 TAXES

- 1) The Contractor is responsible for paying all special taxes, such as Federal Excise Tax (FET), Superfund (CERCLA) and Hazardous Substance Tax (WAC 458-20-252), and applying for any refund from the

governmental unit. Skagit Transit reserves the right to request proof or certification from the Contractor that any of these taxes have been previously paid.

- 2) Pursuant to RCW 82.36.240, as may be amended, Skagit Transit only pays State fuel tax on non-transit (service/staff) vehicles carrying less than fifteen (15) passengers and is exempt from paying:
 - a) Federal Excise Tax
 - b) Federal Fuel Tax, both unleaded gasoline and diesel fuel.
 - c) WA State Fuel Tax, both unleaded gasoline and diesel fuel – RCW 82.38.080(3)
 - d) WA State Use Tax, both unleaded gasoline and diesel fuel – RCW 82.12.0256(2)
 - e) WA State Retail Sales Tax, both unleaded gasoline and diesel fuel – RCW 82.08.0255(1-c)
- 3) It is the Contractor’s responsibility to provide Federal Tax Exemption Certificates to Skagit Transit for authentication and return to the Contractor. The filing of Federal Tax Exemption Certificates shall be the sole responsibility of the Contractor subsequent to Skagit Transit authentication. Under no circumstances will Federal Excise Tax be shown on invoices.
- 4) Unless indicated otherwise, Skagit Transit agrees to pay Washington State sales or use tax on all petroleum product purchases (i.e. winterization additives) where applicable. Any other taxes or import revenues which are not applicable to the sale and delivery fuel (or which may hereafter be imposed by Congress, a State, or any political subdivision hereof) and which by the terms of the tax law must be passed directly to Skagit Transit, will be paid by Skagit Transit from invoice.

3.12 FUEL ADDITIVES

- 1) At Skagit Transit’s request, or as mandated by statute or regulation, the Contractor may be required to supply and blend a fuel additive, conditioner or treatment product to the fuel purchased. Weatherization additives are to be automatically added by the Contractor from October 15th to February 15th of each year, or when the temperature drops below the manufacturer’s recommendation to add such additives. The price charged for additives, conditioners or treatments shall not exceed the lowest price charged to other buyers and the prices are to be comparable to current market rates of other suppliers. At Skagit Transit’s request, Contractor shall provide supporting documentation to validate price compliance.
- 2) For any additive required by statute or regulation, Contractor shall provide Skagit Transit written notice of the change affecting contract fuel prices, including pricing for the additive to be purchased and supporting documentation validating the Contractor’s claim in accordance with Article 6.00 – Contract Modifications listed in Exhibit A. Additives incorporated into the Contract by Amendment will be shown as a separate line item on the invoice.

3.13 REPORTING REQUIREMENTS

Skagit Transit may request that the Contractor provide reports of fuel purchases made by Skagit Transit during the Contract Term. Within ten (10) business days of a request, the Contractor will provide a report in the requested format. The report must be clearly titled (Company name, contact information, dates of report period). The contractor will provide, upon request by Skagit Transit, information sorted according to Skagit Transit’s request, which may include: invoice specific detail or summary detail by petroleum product name, user name (Skagit Transit employee placing the order), delivery date, etc.

3.14 INVOICES

- 1) Invoices and all supporting detailed documentation referencing the invoice shall be provided to Skagit Transit as soon as possible after fuel is delivered rather than on a monthly basis. Contractor shall be diligent in preparing invoices to avoid delays in payment resulting from incorrect invoices. Contractor shall submit a

separate invoice for each fuel delivery and provide sufficient details as outlined in Exhibit A, Article 20 – Payment, including a copy of the average weekly rack price sheet showing prices on the day fuel was delivered.

- 2) Skagit Transit does not accept requests for early payment, down payment or partial payment, unless the Contract Documents specifically allows for it. All expenses are payable net 30 days after receipt and acceptance of satisfactory invoice compliance.

END OF SECTION 3

SKAGIT TRANSIT

INVITATION FOR BIDS #24-025

**RENEWABLE DIESEL
(R99) FUEL DELIVERY**

SECTION 4

SAMPLE CONTRACT

**INDEPENDENT CONTRACTOR AGREEMENT
CONTRACT NUMBER: 24-025**

TITLE: RENEWABLE DIESEL (R99) DELIVERY

TERM: 12:01 a.m. PST on February 1, 2025, through 11:59 p.m. PST on January 30, 2030.

PARTIES:

SKAGIT TRANSIT SYSTEM (SKAGIT TRANSIT)

600 County Shop Lane, Burlington, WA 98233
Phone: 360-757-8801 / Fax: 360-757-8019

Contacts: Greg Latham, Director of Facilities, Maintenance, and Operations (Project Coordinator) – glatham@skagittransit.org Chris Arkle Manager, Accounting – carkle@skagittransit.org Kelly Borden, Accounts Payable – kborden@skagittransit.org

ABCXYZ COMPANY (CONTRACTOR)

Address, City, State, Zip
Phone: / Fax:
Contacts:

THIS AGREEMENT is made and entered into this _____ **day of January 2025**, by and between the Skagit Transit System, a State of Washington municipal corporation, (Skagit Transit), and _____, a State of Washington _____ (Contractor).

In consideration of the terms, conditions, covenants, and performance contained herein, the Parties agree as follows:

1. **Contract Documents:** This document; The entire solicitation titled “RENEWABLE DIESEL (R99) Fuel Delivery IFB #24-025”; Contractor’s submitted bid and any supplemental items, as accepted by Skagit Transit; All Addenda issued prior to, and all modifications issued after execution of this document constitute the Contract and are complementary.
2. **Purchase and Sale:** Skagit Transit agrees to purchase, and Contractor agrees to sell, RENEWABLE DIESEL (R99) Fuel Delivery in accordance with the Contract Documents attached herein by reference.
3. **Rate of Payment:** Is set forth on the Contractor’s submitted Bid Form attached herein by reference. Skagit Transit shall pay the Contractor in current U.S. funds subject to the terms, conditions, additions and deductions provided for in the Contract Documents.
4. **Delivery:** The fuel identified in the Contract Documents shall be delivered by the Contractor, ready for use, within twenty-four (24) hours of receiving a Purchase Order unless the Parties agree otherwise.
5. The Parties agree that this Contract is the complete expression of the terms hereto and any oral representation or understandings not incorporated herein are excluded. Further, any modification of the Contract shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. The Parties also agree that the forgiveness of the non-performance of any provision of this Contract does not constitute a waiver of all other provisions of this Contract.

1.00 ADDITIONS OR DELETIONS

Skagit Transit reserves the right to add or delete items as determined to be in its best interest, provided such items are related to those on Contract and will not represent a significant increase or decrease in size or scope of the Contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid or proposal, and will be evidenced by issuance of a written Contract Amendment issued by Skagit Transit in accordance with Article 5.00 below.

2.00 ASSIGNMENT

This Contract shall be binding on the Parties and their successors and assignees. Contractor shall not assign its obligations, monies payable, transfer any interest, or subcontract the Work provided under this Contract without prior written notification to Skagit Transit. Any potential assignee shall assume all obligations of the Contractor under this Contract and shall be jointly and severally liable with the Contractor for performance of all terms, covenants and conditions of this Contract. Contractor shall be responsible to ensure that all contract requirements flow down to any approved subcontractors.

