



# **Request for Proposal**

**RFP # 2019 - 202**

## **Municipal Legal Services**

**Proposal Submission Deadline:**

**June 10, 2019 no later than 12:00 PM PST**

**Whatcom Transportation Authority  
4011 Bakerview Spur Road  
Bellingham, WA 98226  
Phone (360) 788-9332  
Fax (360) 788-9532  
Procurement@ridewta.com**

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## Part 1 – Introduction

Whatcom Transportation Authority (WTA) Public Transportation Benefit Area (PTBA), defined by RCW 36.57A, providing fixed route and paratransit service throughout Whatcom County, Washington. Whatcom County is in the northwest corner of Washington State. The transit revenue fleet consists of 61 fixed route buses, 42 paratransit vehicles, and 31 vanpools.

WTA's mission is to enhance our community by:

- Delivering safe, reliable, efficient and friendly service
- Offering environmentally sound transportation choices
- Providing leadership in creating innovative transportation solutions
- Partnering with our community to improve transportation systems

Additional information about WTA can be found at [www.ridewta.com](http://www.ridewta.com).

Proposers are required to adhere to the terms and conditions of this solicitation packet. WTA will not negotiate any aspect of the required service or contract once the Intent to Award is issued. WTA will not make any concessions for proposers who are not completely familiar with the scope or contract requirements.

WTA is currently seeking proposals from qualified legal firms to provide general municipal legal services to support the Agency's staff. Work will encompass the traditional scope of legal work as described in the Scope of Work.

All submittals become the property of WTA and are subject to public disclosure after award.

Throughout this RFP the terms vendor, contractor, and proposer are used interchangeably.

Equal Opportunity: Small, minority and women-owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, are encouraged to submit proposals in response to this solicitation. WTA ensures non-discrimination in the award and administration of all contracts, creates a level playing field where DBE's can compete fairly, and remove barriers to the participation of DBE's in our contracts.

## Part 2 – Scope of Work

### 2. A Introduction

WTA's service area includes the cities of Bellingham, Ferndale, and Lynden, as well as incorporated regions surrounding these communities. In 1993 the Lummi/Marietta area was annexed and incorporated into the WTA service area, and in 1994 the Western Whatcom County area (Blaine/Birch Bay/Semiahmoo/Cherry Point) was also annexed and incorporated.

WTA desires to identify qualified and competent attorney(s) and/or law firm(s) having significant and extensive expertise and experience in one or more legal areas of practice outlined. The ideal firm or individual will be comfortable serving as an advisor and allowing decision makers to take the lead. Some key strengths that WTA is searching for:

- Advise without making decisions
- Be approachable and collaborative
- Be responsive and concise
- Assess and advise on potential risk
- Mentor key staff in assessing risk and enable them in decision making

### 2. B Background

The Agency employs over 260 employees, consisting of a General Manager, operators, fleet maintenance, administrative, and support services personnel. Staff does contract out more specialized work like insurance brokerage, Labor & Industries claim management, and employment related legal counsel.

A 10-member Board of Directors oversees the budget and operations of the agency. The Board is comprised of nine (9) elected officials throughout Whatcom County and the President of the Amalgamated Transit Union (ATU). Public meetings of the Board are held monthly at the Whatcom County Courthouse.

WTA is a member of the Washington State Transit Association (WSTA) ([www.watransit.com](http://www.watransit.com)). WSTA is a nonprofit corporation, representing 30 public transit systems in the state and the Washington State Department of Transportation's (WSDOT's) Public Transportation Division. WSTA advocates for state legislation beneficial to public transit and runs twelve (12) committees including Legal Affairs, Legislative, and Transit Security Council.

WTA also participates in a risk sharing pool through the Washington State Transit Insurance Pool (WSTIP) ([www.wstip.org](http://www.wstip.org)) along with 24 other transit agencies. As the Insurance and Risk pool, WSTIP manages all WTA incidents from occurrence to resolution. However, there are some incidents that must be resolved in court.

## 2. C General Technical Requirements

Counsel must

- Be a licensed member in good standing of the Washington State Bar Association (WSBA).
- Possess substantial knowledge and exhibit experience in the interpretation of state laws as they relate to municipal corporations and municipalities.
- Demonstrate experience in initiating and responding to administrative and legal appeals, including quasi-judicial proceedings involving local and state jurisdictional authorities.
- Have experience in all aspects of contract law.
- Exhibit substantial experience in working with agencies and governing boards comprised of elected officials.
- Maintain an understanding of local social and political conditions within Whatcom County.
- Possess a working knowledge and familiarity with Real Estate law.
- Display understanding and use of plain language concepts in written communications ([www.plainlanguage.gov](http://www.plainlanguage.gov)).

