

Joint Bid

City of Yakima and Yakima County



Bid Documents & Specifications for

Bid No. 11324 Bulk Delivery and Purchase of Gasoline & Diesel Fuel

CONTENTS

Bid Documents

Notice to Bidders

Bid Form

Non-Collusion Declaration

Bid Signature Sheet

Bidders Check List

General Conditions

Special Conditions

Vendor Qualification Statement

Safety Questionnaire

Attachment A - Estimated Usage

Attachment B - Delivery locations

Federal Regulations

Sample of Contract

Certificate of Insurance Sample

General Provisions

City of Yakima Purchasing Division

129 No. 2nd St.

Yakima, Washington 98901

(509) 575-6093

July 11, 2013

NOTICE TO BIDDERS
City of Yakima with Yakima County
Joint Bid Call 11324

Notice is hereby given by the undersigned that sealed bids will be accepted in the office of the Yakima City Clerk, Yakima City Hall, 129 N. 2nd Street, Yakima, Washington 98901 until the hour of 2:00 pm, July 11, 2013, and publicly opened and read for:

Bulk Delivery and Purchase of Gasoline and Diesel Fuel

Above per specifications or approved equal.

Bid forms and Specifications are available in the office of the Purchasing Manager, City Hall, Yakima, Washington. 509-575-6093.

The City and County of Yakima reserves the right to reject any and all bids. Minority vendors are encouraged to apply.

Dated this 19th day of June, 2013.

(Seal)

Susan Knotts, CPPB
Buyer II

Publish on June 21st and 22nd, 2013

CITY OF YAKIMA WITH YAKIMA COUNTY
BID NO. 11324
Bulk Delivery and Purchase of Gasoline & Diesel Fuel

BID FORM

The undersigned hereby certifies that they have thoroughly examined the delivery sites and have read and understand the specifications and service embraced in this project:

The City/County reserves the right to award delivery and card lock purchases to one vendor, or different vendors.

All Bids to be quoted FOB Destination.

All prices quoted must be:

- a) **Exempt from Federal Excise Tax.**
- b) **Exclusive of all other US, State and local taxes and Surcharges. All taxes must be listed separately on invoices and should not be listed as components of the differential price.**

Diesel	Card Lock - Vendors Pump		
	OPIS Average 07/11/13	+/- Price Differential (Margin)	TOTAL PRICE PER GALLON
Card Lock Purchase at Vendor's Pump (Weekly Average)			
Premium Unleaded Gasoline	Card Lock - Vendors Pump		
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
Card Lock Purchase at Vendor's Pump (Weekly Average)			
Regular Unleaded Gasoline	Card Lock - Vendors Pump		
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
Card Lock Purchase at Vendor's Pump (Vendor to state whether they use a Weekly or Daily Average)			

Regular Unleaded Gasoline			Delivered
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
Full Truck and Trailer			
One Half Truck and Trailer			
2,500 Gallons or Less			
Conditioner/Treatment Additives			
#1 Dyed Diesel Ultra Low Sulfur			Delivered
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
Full Truck and Trailer			
One Half Truck and Trailer			
2,500 Gallons or Less			
Conditioner/Treatment Additives			
Weatherization Additives			
#2 Dyed Diesel Ultra Low Sulfur			Delivered
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
Full Truck and Trailer			
One Half Truck and Trailer			
2,500 Gallons or Less			
Conditioner/Treatment Additives			
Weatherization Additives			

BIO-Diesel (Bid as alternate ~ may or may not be used)			
	OPIS Average 07/11/13	+/- Price Differential	TOTAL PRICE PER GALLON
B100 (Est. volume 45,000 to 50,000 gallons per year)			
B20 (Est. volume 225,000 to 225,000 gallons per year)			
<p>Enter Prompt Payment Discount If paid within fifteen (15) days Upon receipt of invoice <i>price per gallon</i> \$_____</p>			

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive quoting in connection with the project for which this proposal is submitted.

2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

BID SIGNATURE SHEET
JOINT CITY/COUNTY BID NO. 11324

Bulk Delivery and Purchase of Gasoline & Diesel Fuel

The bidder is hereby advised that by signing this signature sheet he/she is deemed to have acknowledged all requirements contained herein.

PROMPT PAYMENT DISCOUNT TERMS OFFERED _____%, NET _____

****Receipt is hereby acknowledged of addendum(s) No. (s) _____, _____ & _____.**

SIGNATURE OF AUTHORIZED OFFICIAL(S)

Firm Name

Address

Sign Name

Print Name

Date Signed

Phone Number

Fax Number

E-Mail Address

PROPOSAL MUST BE SIGNED 

BIDDER'S CHECK LIST

The bidder's attention is especially called to the following forms which must be executed as required, and submitted with their bid:

- A. **Bid Form**
The unit prices, extensions and total amounts bid must be shown in the spaces provided (Pages 3 - 5).
- B. **Bid Signature Sheet**
To be filled out and signed by the bidder (Page 6).
- C. **Vendor Qualification Statement**
To be filled out and signed by the bidder (Pages 18 - 19)
- D. **Safety Questionnaire**
To be filled out and signed by the bidder (Page 20)
- E. **Federal Regulations Certifications**
 - 1) Buy America Requirements (Pages 24 - 25).
 - 2) Lobbying (Page 27-29).

The following forms are to be executed after the contract is awarded:

- A. **Contract**
This agreement to be executed by the successful bidder.
- B. **Certificate of insurance**
Certificate will be requested from the successful bidder.

CITY OF YAKIMA WITH YAKIMA COUNTY

BID NO. 11324

Bulk Delivery and Purchase of Gasoline & Diesel Fuel

I. GENERAL:

SCOPE

This is a Joint Bid for the City of Yakima (hereinafter referred to as “City”) and Yakima County (hereinafter referred to as “County”) for the purchase and delivery of Gasoline and Diesel, with the City acting as the lead agency with contractual signature authority. The service under this Contract shall include the furnishing of all labor, equipment, appliances and materials necessary for or incidental to the operations, the purchase and delivery of fuel as indicated in these specifications. Materials shall be manufactured in accordance with the best common practices and standards and only the best and safest methods of operations will be allowed.

A. BID FORMS

All bids must be made upon bid forms to be obtained from the City/County Purchasing Office, City Hall, 129 North 2nd Street, Yakima, Washington, 98901. (509) 575-6093.

B. DUE DATE

Bids shall be submitted to the City Clerk’s Office, Yakima City Hall, 129 North 2nd Street, by 2:00 p.m. on July 11, 2013 in a sealed envelope labeled Bid No. 11324 with the date and time of bid opening written on it. If you plan on attending the bid opening, DO NOT BRING YOUR BID WITH YOU INTO THE OPENING ROOM. All bids must be submitted to the Clerk’s Office.

C. TERM

The period of this contract shall be for a period of one year from its effective date. The City/County may, at its option, extend the contract on a year to year basis for up to four additional years provided, however, that either party may at any time during the life of this contract, or any extension thereof, terminate this contract by giving thirty (30) days notice in writing to the other party of its intention to cancel. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City/County provides advance notice of the intention to not renew.

