



Request for Proposal

RFP # 2019 - 203

Labor Attorney

**Proposal Submission Deadline:
Friday, July 26, 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**

Contents

Part 1 – Introduction.....	3
Part 2 – Scope of Work.....	4
2. A Introduction.....	4
2. B Background.....	4
2. C General Technical Requirements.....	4
2. D Scope of Work.....	5
Part 3 - Submission Guidelines.....	6
3. A Procurement Schedule.....	6
3. B Proposal Guidelines.....	6
3. C Minimum Proposer Qualifications.....	7
3. D Proposal Submission.....	8
3. E Submission Packages.....	8
3. F Conflict of Interest.....	9
3. G Addenda.....	10
3. H Contact with WTA.....	10
3. I Protest Procedures.....	10
3. J Inter-local Purchasing.....	12
3. K Request for Clarification, Deviation, or Substitutions.....	12
Part 4 – Proposal Evaluation.....	13
4. A Evaluation Procedures.....	13
4. B Evaluation Criteria.....	14
4. B.1 Demonstrated ability in meeting work requirements (Most Important).....	14
4. B.2 Experience with Transit.....	14
4. B.3 Cost.....	14
4. C Additional Investigation and Review.....	15
4. D Best and Final Offers (BAFO).....	15
4. E Notice of Intent to Award.....	15
Part 5 – Special Terms and Conditions.....	17
5. A Contract Term, Compensation, and Invoice Payments.....	17
5. B Contract Modifications & Change Request.....	17
5. C Independent Contractor.....	18
5. D Access to Records and Sites of Project Performance.....	18
5. E Insurance Requirements.....	18
5. F Subcontractors.....	19
5. G Economic Price Adjustments.....	20
5. H Travel Expense Reimbursement.....	21
5. I Limitations of Liability.....	21
Part 6 – Public Disclosure Law.....	22
Part 7 – Exhibits and Appendix.....	23
Proposer’s Checklist.....	23

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.

WTA is currently seeking an employment and labor law attorney.

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 any Proposer who is not completely familiar with the scope or contract requirements.

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. In general, the term Proposer means those who submit a proposal in response to this RFP, while a Contractor is a Proposer who has been selected and enters a contract to provide the services.

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 is a Public Transportation Benefit Area (PTBA) providing fixed route and paratransit service throughout Whatcom County and to Mt. Vernon in neighboring Skagit County. WTA employs 274 employees in the following categories:

	Non-Represented	Represented	Total
Full Time	41	232	273
Part Time	0	1	1
Total	41	233	274

WTA has a collective bargaining agreement with the Amalgamated Transit Union, Local 843. The current agreement is effective January 1, 2019 through December 31, 2021.

WTA is seeking an attorney or law firm with expertise in employment/labor matters. The assigned attorney would assist WTA with collective bargaining negotiations and general employment law issues.

2. B Background

WTA's ATU collective bargaining agreement is typically negotiated for 3-year terms. Negotiations usually commence in August of the final year of the labor contract.

This table shows the fee history for Labor Counsel:

2018	\$46,118
2017	\$4,119
2016	\$10,723
2015	\$46,924
2014	\$4,175
2013	\$4,419
2012	\$29,422
2011	\$11,769
2010	\$43,864
2009	\$27,200

2. C General Technical Requirements

Counsel will provide specialized professional legal services to WTA on an as needed basis, but must in particular be available and provide assistance as necessary for negotiations of labor contracts. Because such services, at times, represent emergency situations, Counsel will be expected to return a phone call on the same day.

2. D Scope of Work

Other examples of services include:

- Provide assistance and advice on union-related matters including, but not limited to unfair labor practices, grievances, arbitrations, etc.;
- Provide assistance and advice with sensitive personnel-related matters including but not limited to discipline, terminations, and fitness for duty;
- Represent WTA in mediations, arbitrations, hearings, civil court claims, and similar actions;
- Provide guidance to staff regarding interpretation of Federal and State statutes including, but not limited to, ADA, FLSA, FMLA, HIPAA, PERC rulings;
- Provide counsel for the development and review of WTA personnel-related policies and procedures.
- During negotiations, provide assistance, guidance and advice in developing a negotiation strategy.
- Serve as a member of the WTA negotiating team, usually attending each negotiation session.
- Provide general information for WTA as changes occur in legal obligations and requirements.
- Attend Committee and Board of Directors Meetings, as needed, when issues relating to negotiations and employment contracts arise.