## 2. D Scope of Work

Typical Services include (not exhaustive):

- Provides legal advice, perspective, counsel, services, consultation, and opinions to the Board of Directors and WTA staff on a wide variety of assignments and government issues. General Counsel's advice includes methods to avoid civil litigation.
- Furnishes legal representation at Board of Directors and other meetings when requested.
- Drafts, prepares, reviews, amends, and endorses contracts, formal procurements, inter-local agreements, facility-use agreements, etc. to ensure legal accuracy, and that the insurance, indemnity and hold harmless language adequately protects WTA.
- Supports staff with property acquisitions, lease agreements, easements, and licenses.
- Consults and provides research regarding potential risks and how to appropriately transfer risk and mitigate liability.
- Assists staff in understanding the legal and statutory roles and duties of their respective positions and interrelationships with others.
- Works with staff to maintain their awareness of ethical and appearance of fairness standards and avoid conflicts of interest and prohibited transactions.
- Prepares legal opinions at the request of WTA staff or Board of Directors.
- Provides guidance and assistance in defending and pursuing legal claims against or behalf of WTA.
- Represents WTA in litigation and/or potential litigation. This includes, but is not limited to, preparing staff for testimony or deposition, coordinating documents and exhibits, and the hiring of required subcontractors or legal experts to further success of the case.



- Assists in the review of WTA policies and procedures and makes recommendations based on risk mitigation and good business practice.
- Advises on open government and public records law.
- Provides information and assistance regarding the anticipated promulgation of any State or Federal statute that may impact WTA.
- Provide assistance to staff in the interpretation of Federal and State statutes associated with the provision of public transportation and other applicable laws and regulations governing WTA as a public municipal corporation.
- Represents WTA on the Washington State Transit Association (WSTA) Legal Affairs committee.
- Performs other legal services and tasks as assigned by WTA staff or Board of Directors.

## **Part 3 - Submission Guidelines**

All submittals become the property of WTA.

### **3. A Procurement Schedule**

<b>Activity</b>	<b>Date – 2019</b>
<b>Procurement Request Released</b>	May 13
<b>Clarification Deadline</b>	June 3
<b>Submissions Due</b>	June 10, no later than 12:00 PM PST
<b>Finalist In Person Interviews*</b>	Week of June 24
<b>Notice of Intent to Award**</b>	July 1
<b>Estimated Award Date</b>	July 18, 2019

*\* WTA reserves the right to award a contract(s) without demonstrations or a Best and Final Offer.*

*\*\*Issuance of a Notice of Intent to Award is not a substitute for a contract and can be revoked.*

WTA reserves the right to modify the Procurement Schedule through written addenda.

WTA may invite the top one (1) to three (3) firms (competitive range) for a semifinal interview/presentation. Any interviews will be scheduled no later than close of business on June 21. Requirements of the interview will be provided when the interview is scheduled.

### **3. B Proposal Guidelines**

Proposers should fully inform themselves of the conditions, requirements, and specifications before submitting a proposal. The submission of a proposal constitutes Proposers acceptance of the terms and conditions of this solicitation request, including the underlying contract terms and conditions which are set out herein.

The Proposer is responsible for all costs related to the preparation of the proposal, demonstrations or interviews. Any costs associated with the project not specifically set forth in this Request for Proposal will be the responsibility of the Proposer, and will be deemed included in the fees and charges proposed.

WTA reserves the right to:

- Award to one or more vendors
- Accept or reject any or all proposals and their Proposers
- Reject any or all proposals until a contract is signed with the selected Proposer
- Reject this solicitation and issue a new one for any reason
- Waive deviations from the requirements
- Waive any informality or minor irregularity in proposals received
- Issue changes to the solicitation in the form of written addenda
- Request additional information to fully evaluate a proposal

A proposal will be rejected when:

- It is late
- Not in the required format
- The Proposer fails to meet the minimum qualifications listed in Part 3.C
- The Proposer is determined to be not responsible as described in Part 4.C
- Any required form is not signed
- Vendor information, references, or any other form is incomplete or incorrect
- Any other reason determined to be in the best interest of the WTA
- It does not meet required terms and conditions, or formatting requirements
- The details of the proposal have been altered
- A Proposer fails to timely respond to a request for additional information
- It fails to contain any of the requested information in the required format
- A conflict of interest is not properly disclosed
- Proposer fails to acknowledge in writing an addenda

Proposals may not be modified after opening unless requested by WTA. Prior to opening, proposals may be withdrawn at any time.

WTA may request that information be displayed differently than presented (for example, request a bundled pricing structure be itemized).

Proposal pricing shall be valid for a period of 120 days from proposal or Best and Final Offer (BAFO) deadline, if a BAFO occurs.

WTA may request clarification or additional information, including, but not limited to, financial statements.

### **3. C Minimum Proposer Qualifications**

**At the time of proposal**, Proposers must meet the following minimum qualifications:

- Have a current State of Washington Unified Business Identifier (UBI), or provide proof one has been applied for, and all required local government business license(s) and endorsements<sup>1</sup>.
- Be registered with SAM.gov and not be suspended or debarred.
- Not be disqualified from bidding under RCW 39.06.010 or 39.12.065 (3).
- Demonstrate there are no outstanding and/or repetitive violations with Labor and Industries, Department of Revenue, or Employment Security.
- Offer a fixed, hourly cost for services rendered
- Each attorney in the proposed team must possess a Juris Doctorate (JD) degree and have graduated from a law school accredited by the American Bar Association.
- The lead attorney must have a minimum of five (5) years' experience in the field of municipal law.
- Each attorney in the proposed team will be a licensed member in good standing of the Washington State Bar Association (WSBA).