D. MORE OR LESS

Quantities are estimated only and shall be bid on a MORE OR LESS basis. For the purpose of comparison, bids shall be made on the various types of fuel in the quantities listed in the proposal. Listed quantities shall not be considered firm estimates of requirements for the year, nor shall the City/County be bound or limited to quantities listed. Payment will be made only for quantities actually ordered, delivered, and accepted, whether greater or less than the stated amounts.

E. CHANGES

Any proposed change in this contract shall be submitted to the City of Yakima Purchasing Manager for her prior approval and she will make the change by a contract modification. Any oral statement or representation changing any of these terms or conditions is specifically unauthorized and is not valid.

F. TERMINATION - CONVENIENCE

This contract may be terminated by either party by giving sixty (60) days written notice of such intent and will become effective sixty (60) days from the date such written notice is delivered to the applicable party to the contract.

G. TERMINATION - CAUSE

The City/County reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Vendor are deemed by the City/County to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the City/County may terminate this contract, with or without cause, upon thirty (30) days written notice to Vendor.

H. TAXES AND FEES

The City of Yakima and Yakima County are exempt from all Federal Excise Tax. Appropriate taxes and fees that shall be allowed must be itemized on invoices are:

- US Federal lust/spill fund
- Gasoline Tax
- Washington Spill Fund
- Winterization additives

No other surcharges, i.e. Fuel surcharges, Hazardous cleanup surcharges, etc. shall be allowed unless prior written approval has been granted by the City/County Purchasing Manager.

I. PERMITS AND LICENSING

1. Procurement of a City Business License. The successful vendor must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
2. The Vendor must obtain all required permits and license required for all phases of this contract.

J. RESPONSIBILITY

Bidder's History: The City/County will consider all material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is capable of and has a history of successfully completing contracts of this type, including, but not limited to:

- a) That it is skilled and regularly engaged in the general class or type of work called for under the contract.
- b) That is has the requisite experience and ability, sufficient capital, facilities, personnel and plant to enable it to execute the work properly and successfully, and to complete it within the time stated in its proposal.
- c) That it has performed satisfactorily other contracts of like nature, magnitude and comparable difficulty and at comparable rates of progress.

Evidence: A Bidder, if requested, must be prepared to present evidence of experience, ability, service facilities and financial standing necessary to meet satisfactorily the requirements set forth or implies in the proposal.

K. AWARD OF CONTRACT

The City/County of Yakima reserves the right to reject any or all bids or accept any presented which meet or exceed these specifications, and which would be in the best interest of the City/County and will not necessarily be bound to accept the low bid.

1. The award of the Contract will be made within sixty days after the opening of the proposals.
2. Company experience level and qualifications of subcontractor or agent designated to complete the requirements is important and will be considered in the evaluation of the bid. The enclosed Vendor Qualification Statement must be completed and enclosed with the bid to be considered for award. Non-conformance may result in rejection of bid as non-responsive.
3. It shall not be the responsibility of the City/County to provide engineering or other services to protect the Vendor from additional costs accrued from performing this Contract.

L. FUELS BOUGHT FROM DIFFERENT SUPPLIER

Should the contracted vendor be unable to or refuse to supply fuel, on any given day, against this predetermined delivery schedule to which the supplier has agreed and the City/County is forced to procure fuel from a different supplier, the difference in the Bid price of the fuel and that paid the new supplier shall be charged to and paid for by the contracted vendor holding the Bid award for these fuels.

Vendor shall not, however, be responsible for delays in delivery due to:

- Unavoidable mechanical breakdowns
- Strikes
- Inability to secure component materials
- Acts of God
- Fire

Provided the City of Yakima Purchasing Manager is notified in writing by the contracted vendor of such pending or actual delay. In the event of any delay, the date of delivery shall be extended for a period equal to the time lost due to the reason for the delay.

II. SPECIAL CONDITIONS:

A. PRICE ESCALATION/DE-ESCALATION

Because fuel pricing fluctuates from one day to another, the Oil Price Information Service (OPIS) subscription service has become the defacto standard for the basis of establishing fuel contract prices. OPIS regularly collects and reports the fuel prices at the refueling terminals (also referred to as the "Rack") across the nation. Fuel contract prices will be allowed to increase or decrease during the life of the contract and **OPIS DAILY AVERAGE rack prices – SEATTLE** correlated to the actual delivery date, (with the exception of card lock locations that will use a weekly or daily rolling average) will serve as the basis for establishing contract fuel prices.

Biodiesel shall be priced out using the OPIS Biodiesel daily report (Tacoma B100 rack price). The prices for all fuel types in the contract award shall escalate/de-escalate in exact proportion to an established price base, and shall remain constant throughout the contract period and any renewals thereafter.

B. BIODIESEL

Biodiesel may be used in the future by the City and/or the County. Vendor shall state what the margin would be, should either entity decide to use it. The estimated annual volumes listed are for purposes of comparison only. If biodiesel were to be used in the future, the City/County's intent at this time would be to purchase B100 and blend it ourselves.

C. FUTURE FUEL TYPES

Because OPIS price index will serve as the basis for establishing contract pricing and bid multipliers are to be applied to all gasoline and diesel family of fuels, the introduction of any new gasoline or diesel type tracked by OPIS may (at the discretion of the City/County) be added to the contract.

D. QUALITY

All fuel supplies must meet or exceed the most current ASTM specifications relevant to the fuel type ordered.

- Premium Unleaded Gasoline shall be rated 91 Octane.
- Unleaded Regular Gasoline shall be rated 87 Octane.
- Diesel #1 Ultra Low Sulfur Diesel shall be per ASTM D396.
- Diesel #2 Ultra Low Sulfur Diesel shall be per ASTM D975
- Biodiesel shall be per ASTM D6751.

E. ADDITIVES/CONDITIONERS/TREATMENTS

Vendors will be required to supply and blend a fuel additive, conditioner or treatment products to the fuel purchased. The price charged for additives, conditioners or treatments shall not exceed the lowest price charged to other purchasers and the prices are to be comparable to current market rates of other suppliers. At the customer's request, the Vendor is to provide supporting documentation to validate price compliance.

F. WEATHERIZATION ADDITIVES

In addition to paragraph E above, weatherization additives are to automatically be added by the vendor from October 15 to February 15 of each year and at any time when the temperature dips below the manufacturer's recommendation to add such additives.

G. SAFETY STANDARDS

The handling of fuel shall comply with all applicable safety laws and standards of the State of Washington and standards established by the United States Department of Transportation, the United States Department of Labor's Occupational Safety and Health Act (OSHA), accepted industry practices, and City/County requirements.

H. SECURITY

Some delivery sites may have future security restrictions requiring delivery personnel to pass a criminal background check before access is granted. In such cases, the contractor will provide the customer with the necessary paperwork for any drivers used to service these accounts. The customer is to coordinate this activity and provide the contractor sufficient advance notification of this requirement.

I. ENVIRONMENTAL CONSIDERATIONS

Vendors shall comply with all environmental regulations relevant to the contracted refueling service provided. All Department of Ecology Mobile Transfer rules shall apply.

