



# **PROCUREMENT POLICY**

**Effective May 18, 1995**

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**PURCHASING POLICIES**

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# ARTICLE 1 - GENERAL PROVISIONS

## PART A - PURPOSE AND APPLICATION

### 1-101 PURPOSE

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by Skagit Transit, to maximize the purchasing value of public funds in procurement, to provide safeguards for maintaining a procurement system of quality and integrity. This Policy shall be interpreted in accordance with Federal Transit Administration's (FTA) Third Party Contracting Guidance, as contained in FTA Circular 4220.1F, and applicable Washington State law.

### 1-102 APPLICATION

This Policy applies to contracts for the procurement of supplies, services, and construction, entered into by Skagit Transit after the effective date of this Policy unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the Agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance grant funds, the procurement shall be conducted in accordance with all applicable mandatory federal laws and regulations, which are not reflected in this Policy. Nothing in this Policy and the procurement procedures shall prevent Skagit Transit from complying with the terms or conditions of any grant, gift or bequest which are otherwise consistent with law.

## PART B – DEFINITIONS

### 1-201 DEFINITIONS

1. **A/E (Architect - Engineer) Professional Services.** Services that require performance by a registered architect or engineer. Professional services of an architectural or engineering nature that are associated with research, planning, development, and design for construction, alteration, or repair as defined by the laws of the State of Washington and FAR 2.101.
2. **Addenda/Addendum.** A written change, addition, alteration, correction or revision to a solicitation.
3. **Apparent Low Bidder.** The label used for a bidder that has been determined to have provided the lowest price in a bid or quote, prior to determination of whether the bid is from a responsive and responsible bidder.
4. **Bidder.** A person or entity who submits a bid in response to an Invitation for Bid (IFB), Invitation to Bid (ITB), Invitation to Tender (ITT), or other formal solicitation type where price is the primary factor in the evaluation process for award determination.

5. Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and is not given notice of alterations in, or other dispositions of the property subject to the trust.
6. Brand Name. A name, term, symbol, design, or any combination thereof used in specifications to describe a product by a unique identifier specific to a particular seller or manufacturer that distinguishes it from its competition.
7. Brand Name or Equivalent. A specification limited to one or more manufacturers' brand names, with identifying model or part numbers, used to invoke certain quality, performance, and other salient characteristics needed to meet the solicitation requirements and which provides for the submission of equivalent products.
8. Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
9. Cardinal Change. A significant change in contract work that causes a major deviation from the original purpose of the work, or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform a very different work from that described in the original contract. Such changes are breaches of contract and are impermissible.
10. Change Order. Work that is added to or deleted from the original contract scope which may or may not alter the original contract amount, completion time, or project outcome. All Change Orders directing a contractor to perform the changed work are made pursuant to the contract provisions for such changes and will be reduced to writing and signed by the Parties. Change Orders may be issued with or without the consent of the Contractor.
11. Contract Modification. Any written alteration in specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.
12. Confidential Information. Information, such as trade secrets or test data, which is made known only to those who need to know only because of a compelling reason. Such information must be protected and is not a matter of public knowledge as may be allowed by public policy or law. Such information must be clearly identified and labeled by Bidders/Proposers.
13. Construction. The process of utilizing labor to build, alter, repair, improve, or demolish any structure, building, or other public improvement to any public real property. It does not include routine maintenance, repair, or operation (MRO) of existing real property.
14. Contract.
  - a. An obligation, such as an accepted offer between competent parties upon a legal consideration to do or abstain from doing some act. The



essential elements of a contract are an offer and an acceptance of that offer, the capacity of the parties to contract, consideration to support the contract, a mutual identity of consent, legality of purpose, and definiteness.

- b. A mutually binding legal relationship or promise, enforceable by law, obligating a Vendor to exchange goods or services for money or other considerations by Skagit Transit. Agency contracts may be Purchase Orders or some other written document resulting from a formal solicitation, negotiation, etc.
- 15. Contract Administration. The functions performed after the parties have signed a contract. Typical contract administration activities are goal-oriented, aimed at ensuring the enforcement of the contract terms and conditions while ensuring the achievement of the stated output and outcome of the contract.
- 16. Contractor. Any individual or business having a contract with Skagit Transit to furnish goods, services, or construction for an agreed-upon price.
- 17. Cooperative Procurement. The action taken when requirements are combined with two or more entities to obtain advantages of volume purchases.
- 18. Cost Analysis. The review and evaluation of cost data to arrive at costs actually incurred or estimates of costs to be incurred. Cost analysis should be employed when price analysis is impractical or does not allow a purchaser to reach the conclusion that a price is fair and reasonable. It is most useful when purchasing non-standard items and services.
- 19. Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements, which are expected to be incurred, or which have been actually incurred by the contractor in performing the Contract.
- 20. Cost Reimbursement Contract. A contract under which a contractor is reimbursed for allowable and allocable incurred costs to the extent prescribed in the contract, which may include fee and profit, if any. Suitable for use only when the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.
- 21. Design-Bid-Build (DBB) Procedure. The traditional delivery method for construction projects in which design and construction are sequential and contracted for separately with two contracts. For example, Agency commissions an Architect and/or Engineer to prepare drawings and specifications under a design services contract, and separately contracts for the construction by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.
- 22. Design-Build (DB) Procedure. An alternate delivery method for construction projects that combines the architectural, engineering, and construction services required for a project into a single contractual agreement. May only be used by a public body certified by the Washington State Capital Projects

Advisory Review Board (CPARB) to use alternative public works contracting procedures. A construction project under which a public agency would enter into a contract with a seller, firm, or consortium of firms both to design and construct a public transportation system, or an operable segment of such system (i.e. public transportation facility that is the subject of the project), that conforms to specific performance criteria; and may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment. Note: Skagit Transit is not a “certified public body”. (Chapter 39.10 RCW)

23. Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
24. Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantage.
25. Economic Value. Any item greater than nominal intrinsic value, \$50 from a single source in a calendar year, or a single gift from multiple sources with a value in excess of \$50 or more in addition to its ordinary meaning, includes: loans, property interest, interest in a contract, employment or another arrangement involving a right to compensation; an option, irrespective of the conditions to the exercise of the option; and a promise or undertaking for the present or future delivery or procurement (RCW 42.52.010.20).
26. Employee. An individual drawing a salary or wages from Skagit Transit, whether elected or not, and any non-compensated individual performing personal services for Skagit Transit or any department, agency, commission, council, board or any other entity established by the Skagit Transit Board of Directors.Facilities. Buildings, land, equipment, and any tangible capital asset, wherever located, whether owned or leased by Skagit Transit.
27. Financial Interest.
  - a. Ownership of any interest in, or involvement in any relationship that, or as a result of which, a person has recently received (within the past year), or will receive, a sum of money or something of value in excess of \$1,000 per year, or its equivalent.
  - b. Ownership of 2% of any property or business; or
  - c. Holding any position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
28. Firm Fixed Price (FFP) Contract. A type of contract providing for a price that is not subject to adjustment on the basis of the contractor’s cost experience in

performing the contract, but may include economic price adjustment provisions, incentives, or both. FFP contracts place maximum risk and full responsibility on the Contractor for all costs and resulting profit or loss. They provide maximum incentive for the Contractor to control costs, perform effectively, and impose a minimum administrative burden upon the contracting parties unless changes are issued or unforeseen events occur during performance.

29. Force Account. Skagit Transit's own labor forces and equipment used to perform project work. Such work is not subject to FTA Third Party Contracting guidance.
30. Gift or Gratuity. Anything of economic value for which no consideration is given except for those items listed in RCW 42.52.010.10.
31. Grant. A financial allocation provided by one entity, such as the federal government, to another entity to achieve a specific objective. This transfer is governed by the conditions specified in the grant agreement and the relevant authorizing legislation.
32. Grantee. An entity, an agency that receives a grant of monetary funds from a grantor. This means Skagit Transit in its entirety, even if only a particular component of the entity is designated in the assistance award document, and includes any sub-grantee of Skagit Transit. Skagit Transit is responsible for assuring that its sub-grantees comply with the requirements and standards of the awarding entity, and that sub-grantees are aware of requirements imposed upon them by federal statutes and regulations.
33. Grantor. An entity that provides grant funds to achieve a specific objective.
34. Immediate Family. For purposes of the Policy, "immediate family" means: an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the individual and the spouse or domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the individual's spouse or domestic partner and the spouse or domestic partner of any such person. [RCW 42.17A.005(26)]
35. Invitation For Bids (IFB). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
36. Joint Procurement. This method of contracting means two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedules or contracts, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract.

37. Legal Counsel. The attorney or attorneys designated by the Authority to provide legal services to Skagit Transit.
38. Life Cycle Costing. The total cost of an item of work or equipment that is comprised of initial cost, operating costs through the normal or expected life of the item, and salvage or resale price at the end of that normal or expected life.
39. Lowest Responsive and Responsible Bidder. The Bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the Bid Documents.
40. Notification. Notification shall be deemed sufficient once communication is posted by U.S. mail or via facsimile.
41. Organizational Conflict of Interest. A situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to Skagit Transit; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
42. Persons. Any business, individual union, committee, club, other organization, or group of individuals.
43. Piggybacking. This procurement method involves using an Interlocal Agreement to leverage a competitive selection process that another agency has already conducted. Utilizing the other agency's agreement is determined to be in the best interest of Skagit.
44. Price Analysis. The process of examining and evaluating readily available price information in the marketplace without performing a cost analysis; that is, without evaluating the separate cost elements and profit included in an Offeror's price. The end result of price analysis is to ensure fair and reasonable pricing of a product or service. Price analysis may include a variety of techniques such as comparing proposed prices with prices of same or similar items obtained through market research.
45. Pricing Data. Factual information concerning prices for goods and services substantially similar to those being procured; can include offered or proposed selling prices, historical selling prices, and current selling prices, and is relevant to both prime and subcontract prices.
46. Procurement. Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage, and disposal operations.

- 47. Procurement Card (P-Card). A payment method whereby internal customers (Requestors) are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. A pre-established credit limit is established for each card issued. The cards enable e-Procurement and facilitate online ordering, generally from pre-approved Vendors under blanket contracts.
- 48. Proposer. A person or entity who submits a proposal in response to a Request for Proposals (RFP).
- 49. Purchaser. A buyer agent who purchases goods, services, and construction on behalf of Skagit Transit to include contract formation by Purchase Order, bid, or formal contract; and staff acquiring goods and services on behalf of Skagit Transit within their spending limits and realm of authority as delegated by the Chief Executive Officer.
- 50. Qualified Products List (QPL). An approved list of products identified by manufacturers' names and model numbers which, prior to competitive solicitation, Skagit Transit has determined are the only items that will meet the minimum specification requirements. Such products are used when quality is such a critical factor and testing so lengthy or expensive that the entity wants to stay with proven products. The list is prepared by testing products, either in the lab or in daily use. Items may be added to the list by the supplier demonstrating their quality by meeting specifications that have been defined by Skagit Transit.
- 51. Request for Proposals (RFP). The document used to solicit proposals from potential Proposers for goods and services whereby price is not a primary evaluation factor; provides for the negotiation of all terms (except for any federal requirements), including price, prior to contract award. May include a provision for the negotiation of Best and Final Offers (BAFO). May be a single-step or multi-step process.
- 52. Responsible Bidder or Proposer. A business entity or individual who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.
- 53. Responsive Bidder or Proposer. A contractor, business entity, or individual who has submitted a bid or proposal that fully conforms in all material respects to the IFB or RFP and all of its requirements, including all form and substance.
- 54. Revenue Contract. Any third-party contract whose primary purpose is to generate revenues in connection with a transit related activity or to create business opportunities utilizing an FTA- funded asset. (i.e. advertising, concessions, land leasing, and use of right of ways). Excludes supplies or services contracts, management and paratransit contracts, and disposal of assets agreements.

55. Services. The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
56. Small Business. An independently owned firm, corporation, or establishment, having a small number of employees, low volume of sales, small amount of assets, and limited impact on the market.
57. Specification. A precise description of the physical characteristics, quality, or desired outcomes of a commodity to be procured, which a supplier must be able to produce or deliver to be considered for award of a contract. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
58. Supplies. All tangible items purchased or consumed by Skagit Transit.
59. Third Party Contract. Any Purchase Order or contract awarded by a grantee (Skagit Transit) to a vendor or contractor.
60. Time and Materials Contract. A contract that provides for contractor payment based on a direct labor, hourly rate that includes benefits, payroll taxes, overhead, and contractor profit and for the cost of materials and equipment used in performance of the contract. Grantees' use of this type of contract is restricted and may only be used after determining that no other contract type is suitable, and if the Contract specifies a ceiling price that the Contractor may not exceed except at its own risk.
61. Value Engineering (VE). A technique by which contractors may; 1) voluntarily suggest methods for performing more economically and may share in any resulting savings, or 2) be required to establish a program or identify and submit methods for performing more economically.

## **PART C - PUBLIC ACCESS TO PROCUREMENT INFORMATION**

### **1-301 PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be public record to the extent provided under the State Public Disclosure Act, RCW 42.56, and shall be available to the public as provided therein.