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<sup>1</sup> The awarded vendor will be required to obtain A City of Bellingham endorsement as a condition of contract award.



Unless good cause is shown, no Proposer may provide services under a contract with Whatcom Transportation Authority if that Proposer has been removed from representation in a case by order of the court for failure to perform basic services necessary to the case or the client, or in any manner has been found to be ineffective by either an ethics panel or by an appellate court.

### **3. D Proposal Submission**

Proposals via email or a dedicated CD/USB Flash Drive is the preferred method of submission.

Unbound hard copies will also be accepted instead of an electronic copy. Proposals will not be bound with staples, combs, three ring binders, etc. All hard copy submissions should be in a plainly marked envelope "Sealed Proposal RFP #2019-202." Proposal should be submitted to:

Magan Waltari, CPPB  
Procurement & Grants Coordinator/DBELO  
Whatcom Transportation Authority  
4011 Bakerview Spur Rd.  
Bellingham, WA 98226  
(360) 788-9332  
procurement@ridewta.com

Proposals submitted by mail or express carriers (i.e. UPS, FedEx, DHL) must arrive by the due date and time.

### **3. E Submission Packages**

Proposals should conform to the following: pages of the proposal should be numbered; sections clearly identified; single spaced; no columns; minimum 12 point font, and no more than 10 double sided pages, excluding forms requested in the Exhibits.

All proposals should include the following information:

- Provide at least 5 relevant references from the past 3 years where the firm has provided excellent representation to clients, reasonable case preparation, provision of adequate client advice, and excellent litigation skill. Provide name, title, organization, email address, telephone number, and type of services. Please indicate if any of your clients (past or present) may cause a conflict of interest. I.E. construction firms, employees, other agencies, etc.
- Outline number of years of municipal or other public sector law practice as a full-time government attorney or specializing in municipal or other public sector law practice in a law firm or as a sole practitioner.
- Demonstrate expertise in a minimum of four (4) of the following disciplines:
  - Government ethics
  - Labor and employment law

- Information & technology law
- Procurement & Contract law
- Real estate, land use, and construction law
- Claims & litigation
- Public disclosure law, including open meetings and public records
- Federal grants, procurement, and contracting
- Public Transit Benefit Areas (PTBA)
- Describe how WTA's needs will be met when principals are unavailable. Identify roles and tasks other personnel may perform.
- Summarize litigation experience. Include descriptions of at least three (3) representative cases and outcomes from the last two (2) years.
- Stipulate fee schedule for the contract on Exhibit C. Rates must include all costs required to perform the services including, but not limited to, licensing, insurance, overhead, profit, etc.

### 3. F Conflict of Interest

WTA officers, employees, agents, or Board members will not solicit or accept gifts, favors, or anything of monetary value from Proposers. Any WTA officer, agent, employee, or Board member with a perceived or actual financial or other interest in the award of this contract will recuse himself/herself from any evaluation or decision on any proposal.

Proposers and their staff must declare any perceived or actual conflict of interest. For example, a conflict of interest would arise if a Proposer or staff did the following:

- Assists in the creation of the scope of work. This includes, but is not limited to reviewing and commenting on the preliminary scope in whole or part, assisting staff in specification writing, or recommending the use of a particular brand or supplier/distributor in the specification or evaluation of proposals.
- Assists in the creation of a project budget.
- Has a personal or professional relationship or affiliation (past or present) with a member of the evaluation or project team.
- Has a financial gain from the recommendation and/or purchase of a particular good or service relating to a contract or potential contract. (e.g. distributor/manufacturer relationship)

WTA will review all conflict of interest statements and notify the Proposer of its decision to allow or reject a proposal as it pertains to the conflict.

In the event that a conflict of interest is discovered post-award, this will be considered a breach of contract and the contract will be terminated under the terms and conditions provided. The Proposer must pay any additional costs incurred by WTA to engage another contractor to finish the work.

### 3. G Addenda

Addenda will be issued to all Proposers should questions or clarifications be deemed significant enough to affect received proposals. Proposers must ensure they receive all

issued addenda prior to the submission deadline, and acknowledge each addenda on Exhibit A.

### 3. H Contact with WTA

Unauthorized contact regarding this RFP with WTA employees or agents may result in disqualification. Any oral communications will be considered unofficial and non-binding on WTA. Proposers should rely only on written statements issued by the Procurement & Grants Coordinator listed in 3. D "Proposal Submission".