J. NEGLIGENCE

The Vendor assumes all liability and responsibilities for the handling and transportation of the fuel until it has been placed in the storage tank(s). The Vendor shall be responsible for any and all damage to buildings and/or properties caused by delivery trucks, operating personnel and damages or services necessitated by the failure to deliver fuel or the delivery of faulty product and equipment. Any repair or clean up services shall be made at the Vendor's expense and to the satisfaction of the customer. If the Vendor fails to comply with these requirements within a reasonable time, the City/County may deem it expedient to repair damage and perform the necessary services at the expense of the Vendor. Should the fuel be negligently unloaded into the wrong tank (i.e. diesel fuel into a gasoline storage tank), the Vendor is responsible for the immediate removal, cleaning and replacement of both products, for any resulting damage, and the loss of revenue.

K. SPILL RESPONSIBILITIES

The Vendor is solely responsible for any and all spills, leaks or releases, which occur as a result of, or are contributed to by the actions of its agents, employees, or subcontractors. Therefore, the Vendor shall take all measures as required by law to prevent fuel spills (which includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into any land or water). In the event of a fuel spill, leak, or release, the Vendor shall be responsible for the required notifications, containment, clean up, and disposal of the fuel spilled. Should the Vendor fail or refuse to take the appropriate and timely containment, clean up, disposal actions, the City/County may do so and the Vendor shall reimburse the City/County 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 Vendor or submitted as a claim to the bonding company.

L. DELIVERY – KEEP FULL SERVICE

Tank sizes are listed on ATTACHMENT B. **It is the City's intention to never let their tanks go below 5,000 gallons, and the County's intention to never let their tanks go below 2,500 gallons.**

Unless prior approval has been granted and specific arrangements have been made, if the Vendor arrives outside the scheduled delivery hours and is unable to or denied access to making the delivery, the City/County shall incur no expense and the Vendor assumes all liabilities and responsibility for that attempted delivery.

M. TANK LEVELS

Vendor shall monitor the level of all tanks on a daily basis. Vendor will plan and schedule deliveries accordingly to ensure the most expeditious and economic delivery. Vendor will ensure that tank levels never fall below the minimums listed. If tank levels fall below the minimum level more than three (3) times within a two (2) month period, the vendor will be in default of contract and the City/County may cancel contract and purchase fuel from a different supplier.

N. DELIVERY

When the fuel is delivered, the Vendor will be required to provide a delivery invoice (bill of lading) to the Purchaser which will be used to verify the Vendors price with the OPIS rack price average. Routine single order deliveries shall be scheduled by Vendor to be made during normal working hours (8:00 AM to 5:00 PM) unless otherwise specified by Purchaser.

O. EMERGENCY DELIVERIES

Since fuel being purchased with this contract serves law enforcement, emergency fire services and other critical government services, in case of emergency, priority will be given to this contract. Vendor must be equipped and prepared to successfully fulfill an emergency delivery 7 days a week, 24 hours a day.

P. SPLIT LOADS

Prices shall be the same for bulk and split deliveries, i.e. if the County orders a full truck and has part of the load delivered to Sunnyside and part of the load delivered to Yakima, the price shall be for a full truck load.

Q. VOLUME VERIFICATION REQUIREMENTS

To ensure that delivery volumes are accurately calculated, the following shall apply:

- a) Dispensing meters are to be certified by the Washington State Department of Weights and Measures and delivery volumes shall not be temperature corrected.
- b) The City/County reserves the right to randomly ask for stick readings.
- c) All invoices are to be accompanied with the appropriate volume delivery verification documentation including, but not limited to, a metered delivery ticket, bill of lading as well as a record of before and after delivery readings.

R. INVOICES AND PAYMENT TERMS

The City/County will make payment on a Net 30 day basis unless a prompt payment discount is offered. Bidders are urged to offer prompt payment discounts. A space is provided on the Bid Form for a cent per gallon discount if payment is made within fifteen (15) days of receipt of invoice.

Invoice pricing shall be itemized, showing the OPIS price, the differential, and the composite price.

Invoices are to be mailed to the City/County departments specified on the resulting purchase order, blanket order, or contract. All invoices must include the purchase order number, blanket purchase order number, or contract number. Invoices must be exclusive of product other than bid items. Failure to comply may result in delayed payments.

Vendor's invoices must list charges for weatherization additives to diesel fuel as a separate line item.

S. INSURANCE

Indemnity/Liability Insurance.

1. The Vendor agrees to indemnify and save harmless the City/County, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance or any service hereunder.
2. The Vendor shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.
3. Liability Insurance: The vendor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability with "miss delivery of product" coverage with insurance carriers admitted to do business in the State of Washington. The insurance

companies must carry a Best's Rating of A- VII or better. At all times during the life of this contract, Vendor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverage, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Vendor or its insurer(s) to the City/County of Yakima. The requirements contained herein, as well as City/County's review or acceptance of insurance maintained by Vendor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this contract. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Combined Single Limit:	\$1,000,000	Per Occurrence
	\$2,000,000	Annual Aggregate
Automobile Liability:	\$1,000,000	Per Accident
Employers Liability Stop Gap:	\$1,000,000	
Umbrella over General Liability	\$4,000,000	Per Occurrence
Pollution Liability:	\$5,000,000	

(Coverage to include loading and unloading of all petroleum products.)

The City of Yakima/Yakima County, its agents, employees, authorized volunteers; elected and appointed officials are included as Primary/Non-Contributory additional insureds.

The Vendors' insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City/County shall be in excess of the Vendor's insurance and shall not contribute to it.

The Vendor will provide a Certificate of Insurance to the City/County as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the Purchasing Manager prior to commencement of this work.

If at any time during the life of the contract or any extension, the Vendor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City/County to terminate the contract.

The Vendor shall also maintain workers compensation through the State of Washington.

3. Employers Liability (Stop Gap): The vendor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and shall maintain Employers Liability insurance with a limit of no less than \$1,000,000. The County shall not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

Vendor agrees to assume full liability for all claims arising from this contract including claims resulting from negligent acts of all subcontractor(s). Contractor is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

4. Business Auto Policy (BAP): In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Vendor, subcontractor, or anyone employed by either.

Vendor shall maintain business auto liability single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability - Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided and the Motor Carrier Act Endorsement (MCS 90) shall be attached and required after award and must cover all vehicles to be used with this contract.

5. Vendor's Waiver of Employer's Immunity under Title 51 RCW. Vendor intends that its indemnification, defense, and hold harmless obligations set forth above in section A. shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Vendor's indemnification, defense, and hold harmless obligations set forth above in section A, Vendor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Vendor against the City/County and its officers, employees, agents, and volunteers. The parties have mutually negotiated this waiver. Vendor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Vendor, and anyone for whose acts Vendor may be liable in connection with its performance of this Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.
6. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Vendor and the City/County, its officers, officials, employees, and volunteers, the Vendor's liability hereunder shall be only to the extent of the Vendor's negligence.

T. Compliance/DBE Requirements:

Compliance with Laws:

The successful bidder shall comply with applicable Federal, State and local laws, regulations, and executive orders which are incorporated by reference herein. This bid may possibly be used by various divisions that are partially federally funded, and, therefore, must adhere to the following federal regulations, such as DBE, Lobbying and Debarment.