3.00 COMPLIANCE WITH LAWS AND REGULATIONS

- 1) **General Requirement:** Contractor will at all times, at its sole cost and expense, comply with all applicable federal, State and local laws, ordinances, regulations, orders, and codes in regards to all matters of its business operation and to performance of the Work or services under this Contract. Should the Contractor be determined to be in violation of federal, State, or local laws or regulations, Skagit Transit reserves the right to modify its initial determination of responsibility at the time of award and take other action as determined appropriate, including but not limited to, terminating the Contract.
- 2) **Registration:** Contractor's company must be registered to conduct business in the State of Washington. Out-of-state corporations must secure authority from the Secretary of State to transact business in the State of Washington. Accordingly, before Skagit Transit can enter into a contract with an Out-of-state or foreign corporation, such entity must comply with Washington's corporation laws. Information and application forms relative thereto may be obtained from the Corporations Division, Office of the Secretary of State, PO Box 40234, Olympia, Washington 98504-0234. The Corporate Information Line is 360-725-0377 or e-mail at corps@sos.wa.gov.
- 3) **Licenses, Permits and Similar Authorizations:** Contractor shall secure and maintain, at no expense to Skagit Transit and in full force and effect during Contract Term, all required licenses, permits, fees, bonds, inspection fees, and similar legal authorizations as may be required for performance under the Contract. It is Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with all related requirements. If for any reason Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, Contractor shall notify Skagit Transit immediately of such condition in writing.
- 4) **Taxes:** If applicable, Contractor will be responsible for adding sales tax to amounts due under the Contract and making payment of sales tax to the State of Washington, as determined by the Washington State Department of Revenue. All other taxes required by statute or regulation are the sole responsibility of the Contractor. No charge by Contractor shall be made for Federal Excise Tax and Skagit Transit agrees to furnish an exemption certificate where appropriate.
- 5) **Wage and Hours Laws:** Contractor shall comply with all applicable provisions of the Fair Labor Standards Act (FLSA) and all other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall, at all times, save Skagit Transit free, clear and harmless from all actions, claims and expenses arising out of said Act and rules and regulations that are or may be promulgated in connection herewith.

4.00 CONFLICT AND SEVERABILITY

- 1) In the event of a conflict between the solicitation documents and the terms and conditions of the Contract, Skagit Transit has the sole authority to determine which requirement shall apply and be considered the legally binding requirement. In the event of conflict between the Contract Documents in its entirety and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered part of this Contract.
- 2) In the event that any provision, portion, or application of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, Skagit Transit and Contractor shall negotiate an equitable adjustment in the provision of this Contract with a view toward effecting the purpose of this Contract and the validity and enforceability of the remaining provisions, or portions of applications thereof, shall not be affected thereby. Any provision of the Contract Documents found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.

5.00 CONTRACT MODIFICATIONS

- 1) No change, alteration, or modification to this Contract will be effective without prior written consent of Skagit Transit. Oral changes, amendments or agreements are not permitted. Prior to becoming a contract modification, all changes must be prepared as a written Contract Amendment to be signed by the Parties. Only Skagit Transit's Contracts Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Skagit Transit.
- 2) Any increase or decrease in the cost of, or the time required for, the performance of any part of the Contract Work, whether changed or not changed by any such order, an Equitable Adjustment shall be made in the Contract Price or Contract Time, or both, without invalidating any other portion of the Contract. Any change exceeding 25% of the Contract Amount is considered a "Cardinal Change" and will not be permitted.
- 3) Contractor must assert its right to an adjustment by delivering a written Change Request to Skagit Transit which states the general nature of the claim, a detailed price proposal for the changed work or services and, if applicable, notice of any modifications required of other contract provisions that may be affected as a result of the change. If Skagit Transit requests a change, Contractor shall submit same within 7 days after Contractor's receipt of such change request. Upon Skagit Transit's request, Contractor shall submit additional cost or price data, as applicable, to determine the validity and reasonableness of the claim. No claim by Contractor for an Equitable Adjustment hereunder will be allowed for any costs incurred more than 7 days before Contractor gives written notice.
- 4) Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the provision of this Contract titled "Disputes" (Article 8.00); however, nothing in this clause shall excuse the Contractor from proceeding with the work or service as changed.

6.00 DELIVERY OF SERVICES

All work and services must be made in accordance with the Contract Documents. For any exception, Contractor shall give Skagit Transit immediate notice of its inability to meet a scheduled date and provide the reason, expected length of the delay, and a written recovery schedule where applicable. Acceptance of late service shall not waive the remaining schedule or relieve the Contractor of its obligation to make future scheduled service. Contractor shall make every effort to avoid or minimize delays to the maximum extent practicable. Any additional costs caused by these requirements shall be borne solely by Contractor.

7.00 DISPUTES

- 1) **Decision of the CEO:** Except for bid protest, any dispute concerning a question of fact or arising in the performance under this Contract which is not resolved by agreement of the Parties shall be decided in writing by Skagit Transit's CEO. Claims include, without limitation, controversies arising under the Contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision. The decision of the CEO shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the Contractor. The decision shall state the reason(s) for the decision reached and shall inform the Contractor of its appeal rights under Item 3 below. If the CEO does not issue a written decision regarding any contract controversy within 7 Calendar Days after Contractor's written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if any adverse decision had been received. The CEO's decision shall be final and conclusive unless, within 7 Calendar Days from the date of receipt of the decision, Contractor mails or otherwise delivers a written appeal to the Skagit Transit Board of Directors. Contractor's failure to timely submit a dispute against the CEO's decision shall waive any relief that might otherwise be due with respect to such dispute.
- 2) **Performance during Dispute:** Pending final resolution of a dispute, Contractor shall proceed diligently with the performance of the Contract and in accordance with the CEO's decision.
- 3) **Appeals:** Contractor may appeal the CEO's decision to the Skagit Transit Board of Directors by submitting a written Notice of Appeal to the Skagit Transit Board Chairperson within 7 Calendar Days of receipt of the CEO, or designee's, decision. The CEO, or designee's, decision shall be deemed received within 3 days, exclusive of Sundays and holidays, of the date of posting of the decision or sooner in the event of actual receipt of personal service or fax confirmation. The appeal shall be based solely upon the record before the CEO, or designee. A three-member committee of the Skagit Transit Board, as appointed by the Board, shall decide the appeal. Written argument must be submitted to the committee. The committee may affirm or reverse the decision of the CEO, or designee, or reverse the decision in part. The decision of the committee shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as to constitute bad faith, or not supported by substantial evidence. No action challenging such decision shall be brought more than one year from the date of the Contractor's receipt of such decision.
- 4) **Rights and Remedies:** The duties and obligations imposed by the Contract Documents and the rights and remedies herein shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Skagit Transit or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. All claims, counterclaims, disputes and other matters in question between Skagit Transit and Contractor arising out of or relating to this Contract or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within Skagit County, State of Washington. Either party may request in writing that a dispute be submitted to mediation. Absent an agreement to a mediator, the mediation shall be conducted by Judicial Dispute Resolution (JDR) located in Skagit County, Washington. The Parties shall be equally responsible for the cost of any mediation. Mediation is optional and neither party is compelled to participate.
- 5) This "dispute" clause does not preclude consideration of law questions in connection with decisions provided for in the paragraphs above; provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

8.00 EMERGENCY, DISASTERS AND FORCE MAJEURE

- 1) **Force Majeure Definition:** The term “Force Majeure” means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of nature, war, terrorist activities, riots, strikes, fire, floods, epidemics, or other similar occurrences. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party’s performance of this Contract is prevented by reason of Force Majeure. In the event Contractor is unable to meet delivery or performance requirements due to circumstances beyond its reasonable control, Contractor agrees to make such delivery or performance as soon as practicable or shall immediately assist Skagit Transit in whatever reasonable manner to gain access to such goods or services or offer limited substitutions for consideration.
- 2) **Notification:** If either party is delayed by Force Majeure, said party shall provide written notification to the other within forty-eight (48) hours. The notification shall provide evidence of the Force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.
- 3) **Rights Reserved:** Skagit Transit reserves the right to cancel the Contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure and Contractor shall have no recourse against Skagit Transit.

9.00 ENFORCEMENT COSTS

In the event of litigation between the Parties hereto, declaratory or otherwise, for the enforcement of this Contract or as a result of this Contract in any way, the prevailing party shall be entitled to recover from the other party, its reasonable attorney fees and other costs incurred in such action or proceeding. In the event that the Parties engage in arbitration, mediation or any other Alternative Dispute Resolution (ADR) forum to resolve a dispute in lieu of litigation, both Parties shall share equally in the cost of the ADR method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys’ fees incurred as a result of the ADR method.