## **ARTICLE 2 RESPONSIBILITIES**

### **2-101 GENERAL RESPONSIBILITIES**

1. The Chief Executive Officer (C.E.O.) has the final responsibility for the procurement of all goods and services, the processing and sale of goods and services, and to either provide procurement services for the Agency or give functional directions to a delegated designee to perform such services.
2. Other than Procurement personnel, only those persons delegated by the C.E.O. are authorized to commit Skagit Transit for materials, equipment, supplies and services (i.e. emergency purchases).
3. All negotiations are to be handled by the appropriate Procurement personnel within their delegated authority.
4. Personnel purchasing products are to seek to obtain and purchase all goods at the lowest possible total end-use cost, considering the guidelines of prices, services, quality and delivery, and in accordance with sound governmental best procurement practices.
5. Vendor selection and products purchased are to meet the basic policies and standard practices of Skagit Transit
6. All employees involved in purchasing activities will work to maintain and enhance Skagit Transit's image by their personal conduct and methods of doing business.
7. When vendor sales representatives make personal sales calls, they are to be directed to call on Procurement or the delegated purchaser at that time.
8. Requestors will return rejected goods to suppliers.
9. Each Department Manager is responsible for ensuring their department is adhering to the Agency's Procurement Policy and related procedures.

### **2-102 CENTRALIZED PURCHASING**

The organizational structure of Skagit Transit's procurement functions is centralized whereby the rights, powers, duties, and authority relating to purchasing are vested in the Procurement and Contracts Coordinator (PCC) and other Procurement personnel under the Administration Department (collectively referred to as "Purchasing" or "Procurement"); however, final authority resides with the C.E.O. (See 2-101 (1) above). Example: Individuals are permitted to release materials from blanket orders that have been issued by the Purchasing or they may use an Agency P-Card (procurement card) to make individual purchases for their department.

Centralized purchasing further ensures that all applicable federal, State, and local laws, rules and regulations pertaining to each procurement are complied with and included in all solicitations, as necessary. Any purchase exceeding the established micro-purchase threshold must go through Procurement.

The PCC and the Manager of Finance and Administration establish, monitor, and oversee Agency procurement policies and procedures.

### **2-103 GRANT FUNDING**

In addition to the requirements of this Policy and any applicable Washington State laws or regulations, a procurement that includes any amount of federal, State, or other grant funding shall conform to the applicable federal, State, or granting agency laws and regulations, whichever is more restrictive.

### **2-104 SIGNATURE AUTHORITY**

No Department or employee, except as designated by the CEO, shall have the authority to sign Contracts, agreements, or any other form of commitment on behalf of Skagit Transit, regardless of dollar value. Violators of this policy may be personally liable for payment of such Contracts and subject to disciplinary action up to and including termination.



## **ARTICLE 3 - ETHICS IN PUBLIC CONTRACTING**

### **3-101 ANTITRUST LAWS**

The policy of Skagit Transit is to comply with the letter and spirit of all laws applicable to Skagit Transit business and interest.

Violations of the anti-trust laws in any area may have far-reaching effects, causing substantial injury to Skagit Transit in lengthy and expensive litigation, treble damage liability and injunctions or orders affecting property and/or business. An employee who participates in a violation is individually and personally subject to fine or imprisonment.

Skagit Transit's compliance with these laws depends on the conduct of its employees occupying positions of responsibility.

Each employee responsible for Skagit Transit conduct or practices that may involve the application of the antitrust laws should consult and be guided by the advice of legal counsel.

If an employee of Skagit Transit who has acted in good faith for Skagit Transit never-the-less becomes involved in an antitrust proceeding, Skagit Transit will be prepared to assist the employee to the extent possible, including retention of counsel for defense in the case; however, if an employee so acting in good faith is convicted of violating the law there are limitations, as matter of laws, to which Skagit Transit can go to save the employee from punishment imposed as a consequence of conviction.

Each employee is obligated in his area of responsibility to adhere to the above policy. The purchasing employee is not expected to have the knowledge of a lawyer, but he/she is expected to be guided by Skagit Transit's past practices and policies and by his/her own common sense. When he/she is faced with a new problem with unknown legal implications, he/she is expected to refer to the Chief Executive Officer for advice and handling.

### **ROBINSON-PATMAN ACT**

It is also policy to purchase goods and services on the basis of price, quality, terms and services, according to sound governmental purchasing practices.

Personnel performing a purchasing function shall not demand or negotiate a special pricing structure from a vendor that the vendor is not voluntarily willing to offer to other customers under similar conditions and terms.

Legal counsel, through the Chief Executive Officer, should be consulted prior to taking action when in doubt about application of this Policy to any activity.

### **3-102 ETHICAL PRACTICES**

Skagit Transit's suppliers, personnel and services are a natural extension of its own resources. It is the responsibility of all employees to work to maintain the good name of Skagit Transit to develop and maintain good relations between Skagit Transit and its suppliers and to keep in mind that personal contacts form much of the basis for the supplier's opinion of Skagit Transit. In personal

contacts with the suppliers, each employee represents Skagit Transit and should reflect and present the interests and needs of all departments, setting aside, if need be, a more parochial point of view.

### **3-103 CRIMINAL PENALTIES**

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to any civil sanctions set forth in this Article. Criminal, civil, and administrative sanctions against employees or non-employees, which are in existence on the effective date of this Policy, shall not be impaired.

### **3-104 CONFLICTS OF INTEREST, REAL OR APPARENT**

Also, refer to Skagit Transit's Ethics Policy, which discusses this topic more fully.

Use of one's position in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain is strictly prohibited. FTA Cir 9030.1E 1/26/2014

All officers, employees, board members, or agents of Skagit Transit shall avoid both real conflicts of interest and the appearance of conflicting interests in the exercise of their Skagit Transit duties. If an employee finds a situation in which the employee's actions on behalf of Skagit Transit might benefit the employee or any member of the employee's immediate family, it is the employee's responsibility to bring the potential conflict of interest to the attention of their supervisor or Department Manager immediately.

An individual or any member of any individual's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Skagit Transit will evaluate procurements to determine if there is an organizational conflict of interest. If one exists, Skagit Transit may prohibit the Contractor and any of its subcontractors from participating in the procurement or any future procurements.

### **3-105 GIFTS AND GRATUITIES**

It shall be unethical for any officer, employee, board member, or agent of Skagit Transit, or their immediate family member, to either solicit or accept gratuities, favors, or anything of \*economic value from any present or potential contractor or subcontractor. No gift, favors, or gratuities other than an item of nominal economic value, either solicited or non-solicited, shall be accepted or received by any officer, employee, board member, or agent of Skagit Transit from any supplier, vendor, customer, client, or any individual or organization doing or seeking business with Skagit Transit.

\*Economic Value. Any item greater than nominal intrinsic value, \$50 from a single source in a calendar year, or a single gift from multiple sources with a value in excess of \$50 or more in addition to its ordinary meaning, includes: loans, property interest, interest in a contract, employment or another arrangement involving a right to compensation; an option, irrespective of the conditions to the exercise of the option; and a promise or undertaking for the preset or future delivery or procurement (RCW 42.52.010.20). The value of gifts given to an officer's, employee's, board member's or agent's family member or guest shall be attributed to the official, employee, board member, or agent for the purpose of determining whether the limit has been exceeded (RCW 42.52.150.1).

Any employee who is offered or receives a payment or gift of economic value shall refuse it or return it to the giver in a tactful and dignified manner, advising the giver of Skagit Transit's policy prohibiting its acceptance.

Loans are not to be accepted from an individual or organization having prospective dealings with Skagit Transit unless such individual or organization is in the business of making loans to individuals.

No employee shall permit any influence which could conflict with the best interest of Skagit Transit, or prejudice Skagit Transit's reputation.

Association with supplier representatives at luncheons, dinners, or business organization meetings are helpful in establishing better business understanding, and is neither questionable nor unethical, provided the Buyer keeps himself free of obligations. To ensure this, Skagit Transit personnel are expected to assume their share of the expense of such meetings, luncheons, or dinners.

The responsibility for adherence to this Policy is a joint one. Individuals who represent Skagit Transit must be beyond challenge or reproach in every business transaction, and not allow themselves to be put into a position where their judgments can be influenced.

Any employee not complying with this Policy shall be subjected to appropriate disciplinary action.

### **3-106 PROHIBITION AGAINST CONTINGENT FEES**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Skagit Transit contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

### **3-107 CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It shall be unethical for any employee who is participating directly, or indirectly, in the procurement process to become, or to be, the employee of any person contracting with the governmental body by which the employee is employed.

### **3-108 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICT OF INTEREST**

Skagit Transit may grant a waiver from the employee conflict of interest provision (Article 3-104) or the contemporaneous employment provision (Article 3-107) upon making a written determination that:

1. The contemporaneous employment or financial interest of the Skagit Transit employee has been publicly disclosed;
2. The Skagit Transit employee will be able to perform his or her procurement function without actual or apparent bias or favoritism; and
3. The award will be in the best interests of Skagit Transit.

### **3-109 USE OF CONFIDENTIAL INFORMATION**

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain for any other person.

### **3-110 MISCONDUCT OF CONTRACTORS / SUPPLIERS / VENDORS**

Contractors, suppliers, and vendors doing business or seeking to do business with Skagit Transit are expected to demonstrate ethical conduct. Employees must report actual or suspected misconduct or unethical behavior by a contractor, supplier, or vendor to the CEO. Misconduct and unethical behavior may include but is not limited to:

1. Undermining the procurement process
2. Dishonest behavior, untimely performance, or non-compliance with terms of their Contract
3. Collusion or other illegal agreement or action between bidders responding to a Skagit Transit solicitation; or
4. Circumventing the solicitation process by asking Skagit Transit employees, consultants, or other contractors to provide information to which the contractor, supplier, or vendor is not entitled to obtain a competitive advantage.

### **3-111 SANCTIONS**

Employees. The Skagit Transit Board of Directors or the Chief Executive Officer may impose any one or more of the following sanctions on an employee for violations of the ethical standards in this part:

1. Oral or written warnings or reprimands;
2. Suspension with or without pay; or
3. Termination of employment

Non-employees. The Skagit Transit Board of Directors may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

4. Written warnings or reprimands
5. Termination of contract; or
6. Debarment or suspension as provided in Article 11

### **3-112 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH FOR ETHICAL STANDARDS**

General Provisions. The value of anything transferred or received in breach of the ethical standards of these procedures by an employee or a non-employee may be recovered from both employee and non-employee.

Recovery of Kickbacks by Skagit Transit. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by Skagit Transit and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

### **3-113 CONFIDENTIALITY**

Although Skagit Transit is a public agency, there are still circumstances under which documents are not subject to the legal requirements of public disclosure.

There are steps during the purchasing transaction that are of a confidential nature, especially with regard to vendors and documentation that they consider to be proprietary.

It is considered unethical, as well as damaging, to allow propriety information about one vendor's quotation or bid status to pass to another vendor. Overheard phone calls, documents on desks during vendor interviews, and conversations between buyers within hearing of vendors in other offices are less direct methods of sharing proprietary information. Even acknowledging to a bidder that there are other bidders is damaging. An awareness of this sort of situation should be created so that it may be avoided.

All procurement files are to be maintained in an up-to-date and confidential manner by the Procurement and Contracts Coordinator. Access to these files and any other documentation found within the procurement files shall be restricted to those authorized by the Manager of Finance and Administration.

### **3-114 CONE OF SILENCE**

The Cone of Silence is a prohibition on direct and indirect communications relating to a competitive solicitation or advertised solicitation that commences upon the issuance of the solicitation document. Evaluation Committee members shall not communicate, verbally or in writing, with other committee members, staff, or the public regarding an active solicitation except during Evaluation Committee meetings.

Bidders, respondents, lobbyists, or consultants shall not contact any Skagit Transit employee, or Skagit Transit official, or any member of the Evaluation Committee concerning an active Solicitation during the Cone of Silence Period. All questions and inquiries concerning procedural matters shall be directed to the designated Procurement contact as identified within the active solicitation only. The contact person must not be a member of the Evaluation Committee. The Cone of Silence period ends upon the final execution of the Contract or when the solicitation has been canceled.

### **3-115 LOBBYING LIMITATIONS**

Departments must preserve the integrity of Skagit Transit's procurement decision-making process and avoid even the appearance of impropriety. To achieve this goal:

1. Entities that engage in efforts to influence Skagit Transit officials must report their lobbying efforts to the public.

2. Skagit Transit officials must disclose certain gifts from lobbying entities.
3. Entities that engage in efforts to influence shall honor the Cone of Silence period by avoiding contact with Skagit Transit employees, officials, or members of the Evaluation Committee during an active solicitation.

### **3-116 UNAUTHORIZED PURCHASES**

Except as provided in the policy, it shall be a violation for any Skagit Transit officer, employee, or other persons, to knowingly and willingly order the purchase of any goods or make any Contract for goods or services, sell, trade, or dispose of Skagit Transit material in the name of or on behalf of Skagit Transit, except as provided by policy. Skagit Transit shall not be bound by any purchase order or Contract made contrary to policy.