Disadvantaged Business Enterprise:

In response to Federal Regulations, the City of Yakima has established a goal for participation of Disadvantaged Business Enterprise (DBE) in City funded projects. The current goal is 12%. Contractors are expected to assist the City of Yakima by meeting these goals. Contractors are encouraged to give consideration to Disadvantaged Businesses and report to the City of Yakima where they have been successful in utilizing Disadvantaged Businesses.

If contractor is certified DBE, please enter your certification number below:

DBE Certification No. _____

Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements:

By signing this proposal, the successful vendor 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 or employee of any agency, a Member 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 any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than the Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member 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 will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, 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 is placed when this transaction was made or entered into. Submission of this certification is the prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and 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.

Certification of Lower-Tier Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion:

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor or potential sub-contractor under a major third party contract), _____, certifies by submission of this proposal, that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor or potential sub-contractor under a major third party contract) is unable to certify to any of the statements in this certification, such Participant will attach an explanation to this proposal.)

THE LOWER TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR OR POTENTIAL SUB-CONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) _____, 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 U.S.C. SECTIONS 3801 ET SEQ ARE APPLICABLE THERETO.

U. COMPLIANCE WITH FTA REQUIREMENTS

Attached to this bid specification are the Federal Transit Administration 3rd Party Contracting Clauses. Where applicable, vendors shall comply with the sections that apply to this bid call.

III. VENDOR QUALIFICATION STATEMENT (To be submitted with Bid)

Vendor must complete all portions of this statement before bid proposal will be considered. The following statements as to experience, equipment and general qualifications of the bidder as submitted in conjunction with the proposal, as part thereof and truthfulness and accuracy of information is guaranteed by the bidder and included in bid evaluation.

A. Name and address of principal business office which Contract will be administered from:

Telephone: _____

E-Mail: _____

B. Number of years Vendor has been engaged in business: _____

C. The bidder as a Vendor has never failed to satisfactorily perform a contract awarded to him except as follows: (Name of any and all exceptions and reasons thereof)

D. Vendor must have at least five (5) years experience as a provider in this field of work and have satisfactorily completed three (3) contracts of this nature in the last five (5) years:

1. Location and for who performed:

Phone _____ Contact Person _____

2. Location and for who performed:

Phone _____ Contact Person _____

IV. Safety Questionnaire (To be submitted with Bid)

You must fill out this questionnaire and submit it with your bid if you are offering a price on Bulk Delivery and Purchasing of Gasoline and Diesel Fuel. Failure to complete the Questionnaire may be sufficient grounds for rejection of Bid.

1. Is fuel shipped on radio-equipped trucks? Yes No

2. What safety equipment is carried on the delivery trucks?

A. _____

B. _____

C. _____

D. _____

E. _____

3. What is your unloading procedure (using the above listed safety equipment)?

4. What emergency training will the drivers receive?

Name of Course:

Number of Hours:

Date of Training:

1. _____

2. _____

3. _____

5. What procedures are proposed for emergencies during transport?

(I.e. Will local Fire Departments be notified of transport routes and times?)

1. _____

2. _____

3. _____

4. _____

6. Who in the supplier's organization do we contact in case of emergency?

(Name, Position, Phone number)

ATTACHMENT A

ESTIMATED USAGE

Although the City and County do not guarantee volume commitments, the total projected annual usage in gallons is as follows:

CITY OF YAKIMA (Unleaded and Premium gasoline from vendor pumps **are** included in totals)

Premium Unleaded Gasoline	1080 gal.
Regular Unleaded Gasoline	326,475 gal.
Diesel	7895 gal.
Dyed Diesel (#2)	592,365 gal.

YAKIMA COUNTY (Unleaded gasoline from vendor pumps **are** included in totals)

Regular Unleaded Gasoline	172,595 gal.
Diesel	10,000 gal.
Dyed Diesel (#1)	264,000 gal.

DELIVERY LOCATIONS

CITY OF YAKIMA

A. City of Yakima Public Works		
2301 Fruitvale Blvd		
Yakima, WA		
15,000 gal Unleaded gasoline tank	Approximately	180,400 gal p/yr
15,000 gal Dyed Diesel tank	Approximately	525,000 gal p/yr
B. Tahoma Cemetery		
1801 Tahoma Ave		
Yakima, WA		
500 gal Unleaded gasoline tank	Approximately	500 gal p/yr
500 gal Dyed Diesel #2 tank	Approximately	850 gal p/yr
	Plus Diesel #1	300 gal p/yr
C. First Street Fuel Station		
302 N. 1st Street		
Yakima, WA		
15,000 gal Unleaded gasoline tank	Approximately	45,000 gal p/yr
10,000 gal Dyed Diesel tank	Approximately	50,000 gal p/yr
D. City of Yakima Waste Water Plant		
2220 E Viola		
Yakima, WA		
1,000 gal Unleaded gasoline tank	Approximately	12,675 gal p/yr
500 gal Dyed Diesel #2 tank	Approximately	10,645 gal p/yr
E. Yakima Fire Station No. 95		
807 E Nob Hill Blvd		
Yakima, WA 98901		
500 gal Unleaded gasoline tank	Approximately	1,800 gal p/yr
500 gal Dyed Diesel #2 tank	Approximately	2,900 gal p/yr
F. Yakima Fire Station No. 92		
7701 Tieton Drive		
Yakima, WA 98908		
250 gal Unleaded gasoline tank	Approximately	Didn't use last year
250 gal Dyed Diesel #2 tank	Approximately	2,975 gal p/yr
G. Yakima Air Terminal		
2406 West Washington Ave., Suite B		
Yakima, WA 98903		
1,000 gal Unleaded gasoline tank	Approximately	4,000 gal p/yr
2,000 gal Dyed Diesel # 2 tank	Approximately	8,000 gal p/yr

YAKIMA COUNTY

**H. Yakima County Shop
1216 S. 18th St
Yakima, WA**

10,000 gal Unleaded gasoline tank	Approximately	70,000 gal p/yr
10,000 gal Dyed Diesel tank	Approximately	94,000 gal p/yr

**I. Yakima County Sunnyside Shop
321 S. 1st Ave
Sunnyside, WA**

6,000 gal Unleaded gasoline tank	Approximately	11,000 gal p/yr
6,000 gal Dyed Diesel tank	Approximately	33,000 gal p/yr

**J. Terrace Heights Landfill Site
7151 Roza Hill Drive
Yakima, WA**

6,000 gal Dyed Diesel tank	Approximately	91,000 gal p/yr
----------------------------	---------------	-----------------

**K. Lower Valley Transfer Station
1150 Luther Road
Granger, WA**

1,100 gal Dyed Dieseltank	Approximately	6,000 gal p/yr
---------------------------	---------------	----------------

**L. Cheyne Landfill Site
4970 Cheyne Rd
Zillah, WA**

2,500 gal Dyed Diesel tank	Approximately	40,000 gal p/yr
----------------------------	---------------	-----------------