10.00 ENGLISH LANGUAGE

All documentation and any other written, oral, or other communications required in the performance of the Contract shall be prepared using the English language as used throughout the U.S. If English is not the prevalent language used at the job site, a person fluently proficient in the other language(s) used and in English shall be available to the representative during all working hours for interpretation.

11.00 ERRORS AND OMISSIONS

If, at any time during the performance of this Contract, Contractor becomes aware of any errors, omissions, discrepancies and actual or potential problems between the Contract Documents and any federal, State or local law, rule, or regulation, Contractor shall give immediate written notice thereof to Skagit Transit’s Contracts Administrator. Until such written notification has been given and one business day has elapsed, any services performed by Contractor after such discovery will be done at Contractor’s risk.

12.00 FEDERAL REQUIREMENTS

The federal clauses in this Section are not negotiable and, unless otherwise specified, must be included in any subcontracts awarded by the Contractor. The FTA will not be a party to any sub-agreement nor to any solicitation for bids.

13.1 ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

- a) Maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, or any extensions thereof, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Skagit Transit, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- b) Permit any of the foregoing parties access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c) Provide, pursuant to 49 C.F.R. 633.17, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- d) FTA does not require the inclusion of these requirements in Contractor subcontracts. Reference 49 CFR 18.39 (i) (11).

13.2 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Parties are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and the following regulations and any amendments thereto:

- a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
- d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- f) General Services Administration regulations, "Construction and Alteration of Public Buildings", "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;
- g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;
- h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F; and
- i) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

13.3 BREACHES AND DISPUTE RESOLUTION

- a) **Disputes.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by Skagit Transit's CEO. This decision shall be final and conclusive unless within 10 Calendar Days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to Skagit Transit's Board of Directors. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Board of Directors shall be binding and Contractor shall abide by the decision.
- b) **Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- c) **Performance during Dispute.** Unless otherwise directed by Skagit Transit, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- d) **Rights and Remedies.** The duties and obligations imposed by the Contract Documents and the rights and remedies thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Parties shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. All claims, counterclaims, disputes, and other matters in question between the Parties arising out of or relating to this Contract or its breach will be decided by arbitration if the Parties mutually agree, or in a court of competent jurisdiction within Skagit County, State of Washington.

13.4 BUY AMERICA

- 1) Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 % domestic content. Contractor must submit to Skagit Transit the appropriate Buy America Certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver.
- 2) Bids or offers that are not accompanied by a completed Buy America Certification will be rejected as non-responsive. This requirement does not apply to lower tier subcontractors. (*Contractor's Buy America Certification submitted with their bid is incorporated herein by reference.*)

13.1 CARGO PREFERENCE REQUIREMENTS

- 1) Contractor agrees comply with 46 U.S.C. Section 55303 and Maritime Administration regulations, "Cargo Preference-U.S. Flag Vessels," 46 CFR Part 381 which requires the use of privately owned U.S. Flag commercial vessels to transport at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of any federally assisted property involved, pursuant to the underlying Agreement, to the extent such vessels are available at fair and reasonable rates for United States Flag commercial vessels.

- 2) Contractor must furnish within 20 Business Days following the date of loading for shipments originating within the United States, or within 30 Business Days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Skagit Transit, (through the Contractor in the case of a subcontractor's bill-of-lading).
- 3) Contractor agrees to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

13.2 CIVIL RIGHTS / TITLE VI REQUIREMENTS

- 1) **Non-discrimination.** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, Contractor and each subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2) **Equal Employment Opportunity.** Contractor agrees to comply with all Equal Employment Opportunity requirements applicable to this Contract as follows and with any implementing requirements that the FTA may issue:
 - a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
 - b) **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue
 - c) **Segregated Facilities.** Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation

or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation of this Civil Rights clause.

- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.
- 4) **Sanctions of Non-Compliance.** In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Skagit Transit shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.
- 5) Contractor agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13.3 **CLEAN AIR AND WATER REQUIREMENTS**

- 1) Contractor agrees to comply with all applicable standards, orders or regulations issued under:
 - Section 306 of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401 through 7671q. and;
 - Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377 and;
 - Executive Order 11738 and Environmental Protection Agency regulations 40 CFR, Part 15, which prohibits the use of non-exempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities.
- 2) Contractor agrees to report each violation to Skagit Transit and understands and agrees that Skagit Transit will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- 3) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

13.4 **DEBARMENT AND SUSPENSION**

- 1) Executive Order 12549, as implemented by 49 CFR Part 29, prohibits Skagit Transit from contracting for goods and services from organizations that have been suspended or debarred from receiving federally assisted contracts. This Contract is a covered transaction therefore, Contractor agrees to verify that the Contractor and none of its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. Contractor and any of its lower tier subcontractors shall: 1) Review a subcontractor's status on the federal System for Award Management (SAM) website at <https://www.sam.gov> before entering into any contracts; or 2) Collect a certification from all lower tiered subcontractors.

- 2) Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or agency or from bidding on any public contract; and shall not be presently indicted for, or otherwise criminally or civilly charged by, a governmental entity (federal, State or local) with commission of any of the offenses mentioned below.
- 3) Within a three-year period preceding this bid or proposal, Contractor shall not have been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract; Violation of federal or State anti-trust statutes; Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or had one or more public transactions (federal, State or local) terminated for cause or default.
- 4) By signing and submitting a bid or proposal, Contractor has certified that the certification in this clause is a material representation of fact relied upon by Skagit Transit. If it is later determined that the Contractor knowingly rendered an erroneous certification by signing the bid, or failed to notify Skagit Transit immediately of circumstances which made the original self-certification no longer valid, Skagit Transit may immediately terminate the Contract, in addition to other remedies available to it, including suspension or debarment by the Federal Government. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer.
- 5) Contractor further agrees to include a provision requiring such compliance in each subcontract, regardless of tier.

13.5 **DISADVANTAGED BUSINESS PARTICIPATION**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*". The national goal for participation of DBE is 10%. A separate contract goal for DBE participation has NOT been established for this Contract.

- 1) **DBE Program.** It is Skagit Transit's policy to ensure Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts. Contractor will cooperate with Skagit Transit in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBE consistent with the efficient performance of the Contract. To enable accurate monitoring of DBE Program compliance, the Contractor is required to report to Skagit Transit its DBE participation obtained through race-neutral means throughout the period of performance under this Contract.
- 2) **DBE Liaison.** Skagit Transit has a designated DBE Liaison to assist DBEs, administer Skagit Transit's DBE Program, and acts as liaison to the Uniform Certification Process in Washington State administered by the Washington State Office of Minority and Women's Business enterprises (OMWBE). Inquiries and requests concerning Skagit Transit's DBE Program shall be directed to: Motoko Pleasant, DBE Liaison, Skagit Transit, 600 County Shop Lane, Burlington, WA 98233. Phone: 360-757-8801, x1601.

- 3) **Non-Discrimination Assurances.** Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Skagit Transit deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Contractor from future bidding as non-responsible. Each subcontract of the Contractor, regardless of tier, must include the assurances of this paragraph. (See 49 CFR 26.13(b)).
- 4) **Prompt Payment to Subcontractors.** Contractor is required to pay each subcontractor performing work under this Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that Work from Skagit Transit. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's Work related to this Contract is satisfactorily completed and accepted by Skagit Transit. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of Skagit Transit. This clause applies to both DBE and non-DBE subcontractors.
- 5) **DBE Delegation and Assignment.** Contractor must promptly notify Skagit Transit whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of Skagit Transit. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with re-solicitation costs to the prime contractor or its bond.

13.6 ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

13.7 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract between Skagit Transit and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

13.8 FLY AMERICA REQUIREMENTS

- 1) **Project Travel – Use of U.S. Flag Air Carriers.** Contractor agrees to comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, ("Fly America" Act), 49 U.S.C. Section 40118, in accordance with the General Services Administration's (GSA) regulations, "Use of United States Flag Air Carriers", at 41 CFR Sections 301-10.131 through 301-10.143, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation when property or persons are transported by air between U.S. and foreign destinations, or between foreign locations, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

- 2) Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

13.9 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT, as set forth in the most current FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any Skagit Transit requests that would cause Skagit Transit to be in violation of the FTA terms and conditions.