## ARTICLE 4 - CONTRACT FORMATION

### PART A – DOCUMENTS

#### 4-101 DOCUMENTS

Contracting methods commonly require written documents covering some of the steps of a transaction. Although not all of the documents listed below are used in a single transaction, they represent the most common types of contracts or information incorporated into the Contract Documents:

1. Purchase Orders
2. Formal Contracts
3. Invitation for Bids
4. Requests for Proposals
5. Change Orders
6. Amendments
7. Addenda

### PART B – GENERAL PROCUREMENT STANDARDS

#### 4-201 GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS

1. Contract Administration System. Personnel responsible for procurement of goods and services on behalf of Skagit Transit will ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. Ensuring Most Efficient and Economic Purchase. Skagit Transit procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
3. Intergovernmental Procurement Agreements. To foster greater economy and efficiency, Skagit Transit may enter into State and local intergovernmental agreements for procurement or use of common goods and services. The requirements and standards of FTA Circular 4220.1G apply to procurements entered into under such agreements using FTA funds.



4. Excess and Surplus Property Usage. Skagit Transit is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.
5. Use of Value Engineering in Construction Contracts. Skagit Transit may use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value Engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.
6. Awards to Responsible Contractors. Skagit Transit shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
7. Written Record of Procurement History. Skagit Transit shall maintain records detailing the history of procurement. At a minimum, these records shall include:
  - a. The rationale for the method of procurement;
  - b. Selection of contract type;
  - c. Reasons for contractor selection or rejection; and
  - d. The basis for the contract price
8. Responsibility for Settlement of Contract Issues/Disputes. Skagit Transit alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Skagit Transit of any contractual responsibility under its contracts. Any issues or disputes should be made in writing to the Procurement and Contracts Coordinator, who will escalate through the Director of Finance to the Chief Executive Officer.
9. Written Protest Procedures. All disputes relating to Skagit Transit's procurements will be addressed as documented in Article 12 – Appeals and Remedies. In all instances where a protest is received in regard to a contract required to comply with FTA Circular 4220.1G, as may be amended, Skagit Transit is required to disclose information regarding the protest to FTA. All protest decisions must be in writing. Written protests should be made to the Procurement and Contracts Coordinator, who will escalate through the Director of Finance to the Chief Executive Officer. A protester must exhaust all administrative remedies with Skagit Transit before pursuing a protest with FTA. FTA protest reviews will be limited to 1) Skagit Transit's failure to have, or to have followed, its protest procedures, or its failure to review a complaint or protest; or 2) violations of federal law or regulation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters

Office within 5 business days of the date the Protester knew or should have known of an adverse decision by Skagit Transit or other bases of appeal to FTA. Violations of federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of the State or local authorities.

10. Contract Period of Performance Limitation. Skagit Transit will not enter into any contract for rolling stock or replacement parts with a period of performance exceeding 5 years inclusive of options without prior written FTA approval. Skagit Transit will be judicious in establishing and extending contract terms for all other types of contracts. Good procurement practice dictates that contracts will not be entered into for longer than minimally necessary to accomplish the purpose of the contract.
11. Contract Options. Skagit Transit may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, Skagit Transit may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If Skagit Transit chooses to use options, the requirements below apply:
  - a. Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
  - b. Exercise of Options. Skagit Transit must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless Skagit Transit has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

#### **4-202 COMPETITION**

1. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:
  - a. Unreasonable requirements placed on firms in order for them to qualify to do business;
  - b. Unnecessary experience and excessive bonding requirements;
  - c. Non-competitive pricing practices between firms or between affiliated companies;
  - d. Non-competitive awards to any person or firm on retainer contracts;
  - e. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or

contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

- f. The specification of only a "brand name" product without listing its salient characteristics and not allowing an "equal" or "alternate" product to be offered; and
  - g. Any arbitrary action in the procurement process.
2. Prohibition against Geographic Preferences. Skagit Transit will not use statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws; however, geographic location may be a selection criterion in procurements for Architectural and Engineering (A&E) services only, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. Written Procurement Selection Procedures. All solicitations shall:
- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used. A grantee shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a grantee wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

- b. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. Pre-qualification Criteria. The act of pre-qualifying vendors or contractors to meet certain criteria before being permitted to bid on a project is prohibited by Washington State law for all public agencies except the following: WSDOT (State Dept. of Transportation) for highway work – RCW 47.28.070; Public Utility Districts (PUDs) for electrical work – RCW 54.04.085; and

Cities or towns owning an electrical utility for electrical work – RCW 35.92.350. The Legislature has provided public agencies with the ability to help ensure that qualified contractors work on public works projects through the use of Supplemental Bidder Responsibility Criteria, as authorized in RCW 39.04.350(2).

Skagit Transit shall maintain current lists of persons, firms, or products to be used in acquiring goods and services and include enough sources to ensure maximum full and open competition (i.e. Vendor Bid List, Planholders' List, etc.). Also, Skagit Transit will not preclude potential bidders/proposers from requesting to be placed on any such lists during the solicitation period, which is from issuance of the solicitation to its closing date.

## **PART C - METHODS OF PROCUREMENT**

The following policies apply to all methods of procurement:

### **4-301 PROCUREMENT SPLITTING PROHIBITED**

5. A purchase must not be divided or reduced (split) to avoid exceeding a procurement threshold that would normally require a competitive process. For example, if purchasing ten similar items from a vendor within a year, the purchase must not be split (made through more than one PO) to keep each purchase under a certain dollar amount.
6. During the annual budget process, each Department Manager will define for their department any like/kind items for Procurement's determination of the appropriate procurement method. This approach will be considered in all Agency procurements to ensure purchases are not split to circumvent the competitive process. In defining "like/kind" items, Managers shall consider the purchase of multiple periodic orders and purchases of similar items of varying sizes, etc. In all cases, if a Manager determines that purchases of like-kind items will exceed the micro- purchase threshold, then such acquisitions must be turned over to Procurement.

### **4-302 PROCUREMENT BY MICRO-PURCHASE – UP TO \$50,000**

1. When determining if this procurement method applies, the entire purchase is considered regardless of what each single item costs, including freight, tax, and other costs to acquire the goods or services, and totaled to arrive at a final purchase price or contract amount. For example, the total cost or estimate is less than \$50,000.
2. Exempt from competitive quotations; however, reasonable judgment must be made in seeking the lowest possible total end-use price, considering quality, delivery, etc. and providing the price can be determined to be fair and reasonable. This determination must be documented on the Requisition.
3. Micro-purchases may be equitably distributed (rotated) among a list of willing Vendors. Written vendor rotation procedures may be developed with a distribution list of vendors for each department utilizing this procedure, or a binder of various lists kept by Procurement to assign the next available vendor on a particular list to the Requestor. All such lists shall be maintained by Procurement.
4. Exempt from FTA requirements except when the purchase is for federally funded construction exceeding \$3,000 or federally funded goods/services costing up \$10,000, as mandated by federal law.

### **4-303 PROCUREMENT BY SMALL ACQUISITION – 50,001 TO \$150,000**

1. When Procurement determines if this method applies, the entire purchase is considered regardless of what each single item costs, including freight, tax,

and other costs to acquire the goods or services, and totaled to arrive at a final purchase price or contract amount. For example, the total cost or estimate is valued at more than the micro-purchase threshold \$50,000 but less than the Agency's formal process threshold \$150,000

2. At least 3 written quotations from a number of qualified sources are required; award to lowest responsive and responsible bidder. Quotes may be obtained by phone, internet research, through an informal Request For Quotes (RFQ), or "mini-bid" process and a tabulation of quotes/bids compiled, as necessary. Quotes or tabulation results must be attached to the Requisition and included with the PO paperwork.
3. Federal clauses (mandatory and/or situational) apply if utilizing FTA funds.

#### **4-304 PROCUREMENT BY FORMAL PROCESSES – \$150,000 AND OVER**

1. Competitive Sealed Bid – Invitation For Bids (IFB). Used when a contract is estimated to cost more than \$150,000 and the only evaluation factor is price alone. Bids are publicly solicited and, in order for sealed bids to be feasible, the following conditions should exist:
  - a. A complete, adequate, precise, and realistic specification or purchase description is available;
  - b. There is a reasonable expectation of receiving more than one sealed bid;
  - c. The award can be made principally on the basis of price and price-related factors listed in the solicitation including, but not limited to: transportation costs, life cycle costs and discounts expected to be taken;
  - d. No discussion or negotiation with bidders is necessary.

The following requirements apply to procurement by competitive sealed bids:

1. Unless the Small Works Roster process is used, the IFB will be publicly advertised in the official newspaper, or a newspaper of general circulation, at least once and at least 14 Calendar Days prior to the Bid Due Date.
2. Bids shall be solicited from an adequate number of known sources, providing them sufficient time to prepare bids prior to the date set for opening the bids;
3. The IFB, which will include any specifications and pertinent attachments, shall adequately define the items or services sought in order for the bidder to properly respond;
4. Sufficient time is allowed to permit the solicitation, submission, and evaluation of sealed bids;
5. All bids will be publicly opened at the time and place prescribed in the IFB;

6. Any or all bids may be rejected if there is a sound documented business reason;
  7. A Firm-Fixed-Price (FFP) contract (lump sum or unit price) is awarded to the lowest responsive and responsible bidder. When specified in the Bid Documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
  8. Federal clauses (mandatory and/or situational) apply if utilizing FTA funds.
2. Competitive Proposal – Request For Proposals (RFP). Used when a contract is estimated to cost more than \$150,000 and conditions are not appropriate for the use of sealed bids; when factors other than price must be evaluated. Proposals are publicly solicited and in order for competitive proposals to be feasible, any of the following conditions should be present:
- a. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specification, other circumstances requiring the need for discussions or the importance of basing the contract award on factors other than price alone are present.
  - b. There is uncertainty about whether more than one proposal will be submitted in response to an RFP and the grantee lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single proposal.
  - c. The award cannot be made exclusively on price as the relative importance of cost or price may vary but may play a dominant role in source selection.
  - d. Separate discussions with individual Proposers are expected after submission of proposals.

The following requirements apply to procurement by competitive proposals:

1. The RFP will be publicly advertised in the official newspaper or a newspaper of general circulation at least once and at least 14 Calendar Days prior to the proposal due date;
2. All evaluation factors and their relative importance will be identified in the RFP, but numerical weights or percentage ratings need not be disclosed;
3. Proposals will be solicited from an adequate number of qualified sources;
4. Skagit Transit will follow its Procurement Policy and procedures for conducting technical evaluations of the proposals received and for selecting awardees;
5. Any or all proposals may be rejected if there is a sound documented business reason;

6. A FFP or cost reimbursement type contract is awarded to highest scoring responsible Proposer whose offer is most responsive and advantageous to Skagit Transit's needs, with all evaluation criteria considered.
7. Federal clauses (mandatory and/or situational) apply if utilizing FTA funds.
3. **Two-Step Procurement.** Two-step procurement procedures (41 U.S.C. Section 253) may be used in both sealed bid and competitively negotiated procurements, providing the opportunity for full and open competition is retained.

The following requirements apply to procurements by the two-step process:

1. Review of Technical/Professional Qualifications and Approach. Review the prospective contractor's technical or professional approach to Skagit Transit's IFB or RFP, and technical qualifications to carry out that approach. The competitive range may be narrowed to prospective contractors who demonstrate a technically satisfactory approach and have satisfactory qualifications.
2. Review of Bids and Proposals Submitted by Qualified Prospective Contractors. Solicit and review complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals should be solicited from at least three qualified prospective contractors. All bids or proposals submitted shall be considered rather than limiting reviews to the most qualified bidder or proposer.

In the interests of efficiency, Skagit Transit may elect to obtain submittals of both steps with a single solicitation.

4. Design-Bid-Build (DBB) Procurement. The traditional Design-Bid-Build method requires separate procurements to build the final product: 1) contract for A&E services; and 2) contract for construction.
  - a. Design Services. Qualifications-based procurement must be used for design services in accordance to the Brooks Act, 40 U.S.C. Chapter 11, and Chapter 39.80 RCW procedures.
  - b. Construction. Procurement by competitive sealed bids (IFB); Small Works Roster process may be used up to \$350,000. Washington State law does not currently allow competitive negotiated procurements (RFP) for public works construction contracts.

#### **4-305 QUALIFICATIONS-BASED PROCUREMENT – ARCHITECTURAL AND ENGINEERING (A&E) – NO THRESHOLD**

Qualifications-based procurement procedures are required for the selection of contractors performing A&E services, as based on the Brooks Act, 40 U.S.C. Chapter 11, and Chapter 39.80 RCW. Skagit Transit may only use qualifications excluding price procurement procedures when it seeks to acquire A&E services, such as program management, construction management, feasibility studies,



preliminary engineering, design, architectural, engineering, land surveying, mapping, and other related services as set forth in 49 U.S.C. Section 5325(b), when the A&E services directly support, or are directly connected with or related to, the construction, alteration, or repair of real property.

This method of procurement cannot be used to obtain other types of services even though a firm providing A&E services is also a potential source to perform other types of services; or when the design or fabrication will become off-the-shelf items or delivered as final end products for installation in an FTA-assisted construction project, including an Intelligent Transportation System (ITS) construction project.

The Brooks Act requires that:

1. An offeror's qualifications be evaluated
2. Price be excluded as an evaluation factor
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing an agreement on price, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to Skagit Transit.