FEDERAL REGULATIONS

The successful bidder shall comply with applicable federal, state and local laws, regulations, and executive orders, which are incorporated by reference herein. This bid is being used by the City of Yakima Transit Division, which receives Federal funding and, therefore, must adhere to the following federal regulations:

FEDERAL TRANSIT ADMINISTRATION 3RD PARTY CONTRACT CLAUSES FOR CITY OF YAKIMA

A.1 - Federally Required and Other Model Contract Clauses

- ~~1. Fly America Requirements SECTION DELETED~~
2. Buy America Requirements
- ~~3. Charter Bus and School Bus Requirements (School Bus section removed-not applicable)
SECTION DELETED~~
4. Cargo Preference Requirements
- ~~5. Seismic Safety Requirements SECTION DELETED~~
6. Energy Conservation Requirements
7. Clean Water Requirements
- ~~8. Bus Testing SECTION DELETED~~
- ~~9. Pre Award and Post Delivery Audit Requirements SECTION DELETED~~
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
- ~~13. Bonding Requirements SECTION DELETED~~
14. Clean Air
15. Recycled Products
- ~~16. Davis Bacon and Copeland Anti Kickback Acts SECTION DELETED~~
- ~~17. Contract Work Hours and Safety Standards Act SECTION DELETED~~
- ~~18. [Reserved] SECTION DELETED~~
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
- ~~26. Patent and Rights in Data SECTION DELETED~~
- ~~27. Transit Employee Protective Agreements SECTION DELETED~~
28. Disadvantaged Business Enterprises (DBE)
29. State and Local Law Disclaimer
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The 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, and 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 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. 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 or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working 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 the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. 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.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS
33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The 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.

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification 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 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] 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 or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives 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. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide 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.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, 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 the Purchaser, the FTA Administrator, the Comptroller General, 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).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
<u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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 Master Agreement between Purchaser and 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.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The 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.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

1. The 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 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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 this contract work is being performed. In addition to other penalties that may be applicable, the 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 on the Contractor to the extent the Federal Government deems appropriate.
2. The 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 FTA under the authority of 49 U.S.C. § 5307, the 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. The 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 subcontractor who will be subject to the provisions.

21. TERMINATION

**49 U.S.C. Part 18
FTA Circular 4220.1E**

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such

contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest.

If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the 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, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery 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, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, 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.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer 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. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, 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, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(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 laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor

(U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 the Project. The 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, 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(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) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also 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.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of

employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available 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 (Recipient), (Architect) 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.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE) **49 CFR Part 26**

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. 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 Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out 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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. **{If a separate contract goal has been established, use the following}** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [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.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, 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. The

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 {insert agency name}.

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contract

This disclaimer applies to all contracts.

Flow Down

The Disclaimer has unlimited flow down.

Clause/Language

State and Local Law Disclaimer – The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

**Drug and Alcohol Testing
Option 1**

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

**Drug and Alcohol Testing
Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing
Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

**NOTE: A separate contract will be required for City and County*

SAMPLE
C O N T R A C T

THIS AGREEMENT is made and entered into by and between the **City of Yakima** (hereinafter "Agency"), a Washington municipal corporation, and _____, a _____ Corporation, (hereinafter "Contractor").

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

1. Scope of Services. The Contractor shall supply gasoline and diesel delivery services per the dollar amounts listed in the bidder's proposal as per City/County Bid No. 11324. The Contractor shall include the furnishing of all labor, equipment, appliances and materials necessary for or incidental to the operations, the purchase and delivery of fuel all in accordance with and as described in the attached specifications. Materials shall be manufactured in accordance with the best common practices and standards and only the best and safest methods of operations will be allowed and shall perform under this contract and every part thereof.

Service shall start within _____ Days after signing of contract.

2. Incorporation of Contractor's Bid Proposal. Except to the extent that it conflicts or is inconsistent with this Agreement, the Contractor's Bid, dated July 11, 2013, including all of Contractor's representations, conditions and obligations, submitted to the Agency on July 11, 2013, (hereafter "Bid") and is fully incorporated herein by this reference. Any inconsistencies or conflicts between the Contractor's Bid and this Agreement shall be resolved in favor of the Agreement terms, conditions, obligations and language.

3. Integration Clause. There are no representations, agreements or conditions relating to the subject matter hereof other than as expressly set forth in this agreement which contains the entire agreement between the parties. The Agency acknowledges that no oral representations or warranties have been made by Contractor or by any of the Contractor's agents or employees.

4. Consideration. Contractor shall be compensated as set forth on the Bid Form of Contractor's Bid Proposal. Contractor shall submit an itemized invoice to the Agency evidencing the OPIS price, the differential, the composite price for all fuel provided during the preceding billing cycle. Any weatherization additives, conditioners, and treatments to fuel shall be listed as a separate line item. The Agency shall make payment to Contractor within thirty (30) calendar days following receipt of the properly completed invoice unless a prompt payment discount is offered. All payments are expressly conditioned upon Contractor providing services that are satisfactory to the Agency.

5. **Term of Agreement.** Unless terminated in accordance with Section 5, the term of this Agreement shall be for a period of one (1) year, commencing _____, 2013; provided, however, that Agency may, at its option, extend this Agreement for four (4) additional one (1) year periods, for a total of five (5) years. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance of the intention to not renew.

6. **Termination - Convenience.** This contract may be terminated by either party by giving sixty (60) days written notice of such intent and will become effective sixty (60) days from the date such written notice is delivered to the applicable party to the contract.

7. **Termination - Cause.** The City reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Vendor are deemed by the City to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the City may terminate this contract, with or without cause, upon thirty (30) days written notice to Contractor.

8. **Agreement Modification.** This Agreement contains all terms and conditions agreed upon by the parties. No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing and executed by both parties.

9. **Independent Contractor Status of Contractor.** Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between Contractor or any officer, employee or agent of Contractor and the Agency. In no event shall the Contractor be authorized to enter into any agreement or undertaking for or on behalf of the Agency. Contractor and the Agency understand and expressly agree that Contractor is an independent contractor in the performance of each and every part of this Agreement. Contractor, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. Additionally, and as an independent contractor, Contractor and its employees shall make no claim of Agency employment nor shall claim against the Agency any related employment benefits, social security, and/or retirement benefits. Contractor shall also be responsible for compensating its employees and for paying all related taxes, deductions and assessment, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. Contractor shall pay the same before it becomes due.

10. **Delegation of Professional Services.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned, transferred or subcontracted out in whole or in part by Contractor to any other person or entity. The services provided for herein shall be performed by the Contractor, and no person other than regular associates or employees of the Contractor shall be engaged upon such work or services except upon written approval by designative representative of the Agency.

11. Maintenance of Records, Annual Report and Inspections.

a. Contractor shall maintain accounts and records, including personnel, property, financial, and program records, and such other records as the Agency may deem necessary to ensure proper accounting for all relevant funds and compliance with this Agreement, including a system of internal controls and accounting conforming with generally accepted accounting principles and auditing standards.

b. All such records and documents shall be retained by Contractor and made available for inspection, audit and copying by the Agency representatives and/or appropriate federal/state officials during the term of this Agreement and for a period of six (6) years following the termination of this Agreement. This provision shall survive the term of this Agreement.