### 3. I Protest Procedures

**Filing a Protest** Any party with an interest in the award of the solicitation may file a protest that WTA staff did not follow its own policies and procedures regarding a Procurement Action.<sup>2</sup> Any protest must be submitted in writing to WTA's Procurement & Grants Coordinator, and include the following information:

- a) Name, address, email address, and telephone number of the protester
- b) Signature of the protester or their representative
- c) Identification of the solicitation
- d) Detailed statement of the legal and factual grounds of the protest
- e) Copies of all relevant documents
- f) The form of relief requested

Issues and facts not stated in the Notice of Protest will not be considered.

**Time for Filing a Protest.** A protest based on alleged improprieties or ambiguities in a **solicitation** must be filed at least seven (7) days before the due date of the bid or proposal. A protest based upon alleged improprieties in an **award** of a contract or a **proposed award** of a contract must be filed within three (3) days after the Notice of Intent to Award has been issued.

**Notice of Protest.** Procurement shall immediately give notice of a protest to the selected Proposer if a contract has been awarded. If no award has been made, notice will be provided to all Proposers.

**Stay of Award.** If a protest is filed, the award may be made unless the Finance Director determines in writing that:

- a) Reasonable probability exists that the protest will be denied.
- b) Stay of the award is not contrary to the best interests of WTA.

### Review of Protests

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<sup>2</sup> "Procurement Action" includes: specific procurement steps, such as setting the calendar of events; producing the proposal/bid document; advertising the proposal or bid in legal paper of record; maintaining a list of proposal/bid holders; conducting a pre-proposal meeting; responding to all approved equals/clarifications received by the appropriate time and date; addenda issued straightforwardly to all proposal/bid holders; enforcing closing time and date; providing proctoring services to the project manager and evaluation committee; setting criteria weights; conducting interview process with top-scoring Proposers and evaluation committee; creating notes to file regarding the proposal/bid process; issuing award/non-award letters; and maintaining a written record of the procurement.

**Review:** The Finance Director shall review and investigate properly filed protests and issue a written decision to the protestor:

- a. A meeting(s) will be called within five (5) working days from receipt of the protest that will include representatives from the WTA and the protester to discuss the issue(s) related to the protest. The meeting may be conducted by telephone conference if convenient for both parties.
- b. A decision of the protest will be made by the Finance Director within three (3) working days of the final meeting and at the time the protester shall be notified of the decision in writing by the Director by email or regular mail.
- c. The Finance Director may, at his/her sole discretion, extend the limits of time outlined above.
- d. The decision of the Finance Director shall be final, unless appealed as provided herein.
- e. A request for reconsideration may be allowed if data becomes available that was not previously known, or there has been an error of law or regulation.

**Appeal:** A Protestor may appeal the Finance Director's formal decision to WTA's General Manager. The written appeal must be received by WTA within two (2) business days after receipt of the written decision by the Protestor, or the appeal will not be considered. Properly filed appeals of the decisions of the Finance Director shall be reviewed and investigated by the General Manager who shall issue WTA's final decision no later than twenty one (21) days after receipt.

### **3. J Request for Clarification, Deviation, or Substitutions**

Any Proposer(s) believing a contract term or scope requirement is unnecessarily restrictive or wishing to propose an alternate must notify the Procurement and Grants Coordinator by the deadline provided in the Procurement Schedule. Requests submitted after this date, or as a proposal condition will not be reviewed or considered. WTA will not agree to terms or conditions to the contract after proposals are submitted and conditioned proposals may be rejected as non-responsive. Any changes or requests pertaining to the contract must be made evident prior to the close of the procurement.

#### **ESTABLISHMENT OF CONTRACT BASED UPON NOTICE OF INTENT TO AWARD**

The RFP and the PROPOSAL SUBMITTED constitute an "offer" and "acceptance" of all of the terms and conditions for an enforceable contract, subject to WTA's formal award of a proposal, which remains in its exclusive discretion. Once a proposal is accepted and awarded by WTA, the parties will have an enforceable "contract" whose terms and conditions will comprise those set out in the RFP and the proposal. WTA reserves the right to seek to have such contract enforced, and to seek specific performance from the successful Proposer based upon the terms set out in the RFP and the proposal. Throughout this RFP, the term "Contract" shall mean the terms and conditions contained in this RFP and an awarded proposal, and a formal written contract entered pursuant to Part 4.

Submission of a proposal grants WTA the right to enforce the parties' agreement without the need for a signed Contract, based upon the existence of an enforceable agreement between the parties, whose terms and conditions shall comprise the RFP and proposal.



Any unapproved deviations, exceptions, substitutions, alternates, or conditions contained in a proposal are cause for the proposal's rejection as non-responsive.

THE ONLY WAY THAT THE SUCCESSFUL PROPOSER MAY MODIFY, AMEND OR AVOID ANY TERM AND CONDITION SET OUT IN THE RFP IS TO REQUEST A DEVIATION OR SUBISTITION BY THE DEADLINE PROVIDED IN 3.A. UNLESS A REQUEST IS PRESENTED BEFORE THE DEADLINE, AND ACCEPTED BY WTA IN WRITING AS AN ADDENDA, ALL TERMS AND CONDITIONS OF THE RFP SHALL BE BINDING AND ENFORCEABLE AGAINST THE SUCCESSFUL PROPOSER.