These requirements apply except to the extent any state adopts or has adopted by statute, a formal procedure for the procurement of A&E services.

#### **4-306 PROCUREMENT BY PIGGYBACKING**

The Chief Executive Officer may make, or authorize another to make, procurements of property, services or construction by way of an Interlocal Agreement, as authorized by Chapter 39.34 RCW, where there exists a competitive procurement made by another public agency and it is determined to be in the best interest of Skagit Transit to participate with such other local agency in the procurement of supplies, services or construction items.

This type of procurement is called “piggybacking” and is defined by the FTA as the post award use of contract rights that allows someone who was not contemplated in the original contract to purchase the same supplies/equipment through that original contract.

The purpose of entering an Interlocal Agreement is to take advantage of a competitive selection process already conducted by another agency and save Skagit Transit the time and expense of conducting its own selection process for the same property, services or construction items.

Piggybacking is permissible when:

1. The solicitation document and resultant contract include an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded. This includes the base and option quantities.
2. The quantities to be ordered were included in the original bid and evaluated as part of the contract award decision.

3. The original solicitation and resultant contract must contain both a minimum and maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation.
4. If federal funds are used in the procurement, the contract being accessed by the piggybacking procedure must contain:
  - a. The clauses required by federal regulations;
  - b. The contractor's submitted certifications required by federal regulations; and
  - c. The procurement in other respects meets federal requirements.
5. The procurement and contract meets other Skagit Transit requirements.

Piggybacking is NOT permissible when:

6. There is no assignment clause in the original solicitation.
7. The piggybacking action would call for an increase in quantities that were not originally bid on and not originally evaluated as part of the contract award. Such an order for additional quantities would constitute a non-competitive procurement. This non-permissible practice is sometimes referred to as a "tag-on".
8. The order is against an indefinite delivery/indefinite quantity contract where the quantities ordered were not bid on and evaluated as part of the basic contract award.
9. The order is an attempt to exercise an expired option.
10. If Federal funds are used, the contract does not contain the required federal clauses or meet federal requirements in other respects.
11. The contract does not meet Skagit Transit requirements in other respects.

#### **4-307 NON-COMPETITIVE PROCUREMENT (SOLE SOURCE)**

Except as permitted by federal law or regulations, all procurement transactions will be conducted in a manner providing full and open competition. In certain instances and situations, non-competitive procurements may be permissible only when the award of a contract is infeasible under small purchase, sealed bids, or competitive proposal procedures AND at least one of the circumstances listed below is present:

1. Sole Source with Non-Federal Funds
  - a. The item or service is available from only a single responsible source. A determination that no other type of property or services will satisfy the needs of Skagit Transit should only be made after detailed market research and checking with other vendors and other agencies. Must

document all research and efforts to find other sources and include with the procurement history. One of these conditions may apply:

- Compatibility. Items are compatible with an established Agency \*standard or existing equipment, inventory, systems, data, programs or services.
- Proprietary Property. Licensed or patented product with only one vendor/dealer.
- Authorized Dealer. Only authorized Service Provider for parts, supplies, repairs and services for support and warranty.
- Unique design. Requires unique features that are essential, aesthetic requirements, or not practical to match to existing design or equipment.
- Used item. Surplus item bought through an auction or distributor that would represent good value and is advantageous to Skagit Transit.
- Delivery Date. Only one supplier can meet required delivery date.
- Project or Research Continuity. Product, systems, services or data must comply with an ongoing project, research, data, testing or analysis. Results would be interrupted or compromised without continuity.

- b. After solicitation of a number of sources competition is determined adequate. If, after soliciting from several sources, only a single response is received, and after determining that the bidding environment was fair and not impeded in any way, and after reviewing the specifications and determining they are not unduly restrictive and changes cannot be made to encourage greater competition, then negotiations may begin to arrive at a reasonably priced contract. Must document and include with the procurement history.

2. Sole Source with Federal Funds. When the property or service is being funded by the FTA, the Requestor must determine if one of the following sole source justifications in FTA Circular 4220.1G applies to the procurement and the documentation must reference one of these:

- a. The property or services are available from one source. When requiring supplies or services available from only one responsible source and no other supplies or services will satisfy the requirements. One these conditions may be present:
- A unique or innovative concept or capability not available from another source;

- Patent or data rights restrictions preclude competition;
  - A follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition; or
  - A follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the Agency's needs.
- b. Single Bid or Proposal – Competition Adequacy. When receiving a single bid or proposal in response to a solicitation, determine if competition was adequate by reviewing the requirements for undue restrictiveness, or survey potential sources that chose not to submit a response. If after solicitation of a number of sources competition is determined adequate, FTA's competition requirements will be fulfilled and the procurement will qualify as a valid sole source. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
- c. Unusual and Compelling Urgency. When such an unusual and urgent need for the property or services exist that the grantee would be seriously injured unless it were permitted to limit the solicitation. The solicitation is limited when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.
- d. Authorized by FTA (in writing). If the situation does not fit any sole source category, yet the Requestor still feels it warrants sole source, a written request may be sent to the FTA to grant Skagit Transit permission to use sole source. Written authorization from FTA must be included with the procurement history.

Note: Associated Capital Maintenance Items (OEM parts) must qualify for an exception under the same standards that would apply to other sole source acquisitions.

3. Cardinal Changes. Substantial contract modifications not within the original scope of the contract are also considered sole source procurements and further constitute an impermissible "CARDINAL CHANGE". This is determined when there exists:
- a. A significant change in the original nature or purpose of the work to be performed or the intended method of achievement;
  - b. A substantial change in the type or amount of work effort on the part of the contractor;

- c. A substantial change exceeding 25% of the total cost of the contract.
- 4. Documentation. Every sole source procurement will be documented on Skagit Transit's "Sole Source Justification" form recording the rationale for justifying the use of sole source, the results of all research, and any other supporting documentation attached. Documentation shall include, but not be limited to:
  - a. Completed Sole Source Justification Form.
  - b. Written authorization from FTA, if any.
  - c. Written correspondence or a record of verbal communications with other vendors and public agencies.
  - d. Cost or price analysis, as appropriate.

All documents are forwarded to the Procurement and Contracts Coordinator who, after review, will finalize the documentation package and ensure required approvals are obtained from the:

- 1. Manager of Finance and Administration – for all capital items.
- 2. Chief Executive Officer – for total amounts up to \$150,000
- 3. Full Board of Directors – for total amounts exceeding \$150,000; sole source awards must be made by Resolution.

#### **4-308 NON-COMPETITIVE PROCUREMENT (EMERGENCY PROCUREMENT)**

The public exigency or emergency will not permit a delay resulting from competitive solicitation.

The Chief Executive Officer, or designee, must authorize the declaration of an emergency, within a reasonable amount of time after, if not before, the purchase. Needs arising from this event will not permit a delay resulting from competitive solicitation, however such emergency procurements shall be made with competition as is practicable under the circumstances. Emergency purchases must be limited to addressing the emergency only. For example, you cannot use a contractor selected without competition to replace your entire roof when the emergency is only to fix a leak in the roof. Emergency justification must be documented and included in the procurement history.

- 1. Definition: A circumstance resulting from an unusual or compelling urgent need for procurement of supplies, services, or construction items exceeding \$10,000 in total where Skagit Transit would be seriously injured unless it limits the solicitation. A threat to public health, welfare, or health and safety may require authorizing an emergency. Simply being short on time due to the agency's negligence is not an emergency.
- 2. Documentation. Every emergency procurement will be documented on Skagit Transit's "Emergency Procurement Justification" form, recording details of the emergency, the rationale for justifying the use of the selected contractor, the results of all research, and any other supporting documentation attached. Documentation shall include, but not be limited to:

- a. Completed Emergency Procurement Justification Form.
- b. Written authorization from FTA, if any.
- c. Written correspondence or a record of verbal communications with other vendors and public agencies.
- d. Cost or price analysis, as appropriate.
- e. Written determination explaining the basis of selection of the particular contractor.

All documents are forwarded to the Procurement and Contracts Coordinator, who, after review, will finalize the documentation package and ensure required approvals are obtained from the:

- f. Manager of Finance and Administration – for all capital items.
- g. Chief Executive Officer – for total amounts up to \$150,000
- h. Full Board of Directors – for total amounts exceeding \$150,000; sole source awards must be made by Resolution.

Reference: RCW 43.19.1906 (1) and (3)

FTA Circular 4220.1G: Chapter VI

FTA Best Practices Procurement Manual: Chapter 4.

# **ARTICLE 5 - FORMAL SOLICITATION PROCESSES**

## **PART A – BID SPECIFICATIONS**

### **5-101 MAXIMUM PRACTICABLE COMPETITION**

All specifications shall be drafted so as to promote overall economy for the purposes intended, and encourage maximum free and open competition in satisfying Skagit Transit's minimum needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications, including but not limited to those prepared for Skagit Transit by architects, engineers, designers, and draftsman.

### **5-102 BRAND NAME OR EQUAL SPECIFICATIONS**

1. Use. Brand name or equal specifications may be used when the Project Manager determines in writing that:
  - a. No other design or performance specification or qualified products list is available;
  - b. Time does not permit the preparation of another form or purchase description, not including a brand name specification;
  - c. The nature of the product or the nature of Skagit Transit's requirements makes use of a brand name or equal specification suitable for the procurement;
  - d. Use of brand name or equal specification is in Skagit Transit's best interest.
2. Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal", "or alternate", references and shall further state that substantially equivalent products to those designated will be considered for award.
3. Required Characteristics. Unless the Project Manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specification shall include a description of the salient characteristics (particular design, function, or performance, etc.) which are required.
4. Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, characteristics desired and is not intended to limit or restrict competition.
5. Further Requirements. No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain

proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing to provide for necessary interchange ability of parts or equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equals".

#### **5-103 BRAND NAME SPECIFICATION**

1. Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Project Manager makes a written determination that only the identified brand name item or items will satisfy Skagit Transit's needs.
2. Competition. The Project Manager, or designee, shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree or price competition is practicable. If only one source can supply the requirement, the procurement shall be made under section 4-306 (Sole Source Procurement).

### **PART B – PUBLIC NOTICE**

#### **5-201 PUBLIC NOTICE**

Adequate public notice of the solicitation shall be given a reasonable time, not less than 14 Calendar Days prior to the date set forth therein for the opening of bids or submittal deadline for receipt of proposals. Such notice shall include publication in a newspaper of general circulation, unless the Small Works Roster process is used for an IFB. The public notice shall state the place, date and time of bid opening or deadline for submitting proposals.

### **PART C – RECEIPT OF SUBMITTALS**

#### **5-301 INVITATION FOR BIDS (IFB)**

Bids shall be unconditionally accepted without alteration or correction, except as authorized in these policies. Bids shall be date stamped and initialed on the envelope by the accepting employee. The time that the bid was received shall also be noted if received on the date of bid closing. Bids shall not be opened (taken from the sealed envelope) except as authorized in these policies. No bids shall be handled so as to permit disclosure of the identity of any Bidder or the contents of any bid to competing offerors until the date set for bid opening.

An abstract of bids (Bid Tabulation) shall be prepared after the bid opening, containing the name of each Bidder and the dollar amount of the bid. The Bid Tabulation is not a final award notice but a tally of all bids received showing who the apparent low bidder is and will be made available for public inspection once completed and verified as accurate. A final Bid Tabulation disclosing the price details of each bid item shall be open for public inspection only after contract award.

#### **5-302 REQUEST FOR PROPOSALS (RFP)**

Proposals shall be date stamped, marked with the time received, and initialed by the accepting employee on the envelope. Proposals shall not be opened (taken from the sealed envelope) except as authorized in these policies. No proposals shall be handled so as to permit disclosure of the identity



of any offeror or the contents of any proposals to competing offerors during the process of negotiation. A Register of Proposals shall be prepared containing the name of each Proposer, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be open for public inspection only after contract award.

## **PART D – OPENING OF SUBMITTALS**

### **5-401 INVITATION FOR BID (IFB)**

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids, or as amended by Addendum. The amount of each bid, and such other relevant information as the Procurement and Contracts Coordinator deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1-301 (Public access to Procurement Information).

### **5-402 TIE BIDS (IFB)**

The possibility exists that identical bids may be received at the bid opening. Absent collusion among the bidders, the following procedure will be used to identify the apparent low bidder:

1. The names of the bidders submitting identical bids shall be placed in a receptacle suitable for drawing lots.
2. A Skagit Transit employee, who is agreeable to all parties, shall draw from the receptacle one lot and publicly announce the identity of the apparent low bidder.
3. The apparent low bidder shall be awarded a contract providing Skagit Transit subsequently determines the successful bidder to be the lowest responsive and responsible bidder.

### **5-403 REQUEST FOR PROPOSALS (RFP)**

At a time prior to the date set for the selection committee meeting, proposals will be opened by the Procurement and Contracts Coordinator and reviewed. A bid history/receiving form will be completed for each proposal received to include information regarding responsiveness and responsibility of the Proposer. Necessary copies will be made for each committee member; confidential portions of the proposal will be noted; forms for references checks will be submitted as described at 5-502, and any other pre- evaluation work necessary will be performed by the Procurement and Contracts Coordinator.