12. Warranty. Contractor warrants that all services provided hereunder shall be furnished in a manner consistent with industry standards and the level of professional skill generally acceptable in the industry with regard to the service of this kind.

13. Non-discrimination. During the performance of this Agreement, Contractor shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, race, color, sex, religion, national origin, creed, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. This non-discrimination provision shall include, but not be limited to, the following:

a. The benefits or services provided by the Contractor at the Facility;

b. The rules, regulations, and/or practices established by the Contractor for use of the Facility.

Contractor shall furnish all information, evidence, documents and reports required by the Agency to substantiate compliance with this non-discrimination clause.

14. The Americans with Disabilities Act. With regard to the services to be performed pursuant to this Agreement, Contractor agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

15. Conflict of Interest. Contractor represents that it and its employees do not have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Agreement.

16. **Compliance with Applicable Laws.** Contractor shall provide auction services in accordance with all applicable statutes, laws, regulations, and ordinances and shall not allow the Auction facility to be used for any unlawful purposes.

17. **No City Insurance.** It is understood the Agency does not maintain liability insurance for Contractor or for its employees, agents, officers and subcontractors.

18. **Insurance.**

a. The Contractor agrees to indemnify and save harmless the City/County, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance or any service hereunder.

The Contractor shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

The City of Yakima/Yakima County, its agents, employees, authorized volunteers; elected and appointed officials are included as Primary/Non-Contributory additional insureds.

The Contractors' insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City/County shall be in excess of the Contractor's insurance and shall not contribute to it.

The Contractor will provide a Certificate of Insurance to the City as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the Purchasing Manager prior to commencement of this work.

If at any time during the life of the contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the contract.

The Contractor shall also maintain workers compensation through the State of Washington.

Liability Insurance: The Contractor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability with "miss delivery of product" coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the City of Yakima. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Combined Single Limit:	\$1,000,000	Per Occurrence
	\$2,000,000	Annual Aggregate
Automobile Liability:	\$1,000,000	Per Accident
Employers Liability Stop Gap:	\$1,000,000	
Umbrella over General Liability	\$4,000,000	Per Occurrence
Pollution Liability:	\$5,000,000	

(Coverage to include loading and unloading of all petroleum products.)

Employers Liability (Stop Gap): The Contractor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and shall maintain Employers Liability insurance with a limit of no less than \$1,000,000. The County shall not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

Contractor agrees to assume full liability for all claims arising from this contract including claims resulting from negligent acts of all subcontractor(s). Contractor is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

Business Auto Policy (BAP): In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Pollution Liability: Coverage at least as broad as that provided under ISO Pollution Liability - Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided and the Motor Carrier Act Endorsement (MCS 90) shall be attached and required after award and must cover all vehicles to be used with this contract.

b. Contractor's Waiver of Employer's Immunity under Title 51 RCW. Contractor intends that its indemnification, defense, and hold harmless obligations set forth above in section A. shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above in section A, Contractor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Contractor against the City and its officers, employees, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this

Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.

c. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City/County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

19. Hold Harmless. The Contractor shall, and hereby agrees to, release, save, otherwise hold harmless and indemnify the Agency from claims, demands, damages, actions, causes of actions or other liability, injury, or harm caused by act or omissions, foreseen or unforeseen, negligent or otherwise, that would otherwise befall said Agency arising out of the Contractor's implementation of the terms of this contract.

20. Indemnity.

a. Contractor agrees to protect, defend, indemnify, and hold harmless the Agency, its officers, elected officials, agents, employees, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all costs of every kind and nature whatsoever, including without limitation, judgments, awards, court costs, investigative fees and expenses, and reasonable attorneys' fees and disbursements arising out of or in connection with the performance or non-performance of this Agreement. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the Agency and its officers, principals, agents, or employees.

b. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

c. This Section of the Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

21. Severability.

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

22. Non-Waiver of Breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

23. **Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent to the parties to their addresses as follows:

TO CITY: Purchasing Division TO CONTRACTOR: _____
Yakima City Hall _____
129 North 2nd Street _____
Yakima, WA 98901 _____

Or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

24. **Integration and Supersession.** This Agreement, together with the identified Exhibits hereto, sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

25. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

26. **Venue.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County, Washington.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first herein above written.

Countersigned: CITY OF YAKIMA

This _____ day of _____, 2013.

Tony O'Rourke, City Manager

Contractor

ATTEST:

By: _____

Its _____
(President, Owner, etc.)

Sonya Claar Tee, City Clerk

(Address)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Agency name and address	CONTACT NAME	
	PHONE (A/C, H/O, E/M)	FAX (A/C, H/O)
INSURED Named Insured & address	INSURER(S) AFFORDING COVERAGE	
	INSURER A:	A - VII or better Admitted
	INSURER B:	A - VII or better Admitted
	INSURER C:	A - VII or better Admitted
	INSURER D:	A - VII or better Admitted
	INSURER E:	

COVERAGES

CERTIFICATE NUMBER: #

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS. LTR.	TYPE OF INSURANCE	ISSUE NUMBER (MM/DD/YYYY)	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR	X	#	Date	Date	EACH OCCURRENCE ± 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) ± 100,000 MED-EXP (Any one person) \$ 5,000 PERSONAL & ADJ BODILY ± 1,000,000 GENERAL AGGREGATE ± 2,000,000 PRODUCTS - COMP/OP AGG ± 2,000,000 \$
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input checked="" type="checkbox"/> PRO. ACC. <input type="checkbox"/> LEO					
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS LEASED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	#	Date	Date	COMBINED SINGLE LIMIT (EA OCCURRENCE) ± 1,000,000 BODILY BODILY INJURY (Per person) \$ BODILY BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per occurrence) \$
	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS MADE	X	#	Date	Date	EACH OCCURRENCE ± 4,000,000 AGGREGATE \$ \$
D	EMPLOYERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/OWNERS/EXECUTIVE OFFICERS/AGENTS EXCLUDED (Mandatory in WA) If yes, describe under DESCRIPTION OF OPERATIONS below	VIA N/A	Employers Liab. Only	Date	Date	NO STAT. TORT LIMITS <input checked="" type="checkbox"/> WITH CAP E.L. EACH ACCIDENT ± 1,000,000 E.L. DISEASE - EA EMPLOYEE ± 1,000,000 E.L. DISEASE - POLICY LIMIT ± 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Yakima, its elected and appointed officials, employees, agents, and volunteers are included as additional insureds.

Project name & #

CERTIFICATE HOLDER

City of Yakima
129 N. 2nd Street
Yakima WA 98901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD

© 1988-2010 ACORD CORPORATION. All rights reserved.

ACORD 25 (2010/05)

COMMERCIAL GENERAL LIABILITY

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS
- SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

The City of Yakima and the County of Yakima, its agents, employees, authorized volunteers, elected and appointed officials are included as Primary/Non-Contributory additional insured's.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG2010 1001

Copyright, Insurance Services Office Properties, Inc., 2000

**CITY OF YAKIMA
GENERAL PROVISIONS FOR TRANSIT CONTRACTS
(A PART OF ALL CONTRACT DOCUMENTS)**

These General Provisions, the Specifications, the Invitation to Bid/Quote form and any attachments, constitutes the bid document, and will be considered as one document.