## **Part 4 – Proposal Evaluation**

### **4. A Evaluation Procedures**

1. The Procurement & Grants Coordinator will initially review proposals against the following criteria. Proposals that do not receive 3 “Pass” scores will not be reviewed further.

<b>Factor</b>	<b>Rank</b>
Conformity with Minimum Proposer Qualifications (3.C)	Pass/Fail
Complete Package Submission (3.E)	Pass/Fail
All Exhibits Completed (Part 8)	Pass/Fail
Cost	5

Pricing score, using the following normalizing formula.

(Lowest Overall Proposed Price ÷ Price Being Evaluated) × 5 = Score. Price will be calculated using WTA’s 2018 billed hours for legal services as outlined in 4.B.4 below.

2. Evaluation Committee will then review Proposals receiving 3 “Pass” scores against the following Evaluation Criteria, which are listed in the order of importance.

<b>Initial Evaluation Factor</b>	<b>Rank</b>
Demonstrated ability to meet requirements in 2.D	0-5
Demonstrated expertise in a four (4) or more disciplines outlined in 3.E above.	0-5
<b>Initial Evaluation Total</b>	<b>10</b>
<b>+ Cost points above</b>	<b>5</b>
<b>Total Possible Cumulative Initial Evaluation Score</b>	<b>15</b>

Committee members will assign a rank of 1 – 5 for each factor and it will calculate total points as follows:

- 1 – Proposal did not meet factor requirements = 0%
- 2 – Proposal met less than ½ of factor requirements = 25%
- 3 – Proposal met at least ¾ of factor requirements = 50%
- 4 – Proposal met all of the factor requirements = 75%
- 5 – Proposal exceeded factor requirements = 100%

Rankings are in whole numbers only or rounded down. (e.g. 4.5 will round to 4). Rankings will then be averaged based on how many members of the Evaluate Committee are scoring.

3. The top 2 – 4 proposals may be invited for interviews. Once any interviews are complete, the Evaluation Committee will re-score submissions against the Initial Evaluation Factors based on information provided by interviewees. This score will be added to the initial score to determine the Competitive Range Proposals.

4. A member of the Evaluation Committee and/or the Procurement & Grants Coordinator will check references of the proposals in the Competitive Range and share them with the evaluation committee. Proposals will be evaluated and scored against the below criteria. Scores will then be added to the initial scores to determine the highest scoring proposal.

<b>Competitive Range Factor</b>	<b>Rank</b>
Relationship with prior clients/References	0-5
<b>Competitive Range Total</b>	<b>5</b>
<b>+ Initial Evaluation Points Above</b>	<b>10</b>
<b>+ Cost Points Above</b>	<b>5</b>
<b>Total Possible Cumulative Competitive Range Evaluation Score</b>	<b>20</b>

5. Proposers may be asked for a Best and Final Offer post-interview as detailed in 4.D below. WTA reserves the right to award a contract without a Best and Final Offer Request.
6. The highest scoring Proposer will be selected. Nothing in this request obligates the WTA to award a contract to the lowest cost Proposer, or any Proposer.

In the event that the top two (2) proposals are within three (3) points of each other, they are considered comparative equals. WTA will require best and final offers (BAFO) be submitted for evaluation. The Evaluation Committee will review them against all of the evaluation factors above and render a final score.

#### **4. B Evaluation Criteria**

##### **4. B.1 Demonstrated ability in meeting work requirements**

Proposer will provide detail clearly demonstrating its ability to provide the services outlined in the 2.D Scope of Work against the information provided in 3.E Submission Packages.

##### **4. B.2 Demonstrated expertise in four (4) or more disciplines**

Proposers will include verifiable detail of its experience in no less than four (4) disciplines that are detailed in the 3<sup>rd</sup> bullet of 3.E "Submission Packages". Proposers demonstrating expertise in more than four (4) disciplines will receive a higher score.

##### **4. B.3 References**

WTA staff will review the references provided and verify that the Proposer has performed satisfactorily on other contracts using the guidelines outlined in the 1<sup>st</sup> bullet of 3.E "Submission Packages".

##### **4. B.4 Cost**



Proposal price will be calculated by taking one (1) Principal, one (1) Associate, and one (1) Paralegal hourly rates and multiplying them by WTA's 2018 approximate billed hours for legal services at those billing levels. For 2018, WTA was billed:

- 150 Principal Hours
- 13 Associate Hours
- 49 Paralegal Hours

#### **4. C Additional Investigation and Review**

WTA will review all material submitted with a proposal to establish Proposer responsibility and performance history. This includes review of all permits, registrations, and licenses as required by city, state, and Federal ordinances, rules, laws, and regulations. When requested by WTA, Proposer shall provide documents confirming that he/she/it has obtained any local business registrations or permits that may be required.