## **PART E – EVALUATION OF RFP**

### **5-501 SELECTION (EVALUATION) COMMITTEE**

At a time prior to proposal due date, a Selection Committee consisting of an odd number of participants will be formed. The committee should consist of the Project Manager, another person who understands the technical specifications contained in the RFP, and preferably a person with no affiliation with Skagit Transit such as someone from another transit agency; however, the selection committee members will be determined on a case-by-case basis. The Procurement and Contracts Coordinator will obtain a signed “Affidavit Concerning Conflicts of Interest, Ethics in Public

Contracting and Confidentiality of Proposals” from each member of the committee. The Procurement and Contracts Coordinator will set a date and time for the Selection Committee to meet within the parameters of the RFP calendar of events.

#### **5-502 SELECTION COMMITTEE MEETING**

This meeting is closed to all except the committee members and the meeting facilitator (usually the Procurement and Contracts Coordinator). Proposals shall be evaluated based on the requirements set forth in the RFP, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The RFP shall set forth the evaluation criteria to be used. No criteria may be used in proposal evaluations that are not set forth in the RFP.

#### **5-503 DISCUSSION AND NEGOTIATION WITH RESPONSIBLE PROPOSERS AND REVISIONS TO PROPOSALS**

As provided in the RFP, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposal pricing and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

### **PART F – CORRECTION OR WITHDRAWAL OF BIDS**

#### **5-601 CORRECTION OR WITHDRAWAL OF BIDS**

Correction or withdrawal of inadvertently erroneous bids before or after bid closing date, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the bid package prior to the time set for bid opening or closing date set for receipt of proposals.

After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of Skagit Transit or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident or
2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Executive Officer or designee.

## **PART G – NOTICE OF AWARD**

### **5-701 INVITATION FOR BIDS (IFB)**

Bidders will be notified of award after the Board of Directors has made award. A final Bid Tabulation or abstract will also be made available at this time. A notice of award recommendation to the Board may be faxed or e-mailed to all bidders prior to the Board's award, as determined by the Manager of Finance and Administration.

In the event all bids for a construction project exceed available funds, as certified by the Manager of Finance and Administration, and the low responsive and responsible bid does not exceed such funds by more than five percent, the Chief Executive Officer or designee is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the IFB.

### **5-702 REQUEST FOR PROPOSALS (RFP)**

Proposers will be notified of the selection committee's proposed recommendation of award to the Board of Directors. This communication will list the date, location and time of the Board's consideration for award. Proposers will then be notified of the Board's final award.

## **PART H – CANCELLATION OF SOLICITATION**

### **5-801 CANCELLATION OF BIDS OR PROPOSALS**

An Invitation For Bids, a Request For Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or as may be specified in the solicitation when it is for good cause and in the best interests of Skagit Transit. The reasons, therefore, shall be made part of the contract file. Each solicitation issued by Skagit Transit shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of Skagit Transit. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reasons for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or proposers.

## **PART I – RESPONSIBILITY OF BIDDERS**

### **5-901 DETERMINATION OF NON-RESPONSIBILITY**

If a bidder or proposer who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement and Contracts Coordinator or designee. The unreasonable failure of a bidder or

proposer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination and shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

## **5-902 RIGHT OF NON-DISCLOSURE**

Information furnished by a bidder or proposer pursuant to this Section shall not be disclosed by Skagit Transit outside the Chief Executive Officer's office without prior written consent by the Bidder or Proposer.

## **PART J – IRREGULARITIES/DEVIATIONS**

### **5-1001 MATERIAL AND IMMATERIAL DEVIATIONS**

Material deviations in a solicitation response may not be waived in order to make an award. Material deviations are those that go to the substance of the requirements. This deviation affects the price, quality, characteristics of the items, or the delivery of the materials or services offered and is detrimental to the rights of other suppliers that have submitted a response. Descriptive examples of material deviations include:

1. Minimum specifications are not met (e.g., required horsepower for an engine)
2. Price is not submitted
3. Offer, including price, is contingent upon stipulations not contained in the solicitation
4. Specific mandatory requirements in the solicitation are not reflected in the bid or proposal
5. A required bid bond is not submitted prior to the due date for submission of responses.
6. The response is significantly dissimilar or inconsistent with other responses submitted without a reasonably acceptable explanation for the deviation
7. Sealed responses received after the specified time.

Immaterial deviations or minor irregularities in a solicitation response may be waived at the discretion of the PCC to make an award. Immaterial deviations are those that will not alter a supplier's position with respect to receiving the award. If required, these deviations may be clarified with the supplier to all Skagit Transit to understand the response. Examples of immaterial deviations include, but are not limited to:

1. Failure to provide a certificate of affidavit
2. Failure to submit the required proof of financial responsibility or insurance
3. Failure to submit requested brochures or catalogs
4. Failure to fully complete or submit a required form (with the exceptions note above in material deviations)

## **ARTICLE 6 - COST AND PRICE ANALYSIS**

Skagit Transit must perform either a cost or price analysis in connection with every procurement action on an FTA funded contract as required, including contract modifications, and in non-federal procurements when a single bid or proposal is received. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Project Manager, Procurement, or the Requestor must make an Independent Cost Estimate (ICE) before bids or proposals are received. For contract modifications, the ICE must be prepared without knowledge of the contractor's proposed pricing.

### **6-101 PRICE ANALYSIS**

If competition is deemed adequate, a price analysis is required to determine that the price is fair and reasonable. Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition. The determination can be made by analyzing or comparing vendor price quotations, catalog or market prices offered in substantial quantities to the general public, regulated prices, recent prices for similar goods and services made by other agencies, or any other reasonable method.

### **6.102 COST ANALYSIS**

When a price analysis will not provide sufficient information to determine the reasonableness of the contract cost, a cost analysis is required. The various elements of cost are analyzed to determine what the item should cost as compared to the proposed cost in order to finally determine if the price is fair and reasonable. In general, a cost analysis is relevant in the following situations:

1. When only one bid or proposal is received and price competition is adequate.
2. When a sole source determination is made, regardless of funds used.
3. When a contract modification is made.

A cost analysis is performed by requesting the offeror to submit the elements of their submitted price (Labor, Hours, Overhead, Materials, and resulting Profit, etc). These elements are analyzed to determine if the price is fair and reasonable. Note that profit, in most cases, should not exceed a 20% margin over the contractor's cost to supply the property or service. In a negotiated procurement, profit may be negotiated as a separate element of the proposal. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Award shall not be considered until after the completion of said cost analysis and the written determination by the Procurement and Contracts Coordinator that the single bid received is fair and reasonable. A written record of such cost analysis or price analysis shall be made a part of the contract file.

### **6-103 CERTIFICATION REQUIRED**

A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted

was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

#### **6-104 PRICE ADJUSTMENT PROVISION REQUIRED**

Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to Skagit Transit, including profit or fee, shall be adjusted to exclude any significant sums by which Skagit Transit finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between Skagit Transit and the contractor.

# **ARTICLE 7 - PUBLIC WORKS REQUIREMENTS AND PREVAILING WAGE**

## **7-101 MANDATORY FOR PUBLIC WORKS PROJECTS**

Compliance with RCW 60.28 and 39.08 and any other relevant RCW or WAC is mandatory for all public works projects consisting of construction or facility improvement contracts or subcontracts.

For FTA-assisted construction or facility improvement contracts exceeding \$150,000, the following minimum requirements apply:

1. A bid guarantee from each Bidder equivalent to 5% of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified;
2. A Performance Bond on the part of the contractor for 100% of the contract price. A Performance Bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
3. A Payment Bond on the part of the contractor for 100% of the contract price. A Payment Bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. For FTA- assisted projects, payment bond amounts may be required from contractors as follows:
  - a. 50% of the contract price if the contract price is not more than \$1 million;
  - b. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - c. \$2.5 million if the contract price is more than \$5 million.

A cash deposit, certified check or other negotiable instrument may be accepted by Skagit Transit in lieu of performance and payment bonds, provided that a procedure is followed to assure that the interest of the FTA is adequately protected.

The requirement of performance bonds on other contracts shall be at the discretion of the Risk Manager.

Skagit Transit may use the "Limited Public Works Process" for contracts with an estimated cost of less than \$35,000. This process allows Skagit Transit to waive the bonding requirements of 39.08 RCW and retainage requirements of 60.28 RCW by assuming liability for the contractor's non-payment of laborers, material and taxes, however, the prevailing wage cannot be waived. In all cases, Skagit Transit will retain the right of recovery from the contractor. The use of Limited Public Works Process will be authorized by Skagit Transit's Risk Manager.

Skagit Transit may establish a small works roster for public works projects under \$350,000. Skagit Transit may set up their own list, or enter into an agreement with another local government for use of their preapproved list as per 39.04.155 RCW. The Board of Directors shall authorize use of the small works roster process through Resolution and the Finance Manager and Procurement and Contracts Coordinator will develop procedures for its use.

#### **7-102. COMPLIANCE WITH THE DAVIS BACON ACT**

For all Federally assisted prime construction, alteration or repair contracts in excess of \$2,000, under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects.

The Contractor will comply with the Davis- Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.

The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

It is the responsibility of the contracting officer to ensure that a copy of the most current wage determination of the Department of Labor (DOL) is included in the solicitation and ensuing contract. In addition, prior to making payments on any construction contract, the contracting officer must obtain documentation certifying federal minimum prevailing wages were paid to employees of the contracting entity.



# **ARTICLE 8 CONTRACTS**

## **PART A – GENERAL REQUIREMENTS**

### **8-101 GENERAL AUTHORITY**

Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interest of Skagit Transit may be used; provided that the use of any “Cost Plus a Percentage of Cost” method described below are not used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to Skagit Transit than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

### **8-102 COST PLUS PERCENTAGE OF COST PROHIBITED**

The Cost Plus a Percentage of Cost and Cost Plus a Percentage of Construction Cost methods of contracting shall not be used.

### **8-103 MULTI-TERM CONTRACTS**

Consistent with current FTA guidelines, contracts for the acquisition of rolling stock or replacement parts for rolling stock must be limited to 5 years. All other contracts for supplies or services may be entered into for any period of time deemed to be in the best interests of Skagit Transit provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. In general, the solicitations will dictate the contract period plus the optional renewal periods. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore, term renewals will be made at the fees or percentage increases dictated in the Proposer’s original response to the RFP.

### **8-104 TIME AND MATERIALS TYPE CONTRACTS**

Skagit Transit may only use time and material type contracts when:

1. After a determination that no other type of contract is suitable; and
2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

### **8-105 CANCELLATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL PERIODS**

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

## **PART B - PURCHASE ORDERS**

### **8-201 PURCHASE ORDERS**

A Purchase Order (PO) is a legal contract governed by the Law of Contracts and the Uniform Commercial Code of Law (UCC). Its use is mandatory for the purchase of goods and services in excess of the micro-purchase threshold with the following exceptions:

1. When a formal written contract is in place;
2. When a Vendor or Contractor is included on the Requisition Exemption List;
3. When monthly services cannot be reasonably estimated prior to the purchase (i.e. utilities).

POs may be used for purchases under the micro-purchase threshold, if desired, to expedite the ordering process or provide a receiving document.

Issuance of Purchase Orders: A PO is initiated by a Requisition completed by the Requestor and approved by Procurement and management for all purchases, regardless of dollar amount, unless exempted on the Requisition Exemption List. (See attached Exhibit B, Requisition Requirements)

A PO will be issued after the completed Requisition is given Final Approval by a manager, including appropriate quotes attached as required. As a major requirement, the PO must contain a precise and clear description of the elements in the order, the terms of the purchase, the manner and place of delivery. (See Procedure 180.03 – Purchase Order Preparation Procedures)

### **8-202 NON-NEGOTIATED ORDER**

When Procurement issues a PO without prior specific negotiations on the particular transaction, the printed language on the PO is intended to prevent Skagit Transit from being bound by a subsequent “order acknowledgment” that changes the normal and usual conditions that would attach to Skagit Transit’s offer.

When a PO is issued in response to a specific quotation, the printed language on the PO is intended to give Skagit Transit the legal effect of a counter-offer, requiring the Vendor to accede to its terms (which usually are typical ordinary terms and conditions imposed by law and trade custom).

### **8-203 ORAL AGREEMENT TO PURCHASE AND “STATUTE OF FRAUDS”**

It is important to understand when written confirmation is required to create an enforceable agreement, even though legally enforceable contracts result from oral orders in most cases. The law covering written purchase agreements is known as the “Statue of Frauds” and is designed to prevent commercial frauds. Some of the more important points covered in the UCC are as follows:

- a. If the value of the order is \$10,000 or more, there must be some written notation beyond orally stating a PO number, in other words, an actual PO must be issued.

- b. Between merchants, notice of objection must be given within a reasonable time, normally 10 days, if the memorandum from the seller is not according to the buyer's understanding.
- c. An oral agreement without a written memorandum can be enforced if the notice from the seller is not according to the buyer's understanding.