1. Laws and Regulations

The contractor shall comply with all applicable laws and regulations pertaining to this contract. In addition, the contractor shall ensure that any subcontractor performing this contract shall comply with all applicable laws and regulations pertaining to this contract.

2. Acceptance

The City reserves the right to reject any or all quotations, to waive any technicalities and informalities, and to accept or reject all or any part of this quotation at prices shown. All bids/quotes must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening of the bids/quotes, unless otherwise stated.

3. Bid/Quote Submittals

Bids and quotes shall be submitted on the attached forms only. Extra pages and literature may be added to this package; however, the package shall be returned intact as received.

All prices and notations must be typewritten or written in ink, with no erasures permitted. Mistakes may be crossed out and corrections written adjacent thereto, and must be initialed in ink by person signing quotation. Verify your quotations before submission, as they cannot be withdrawn or corrected after being opened.

If applicable, unit prices for all items, all extensions, and the total amount of bid or quote must be shown. In the instance of a discrepancy between the unit price and the total price, the unit price shall govern. Any pricing, configuration, or other errors discovered after bid/quote opening or quotation due date must remain and cannot be adjusted.

4. Change Orders

Change Orders for material or services will be without effect unless issued and authorized in writing by the Purchasing Manager.

5. Quality Standards

The brand names listed indicate the standard of quality required. Brands of equal quality, performance and use will be considered, provided the offeror specifies the brand, model and other data for comparison with their bid/quote. The City of Yakima will be the sole judge for approving other brands offered as equals to the brand specified. Bidders shall indicate if they are offering alternate brands in the space below each item and must provide descriptive specifications explaining the merits of the substitute item.

6. Delivery

Time is of the essence and this order is subject to cancellation by the City of Yakima for Vendor's failure to deliver on time. For any exception to the delivery date specified in this order, Vendor shall give prior written notification and obtain written approval from the City. The acceptance by the City of later performance with or without objection or reservation shall neither waive the City's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor. All quotations shall include delivery F.O.B. destination, freight pre-paid, unless otherwise stated in this "Bid Call" or "Invitation to Quote" at the designated address set forth in the proposal given to each bidder. When shipping addresses specify room identification, Vendor shall make such delivery thereto without additional charge. If the City grants specific authorization to ship goods F.O.B. Shipping Point, Vendor agrees to prepay all shipping charges, route the goods by cheapest common carrier, and bill the City as a separate item on the invoice for said charges. It is also agreed the City reserves the right, at its sole option, to refuse COD Shipments.

7. Identification

The purchase order number shall appear on all invoices, packing lists, packages, shipping notices and other written documents relating to this order. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein.

8. Payment

Vendor is to submit properly completed invoice(s) and mail to: *City of Yakima, Accounts Payable, 129 No. 2nd St., Yakima, WA 98901*

To insure prompt payment, each invoice should cite purchase order number, bid/quote number, description of item purchased, unit and total price, discount terms and include the vendor's name and return remittance address. Payment will be mailed within thirty (30) days of (a) the receipt and acceptance of the product or service and (b) a properly completed invoice.

9. Risk of Loss

Regardless of the F.O.B. Point specified above, Vendor agrees to bear all risk of loss, injury, or destruction of goods ordered herein which occur prior to actual physical delivery to the City, and such loss, injury, or destruction shall not release Vendor from any obligation hereunder.

10. Force Majeure

Vendor will not be responsible for delays in delivery due to acts of God, fire, Strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided vendor notifies the Purchasing Manager immediately in writing of such pending or actual delay. Normally, in the event or any such delays (acts or God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

11. Rejection

All goods and any services purchased in this order are subject to approval by the City. Rejection of goods or services, resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by the City or returned, will be at Vendor's risk and expense.

12. Approximate Quantity

The quantities listed are the City's current approximate requirements. The City of Yakima will neither be obligated by, nor restricted to, these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the Bid/Quote. If it is agreeable to both parties and prices have not changed and the same unit/materials are still available, additional units/materials may be ordered within 12 months of the signing of the original agreement.

13. Cooperative Purchasing

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties agree. The City does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

14. Samples

Samples of items, when required, must be furnished free of expense to the City, and if not destroyed by tests will, upon request, be returned at the bidder's expense.

15. Inspection

Cost of inspection on deliveries or offers for delivery, which do not meet specifications, will be for the account of the vendor.

16. Hazardous Materials

If this order covers goods, which include hazardous chemicals, Vendor shall, at the time of product delivery, provide the City with copies of Material Safety Data Sheets for such chemicals. These sheets shall be in the form then required by applicable law or regulation (See WAC 296-62-05413). This requirement shall be in addition to whatever other requirements are imposed by law or regulation.

17. Public Disclosure

Proposals shall become the property of the City. All proposals shall be deemed a public record as defined in RCW 42.56 "Public Records." Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the Vendor, or is any way contrary to state public disclosure laws or this RFP will be declared non responsive and removed from consideration. Any information in the proposal that the successful Vendor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated as described in Section Proprietary Information. The particular exception from disclosure upon which the Vendor is making the claim and the RFP page it is found on must be identified. RFP's will not be disclosed prior to release to potential respondents. With the exception of lists of prospective Vendors, the City will not disclose RFP records until execution of the contract(s). At that time, all information about the competitive procurement will be available with the exception of: Proprietary/confidential portion(s) of the successful proposal(s), until the Vendor has an adequate opportunity to seek a court order preventing disclosure. The City will consider a Vendor's request for exemption from disclosure; however, the City will make a decision predicated upon RCW 42.56.

18. Warranties

Vendor warrants that all goods and services furnished under this order are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Vendor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Vendor's warranties (and any more favorable warranties, service policies, or similar undertaking of Vendor) shall survive delivery, inspection, and acceptance of the goods or services.

19. Re-Award

When the contract is terminated by the vendor upon 30 days notice as herein provided, the City, pursuant to City ordinance, may re-award the contract to the next most responsible bidder. When a vendor is unable to supply goods and/or services to the City and is in breach of the contract, or when the contract is terminated by the City for cause as herein provided, the City reserves the right to re-award the contract to the next most responsible bidder.

20. Errors and Omissions

The City reserves the right to correct obvious ambiguities and errors in the Bidder's proposal and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

21. Late Receipt of Bid/Quote Documents

Bids and/or quotations and modifications received after the exact hour and date specified for receipt of bids and/or quotations will not be considered (i.e. if bid was due by 2:00 PM, any bids received after 2:00:00 PM will be rejected).

22. Licenses

If applicable, successful vendor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

In addition, Contractors are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the bid/quote.

23. Delivery of Unapproved Substitutions

Vendors are authorized to ship only those items ordered covered by the contract. If a review of orders placed by the City reveals that an item other than those covered by and specified in the contract have been ordered and delivered, the Purchasing Manager will take such steps as are necessary to have the item(s) returned to the contractor at no cost to the City regardless of the time elapsed between the date of delivery and discovery of the violation. Violation of this clause may result in the removal of the offending vendor's name from the City mailing list for a period of up to three (3) years.