Part 3 - Submission Guidelines

All submittals become the property of WTA.

3. A Procurement Schedule

Activity	Date – 2019
Procurement Request Released	June 24
Clarification Deadline	July 15
Submissions Due	July 26 no later than 12:00 PM PST
Finalist In Person Interviews*	August 15-16
Final Selection (Best & Final Offer)*	August 23
Notice of Intent to Award**	September 3
Estimated Award Date	September 19

* 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 semi final interview/presentation. Any interviews will be scheduled no later than close of business on August 7, 2019. 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 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, incomplete, or incorrect
- Any other reason determined to be in the best interest of the WTA
- It does not meet required terms and conditions
- 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 required information
- 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 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 endorsements¹.
- 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.
- Possess all permits, registrations, and licenses as required by city, state, and Federal ordinances, rules, laws, and regulations. When requested by WTA, Proposer shall

¹ The awarded Proposer will be required to obtain A City of Bellingham endorsement as a condition of contract award.

provide documents confirming that he/she/it has obtained any local business registrations or permits that may be required.

- The firm and individuals assigned to work with WTA shall be well versed in relevant aspects of public transit operations.
- 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 seven (7) years' representing public entities with at least five (5) years in labor negotiations.
- Each attorney in the proposed team will be a licensed member in good standing of the Washington State Bar Association (WSBA).

Unless good cause is shown, no Proposer may provide services under a contract with WTA 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 - 203." Proposal should be submitted to:

Magan Waltari, CPPB, CPSM
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.

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, including forms requested in the Exhibits.

All proposals should include the following information:

- Provide at least five (5) relevant references from the past three (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. 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.
- Document expertise in the following using specific examples:
 - Labor and employment law
 - Equal Employment Opportunity defense
 - Defense of state and federal lawsuits involving employment law
 - Administration of public sector Collective Bargaining agreements
 - Labor arbitration
 - Unfair labor practice & employee relations
 - Employee relations
 - Age discrimination
 - Title VII cases, specifically transit related
 - Public Transit Benefit Areas (PTBA)
 - Development of personnel policies
 - Disability discrimination
- Describe how WTA's needs will be met when principals are unavailable. Identify roles and tasks other personnel may perform.
- Summarize labor negotiation experience. Include descriptions of at least three (3) representative contracts 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.

- Has access to nonpublic information during the performance of an earlier contract or has been provided with information other contractors have not during procurement.
- 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 below:

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, or the procedures and restrictions set out in this RFP.² Any protest must be submitted in writing to WTA's Procurement & Grants Coordinator, and include the following information:

² "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 protoring 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.

- 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 will be postponed unless the Finance Director determines in writing that:

- a) Reasonable probability exists that the protest will be denied.
- b) Suspension of the award would be contrary to the best interests of WTA.

Review of Protests

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 Inter-local Purchasing

This award shall be subject to RCW Chapter 39.34 Inter-local Cooperation Act where other government agencies may purchase on the WTA request in accordance to the terms and prices stated, over the subsequent time period for which the vendor is willing to honor the solicitation price.

3. K 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 bid, 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 SUBSTITUTION 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.

Factor	Score
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.

$(\text{Lowest Overall Proposed Price} \div \text{Price Being Evaluated}) \times \text{Total Points Possible} = \text{Score}$.

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

Initial Evaluation Factor	Score
Demonstrated ability of assigned counsel and other team staff to meet requirements in Part 2 (most important)	5
Experience with Transit	5
Initial Evaluation Total	10
+ Cost points above	5
Total Cumulative Initial Factors Score Possible	15

Committee members will assign a score 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%

Scores are in whole numbers only or rounded down. (e.g. 4.5 will round to 4). Scores 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, at the discretion of WTA. Once any interviews are complete, the Evaluation Committee will re-score against the Initial Evaluation Factors based on information provided by interviewees. This score will 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 scored against the below criteria. Scores will then be added to the initial scores to determine the highest scoring proposal.