## **PART C - COOPERATIVE PURCHASING**

### **8-301 COOPERATIVE PURCHASING (RCW 39.34.03)**

Pursuant to RCW Chapter 39.34, Skagit Transit may join with a state, or political subdivisions of a state, for the purchase of materials, equipment, supplies, or services by entering into a written Intergovernmental Cooperative Purchasing Agreement that requires compliance with the state's, or the political subdivision's, applicable procurement law, including that of Washington State if the cooperative is out-of-state. In addition, Skagit Transit may make a bid call with another government entity as a joint purchase complying with the bid requirements of the participating jurisdictions. Approval and authority for entering into an Interlocal Cooperative Purchasing Agreement will be determined by the anticipated cost of the procurement.

In procurements where it may be advantageous for Skagit Transit to purchase goods and services in cooperation with other public agencies, or purchasing cooperatives, the requirement for a public notice in the newspaper of general circulation shall be waived; however, a copy of the awarding agency's solicitation advertisement or posting of the Invitation to Bid or Request for Proposals on their website may be obtained. The website shall be any state or local website established and maintained by a public agency, purchasing cooperative, or a similar service provider. The posting shall be for the sole purpose of public notice for bids or proposal solicitations. The awarding agency may also fulfill this requirement by providing an access link from the State's website portal to the public notice of solicitation.

When practical, Skagit Transit may include language in its solicitations allowing other public agencies to purchase from Skagit Transit's solicitations, provided that the other agencies allow similar rights and reciprocal privileges to Skagit Transit.

### **8-302 UNITED STATES GOVERNMENT, STATE OF WASHINGTON, OR POLITICAL SUBDIVISIONS**

Services, materials, and equipment may be purchased from the United States Government, or any agency of the State of Washington, or political subdivision, without the necessity to require a competitive solicitation process by Skagit Transit if the contract is found to be in the best interest and at a favorable price to Skagit Transit and the awarding agency's procurement process complies with the bid laws of Washington State.

General Services Administration's (GSA) Cooperative Purchasing Program, available for Federal Government use, allows State and local governments to purchase from GSA Schedule 70 for Information Technology and Schedule 84 for Law Enforcement and security products and services, at any time, for any reason, using any funds available.

## **PART D – CONTRACTS OUTSIDE THE SCOPE OF THIS POLICY**

### **8-401 OTHER ACQUISITIONS**

This Policy will not apply to transactions involving the purchase, sale, lease, or other transactions for real property; for joint development projects; for purchases from government-regulated entities such as public utilities which are granted market exclusivity by the regulating agency (i.e. public utility district (P.U.D.); sewer district, etc.); for purchases of professional subscriptions, memberships, seminars, and expenses in connection with industry meetings and conferences; for travel and living expenses on Skagit Transit business; and other similar expenditures incidental to the routine conduct of Skagit Transit's business covered under the Travel Policy.

### **8-402 REVENUE CONTRACTS**

Contracts whose principal purpose is to generate revenue for Skagit Transit are not subject to this Policy; however, where feasible, a competitive process suitable to the type and scope of the activity involved and the availability of competition should be conducted. In keeping with Skagit Transit's mission and image, revenue contracts are encouraged to enhance income to defray operating expenses and can present opportunities for the business community. In some circumstances involving a revenue-producing activity (i.e. the employment of a contractor to produce revenue) this Policy may apply.

## **PART E - CONTRACT PROVISIONS AND CLAUSES**

### **8-501 CONTRACT PROVISIONS**

Periodically, Skagit Transit will develop authorized contract provisions and clauses that are approved by legal counsel and the Skagit Transit Risk Manager. The list of approved contract provisions and clauses will be maintained by the Procurement and Contracts Coordinator.

### **8-502 FTA Required Third Party Contract Clauses**

In order to be compliant with FTA Funding sources, these clauses are required to be included in any third-party contract where that funding source is being utilized. These clauses are subject to updates per the Federal regulation adjustment and FTA adoption and will be reviewed annually or as needed to ensure compliance. Please see Exhibit C for the most up-to-date version of these contract clauses.

## **PART F – CONTRACT MODIFICATIONS**

### **8-601 CONTRACT AMENDMENTS AND CHANGE ORDERS**

Skagit Transit may negotiate performance changes to current contracts through a written Change Order or Contract Amendment, as applicable.

Contract Amendments are typically used to modify multi-year contracts for goods or services in order to exercise option year extensions and price increases. Amendments are issued by the Procurement and Contracts Coordinator and signed by the Contractor and Skagit Transit's Chief Executive Officer. Full Board approval was already granted to the original proposal which

contemplated option year extensions/pricing, therefore Board approval is not required again unless the Contractor submits a request to increase option year prices that results in a change that exceeds the C.E.O.'s spending authority.

Contract Change Orders issued to modify a contract or PO direct the Contractor to make changes to the original scope of work/specifications, time, or both and are typically bilateral (agreed to by all parties) but can be unilateral (Skagit Transit orders a contract change without the consent of the contractor). In reference to construction contracts, it relates primarily to changes caused by unanticipated conditions encountered during construction not covered by the drawings, plans, or specifications of the project.

Such changes shall be in writing and require review and approval by the Project Manager(s) assigned to the Contract. If Skagit Transit has acquired the services of an A&E (Architectural and Engineering) firm to perform project and/or construction management services, then the primary Architect or Engineer must also review and approve Change Orders.

The Chief Executive Officer shall be authorized to amend contracts in an amount not to exceed his/her purchasing authority limit, provided that the amended total does not exceed the amount budgeted for the Project. Board approval shall be required for a single Change Order exceeding \$150,000.

## ARTICLE 9 - CONTRACT ADMINISTRATION

### 9-101 DEFINITIONS:

1. Project Manager (PM): Person designated on the contract as the main Point of Contact (POC) for the contractor and primary person responsible for overseeing and managing the project work, schedule and budget.
2. Procurement and Contracts Coordinator (PCC): Universally referred to as the Contracting Officer, is the person with the delegated authority to enter into, administer, and/or terminate contracts, and make related determinations and findings. The PCC develops and maintains all Contract Documents and procurement files and is responsible for monitoring procurement compliance Agency-wide.

### 9-103 CONTRACT ADMINISTRATION SYSTEM

All contracts (including interagency) executed by Skagit Transit shall demonstrate that the PCC, PM, and Contractor have complied with the terms and conditions set forth in the contracts.

The procurement file shall include all documentation regarding the administration of the contract, from inception to completion, and be maintained by the PCC. The documentation shall contain, but not be limited to, the following:

\*Please note that the following listing may be a logical filing order with a preprinted cover sheet for the procurement file.

1. Original solicitation documents with Specifications or Scope/Statement of Work
2. Proof of advertisement (both newspaper of record and website)
3. Independent Cost Estimate with any supporting documentation
4. Pre-bid activity and related documentation
5. Bids, proposals or quotes (submittals) received
6. Submittal review, analysis / evaluation process / scoring documents
7. Explanation of the basis for the selection of the contractor
8. Documentation that price is fair and reasonable
9. Pre-award activity/changes to contract and related documentation
10. Award recommendation notices
11. Board approval of contract award / Final award notices
12. Executed contract or PO
13. Any bonding/retainage/insurance documentation
14. Notice to Proceed
15. Post-award activity and related documentation
16. Modifications/changes to contract.
17. Documentation of any cardinal changes.
18. Notices for project completion milestones; acceptance
19. Documentation relating to all contract close out activity

20. A chronological summary of contract activity
21. Information related to grant funding

Immediately after full execution of the basic contract, the technical administration of the contract work becomes the responsibility of the PM with the administrative assistance of the PCC. Together, they shall establish any further methods and procedures to be used to monitor contracts on a case-by-case basis.

The PM is selected by the Chief Executive Officer from the individual department who originated the contract specifications. Responsibilities of the PM include guidance of the work to be performed by the contractor, payment consistent with the contractual terms, monitoring the effective date of the contracts, and other specific contract elements, including modifications to the contract work that may arise during the term of the contract.

# **ARTICLE 10 - SKAGIT TRANSIT PROCUREMENT RECORDS**

## **10-101 CONTRACT FILE**

All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for Skagit Transit in a contract file by the Procurement and Contracts Coordinator.

## **10-102 INTERNAL AUDIT**

All procurement records shall be retained and made available to the Skagit Transit internal auditor.

## **10-103 RETENTION OF PROCUREMENT RECORDS**

All procurement records shall be retained and disposed of by Skagit Transit in accordance with records retention guidelines and schedules required by State law. If a contract is being funded in whole or in part by assistance from the FTA, then all procurement records pertaining to that contract shall be maintained for at least 3 years from the closeout date of the federally assisted contract, or the final disposition of any controversy arising out of the assistance agreement.

## **10-104 CONTRACT COMPLIANCE AUDIT**

On at least an annual basis, an internal audit will be performed by the PCC to ensure all procurements comply with Skagit Transit's policies and procedures. All personnel responsible for initiating procurements will maintain adequate documentation to demonstrate compliance with policies and procedures. In addition to reviewing individual procurements the audit will analyze procurements to verify procurement splitting is not occurring.



# ARTICLE 11 DEBARMENT OR SUSPENSION

## 11-101 AUTHORITY TO DEBAR OR SUSPEND

After consultation with legal counsel the Chief Executive Officer or Manager of Finance and Administration is authorized to debar or suspend a person or firm from consideration for award of Skagit Transit contracts if there is probable cause to believe that the person or firm has engaged in any activity that might lead to debarment or suspension. The debarment shall not be for a period of more than 3 years. The suspension shall not be for a period exceeding 3months.

The causes for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state and federal statues of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Skagit Transit contractor,
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provision, as set forth below, of a character which is regarded by the Chief Executive Officer or Manager of Finance and Administration to be so serious as to justify debasement action:
  - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
5. Any other cause the Chief Executive Officer or Manager of Finance and Administration determines to be so serious and compelling as to affect responsibility as Skagit Transit contractor, including debarment by another governmental entity for any cause listed in the Policy; and
6. For violation of the ethical standards set forth in Article 3 (Ethics in Public Contracting).

#### **11-102 DECISION TO DEBAR OR SUSPEND**

The Chief Executive Officer shall issue a written decision to debar or suspend. The decision shall state the reason for the action taken and inform the debarred or suspended person or firm involved of its right concerning judicial or administrative review.

#### **11-103 NOTICE OF DECISION**

A copy of the decision required by Section 12-102 (decision to debar or suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person or firm.

#### **11-104 FINALITY OF DECISION**

A decision under section 12-102 (decision to debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Skagit Transit Board of Directors or commences a timely action in court in accordance with applicable law.

# **ARTICLE 12 APPEALS AND REMEDIES**

## **PART A - BID PROTESTS**

### **12-101 RIGHT TO PROTEST**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract due to a matter of law or procedural flaw may file a protest with the Chief Executive Officer, or designee. The written and signed notice of protest must address which law or procedure was not followed or violated, how it has affected the aggrieved, and describe the relief or corrective action desired. The protest letter shall be submitted in writing prior to the opening of bids or the closing date for proposals. If the aggrieved person did not know, and could not have known, of the facts giving rise to such protest prior to bid opening, or the closing date for receiving proposals, the protest shall be submitted within 16 hours after bid opening, or 2 full business days after the aggrieved person knows or could have known of the facts giving rise thereto. Upon timely submittal of a written Notice of Protest, the protest shall be handled as follows:

1. A meeting(s) will be called within 5 business days from receipt of the protest that will include representatives from Skagit Transit and the Protestor to discuss the issue(s) related to the protest. The meeting may be conducted by telephone conference;
2. A decision of the protest will be made by the Chief Executive Officer, or designee, within 7 business days of the final meeting. The Protestor shall be notified of the decision in writing by the Chief Executive Officer, or designee, by regular mail;
3. The Chief Executive Officer, or designee, may, at his/her sole discretion, extend the limits of time outlined above;
4. The decision of the Chief Executive Officer, or designee, shall be final unless appealed as provided herein;
5. 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.
6. If the protester is not satisfied with the solution of the Chief Executive Officer, or designee, a written appeal may be filed with the Board of Directors. Appeals to the Board of Directors filed more than 5 Calendar Days following the receipt of the Chief Executive Officer, or designee's, written determination will not be accepted.

### **12-102 APPEALS**

Protestor may appeal the Chief Executive Officer, or designee's, decision to the Skagit Transit Board of Directors by submitting a written Notice of Appeal to the Skagit Transit Board Chairperson within 7 Calendar Days of receipt of the Chief Executive Officer, or designee's, decision. The Chief Executive Officer, or designee's, decision shall be deemed received within 3 days, exclusive of Sundays and holidays, of the date of posting of the decision or sooner in the event of actual receipt

of personal service or fax confirmation. The appeal shall be based solely upon the record before the Chief Executive Officer, or designee. A three-member committee of the Skagit Transit Board, as appointed by the Board, shall decide the appeal. Written argument must be submitted to the committee. The committee may affirm or reverse the decision of the Chief Executive Officer, or designee, or affirm or reverse the decision in part. The decision of the committee shall be final.

#### **12-103 STAY OF PROCUREMENTS DURING PROTESTS**

In the event of a timely protest under the Chief Executive Officer, or designee, Skagit Transit shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Board of Directors makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of Skagit Transit.

#### **12-104 ENTITLEMENT OF COSTS**

In addition to any other relief, when a protest is sustained and the protesting Bidder or Offeror should have been awarded the contract under the solicitation, but is not, then the incurred costs in connection with the solicitation, including bid preparation costs, other than attorney's fees, shall be paid by Skagit Transit.