24. "No Bids"

Vendors who are unable to or do not wish to submit a bid and are encouraged to respond by notating their bid "NO BID" on page one of the "BID CALL" and mailing it to the City of Yakima Clerk's Office, 129 North 2nd Street, Yakima, Washington, 98901, with the Bid/Quote due date and time written on the face of the envelope. It is the City's practice that if no response to a bid is received by a vendor after two consecutive mailings, the vendor will be deleted from our vendor's mailing list for that type of commodity item.

25. Non-Collusion

The Bidder represents, by the submission of the Proposal, that the prices in this bid/quote are neither directly nor indirectly the result of any formal or informal agreement with another bidder.

26. Evaluation of Bid/Quote

In the evaluation of otherwise responsible bids/quotes, the Bidder's experience, delivery time and responsibility in performing other contracts will be considered. In addition to price, the following may be considered:

- I. The ability, capacity and skill of the bidder to perform the contract and provide the services required.
- II. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- III. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- IV. The quality of performance of previous contracts or service.
- V. The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services.
- VI. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- VII. The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
- VIII. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

27. Taxes

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The City is exempt from Federal Excise Tax. Where applicable, the City shall furnish a Federal Excise Tax Exemption certificate.

28. Non-Discrimination

During the performance of this Agreement, Contractor shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, national origin, creed, age, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

29. The Americans with Disabilities Act.

With regard to the services to be performed pursuant to this Agreement, Contractor agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

30. Assignment. This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by the Contractor to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Contractor as stated herein.

31. Termination - Convenience

This contract may be terminated by either party by giving thirty (30) days written notice of such intent and will become effective thirty (30) days from the date such written notice is delivered to the applicable party to the contract.

32. Termination - Cause

The City reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Contractor are deemed by the City to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the City may terminate this contract, with or without cause, upon thirty (30) days written notice to Contractor.

33. Delay of an Award

If, after bid/quote opening, administration problems threaten to delay award beyond the bidder's acceptance period, bidders shall be requested to extend the bid/quote acceptance period. This request must be made and confirmed in writing prior to the expiration date of their bids/quotes (with consent of sureties, if any) to avoid the need to re-advertise.

34. Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of the Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the City of Yakima. This Agreement shall be governed by the laws of the State of Washington.

35. Defense and Indemnity Agreement

The vendor agrees to defend, indemnify and save harmless the City, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account to damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Vendor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, The City, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

36. Permits

The vendor shall procure and pay for all permits and licenses necessary for the completion of the Contract, including those permits required by the City of Yakima. In the event a necessary permit is not obtained, the Vendor will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extension.

37. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

38. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

39. Entire Agreement

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understanding between the parties.

40. Protest Procedure

Any protest must be made in writing, signed by the protestor, and state that the vendor is submitting a formal protest. The protest shall be filed with the City of Yakima's Purchasing Manager at 129 No. 2nd St., Yakima, WA 98901, faxed to 509-576-6394 or emailed to sue.ownby@yakimawa.gov. The protest shall clearly state the specific factual and legal ground(s) for the protest, and a description of the relief or corrective action being requested. **Protests before award** shall be filed five (5) days before the solicitation due date, and **protests after the award** shall be filed five (5) days after Award Announcement (see below for details). The following steps shall be taken in an attempt to resolve the protest with the vendor:

- Step I** Purchasing Manager and Division Manager of solicitation try resolving matter with protester. All available facts will be considered and the City Purchasing Manager shall issue a decision. This decision shall be delivered in writing to the protesting vendor.
- Step II** If unresolved, within three (3) business days after receipt, the protest may be appealed to the Department Head by the Purchasing Manager.
- Step III** If still unresolved, within three (3) business days after receipt, the protest may be appealed to the City Manager (or his designee). The City Manager shall make a determination in writing to the vendor.

Grounds for Protest

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

- A matter of bias, discrimination, conflict of interest;
- Solicitation unduly constrains competition or contains inadequate or improper criteria;
- Errors in computing score;
- Non-compliance with procedures described in the solicitation or City Policy.

Protest Determination

Each review and determination of the protest shall issue a decision that either:

- Finds the protest lacking in merit and upholds the award; or
- Finds only technical or harmless errors in the acquisition process and determines the City to be in substantial compliance and therefore reject the protest; or
- Finds merit in the protest and provides options for correction, including, but not limited to, correcting the errors and re-evaluating the bids, reissuing the bid to begin a new process, or entering in to a contract that remedies the protest finding; or
- Makes other findings and determines other courses of action as appropriate.

Timeframe Only protests and complaints received within the required timeframe for protest action are accepted for consideration.

Award Announcement

Purchasing shall announce the successful bidder via City Website, e-mail, fax, regular mail, or by any other appropriate means. Once the announcement is released by Purchasing, the protest time frame begins. The timeframe is not based upon when the vendor received the information, but rather when the announcement is issued by Purchasing. Though every effort will be made by Purchasing to distribute the announcement to the interested vendors, Purchasing is not responsible to assure that vendors receive the announcement. It is the responsibility of the vendors to obtain the announcement from Purchasing.

Award Regardless of Protest

When a written protest against making an award is received, the award shall not be made until the matter is resolved, unless the City determines that one of the following applies:

- The supplies or services to be contracted for are urgently required;
- Delivery or performance will be unduly delayed by failure to make award promptly;
- A prompt award will otherwise be advantageous to the City.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

The City retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

41. Qualified Bids

The General Terms and Conditions and Supplemental Terms and Conditions included in this bid document will govern the performance of the work. No other terms and conditions will be accepted. Bids that are conditioned in any way, or Bids that take exception in any way to the City of Yakima's General and Supplemental Terms and Conditions, may result in the Bid being considered non-responsive.

42. Proprietary Material Submitted

Any information contained in the bid/RFP submitted that is proprietary must be clearly designated. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a vendor's bid, the City of Yakima will comply according to the Open Public Records Act, Chapter 42.17 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected vendor has been given an opportunity to seek a court injunction against the requested disclosure.

Personnel Inventory Form

* To Accompany Bid Proposal *

Firm Name: _____ Contact: _____

Address: _____ Phone Number: _____

City: _____ State: _____ Zip: _____

Type of Service Provided: _____

Are you a certified DBE or WMBE?: YES___ NO___. If yes, what is your certification number?

**Contractor's Entire Work Force - if you need additional space,
photo copy this section and attach it to this form.**

Occupation	Total Employed		Total Minorities		African American		Asian or Pacific Islander		Native American		Hispanic or Latino		Apprentice Trainee	
	M	F	M	F	M	F	M		M	F	M	F	M	F
Officers														
Foremen														
Clerical														
Totals:														

Goals for minorities and women employees in the contractor's and subcontractor's workforce are 10% combined. Contractors and subcontractors do not have to fire or lay off employees to meet these goals, however, if new employees are hired, it shall be an obligation to make a good faith effort to hire qualified minorities and women.