Competitive Range Factor	Score
Relationship with prior clients/References	5
Competitive Range Total	5
+ Initial Evaluation Points Above	15
+ Cost Points Above	5
Total Possible Cumulative Competitive Range Evaluation Score	25

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 2 points of each other, they are considered comparative equals. In such case, WTA may, in its discretion, 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 (Most Important)

Proposers will provide detail clearly demonstrating its/his/her ability to provide the services outlined in the Scope of Work against the information provided in 3.E Submission Packages.

4. B.2 Experience with Transit

Proposers will detail its/his/her experience with Washington State transit agencies. This should include attending or presenting at conferences with a transit, transportation or public employment focus, monitoring legislative initiatives affecting transit, and a client list that includes Washington State transit agencies.

4. B.3 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. As a reference point, in 2018 (a year in which

negotiations for a new labor agreement occurred), WTA was billed the following for labor associated legal work:

- 113.6 Principal/Partner Hours
- 3.7 Associate Hours

WTA will also include at least one (1) hour of paralegal services. If staff at the same level has different billing rates, WTA will use the highest rate in its calculation. For example, if two (2) partners were proposed, with one partner having a bill rate of \$200 and the other \$250, then WTA will use the higher of the two for its calculation.

4. C Additional Investigation and Review

WTA will review all material submitted with a proposal to establish Proposer responsibility and performance history. 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 above.

4. E Notice of Intent to Award

Upon selection of the successful Proposer, a Notice of Intent to Award will be provided to all RFP holders. 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 its/his/her 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 recordsrequests@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 Proposer³.

³ 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 expressly or by reference the terms of this Request for Proposal, the general terms and conditions set out in Appendix Z, and the following particular terms and conditions. Each and all of these applicable 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 increment.
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 based on successful task completion 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 the Request for Proposal or any contract shall be effective without prior endorsement of the WTA's General Manager and execution by both parties of a written amendment.

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 5.E(23), 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 and

executed 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, Contractor 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 Commissioner⁴. 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

⁴ RCW 48

- Personal injury
- Property Damage, including Premise and Operations, Fire damage and medical expense
- Independent Contractors coverage
- Protective Liability
- 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 90% 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 subcontractor 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 subcontractors.

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

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 anniversary of the contract, WTA may consider a rate adjustment if requested by the Contractor in writing 30 days prior to contract anniversary. 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, Other Personal 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 of receipt of request. If approved, a rate increase shall take effect 30 days after approval.

To illustrate:

The contracted per mile cost is \$2.50. Using the above CPI for August 2014 and August 2015.

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

The adjustment will be based on the 7.7% change.

The adjustment of 7.7% would then be calculated: $\$2.50 \times 7.7\% = \2.69 . The per mile cost would then be increased to \$2.52 per mile.

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

5. H Travel Expense Reimbursement

Travel costs will be reimbursed to consultants and sub-consultant(s) as follows. Detailed receipts or other proof of expense are required to be fully reimbursed. WTA will not pay any mark-up for any travel costs. A credit card receipt will not be accepted in lieu of a detailed receipt. Receipts are not required for meals covered by per diem and for miscellaneous expenses under \$10 a day.

- Meals & Incidentals per GSA.gov rates at the time of travel based on the destination.
- Mileage will be based on GSA.gov rates at the time of travel.
- Air fare and baggage will be based on the most economical flights with reasonable routing. Business class or first class tickets will not be reimbursed.
- Hotel will be moderately priced and conveniently located. WTA will not reimburse charges for unused rooms.

Expenses including, but not limited to, laundry (unless staying more than 5 nights), in-room movies, extra-cost facilities (e.g. "Resort Fee"), room upgrades or concierge floors, medical expenses, alcohol, damage/theft, fines, tickets, or lost luggage replacement costs, will not be reimbursed. A complete list of Non-Reimbursable Expenses is available upon request.

5. I 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 Constitution⁵.

⁵ 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)
- ☐ Compliance with Wage Statutes (Exhibit F)
- ☐ 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 and appendices are embedded into the RFP as indicated with this symbol:  
Proposers are responsible for ensuring they can access them.

Exhibit A Proposal Confirmation & Cover Sheet		Appendix A Contract Terms & Conditions	
Exhibit B Vendor Demographics & References		Appendix B Sample Contract	
Exhibit C Proposal Cost			
Exhibit D Conflict of Interest Certification			
Exhibit E Debarment and Compliance Statement			
Exhibit F Compliance with Wage Statutes			
Exhibit G Request for Exceptions	