WTA may also obtain additional information and conduct independent investigation, including, but not limited to, obtaining copies of business licenses and/or professional licenses and certificates, obtaining financial reports, verifying DBE/MWBE status, reviewing records with the Better Business Bureau, reviewing references, and checking debarment lists. WTA reserves the right to interview references, perform internet searches, review Dunn & Bradstreet reports, and use any other investigative means it chooses. A Proposer must timely provide all requested information.

#### **4. D Best and Final Offers (BAFO)**

In WTA's discretion, Proposers may be afforded the opportunity to amend his/her/its proposal and make a BAFO. The requests for BAFO's shall include:

- Notice of an opportunity to submit a BAFO based on discussions during interviews or clarifying correspondence.
- A common due date and time for submission of written BAFO's or modifications to any BAFO, allowing a reasonable opportunity for preparation of the written BAFO's.
- Direction for BAFO format and contents.
- Notice that if a Proposer does not submit a BAFO or a notice of withdrawal and another BAFO, his/her/it's immediate previous offer will be construed as the BAFO.

Any modifications to the initial proposals made by a Proposer in the BAFO shall be clearly identified. WTA will evaluate BAFO's according to the same requirements and criteria as the initial proposal. The WTA will make appropriate adjustments to the initial scores for any criteria which have been affected by any modifications made by the BAFO's. These final scores and rankings will again be weighed against the [Evaluation Criteria in 4.C](#).

#### **4. E Notice of Intent to Award**

Upon selection of the successful Proposer, a Notice of Intent to Award will be provided to all Proposers. The Notice of Intent in no way constitutes a promise to award or an acceptance of the offer contained in the proposal; rather it is the WTA's first step in recommending a contract to its Board of Directors. WTA may reconsider and withdraw,





change or amend a Notice of Intent at any time before the Board of Directors formally select a proposal.

Proposers are permitted to request a debriefing about their own proposal from the Procurement and Grants Coordinator after the Notice of Intent is issued. Information relating to or how the Evaluation Team scored other proposals will not be discussed during the debrief. Documents and information relating to the procurement including the successful proposal will become available once the Board of Directors confirms the award recommendation and may be requested by submitting a Public Disclosure Request to [pd@ridewta.com](mailto:pd@ridewta.com). Refer to Part 6 of this RFP for the process of releasing documents marked as “Confidential” or “Proprietary”.

A City of Bellingham endorsement will be required as a condition of contract award to the highest scoring proposer<sup>3</sup>.

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<sup>3</sup> Bellingham Municipal Code 6.05.025

## Part 5 – Special Terms and Conditions

A successful Proposer will execute a formal contract with WTA, which contract shall include the following particular terms and conditions, and such terms and conditions should be factored into any proposal:

### 5. A Contract Term, Compensation, and Invoice Payments

1. Contract Term: The initial length of the contract will be three (3) years, and WTA may, in its discretion, extend the contract for one (1) additional three (3) year increments.
2. Compensation: WTA will only issue payments against an approved Purchase Order and shall pay Contractor a sum equal to the amount agreed upon by the parties.
3. Invoices: Payment will be at Net thirty (30) day terms. WTA is open to negotiating different payment terms (i.e. 3% Net 15, etc.).

WTA reserves the right to refuse payment on invoices for work that completed sixty (60) days prior to the invoice receipt.

Invoices must be addressed to Accounts Payable or emailed to ap@ridewta.com. WTA will not be responsible for late payments due to incorrect routing on the part of the vendor.

### 5. B Contract Modifications & Change Request

No alterations or variation of any of the terms, conditions, prices, quantities, or specifications of any contract shall be effective without prior endorsement of the WTA's General Manager.

Either party may initiate a Change Request to the other in writing. Any request by Contractor shall include a detailed statement of work, level of effort by job description (hours), and job descriptions.

After receipt of any Change Request from WTA, Contractor shall submit a detailed price schedule proposal for the additional work to be performed, if required, and notification of modifications of other provisions of the Contract which may be required as a result of the change. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause provided in Appendix A, however, nothing in this clause shall excuse the Contractor from proceeding with the Contract Work as changed.

WTA reserves the right to add or delete items to the Contract Work, as determined to be in its best interest. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original proposal, and will be evidenced by issuance of a written contract Amendment issued by WTA. Changes for a significant increase or decrease in size or scope of the Contract will not be allowed.

## **5. C Independent Contractor**

At all times, Contractor shall be an independent contractor whereby, in the performance of any contract, the Parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee of WTA under RCW Chapter 41.06 or RCW Title 51. Contractor shall indemnify and hold harmless WTA from and against any and all costs (including attorneys' fees) or liabilities (including payroll taxes, penalties or interest) arising out of any assertions that the Contractor is not an independent contractor of WTA.