### **PART B - CONTRACT CLAIMS**

#### **12-201 DECISION OF THE CHIEF EXECUTIVE OFFICER**

All claims by a contractor against Skagit Transit relating to a contract, except bid protest, shall be submitted in writing to the Chief Executive Officer for a decision. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

#### **12-202 NOTICE TO THE CONTRACTOR OF THE CHIEF EXECUTIVE OFFICER DECISION**

The decision of the Chief Executive Officer shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the Contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of its appeal rights under Section 13-102 of this Article.

#### **12-203 FINALITY OF CHIEF EXECUTIVE OFFICER'S DECISION, CONTRACTOR'S RIGHT OF APPEAL**

The Chief Executive Officer's decision shall be final and conclusive unless, within 7 Calendar Days from the date of receipt of the decision, Contractor mails or otherwise delivers a written appeal to the Skagit Transit Board of Directors, or commences an action in a court of competent jurisdiction.

#### **12-204 FAILURE TO RENDER TIMELY DECISION**

If the Chief Executive Officer does not issue a written decision regarding any contract controversy within 7 days after written request for a final decision, or within such longer period as may be agreed upon between the Parties, then the aggrieved party may proceed as if any adverse decision had been received.

## **PART C - REMEDIES FOR SOLICITATION OR AWARDS IN VIOLATION OF LAW**

### **12-301 PRIOR TO BID OPENING OR CLOSING DATE FOR RECEIPT OF PROPOSALS**

If prior to bid opening or the closing date for receipt of proposals, and after consultation with legal counsel, the Procurement and Contracts Coordinator determines that a solicitation is in violation of federal, State and municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

### **12-302 PRE-AWARD**

If after bid opening or the closing date for receipt of proposals, and after consultation with legal counsel, the Procurement and Contracts Coordinator determines that a solicitation or a bid/proposal selected for award is in violation of federal, State or municipal law, then the solicitation or proposed award shall be canceled.

### **12-303 POST-AWARD**

If after an award, and after consultation with legal counsel, the Procurement and Contracts Coordinator determines that an awarded contract was in violation of applicable law, then:

1. If the Contractor has not acted fraudulently or in bad faith:
  - a. The contract may be ratified and affirmed, provided it is determined that so doing is in the best interest of Skagit Transit, or
  - b. The contract may be terminated and the Contractor shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination.
2. If the Contractor has acted fraudulently or in bad faith, the contract may be declared null and void if such action is in the best interests of Skagit Transit.

## **ARTICLE 13 - ASSISTANCE TO SMALL AND MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

### **13-101 SOLICITATION OF SMALL AND MINORITY AND WOMEN'S BUSINESSES**

The Manager of Finance and Administration and Procurement and Contracts Coordinator shall implement procedures to seek involvement by Small and Minority and Women's Business Enterprises, irrespective of whether they qualify as DBEs, in Skagit Transit procurement processes to the fullest extent practicable.

Examples of procedures that may achieve that involvement may include:

1. Including qualified small, women-owned, and minority businesses on solicitation lists;
2. Assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small, women-owned, and minority business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority businesses.
5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

## **ARTICLE 14 - DISADVANTAGED BUSINESS ENTERPRISES**

See separate DBE Policy and Program.

## **ARTICLE 15 - SKAGIT TRANSIT ISSUED PROCUREMENT CARD**

The Skagit Transit Procurement Card (P-Card) program is designed to improve efficiency in processing purchases from suppliers, including online suppliers in approved categories and generally pre-approved Vendors. The use of P-Cards does not eliminate the cardholder's obligation to obtain quotes and required insurance or confirm a supplier's status on any applicable convicted, suspended, or debarred supplier lists as required by policy.

P-Cards will only be approved for those employees who have a specific responsibility or need requiring a P-Card. The Department head must approve all requests for new P-Cards or changes to a current P-Card holder account. P-Cards will be issued to individuals and will bear the name of the individual cardholder and Skagit Transit. All P-Card holders will be required to attend training on the proper care and use of the P-Card prior to receipt of their P-Card. P-Card holders will be held responsible for the appropriate and acceptable use of the P-Card in accordance with this Policy, associated procedures, and other applicable rules, laws, codes, and standards.

# EXHIBIT A

## FEDERAL REQUIREMENTS AND STATE LAW

1. Conformance with Federal Requirements. The formation of contracts shall conform to the Federal Transit Administration's (FTA) Third Party Contracting Guidance, Exhibit C, as contained in FTA Circular 4220.1G, and applicable Washington State law, whichever is more stringent. Any subsequent changes or amendments to either the Circular or State law after the effective date of this Procurement Policy shall be incorporated into said Policy by this reference.

The procurement rules dispersed throughout this Policy are extracted from, or fashioned after, FTA Circular 4220.1G, Third Party Contracting Guidance, and the Revised Code of Washington (RCW) 43.19.

The aforementioned Circular applies to all FTA grantees and sub-grantees that contract with outside sources under FTA-assisted programs. This Circular sets forth the requirements that Skagit Transit, as a grantee, must adhere to in the solicitation, award, and administration of its FTA-assisted third-party contracts.

If a grantee accepts FTA operating assistance, the requirements of this Circular apply to all transit-related third-party Purchase Orders and contracts awarded with only that portion of operating funds specifically allocated to the property or services being procured. These requirements do not apply to procurements undertaken in support of capital or non-capital projects completely accomplished without FTA funds, or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

2. Conformance with State and Local Law. Skagit Transit shall use its own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in FTA Circular 4220.1G.
3. Self-Certification. The FTA intends to rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements to support the required finding that a grantee has the technical capacity to comply with Federal procurement requirements. Consequently, the Chief Executive Officer must self-certify Skagit Transit's procurement system in the FTA Annual Certification/Assurance Process when applying for grants. The FTA will monitor compliance as part of its routine oversight responsibilities.

**Note:** All Federal and State Law requirements will be followed as they are applicable at the time of the procurement. The references and provided Federal and State Clauses within this document are intended to be place holders. The most up to date Clauses will be kept in an operational working version and shall be referenced as the authority document for those items. Exhibit A and C incorporate by reference only as applicable.



## EXHIBIT B REQUISITION REQUIREMENTS

### 1. REQUISITION APPROVALS

Requisitions are required for ALL purchases, unless exempted by the Chief Executive Officer or Manager of Finance and Administration on an annually approved “Requisition Exemption List”.

Dollar Amount of TOTAL Purchase	Method of Procurement	Purchase Order	Required Approvals
Under \$50,000	No quotes needed; documentation of Fair and Reasonable price or vendor rotation required	As Needed	Department Manager
\$50,000-\$150,000	3 Written Quotes (i.e. RFQ)	**Yes	Department Manager + Chief Executive Officer
Over \$150,001	Formal Bid Process (i.e. IFB/RFP)	**Yes	Full Board of Directors

\*\* Except for when a written contract is already in place, or the Vendor is on the Requisition Exemption List, or where monthly billings occur for services (i.e. utilities) which cannot be reasonably estimated prior to the purchase (See Article 8-201).

### 2. CAPITAL PURCHASE

**Definition:** A tangible and individual fixed asset valued at \$5,000 or more (including tax, set-up and freight) with a useful life of in excess of one year.

- a. Capital purchases must be specifically contained in the annual budget and may not be added during the budget year except by budget revision approved by the Board of Directors.
- b. All capital purchases must be approved by the Manager of Finance and Administration prior to purchase.

### 3. ASSET

**Definition:** Any non-consumable attractive and theft-sensitive item, tangible in nature and possessing a physical substance, costing between \$100 and \$4,999, or any capital item.

- a. Assets must be tracked in inventory and assigned a unique identification number by either tagging or etching.

## EXHIBIT C - FTA THIRD PARTY CLAUSES

**FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS** *(Excluding micro-purchases, except Davis-Bacon requirements at \$3,000)*

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
<a href="#">Access to Third Party Contract Records</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">ADA Access</a>	A&E	ALL	ALL	ALL	ALL
<a href="#">Bond Requirements</a>				>\$250,000	
<a href="#">Bus Testing</a>			ALL		
<a href="#">Buy America Requirements</a>			>\$150,000	>\$150,000	>\$150,000
<a href="#">Cargo Preference Requirements</a>			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
<a href="#">Changes to Federal Requirements</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Charter Service</a>		ALL			
<a href="#">Civil Rights Laws and Regulations</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Civil Rights and Equal Opportunity</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Clean Air and Federal Water Pollution Control Act</a>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
<a href="#">Conformance with ITS National Architecture</a>	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
<a href="#">Contract Work Hours and Safety Standards Act</a>		>\$250,000	>\$250,000	>\$250,000	
<a href="#">Davis-Bacon and Copeland Anti-Kickback Act</a>				>\$2,000	
<a href="#">Debarment and Suspension</a>	>\$3,000	>\$3,000	>\$3,000	>\$3,000	>\$3,000
<a href="#">Disadvantaged Business Enterprises (DBEs)</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Drug Use and Alcohol Program</a>		Transit operations.			
<a href="#">Energy Conservation</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Equal Employment Opportunity</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">False Statements or Claims – Civil and Criminal Fraud</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Federal Tax Liability and Recent Felony Convictions</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Fly America</a>	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel
<a href="#">Incorporation of FTA Terms</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">No Federal Obligations to Third Parties</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.</a>	>\$25,000 for prime and subs.	>\$25,000 for prime and subs.	>\$25,000 for prime and subs.	>\$25,000 for prime and subs.	>\$25,000 for prime and subs.

	TYPE OF PROCUREMENT				
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
<a href="#">Patent Rights and Rights in Data</a>	R&D				
<a href="#">Pre-Award and Post-Delivery Audits of Rolling Stock Purchases</a>			ALL		
<a href="#">Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Prompt Payment</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Public Transportation Employee Protective Arrangements</a>		Transit operations.			
<a href="#">Recycled Products</a>		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
<a href="#">Resolution of Disputes, Breaches, or Other Litigation</a>	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
<a href="#">Restrictions on Lobbying</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
<a href="#">Safe Operation of Motor Vehicles</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">School Bus Operations</a>		ALL			
<a href="#">Seismic Safety</a>	A&E for new buildings & additions.			New buildings & additions.	
<a href="#">Severability</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Solid Wastes (Recovered Materials)</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Special DOL EEO Clause for Construction Projects</a>				>\$10,000	
<a href="#">Termination</a>	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
<a href="#">Trafficking in Persons</a>	ALL	ALL	ALL	ALL	ALL
<a href="#">Veterans Hiring Preference</a>				>\$150,000	
<a href="#">Violation and Breach of Contract</a>	ALL	ALL	ALL	ALL	ALL

### **33.00 REQUIRED FEDERAL CLAUSES**

This Contract is funded in whole or in part with federal operating funds; therefore, the following Federal Transit Administration (FTA) contract clauses are incorporated herein. The FTA required terms, authorized by Federal transit laws, 49 U.S.C. chapter 53, are not negotiable and must be included in any subcontracts awarded by the Contractor unless specified otherwise. This section has been updated in accordance with the [Third Party Contracting Guidance Circular 4220.1G](#), which can be referenced by clicking on the embedded link.

### **33.01 ACCESS TO THIRD PARTY CONTRACT RECORDS**

- a) **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- b) **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
- d) **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors' access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### **33.02 ADA ACCESS**

The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

- a) **Federal laws, including:**
  - i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
  - ii. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
    - 1) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
    - 2) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
  - iii. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;

- iv. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
- v. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

**b) Federal regulations and guidance, including:**

- vi. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
- vii. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
- viii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
- ix. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
- x. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
- xi. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
- xii. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
- xiii. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
- xiv. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
- xv. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
- xvi. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
- xvii. Other applicable federal civil rights and nondiscrimination regulations and guidance.

### **33.03 BOND REQUIREMENTS**

The Federal Skagit Transit or pass-through entity may accept the recipient’s or subrecipient’s bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Skagit Transit or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a) **A bid guarantee** from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument

accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.

- b) **A performance bond** on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
- c) **A payment bond** on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Skagit Transit, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Skagit Transit's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Skagit Transit for the damages occasioned by default, then the bidder agrees to indemnify Skagit Transit and pay over to Skagit Transit the difference between the bid guarantee and Skagit Transit's total damages so as to make Skagit Transit whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

- a) **Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by Skagit Transit to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Skagit Transit within ten (10) business days from Contract execution. The Skagit Transit requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Skagit Transit and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Skagit Transit may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Skagit Transit may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.
  - i. If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand- By Letter of Credit will only be accepted by the Skagit Transit if:
    - A bank in good standing issues it. Skagit Transit will not accept a Letter of Credit from an entity other than a bank.
    - It is in writing and signed by the issuing bank.
    - It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
    - The Skagit Transit is identified as the Beneficiary.

- It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
  - The effective date of the Letter of Credit is the same as the effective date of the Contract.
  - The expiration date of the Letter of Credit coincides with the term of the contract.
  - It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Skagit Transit and the Contractor the work stipulated herein.
- ii. The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

- b) **Payment Bonds.** A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Skagit Transit as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Skagit Transit) and listed as a company currently authorized under 31C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

### **33.04 BUS TESTING**

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR 665 and shall perform the following:

- a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- b) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

### **33.05 BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR §200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

- a) **Build America, Buy America Act.** Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit.



IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

- b) Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements.

The bidder or offeror must submit to Skagit Transit the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA’s Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

### **33.06 CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

- a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381.
- b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- c) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **33.07 CHANGES TO FEDERAL REQUIREMENTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### **33.08 CHARTER SERVICE**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
  - i. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
  - ii. Any other federal Charter Service regulations; or



- iii. Federal guidance, except as FTA determines otherwise in writing.
- b) The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:
  - i. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
  - ii. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
  - iii. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### **33.09 CIVIL RIGHTS LAWS AND REGULATIONS**

*The following Federal Civil Rights laws and regulations apply to all contracts.*

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, "49 C.F. R. Part 21 and any implementing requirement FTA may issue.

- a) **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - i. **Nondiscrimination in Federal Public Transportation Programs.** 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - ii. **Prohibition against Employee Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- b) **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- c) **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals aged 40 and over on the basis of age.

- d) **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **33.10 CIVIL RIGHTS AND EQUAL OPPORTUNITY**

Skagit Transit is an Equal Opportunity Employer. As such, Skagit Transit agrees to comply with all applicable Federal civil rights laws and implemented regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Skagit Transit agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
- d) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- e) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

### **33.11 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Skagit Transit. The following applies for contracts of amounts in excess of \$150,000:

#### **a) Clean Air Act**

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The contractor agrees to report each violation to the Skagit Transit and understands and agrees that the Skagit Transit will, in turn, report each violation as required to assure notification to the Skagit Transit, Federal Emergency Management Skagit Transit, and the appropriate Environmental Protection Skagit Transit Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

#### **b) Federal Water Pollution Control Act**

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The contractor agrees to report each violation to the Skagit Transit and understands and agrees that the Skagit Transit will, in turn, report each violation as required to assure notification to the Skagit Transit, Federal Emergency Management Skagit Transit, and the appropriate Environmental Protection Skagit Transit Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

### **33.12 CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR§ 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

### **33.13 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

*This requirement applies to all FTA grant and cooperative agreement programs.*

- a) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- c) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

**Compliance with the Contract Work Hours and Safety Standards Act.**

- i. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- ii. **Violation;** liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- iii. **Withholding for unpaid wages and liquidated damages.** The Skagit Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- iv. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

**33.14 DAVIS BACON AND COPELAND ANTI-KICKBACK ACT**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis- Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act

(40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **33.15 DEBARMENT AND SUSPENSION**

Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third-Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- a) Complies with federal debarment and suspension requirements; and
- b) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

### **33.16 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the Skagit Transit and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT- assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Skagit Transit deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Skagit Transit makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Skagit Transit’s written consent; and that, unless the Skagit Transit’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

### **33.17 DRUG USE AND ALCOHOL PROGRAM**

The contractor agrees to comply with a drug and alcohol program that has a third-party contractor(s) who perform safety sensitive functions must comply with FTA’s substance abuse management program under 49



C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors: 1. Operating a revenue service vehicle, including when not in revenue service; 2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; 3. Controlling dispatch or movement of a revenue service vehicle; 4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services; 5. Carrying a firearm for security purposes. Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

### **33.18 ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

### **33.19 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Skagit Transit contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting Skagit Transit and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **33.20 FALSE STATEMENTS OR CLAIMS**

- a) **Civil Fraud.** The Recipient acknowledges and agrees that:
  - i. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31.
  - ii. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
  - iii. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- b) **Criminal Fraud.** The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

### **33.21 FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

- a) The contractor certifies that it:
  - i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

- ii. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
  - iii. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.
- b) **Flow-Down.** The contractor shall flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

### **33.22 FLY AMERICA**

- a) **Definitions.** As used in this clause —
- i. "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - ii. "United States" means the 50 States, the District of Columbia, and outlying areas.
  - iii. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:
- i. **Statement of Unavailability of U.S.-Flag Air Carriers**  
  
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:
- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

### **33.23 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The



Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

### **33.24 NO FEDERAL OBLIGATIONS TO THIRD PARTIES**

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

### **33.25 NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§180.220 and 1200.220.

- a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative Skagit Transit, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

### **33.26 PATENT RIGHTS AND RIGHTS IN DATA**

Intellectual Property Rights. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Skagit Transit intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

- a) Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.
- b) For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
  - i. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
    - Any subject data developed under the Contract, whether or not a copyright has been obtained; and
    - Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
  - ii. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
  - iii. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - iv. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - v. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

- vi. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

### **33.27 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre- award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

### **33.28 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  - i. Procure or obtain covered telecommunications equipment or services;
  - ii. Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
  - iii. Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.
- b) As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:
  - i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
  - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - iii. Telecommunications or video surveillance services provided by such entities or using such equipment;
  - iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- c) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

- e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.
- f) For additional information, see section 889 of Public Law 115-232 and § 200.471.

### **33.29 PROMPT PAYMENT**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Skagit Transit, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Skagit Transit.

### **33.30 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

### **33.31 RECYCLED PRODUCTS**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Skagit Transit (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

### **33.32 RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

- a) **FTA Interest**

FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement,

and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

b) **Notification to FTA; Flow Down Requirement**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- i. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- ii. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- iii. **Additional Notice to U.S. DOT Inspector General.** The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative Skagit Transit, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

c) **Federal Interest in Recovery**

The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

d) **Enforcement**

The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

### **33.33 RESTRICTIONS ON LOBBYING**

#### **a) Conditions on use of funds.**

- i. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any Skagit Transit, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. Each person who requests or receives from a Skagit Transit a Federal contract, grant, loan, or cooperative agreement shall file with that Skagit Transit a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- iii. Each person who requests or receives from a Skagit Transit a Federal contract, grant, loan, or a cooperative agreement shall file with that Skagit Transit a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- iv. Each person who requests or receives from an Skagit Transit a commitment providing for the United States to insure or guarantee a loan shall file with that Skagit Transit a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any Skagit Transit, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- v. Each person who requests or receives from an Skagit Transit a commitment providing for the United States to insure or guarantee a loan shall file with that Skagit Transit a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any Skagit Transit, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

#### **b) Certification and Disclosure.**

- i. Each person shall file a certification, and a disclosure form, if required, with each submission that initiates Skagit Transit consideration of such person for:
  - Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- ii. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
  - A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.



- iii. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
  - A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
  - A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- iv. Any person must file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
  - A subcontract exceeding \$100,000 at any tier under a Federal contract;
    - A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
    - A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
    - A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement.
- v. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to Skagit Transit.
- vi. Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
- vii. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

### **33.34 SAFE OPERATION OF MOTOR VEHICLES**

- a) **Seat Belt Use:** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Skagit Transit.
- b) **Distracted Driving:** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

### **33.35 SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- Federal transit laws, specifically 49 U.S.C. § 5323(f);
- FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
- Any other Federal School Bus regulations; or
- Federal guidance, except as FTA determines otherwise in writing.

#### **If Contractor violates this School Bus Agreement, FTA may:**

- Bar the Contractor from receiving Federal assistance for public transportation; or
- Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### **33.36 SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

### **33.37 SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

### **33.38 SOLID WASTES (RECOVERED MATERIALS)**

- a) A Recipient or subrecipient that is a State Skagit Transit or Skagit Transit of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Skagit Transit (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain



recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

### **33.39 SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS**

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering Skagit Transit and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government

contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering Skagit Transit may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### **33.40 TERMINATION**

- a) **Termination for Convenience**

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

- b) **Termination for Default (Breach or Cause)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Skagit Transit may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Skagit Transit that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Skagit Transit, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

- c) **Opportunity to Cure**

Skagit Transit, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

- d) If Contractor fails to remedy to Skagit Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Skagit Transit setting forth the nature of said breach or default, Skagit Transit shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Skagit Transit from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- e) **Waiver of Remedies for Any Breach**

In the event that Skagit Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Skagit Transit shall not limit Skagit Transit's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### **33.41 TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- c) Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.

### **33.42 VETERANS HIRING PREFERENCE**

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **33.43 VIOLATION AND BREACH OF CONTRACT**

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

## APPENDIX 1

### LIST OF POLICY REVISIONS

1. Pursuant to Resolution 2005.12, dated July 20, 2005, the following sections were removed: 9-202, Preparation of a Purchase Order and Exhibit C, Purchasing Procedures.
2. Replaced all references to “SKAT” with “Skagit Transit”.
3. Replaced all references to FTA Circular 4220.1E with 4220.1F, as amended November 1, 2008.
4. Replaced all references to RCW 42.17 of the Public Records Act with 42.56, as amended.
5. Revised Exhibit C, Purchasing Procedures, to reflect the change from paper requisitions to electronic requisitions (E-Reqs) in 2007 and the title of “Purchasing Technician” to “Procurement and Contracts Coordinator”.
6. Revised Article 3-104 reference to FTA Circular 9030.1C to FTA Circular 9030.1D, as amended May 1, 2010.
7. Pursuant to Resolution 2011-16, dated October 19, 2011, the micro-purchase threshold is increased from \$2,500 to the federal limit of \$3,000 and all references herein have been updated accordingly.
8. Pursuant to Resolution 2012-02, dated January 18, 2012, the capital purchase and asset item thresholds have been increased to \$5,000 and \$100 respectively. Policy references were updated; more items added to the “definitions” section; added language pertaining to the Two-Step and Design-Bid-Build methods of procurement under Article 4, Part C; separated item 4- 304(4) – Competitive Procurement by Piggybacking from the “Procurement \$25,001 and Over” section as piggybacking opportunities may also apply to small purchases (became 4-305); and separated 4-304(5) – Procurement by Noncompetitive Proposals (Sole Source) from the same location to become its own section, 4-306.
9. Pursuant to Skagit Transit’s reallocation of its FTA-assisted operating funds effective July 1, 2012, all Agency procurements are no longer considered to be completely federalized (“one dollar taints the pot”). FTA-assisted operating funds are now allocated only to: wages and benefits, uniform, safety boots, and tool allowances, fuel and lubricants, tires/tubes, and security services. Policy Section 4-306, Article 6, and Exhibit A have been revised to reflect this change and apply FTA regulations to only those third party contracts procured with FTA-assisted capital or operating funds. Exhibit B chart was updated to coincide with Article 8-201. Article 13 was revised to include “Small” businesses in the title captions.
10. Revise Exhibit B was revised to include the spending authority level of the C.E.O. per Resolution No. 2003-04, revise Article 4-202(4); add Article 5-402 re: Tie Bids, and revise Article 4-306 to distinguish between Agency and FTA allowances for sole source procurements and to coincide with the new justification form.
11. Pursuant to Resolution 2016-10, dated November 16, 2016, the spending limits for the C.E.O. and Board of Directors was increased to \$50,000 and \$50,001+ respectively, with the Board Chair relieved from the purchase approval process; and the formal bid threshold increased to \$50,000 and the micro-purchase threshold to \$5,000. The Policy and related procedures were updated accordingly.

12. Pursuant to Resolution 2020-03, dated September 16, 2020, the spending limit for the Chief Executive Officer and the formal competitive process threshold was increased from \$50,000 to \$100,000, and the Micro-Purchase threshold was increased from \$5,000 to \$10,000.
13. Revise wording to add NO THRESHOLD to Qualifications-Based Procurement – Architectural and Engineering (A&E) Services pg. 24
14. Replaced all references to FTA Circular 4220.1F with 4220.1G, as amended January 17, 2025. FTA's most recent authorizing legislation is the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, signed into law on November 15, 2021. The legislation reauthorizes Surface Transportation Programs (STPs) for Fiscal Year (FY) 2022 through FY 2026.

The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) authorized FTA programs FY 2016 through 2021; the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) authorized FTA programs for FY 2013 through FY 2015; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) authorized FTA programs from FY 2005 through FY 2012. Changes have been added to this circular to reflect the IIJA provisions applicable to Federal transit and other laws that have become effective since the circular was last published in 2013.

This circular revision also incorporates provisions of the Office of Management and Budget (OMB), "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, as it has been adopted by USDOT at 2 CFR Part 1201.

USDOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, supersede and replace the requirements of the DOT Common Rule, former 49 CFR Parts 18 and 19, except that former 49 CFR Parts 18 and 19 will continue to apply to grant and cooperative agreements awarded before December 26, 2014, as in effect on the date of such grant or cooperative agreements.

15. Updated language in the Davis Bacon Section 7-102 to update current compliance requirements
16. Updated Definitions Section 1-201 with additional definitions. Replaced references to Executive Director with Chief Executive Officer and Contracts Administrator with Procurement and Contracts Coordinator. Updated Responsibility for Settlement of Contract Issues/Disputes Section 4-201(8) to include the responsible party for receiving disputes and the hierarchy for dispute resolution. Added Sections Signature Authority Section 2-104, Misconduct of Contractors/Suppliers/Vendors Section 3-110, Cone of Silence Section 3-114, Lobbying Section 3-115, Unauthorized Purchases Section 3-116, Non-Competitive (Emergency Procurements) Section 4-308, Material and Immaterial Deviations Part J Section 5-1001 and Procurement Card Article 15. Removed Emergency Procurements Article 8. Removed Reference Checks Section 5-502 for inclusion in supplement procedures.