13.10 LOBBYING RESTRICTIONS AND ANTI-KICKBACKS

- 1) **Disclosure of Lobbying Activities.** Pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65, contractors who apply or bid for an award of \$150,000 or more shall complete and submit with their Proposal the "Certification Regarding Lobbying" and, if appropriate, "Disclosure of Lobbying Activities" to Skagit Transit as required by 49 CFR Part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC Section 1601 *et seq.*, who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures shall be forwarded from tier-to-tier up to Skagit Transit. (*Contractor's Lobbying Certification submitted with their bid is incorporated into this Contract by reference.*)
- 2) **Anti-Kickbacks.** Skagit Transit and its contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC Section 51 *et seq.* Under State and federal law, it is a violation for Skagit Transit employees, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services. "Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC Section 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.
- 3) Contractor will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.

13.11 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

- 1) The Parties acknowledge and agree that, absent the FTA's express written consent and notwithstanding any concurrence by the FTA, in or approval of the solicitation or award of the underlying Contract, the FTA is not a party to this Contract and shall not be subject to any obligations or liabilities to Skagit Transit, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

- 2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13.12 NOTIFICATION OF LEGAL MATTERS

- 1) Contractor agrees to notify Skagit Transit immediately if it becomes involved in a current or prospective legal matter that may affect the Federal Government, which includes, but is not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the Federal Government may be named as a party to litigation or a legal disagreement in any forum for any reason. Contractor will immediately notify Skagit Transit if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. Skagit Transit reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

13.13 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

- 1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which the contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.
- 2) Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- 3) Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

13.14 RECYCLED PRODUCTS / RECOVERED MATERIALS

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Examples of such products may include, but are not limited to, the regulatory provisions and products described in the EPA Guidelines at Subpart B of 40 CFR Part 247, implementing Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6962), and Executive Order 12873.

13.15 TERMINATION

- 1) **Termination for Convenience.** Skagit Transit may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in Skagit Transit's best interest. After receipt of a written Notice of Termination, and except as directed by Skagit Transit, Contractor shall immediately stop work as directed in the Notice and comply with all other requirements in the Notice. Contractor shall be paid its costs on only that portion of the Work satisfactorily performed up to the date of termination as specified in the Notice. Contractor shall promptly submit its termination claim to Skagit Transit, together with detailed supporting documentation, to be paid to Contractor. If Contractor has any property in its possession belonging to Skagit Transit, Contractor will account for the same, and dispose of it in the manner Skagit Transit directs.

- 2) **Termination for Default.** If Contractor fails to deliver supplies or to perform the services within the time specified in this Contract or any extension, or if the Contractor fails to comply with any other provisions of this Contract, Skagit Transit may terminate this Contract for default. Skagit Transit shall terminate by delivering to the Contractor a Notice of Termination specifying the

nature of the default and the effective date of termination. Contractor will only be paid the Contract Price for supplies delivered and accepted, or services satisfactorily performed in accordance with the manner set forth in the Contract, less any damages to Skagit Transit caused by such default up to the date of termination as specified in the Notice. This liability includes any increased costs incurred by Skagit Transit in completing the Work or performing the service. If Contractor has any property in its possession belonging to Skagit Transit, Contractor will account for the same and dispose of it in the manner Skagit Transit directs. If it is later determined by Skagit Transit that the Contractor had an excusable reason for not performing due to events which were not the fault of, or are beyond the control of the Contractor, Skagit Transit, after setting up a new delivery of performance schedule, may allow the Contractor to continue work under the Contract or treat the termination as a Termination for Convenience.

- 3) **Opportunity to Cure.** Skagit Transit, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 Calendar Days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Skagit Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 10 Calendar Days after receipt by Contractor of written notice from Skagit Transit setting forth the nature of said breach or default, Skagit Transit shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Skagit Transit from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- 4) **Waiver of Remedies for any Breach.** In the event that Skagit Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Skagit Transit shall not limit Skagit Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract. In the event that any provision, portion, or application of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, Skagit Transit and Contractor shall negotiate an equitable adjustment in the provision of this Contract with a view toward effecting the purpose of this Contract and the validity and enforceability of the remaining provisions, or portions of applications thereof, shall not be affected thereby.

13.00 INDEMNIFICATION, HOLD HARMLESS AND STATUS

To the fullest extent permitted by law, and except to the extent caused by the sole negligence or willful misconduct of Skagit Transit, its officers, officials, agents and employees, Contractor shall defend, indemnify, save and hold harmless Skagit Transit, its officers, officials, agents and employees from and against any and all claims, actions, suits, penalties, losses, expenses, judgments in law and equity, and damages of whatsoever kind in nature arising out of, or resulting from, Contractor's negligence or willful misconduct in the performance of this Contract by or on behalf of the Contractor, its officers, employees, subcontractors and agents; or Contractor's failure to meet the obligations of the Contract. Neither Party assumes any responsibility to the other Party for the consequences of any act or omission of any person, firm or corporation not a party to this Contract. Contractor's sole obligation to defend includes the payment of all reasonable attorney's fees and legal costs of Skagit Transit's defense of any claim, suit or action within the scope of this Article whether or not suit was instituted. If a lawsuit in respect to this hold harmless provision ensues, Contractor shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by Skagit Transit, its officers, officials, agents, and employees, Contractor shall pay the same. Skagit Transit will give the Contractor prompt written notice of the institution of any suit or proceeding and permit the Contractor, through its counsel, to defend same and will give all needed information, assistance and authority to enable the Contractor to do so. This Article does not modify any other articles regarding any other conditions as are elsewhere agreed to herein between the Parties.

14.00 INSPECTION AND REJECTION

- 1) Skagit Transit's inspection of all goods or services upon delivery is for the sole purpose of identification and shall not be construed as Final Acceptance or as acceptance of the goods or services if such does not conform to contractual requirements. If there are any apparent defects in the goods or services at the time of delivery, Skagit Transit will promptly notify Contractor thereof. If there are defects detected post-delivery, Skagit Transit will notify Contractor with a description of such non-compliance.
- 2) Within 7 days of receiving such written notification, Contractor shall provide Skagit Transit with a detailed written plan which indicates the time and methods needed to bring the work in compliance with the Contract. Without limiting any other rights, Skagit Transit may require the Contractor to: 1) repair or replace any or all of the damaged goods at Contractor's expense; 2) refund Skagit Transit the full price paid for any or all of the damaged goods and accept the return of such damaged goods. If Skagit Transit rejects Contractor's written plan, Contractor may be determined to be in material default of the Contract.
- 3) This procedure to remedy defects is not intended to limit or preclude any other remedies available to Skagit Transit by law, including those available under the Uniform Commercial Code, Title 62A RCW. Acceptance by Skagit Transit of unsatisfactory performance, with or without objection or reservation, shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

15.00 INSURANCE REQUIREMENTS

- 1) Contractor, at its sole expense and for the duration of the Contract, will purchase and maintain all insurance described herein from insurers licensed to conduct business in the State of Washington (or issued as a surplus line by a Washington Surplus lines broker) and approved by the State Insurance Commissioner pursuant to RCW Title 48. Insurers must have a minimum rating of A- and a financial rating of Class VII or higher in the most recently published edition of the A.M. Best's Key Rating Guide. The insurance shall protect Skagit Transit against any and all claims for damages to persons or property arising under Contract performance whether by reason of acts or omissions of Contractor, or anyone directly or indirectly employed by Contractor, and shall hold Skagit Transit harmless for any claims presented to it as a result of Contractor's negligence.
- 2) All costs for insurance shall be incidental to and included in the Contract Price and no additional payment will be made by Skagit Transit. Policies shall be endorsed and will not be canceled, materially changed or altered without 30 days prior written notice submitted to Skagit Transit's Risk Manager. Any exclusion must be pre-approved by the Risk Manager.
- 3) **Primary Coverage:** Contractor's insurance afforded herein shall be primary insurance and any insurance or self-insurance maintained by Skagit Transit shall be considered excess coverage and not contributory insurance to that provided by the Contractor. Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- 4) **Evidence of Insurance:** Prior to contract performance, Contractor shall provide Skagit Transit an ACORD Certificate of insurance and any schedule of underlying policies for Skagit Transit's approval within the time specified in the Final Contract Award Notice. If the Contract is executed, no payment will be due until all insurance certificates are furnished.
- 5) **Minimum Scope and Limits of Insurance:** Coverage listed below is the minimum to be provided and not limitations of liability under the Contract, indemnification, or applicable law provisions. Skagit Transit shall not be deemed or construed to have assessed the risks that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and may, at its expense, purchase greater limits and broader coverage. Coverage for each policy period shall be at least as broad as the following:

- a) Commercial General Liability: \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury and Property Damage, including Personal Injury/death; Premise and Operations; Contractual Liability; Protective Liability; Products and Completed Operations; and a general aggregate limit of at least \$2,000,000. This protection may be a CGL policy or any combination of primary, umbrella or excess liability coverage affording total liability limits of not less than \$2,000,000.
- b) Commercial Automobile Liability: \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage for all owned, non-owned, and hired or rented vehicles assigned to or used in the performance of the Work or services.
- c) Employer's Liability and Workers' Compensation: Workers' Compensation shall be provided in the State Statutory Limits and Employer's Liability coverage of not less than \$1,000,000 per occurrence. If Contractor is not eligible for Worker's Comp., it shall indemnify and hold Skagit Transit harmless for any claims presented to it solely as a result of Contractor's negligent actions. Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW.
- d) Additional Insured Endorsement: Except for Workers' Compensation insurance, all other insurance coverages and self-insured retention or deductible portions shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Skagit Transit as Additional Insured. **Language such as the following shall be used in the description area of the ACORD Certificate: "SKAGIT TRANSIT, ITS OFFICERS, AGENTS, AND EMPLOYEES ARE NAMED ADDITIONAL INSURED IN RESPECTS TO CONTRACT #22-010-F"**
- e) Errors and Omissions (E&O) Endorsement: For all errors and omissions for which the insured is held legally liable.
- 6) **Excess Liability**: Coverage in the minimum amounts set forth above shall not be construed to relieve the Contractor from liability in excess of such limits. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.
- 7) **Failure of Coverage**: Contractor's failure to fully comply with these insurance requirements during the term of the Contract shall be considered a material breach of contract upon which Skagit Transit may, after giving 5 Business Days written notice to Contractor to correct the breach, immediately terminate the Contract; or at its discretion, alternatively procure and maintain in the name of the Contractor, and at Contractor's sole expense, such types of insurance to the extent deemed proper up to the amount of the required coverage(s). Skagit Transit may offset the cost of such insurance against payment due to the Contractor under the Contract. If Skagit Transit is damaged by the failure of the Contractor to maintain any of these insurance requirements, or to so notify Skagit Transit, then the Contractor shall bear all costs attributable thereto. Suspension or termination of this Contract shall not relieve Contractor from its insurance obligations hereunder.
- 8) **Attorney Fees**: If a lawsuit in respect to this insurance provision ensues and the amount of the liability claimed exceeds the amount of insurance coverage, Contractor shall authorize representatives of Skagit Transit to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. Contractor shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by Skagit Transit, its officers, agents, and employees, Contractor shall pay the same.

- 9) **Cancellation:** In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to Skagit Transit within one (1) business day of Contractor's receipt of such notice.
- 10) **Rights of Subrogation:** Skagit Transit reserves and retains its rights of subrogation and shall further have the right, at its election and expense, to pursue collection and recovery from any and all responsible third parties. Contractor shall cooperate with Skagit Transit in such recovery and collection, and shall make its records and personnel available. As to an accident or incident to which this paragraph is applicable, any and all sums so recovered by Skagit Transit as provided hereunder, after deduction only of court costs, shall be reimbursed to Contractor. The pendency of any collection efforts against third parties, including litigation, shall in no way delay or diminish the obligation of Contractor to promptly remit the sums due to Skagit Transit under the provisions of this subpart.

16.00 JURISDICTION LAWS AND VENUE

This Contract shall be governed in all respects by the laws of the State of Washington and authorities having jurisdiction over the Contract work will be deemed to be included in the Contract the same as though herein written out in full. The jurisdiction for any action hereunder shall be exclusively brought in the Superior Court for Skagit County in the State of Washington.

17.00 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, or services performed or delivered by Contractor shall be free of all liens, claims, or encumbrances of any kind.

18.00 NON-DISCRIMINATION

- 1) Skagit Transit is an Equal Opportunity Employer. During the performance of this Agreement, Contractor and its assignees, subcontractors, and successors in interest, shall not discriminate against any client, employee, or applicant for employment or for services on the basis of race, color, creed, national origin, religion, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability except for bona fide occupational qualification with regard not limited to the following: Employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, selection for training, or rendition of services.
- 2) Consultant shall take such action with respect to this Agreement as may be required to ensure full compliance with 49 CFR Part 21, "*Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964*" and Chapter 49.60 RCW, *Discrimination – Human Rights Commission*. Failure by Consultant to carry out these requirements is a material breach of contract which may result in the termination of this Agreement or such other remedy as Skagit Transit deems appropriate. Skagit Transit may further bar Consultant from performing any services for Skagit Transit now, or in the future, unless a showing is made satisfactorily to Skagit Transit that discriminatory practices have terminated and that recurrence of such action is unlikely. Skagit Transit retains the right to withhold payments to Consultant under the Agreement for non-compliance with this provision until the Consultant complies.
- 3) In relation to Title VI of the Civil Rights Act of 1964, Consultant is further bound by such provisions contained in Articles 13.4 and 13.7(3) above.

19.00 ORGANIZATIONAL CONFLICTS OF INTEREST

An organizational conflict of interest is a situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to Skagit Transit; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. Skagit Transit will evaluate future procurements related to this Contract to determine if there is an organizational conflict of interest. If an organizational conflict of interest exists, Skagit Transit may prohibit the Contractor and any of its subcontractors from participating in such related procurements.

20.00 OWNERSHIP OF DOCUMENTS

All documents, data, drawings, specifications, software applications and other products or materials produced by Contractor in connection with this Contract shall be the property of Skagit Transit. All such documents, products and materials shall be forwarded to Skagit Transit at its request and may be used by Skagit Transit as it sees fit. Contractor shall preserve the confidentiality of all Skagit Transit documents and data accessed for use in Contractor's work product.

21.00 PAYMENT

- 1) All payments under this Contract are considered full compensation for goods delivered and services rendered. **Pre-payments are not permitted.** Payment is based upon the Contractor's original bid prices, except as may be modified by written Amendment, and will be made within 30 days after acceptance and approval of invoices by Skagit Transit. Prior to approval of payment, the Skagit Transit Project Manager shall make verification of work performed or items received.
- 2) **Invoice Detail:** Each pay request must contain the following minimum information, as applicable: 1) Contract name and number; 2) Skagit Transit's customer account number; 3) Invoice number; 4) Date of invoice; 5) Payment due date; 6) Date of service or goods delivered; 7) Item Description; 8) Quantity and unit measure; 9) Contract Unit Price; 10) Extended price; 11) State Sales Tax (8.6% Destination Based); 12) Total purchase amount. This list is not necessarily all-inclusive.
- 3) **Submittal:** Invoices shall be provided to Skagit Transit as soon as possible after goods are delivered. All paperwork associated with a particular invoice (i.e. work orders, receiving documents, delivery tickets, etc.) must reference the same identifying number and correspond to the final invoice in order to link all the paperwork together. Failure to comply with these requirements may delay payment. Submit invoices to: Skagit Transit, Attn: Accounts Payable, 600 County Shop Lane, Burlington, WA 98233
- 4) **Payment does not imply acceptance of Work:** The granting of any payment by Skagit Transit, or the receipt thereof by Contractor, shall not constitute in any sense acceptance of the Work or service, or any portion thereof, and shall in no way lessen the liability of Contractor to remedy defective work, materials, equipment or service which does not conform to the Contract Documents, though the character of such Work may not have been apparent or detected at the time such payment was made. Payment does not waive Skagit Transit's right to reject defective or non-conforming Work, materials, equipment or service even though the same is covered by the payment, nor is it a waiver of any other rights of Skagit Transit.