## **5. D Access to Records and Sites of Project Performance**

As a recipient of State funds, WTA agrees to:

1. Provide, and require its Contractors at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:
  - a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives
  - b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives
  - c. WTA, member agencies, and its Contractors

## **5. E Insurance Requirements**

Contractor and subcontractors will not begin Work until proof of insurance has been received and approved by the WTA. Insurers must be licensed to conduct business in the State of Washington (or issued as a surplus line by a Washington Surplus lines broker) and approved by the State Insurance Commissioner<sup>4</sup>. Insurers must have a minimum rating of A- and a financial rating of Class VII or higher in the most recently published edition of the A.M. Best's Key Rating Guide. Subcontractors must furnish the same insurance requirements listed below prior to starting work

Approval of the insurance by WTA will not relieve or decrease the liability of the Contractor for any damages arising from Contractor's or its subcontractors' performance of the work. Contractor's failure to fully comply with insurance requirements shall be considered a material breach and cause for immediate contract. Contractor shall bear all damage costs sustained for failure to maintain any of the required insurance or to provide notification that it cannot.

Coverage will include claims for damages arising from Contractor's performance for:

- Bodily injury/death
- Personal injury
- Property Damage, including Premise and Operations, Fire damage and medical expense
- Independent Contractors coverage
- Protective Liability

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<sup>4</sup> RCW 48

- Completed Operations and Products.

The Contractor and subcontractors must procure the following minimum insurance:

1. Commercial General Liability in the amount of \$1,000,000 per occurrence and \$2,000,000 per project aggregate.
2. Umbrella or Excess Liability in the amount of \$1,000,000 per occurrence.
3. Professional Liability in the amount of \$1,000,000 per occurrence.

Coverage must be maintained through the life of the Contract plus one (1) year.

Contractor and subcontractors must furnish the following endorsements separate of the Certificate of Liability:

- Additional Insured Endorsement naming "WTA Agents & Employee's" for Ongoing Operations. Endorsement should be on Accord© form CG20100704 or equivalent.
- Additional Insured Endorsement naming "WTA Agents & Employee's" for Completed Operations. Endorsement should be on Accord© form CG20370704 or equivalent.
- Waiver of Subrogation naming "WTA Agents & Employee's". Endorsement should be on Accord© form CG24041093 or equivalent.
- Cancellation Endorsement providing thirty (30) days advance written notice to be received by WTA.

Contractor and subcontractors must maintain during the life of this contract Worker's Compensation Insurance. If the Contractor is not eligible for Worker's Compensation Insurance it will indemnify and hold WTA harmless for any claims resulting from Contractor's actions.

These insurance requirements do not limit the Contractor's liability for damages resulting from performance.

## **5. F Subcontractors**

Contractor shall perform at least 75% of the work with its own organization.

All subcontractors must be pre-approved by WTA before they begin work. WTA reserves the right to investigate sub-contractor responsibility prior to confirming award, if subcontractors are known. WTA will not approve change orders to the proposal or final contract price for replacing rejected sub-contractors.

Prime contractors are required to provide a copy of the sub-contract or purchase order to WTA. Any sub-contract will contain the same language as required in [Appendix A](#).

Before the sub-contractor starts, shall submit the following documents:

- Insurance requirements listed above or furnish proof of inclusion of the Prime Contractors insurance
- Provide proof that all individuals are properly licensed, certified, and/or bonded to perform the contracted scope where applicable

Contractor will be jointly and severally, and vicariously liable to WTA for any work performed by its subcontractors, and responsible for the work of, including, but not limited to the adequacy, timeliness, efficiency, and sufficiency, its subcontractors. All subcontractors will have sufficient knowledge, skill, and experience to perform the work contracted to them.

WTA will not be held responsible for the contractual relationship between subcontractors and Contractor. Contractor will maintain and monitor all subcontractor performance, payment, project delivery requirements, and relationships as they pertain to the Prime's ability to successfully complete a project.

### **5. G Economic Price Adjustments**

Beginning on the contract anniversary date in 2020, WTA may consider a rate adjustment to the per hour rate of the legal team, if requested by the Contractor in writing. Rates are adjusted using the following index calculated over-the-year:

- The Consumer Price Index for Urban Wage Earners & Clerical Workers (CPI-W); Seattle-Tacoma-Bremerton, WA, not seasonally adjusted, 1982-1984=100 reference base, Legal Services.

Rates will not be adjusted more than 10% above or below the original contracted amount.

WTA, in its sole discretion, will decide whether to approve or deny any adjustment request within 30 days. If approved, a rate increase shall take effect the first of the month following rate increase approval.

An example:

A per hour cost proposed is \$200. Using the above CPI for August 2014 and August 2015.

CPI for Current Period	239.630
Less CPI for Previous Period	222.578
Equals index point change	17.052
Divided by Previous Period CPI	222.578
Equals	0.077
Result multiplied by 100	0.077 x 100
Equals percent change	7.7

The adjustment will be based on the 7.7% change.

The adjustment of 7.7% would then be calculated:  $\$200 \times 7.7\% = \$15.40$ . The new per hour cost would then be increased to \$215.40.

Should the referenced CPI-W index be discontinued, the index for All Items will be used.



## **5. H Limitations of Liability**

WTA is unable to agree to any limitation of liability in the event of a claim or issued judgment through the performance of a contract. This is considered a gift of public funds, and is unenforceable by the Washington State Constitution<sup>5</sup>.

### **5. I Federal Terms and Conditions**

On occasion, requests for services made under the Agreement may be funded in whole or in part by the Federal Transit Administration (FTA) therefore the required federal clauses and certifications shall be incorporated into the Master Agreement. WTA will notify Counsel when the assigned task will be part of an FTA funded grant.

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<sup>5</sup> Article VIII, Section 7, "Credit not to be Loaned"



## **Part 6 – Public Disclosure Law**

WTA complies with RCW Chapter 42.56. All proposals and contract documents will be disclosed if a Public Disclosure Request (PDR) is submitted, unless a proper exception applies. It is Proposers responsibility to be familiar with RCW Chapter 42.56 and what WTA's confidentiality limitations are.

WTA will not execute non-disclosure agreements.

### **Proposals Marked Confidential:**

If WTA receives any public disclosure request that includes a request for all or a portion of any proposal, WTA is required to comply with this request under RCW Chapter 42.56, subject to any exception that may apply to WTA. Nonetheless, any information provided by Proposer labeled "Confidential" or "Proprietary" but does not, in WTA's opinion, fall into an exception from public disclosure, will be initially withheld and WTA will notify Proposer of the request. WTA will continue to withhold the confidential or proprietary labeled materials for a total of fourteen (14) days after providing notice. Thereafter, WTA shall release the confidential or proprietary materials pursuant to the public records request, subject to any court order or injunction that Proposer may obtain.

The Proposer assumes all costs of any legal actions, and shall reimburse WTA for administrative, expert and costs and attorneys' fees it incurs arising from dealing with bidder's labeling of any portion of the bid as "Confidential" or "Proprietary," including those arising from any legal action commenced by bidder. Submission of a bid is agreement with this section.

### **Public Records Application to Documents of Vendor**

As a public contract, all records prepared, generated or used by a successful vendor or its agents, employees and subcontractors relating to the contract and associated work will be subject to being a "Public Record" under RCW Chapter 42.56. Proposer, if selected, shall maintain and retain all such records in a manner that is accessible and WTA shall have the right to review and inspect such records upon request, for a term of three (3) years following completion of the contract work. All records subject to a public disclosure request will be provided to a requester. WTA may only refrain from disclosing any record based upon an exemption that is applicable to WTA, and will not refrain from disclosing any record under an exemption that may be personal to the Proposer. Proposer will need to seek judicial approval to prevent such disclosure, at its expense. Proposer, if selected, shall insert this provision in all contracts with subcontractors or agents providing services relating to the contract.

**Part 7 – Exhibits and Appendix****Proposer's Checklist**

By submitting a Proposal, Proposers agree to be bound by and adhere to all legal requirements and contract terms and conditions contained in this solicitation document.



WTA WILL NOT NEGOTIATE ANY ASPECT OF THE REQUIRED SERVICE OR ANY CONTRACT TERM OR CONDITION ONCE THE INTENT TO AWARD IS ISSUED. WTA WILL NOT MAKE ANY CONCESSIONS FOR PROPOSERS WHO ARE NOT COMPLETELY FAMILIAR WITH THE SCOPE OR CONTRACT REQUIREMENTS.











The following information, forms and documents contained in this solicitation shall be completed and submitted as the first section of the original bid document. Proposals not adhering to the provided directions may be disqualified as non-responsive.

- ☐ Proposal Form (Exhibit A)
- ☐ References (Exhibit B)
- ☐ Proposal Cost (Exhibit C)
- ☐ Notarized Conflict of Interest Certification (Exhibit D)
- ☐ Debarment, Compliance, Conflict of Interest (Exhibit E)
- ☐ A Submission Package (Part 3E)

Proposers are advised that the following will be incorporated into the final contract:

- Request for Proposal including Exhibits and Appendices
- Issued Addenda (if applicable)
- Contractor Pricing & Submissions including completed exhibits
- Executed Contract
- Purchase Orders

The below exhibits are embedded into the RFP as indicated with this symbol:    
Proposers are responsible for ensuring they can access them.

<b>Exhibit A</b> Proposal Confirmation & Cover Sheet		<b>Exhibit G</b> Disadvantaged Business Enterprise Certification §	
<b>Exhibit B</b> Vendor Demographics & References		<b>Exhibit H</b> Lobbying Certification §	
<b>Exhibit C</b> Fee Schedule			
<b>Exhibit D</b> Conflict of Interest Certification		<b>Appendix A</b> Contract Terms & Conditions	
<b>Exhibit E</b> Debarment and Compliance Statement		<b>Appendix B</b> Federal Contract Terms & Conditions	
<b>Exhibit F</b> Request for Exceptions, Deviations, Substitutions		<b>Appendix C</b> SAMPLE Contract	