22.00 PERFORMANCE STANDARDS

- 1) As used in this Article, the word "*service(s)*" includes all work or services performed, the workmanship, and materials and products furnished or used in performing the work or services. Contractor shall comply with recognized quality industry service standards as applicable. All references to standards, whether for delivery of goods, processes, assemblies, workmanship, performance, or similar purposes shall mean, unless otherwise noted, the most recent available published version of such standard. When reference is made to standards, the standards are to be made a part of this Contract and to have the same effect as if fully reproduced herein.

- 2) If any unsatisfactory condition or deficiency is detected, or if any of the services performed do not conform to the contract requirements, Skagit Transit will promptly notify the Contractor in writing with a description of such non-compliance and further require the Contractor to: 1) repair or replace any or all of the damaged goods, or perform the services again in conformity with contract requirements, at Contractor's sole expense; 2) refund Skagit Transit the full price paid for any or all of the damaged goods or services and accept the return of any damaged goods.
- 3) Contractor shall acknowledge such notice within 24 hours of receipt and initiate the process to remedy the condition, defect, error, or non-conformity to the satisfaction of the Skagit Transit Project Manager, or designee.
- 4) Within 7 Calendar Days of acknowledging said notice, Contractor must provide Skagit Transit with a written detailed plan which states the time and methods needed to bring the work, materials or services within acceptable limits of the specifications or contract requirements. Skagit Transit may accept or reject this plan at its discretion. In the event this plan is rejected, Contractor may be determined to be in material default of the Contract and the work, materials, or services will be deemed not accepted and returned to the Contractor at Contractor's expense.
- 5) In the case of an emergency where Skagit Transit believes delay could cause serious injury, loss or damage, Skagit Transit may waive the first written notice and either: 1) direct the Contractor to correct the defect or, 2) correct the defect of its own accord and dispatch a third party contractor, or use Force Account through use of Skagit Transit employees at a rate equal to the employee's hourly rate plus administrative costs. In either case, Contractor is responsible for all costs of remedying the defect and Skagit Transit may deduct such costs from any balance due, or which may become due, to the Contractor or charge-back the cost to the Contractor regardless of who actually corrects the defect.
- 6) **Non-Performance Notice:** If Contractor fails to initiate any corrective action procedure after receiving the first notification of unsatisfactory performance, Skagit Transit may send a "Notice of Non-Performance" to the Contractor detailing the exact nature of non-performance, remaining work to be performed, and the date of non-performance. Contractor shall acknowledge and respond to the Notice within 3 Business Days of receipt and shall promptly proceed to remedy the situation described therein to Skagit Transit's satisfaction. Receipt of notice is evidenced upon signature of certified mail return receipt or 3 Business Days after mailing. Continued non-performance may result in Contract termination. A further finding of non-responsibility may be determined and any future submittals by Contractor for Skagit Transit contracts may be rejected without consideration.
- 7) **Third Party Claims:** In the event that either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Contract.
- 8) No provision herein shall be construed to limit Contractor's liability for work not performed in accordance to the Contract. The liability for such failure to perform shall extend as far as the appropriate periods of limitation provided by law, including those available under the Uniform Commercial Code, Title 62A RCW. Acceptance by Skagit Transit of any late or unsatisfactory performance, with or without objection or reservation, shall not waive, alter or affect the obligations of Contractor from its warranty responsibilities and for satisfactory and timely performance, or the rights of Skagit Transit to claim damage for breach, or terminate the contract.

23.00 **PRICE COMPLETE**

The prices quoted in Contractor's submitted bid, as accepted by Skagit Transit, include all items of labor, material, tools, equipment, and other costs necessary to fully complete the manufacture, assembly, delivery, warranty, schematics and drawings, if required, pursuant to the Specifications in the Bid Documents.

24.00 PRICE ADJUSTMENTS

- 1) Under certain circumstances as a cost of running a business, Contractor may request a price adjustment to the prices as originally bid. Such requests must be filed in writing with the Contracts Administrator only after the second year of the Contract has ended, and a minimum of 60 Calendar Days before the effective date of Contractor's proposed increase. In this event, Contractor must submit detailed cost data with their request which supports their claim for a price increase, or any other documentation that Skagit Transit deems necessary to determine through a cost analysis or audit that any increase is fair and reasonable. Skagit Transit's acceptance of any proposed price increase will be incorporated into the Contract by written Amendment. Skagit Transit reserves the right to deny the Contractor's price increase request or terminate the Contract.
- 2) Price adjustment requests shall:
 - a) Clearly identify the goods or services impacted by the increase.
 - b) Be the direct result of increase at the manufacturer's or corporate level.
 - c) Substantiate that the increase is consistent with current market conditions and that Contractor could not get a better price from another manufacturer or supplier.
 - d) Not deviate from the original contract pricing scheme/methodology.
 - e) Not result in a 25% overall increase or greater cost to the Contract Amount (see Article 6(2) re: "Cardinal Change").
 - f) Reference U.S. published indices such as the Producers Price Index (PPI) for the commodity, the Consumer Price Index (CPI) for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price changes to help substantiate and document the Contractor's request.
 - g) Remain firm-fixed for at least one (1) year after the effective date of the contract Amendment perfecting the adjustment. All other payment terms will remain in effect under the original Contract.

25.00 PROPERTY LIABILITY

Unless otherwise provided for, Contractor assumes the risk of, and shall be responsible for, any loss or damage to Skagit Transit furnished property in its possession, or in the possession of any agents or employees of the Contractor, resulting from Contractor's negligent or willful misconduct, except for reasonable wear and tear in the normal performance of this Contract. Contractor shall bear no liability for any negligent acts or abuse of property by Skagit Transit.

26.00 RELATIONSHIP OF THE PARTIES

- 1) The Parties agree that an independent contractor relationship will be created by this Contract whereby, in the performance of this Contract, the Parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee of Skagit Transit under Chapter 41.06 RCW or Title 51 RCW. Contractor shall indemnify and hold harmless Skagit Transit from and against any and all costs (including attorney fees incurred in defense) or liabilities (including payroll taxes, penalties or interest) arising out of any assertions that the Contractor is not an independent contractor.
- 2) Upon Contract execution ("Effective Date"), Contractor agrees that it has a business account established with the Washington State Department of Revenue, and other State agencies as required by the particular case, for the payment of all State taxes normally paid by employers and businesses, and has registered for and received a Unified Business Identifier (UBI) number from the State of Washington.

27.00 REPRESENTATIVES

- 1) **Skagit Transit:** The Contracts Administrator is the designated representative for contract compliance and helping resolve contractual issues. The Project Manager is the designated representative for contract performance compliance within budget and schedule, approval of services, and coordinating communications between the Contractor and Skagit Transit. The Project Coordinator is the designated representative to act on behalf of the Project Manager. Key personnel are listed on the first page of this Contract.
- 2) **Contractor:** Contractor shall appoint a representative as a Point of Contact (“POC”) for Skagit Transit and contract liaison agent through whom Skagit Transit will communicate. POC shall respond to all written communications from Skagit Transit representatives within 7 Calendar Days from receipt.
- 3) Either Party shall have the right to change any representative or address it may have given to the other Party by giving such other Party due notice in writing of such change.

28.00 RISK OF LOSS AND TITLE

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur before delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligation hereunder.

29.00 SERVICE OF NOTICES

- 1) Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all legal notices desired or required hereunder shall be promptly made in writing and shall be deemed to have been duly given if delivered personally, or on the third Calendar Day after mailed certified, return receipt, and postage prepaid, to the Parties at the following addresses or to such other address as either Party may hereafter designate in writing:

SKAGIT TRANSIT	CONTRACTOR
Contact: Crystle Stidham, Chief Executive Officer	Contact:
Address: 600 County Shop Lane, Burlington, WA 98233	Address:
Phone: 360-757-8155	Phone:
Fax: 360-757-8019	Fax:
E-mail: cstidham@skagittransit.org	E-mail:

- 2) Either Party hereto shall have the right to change any representative or address by giving the other Party due notice in writing of such change. Consultant shall immediately furnish Skagit Transit with copies of all pertinent papers received by Consultant.

30.00 SUGGESTIONS TO CONTRACTOR

Any plan or method of work suggested by Skagit Transit to Contractor, but not specified or required in writing under the Contract, if adopted or followed by Contractor in whole or part, shall be used at the risk and responsibility of Contractor and Skagit Transit shall assume no responsibility therefore.

31.00 SUPERVISION AND COORDINATION

Contractor shall: 1) Competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; 2) Designate a representative for the Work under this Contract to which all communications given by Skagit Transit to the representative shall be binding on Contractor.

32.00 WAIVER OF RIGHTS BY SKAGIT TRANSIT

In the event that Skagit Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Skagit Transit shall not limit Skagit Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract. Skagit Transit shall be deemed to have waived a right or remedy only if issued or confirmed in writing as a waiver by Skagit Transit. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right and remedy.

33.00 WARRANTIES

- 1) Contractor warrants that all workmanship and materials, including all parts and accessories whether manufactured by it or others, provided under this Contract are subject to all warranties or guarantees arising by operation of law and additionally conform to the requirements and specifications imposed by Skagit Transit or offered in the Contractor's bid, including any submitted Manufacturers' Warranty or workmanship guarantee. This warranty shall be in addition to any other express or implied warranties provided by this Contract or by law, and in addition to any other rights or remedies available to Skagit Transit under this Contract or by law.
- 2) **Defects.** Skagit Transit shall immediately give written notice to Contractor of any defective goods or services discovered within said warranty period. Contractor will maintain copies of all warranty information and shall cooperate with Skagit Transit to immediately facilitate any warranty related work to satisfactorily repair the condition, correct the defect, error, or non-conformity at Contractor's sole expense. If Contractor has not taken corrective action within 30 Calendar Days after receiving the written notice, Skagit Transit, in its sole discretion, may seek to correct the defect itself. In this event, Contractor is responsible for all replacement costs and Skagit Transit will charge-back such costs to Contractor, including shipping charges, regardless of who actually corrects the defect. In the case of an emergency where Skagit Transit believes delay could cause loss or damage, Skagit Transit may waive the written notice and correct the defect.
- 3) **Product.** In addition to any standard Manufacturer's Warranty, Contractor shall furnish to Skagit Transit any warranty or guarantee furnished as a normal trade practice in connection with the purchase of any materials, items or equipment used in the fabrication process. Such furnished products shall: Conform to the requirements and specifications herein; Be of good marketable quality of latest model and current date; Exclude surplus remanufactured and used products; Be fit for the known purpose for which they are sold; Be free and clear of all liens and encumbrances and that Contractor has a good and marketable title to same; Not infringe any patent, registered trademark or copyright; and Contractor agrees to hold Skagit Transit harmless in the event of any infringement or claim thereof. Acceptance of any item or service and inspection incidental thereto by Skagit Transit shall not alter or affect the obligations of the Contractor or the rights of Skagit Transit.
- 4) **Price.** Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by Contractor to any other customer purchasing the same goods or services in like or similar quantities and under similar terms and conditions.
- 5) **Remedies.** Skagit Transit reserves the right to waive or take exception to its specifications if it is to the greatest advantage or best interest of Skagit Transit. Warranties shall not apply to work or materials that have been abused or neglected by Skagit Transit. Abuse means damage or degradation resulting from accidents, deliberate actions or omission other than normal wear and tear of the user. Skagit Transit's Project Manager, or designee, will be the final arbitrator for issues involving abuse versus normal wear and tear.

- 6) Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to Skagit Transit by Contractor and those extended to Contractor by its suppliers, vendors, distributors and subcontractors. Such inconsistency or difference will not excuse Contractor's full compliance with its obligations under this Contract. Required repairs not covered by the Manufacturer's Warranty because of Contractor's deviation of the methods will be made by Contractor at no expense to Skagit Transit.

END OF SECTION 4

SKAGIT TRANSIT
INVITATION FOR BIDS #24-025
FOR
RENEWABLE DIESEL
(R99) FUEL DELIVERY
SECTIONS 5 – 9
MANDATORY FORMS

INSTRUCTIONS: This entire Section 5 will be your Bid. Answer each part directly on this form in the spaces provided. All entries below shall be legible and entered in ink or typed. **Do not leave an item blank or your bid may be considered non-responsive.** Acceptable abbreviations for use on this form: Not Applicable = (N/A).

5.1 BUSINESS INFORMATION

Business Name, as registered: _____

Type of Business (sole proprietorship, partnership, corporation, other) _____

Name & Title of person preparing bid: _____

Mailing Address, including Zip Code: _____

Telephone/Fax Numbers, including Area Code: Ph: _____ Fax: _____

E-mail Address: _____

Federal Tax Identification Number: _____ DUNS Number: _____

DBE, M/WBE or SBE Certification Number(s): _____

WA State Contractor Registration Number: _____

WA UBI# / State Excise Tax Registration Number: _____

WA Industrial Insurance Account Identification Number: _____

5.2 **BID PRICE**

The Bid Price for RENEWABLE DIESEL (R99) fuel shall include transportation costs for delivery and exclude all taxes. Except for Federal Excise Tax, any remaining taxes/assessments, as applicable, must be listed separately in Part 6.7 below (and on Contractor’s invoices) and should not be listed as components of the differential price. No other surcharges (i.e. Fuel surcharges, Hazardous cleanup surcharges, etc.) shall be allowed unless prior written approval has been granted by Skagit Transit in writing.

Contract Base Price per Gallon

OPIS Contract Average as of January 9, 2025, 10am ET \$_____
(Attach copy of price justification)

Price Differential: Bidder’s Fixed Margin/Mark-up Rate \$_____

Bid Price: Total Price per Gallon Delivered on 1/10/25 \$_____
(Based on 1/9/25 rack price)

X 266,409 Gallons (annual average) \$_____

X 5 Years = **TOTAL BID PRICE** \$_____

5.3 Emergency Delivery Fee \$_____

5.4 Other Fees/Taxes/Items (please list below):

- _____ \$_____
_____ \$_____
_____ \$_____
_____ \$_____
_____ \$_____

5.5 **Cost Savings Initiatives**

If applicable, please enter any Prompt Payment Discount terms below:

5.6 ACKNOWLEDGMENT OF ADDENDA

I/We acknowledge that Addenda numbers _____ through _____ have been received by us and have been taken into account as part of our Bid. (If no Addenda were issued, please mark each space with a "0").

5.7 BIDDER’S CERTIFICATION

I/WE CERTIFY that, to the best of my/our knowledge and belief, the solicitation documents in their entirety and any Addenda issued thereto have been examined, read, and that the Bidder thoroughly understands:

- ✓ The work/services to be provided under the Contract;
- ✓ The procedures and instructions of this solicitation;
- ✓ The terms and conditions of the resulting Contract;
- ✓ That information contained in this Bid is accurate and complete;
- ✓ That all costs except sales tax are included this Bid;
- ✓ The offer remains effective for a period of 60 days from the Bid Due Date;
- ✓ That I/we have the legal authority to commit this company to a contractual agreement;
- ✓ That our submitted Bid will become part of the public record.
- ✓ That final funding is based upon approved budget amounts by Skagit Transit’s Board of Directors.

Having carefully examined all documents for this Contract, as well as the site of the Work, and the availability of labor and materials we, the below signed Bidder, propose to perform all services identified herein in strict compliance with the Contract Documents for the amounts set forth above:

Authorized Signature _____
Date

Printed Name & Title: _____

Company Name: _____

END OF SECTION 5

**AFFIDAVIT CONCERNING NON-COLLUSION, CONFLICTS OF INTEREST,
ANTI-KICKBACKS, SEGREGATED FACILITIES, DEBARMENT AND SUSPENSION**

6.1 NON-COLLUSION

Bidder affirms that, in connection with this Bid, the prices or cost data have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, and that the Bid herewith submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person not therein named; and further says that the said Bidder has not directly, or indirectly, induced or solicited any bidder on the above work or supplies to put a sham bid, or any other person or corporation to refrain from bidding; and that said Bidder has not in any manner sought by collusion to secure to himself an advantage over any other bidders.

6.2 CONFLICTS OF INTEREST, ANTI-KICKBACKS AND CONTINGENT FEES

Bidder affirms that:

1. It has no direct or indirect pecuniary or proprietary interest in the Contract, and that it shall not acquire any such interest which conflicts in any manner or degree with the work or services required to be performed under this Contract, and that it shall not employ any person or agent having such interest. In the event that the Bidder, as Contractor, or its agents, employees or representatives hereafter acquires such a conflict of interest, Contractor shall immediately disclose such interest to Skagit Transit and take immediate action to eliminate the conflict or will withdraw from the Contract as Skagit Transit may require.
2. No gratuities, in the form of entertainment, gifts, favors, service, or other thing of intrinsic value from or to any person involved in this solicitation were offered or given by the Bidder or any of its agents, employees, or representatives to any official, member, employee, agent of Skagit Transit or family member of same, or to another governmental agency, with a view toward securing this Contract or securing favorable treatment with respect to the awarding, amending, or the making of any determination regarding performance under this Contract. Use of one's position in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain is strictly prohibited (FTA Cir 9030.1D).
3. No person or selling agency, except bona fide employees or designated agents or representatives of the Bidder, have been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.

6.3 DEBARMENT AND SUSPENSION

Bidder certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not, within a 3-year period preceding this bid, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 above; and
4. Have not within a 3-year period preceding this bid had one or more public transactions (federal, State or local) terminated for cause or default.

6.4 SEGREGATED FACILITIES

Bidder certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under its control where segregated facilities are maintained. Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity or Civil Rights clause in any contract resulting from acceptance of this bid. As used in this Certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise.

If the Bidder is unable to certify to any of the statements in this certification, Bidder shall attach an explanation to this certification. Note: The penalty for making false statements in offers is described in 18 U.S.C. 1001.

THE BIDDER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3802, *ET SEQ.*, ARE APPLICABLE THERETO.

Authorized Signature

Date

Printed Name & Title

Company Name

Subscribed and sworn to before me this _____ day of _____, 2019.

Notary Public in and for the State of _____,

residing in _____

****THIS FORM MUST BE SUBMITTED WITH YOUR BID****

Federal Transit Administration (FTA)

Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include and include final assembly in the United States for 15 passenger vans and wagons produced by Chrysler Corporation, microcomputer equipment, software, small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Bidders must submit to Skagit Transit the appropriately completed Buy America Certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America Certification will be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products:

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Signature _____ Date _____

Title _____

Company Name _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Signature _____ Date _____

Title _____

Company Name _____

****THIS FORM MUST BE SUBMITTED WITH YOUR BID****

Federal Transit Administration (FTA)

Pursuant to 40 CFR Part 34 (incorporated herein by reference), the undersigned certifies to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer of employee of any agency, a Member of Congress, or 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, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of 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 this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL *"Disclosure Form to Report Lobbying,"* in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE BIDDER, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. A 3801, ET SEQ., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of Firm: _____

Authorized Signature: _____

Printed Name and Title: _____

Date: _____

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**** THIS FORM MUST BE SUBMITTED WITH YOUR BID ****

As required by 49 CFR Part 26.11, Skagit Transit is required to create and maintain a bidders list of all firms bidding on prime contracts and bidding or quoting subcontracts on U.S. Department of Transportation-assisted contracts. To comply with this provision of the regulations, Skagit Transit requests the following information required by the FTA.

This information is not used in determining contract award but is mandatory. Failure to return a completed form with your submittal will be cause for immediate rejection of the bid or proposal as non-responsive.

Company Name: _____

Company Address: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Authorized Signature: _____

Printed Name and Title: _____

Date Signed: _____

Is your firm a Disadvantaged Business Enterprise (DBE) registered with the State of Washington Office of Minority and Women’s Business Enterprises?

Yes No

Is your firm a Small Business Enterprise (SBE) meeting the size requirements of 49 CFR Part 26.65 whereby average annual gross receipts for the previous three years do not exceed \$22.41 million (or as adjusted for inflation by the Secretary of USDOT)?

Yes No

How long has your firm been in business? _____

Please check the box that describes your total (national) gross annual receipts:

- | | |
|----------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Less than \$500,000 | <input type="checkbox"/> \$3,000,001 - \$3,500,000 |
| <input type="checkbox"/> \$500,000 - \$1,000,000 | <input type="checkbox"/> \$3,500,001 - \$4,000,000 |
| <input type="checkbox"/> \$1,000,001 - \$1,500,000 | <input type="checkbox"/> \$4,000,001 - \$4,500,000 |
| <input type="checkbox"/> \$1,500,001 - \$2,000,000 | <input type="checkbox"/> \$4,500,001 - \$5,000,000 |
| <input type="checkbox"/> \$2,000,001 - \$2,500,000 | <input type="checkbox"/> \$5,000,001 - \$5,500,000 |
| <input type="checkbox"/> \$2,500,001 - \$3,000,000 | <input type="checkbox"/> Greater than \$5,500,000 |

**** THIS FORM MUST BE SUBMITTED WITH YOUR BID ****

SKAGIT TRANSIT
INVITATION FOR BIDS #24-025
FOR
RENEWABLE DIESEL
(R99) FUEL DELIVERY

SECTION 10 –11

OPTIONAL FORMS

Submit all questions or Requests for Clarification by identifying the Section, Subpart, or page reference in the "Q&A" tab in Beacon Bids. Questions will be responded to in the Beacon Bids platform. Enter only one question or request for clarification per line.

Company Name: _____ Requestor: _____

Fax: _____ Phone: _____ E-mail: _____

Document Reference: State the Section #, Part, Subpart, Page, etc. to which you are referring.

Question or Request for Clarification:



****Optional Use Form****

 <p style="font-size: 24pt; font-weight: bold; margin: 0;">SKAGIT TRANSIT</p>	<p>600 County Shop Lane Burlington, WA 98233</p>	<p style="font-size: 24pt; font-weight: bold;">IFB #24-025</p>
<p>If your firm elects to not submit a response to this solicitation, please complete this form and return to John Stevens, Procurement Process Consultant, via email to civic-paas.skagittransit@civicinitiatives.com</p>		<p style="font-size: 18pt; font-weight: bold;">RENEWABLE DIESEL (R99) FUEL DELIVERY</p>

NO BID NOTICE

A response to the solicitation is not being submitted for the following reason(s):

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><input type="checkbox"/> We do not provide the required goods or services</p> <p><input type="checkbox"/> The project scope is too small</p> <p><input type="checkbox"/> The project scope is too large</p> <p><input type="checkbox"/> Specifications are not sufficiently defined</p> <p><input type="checkbox"/> Cannot handle due to present work load</p> | <p><input type="checkbox"/> Cannot meet delivery or response time requirements</p> <p><input type="checkbox"/> Licensing restrictions (please explain below)</p> <p><input type="checkbox"/> Insufficient time to prepare submittal</p> <p><input type="checkbox"/> Cannot comply with contract terms and conditions (please specify below)</p> <p><input type="checkbox"/> Other reasons (please explain below)</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

ADDITIONAL REASONS / COMMENTS:

<p>I/We wish to respond to similar services in the future</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Authorized Company Official – Signature and Title</p>	<p>Date</p>
<p>Do not write in this space</p>	<p>Firm Name</p>	
	<p>Address</p>	
	<p>City</p>	
	<p>State</p>	<p>Zip Code</p>
	<p>Telephone Number</p>	

****Optional Use Form****