



# **Request for Proposal**

**RFP # 2019 - 231**

## **Lynden Station Space Rental**

**Proposal Submission Deadline:**

**Monday, September 23, 2019  
no later than 12:00 PM PST**

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



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## Part 1 – Introduction

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

WTA's mission is to enhance our community by:

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

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

WTA is currently seeking proposals from interested parties to lease space at WTA's Lynden Transit Station located at 1945 Front Street, Lynden, Washington.

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

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

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

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

## Part 2 – Scope of Work

### 2. A Introduction

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

WTA's Lynden Station ("Property") has operated for a number of years, serving as a satellite hub for fixed route services throughout the county. Other modes of transportation such as WTA Paratransit Services, rideshare, and private transportation (charters) carriers frequent the center at various times during the day.

### 2. B Background

The Lynden Transit Station is located at 1945 Front Street, Lynden, Washington and shown on Appendix D. There is 1,179 square footage of leased space currently operating as a privately operated food concession with preparation and service area, seating area, and dry storage ("Space"). There are four (4) parking spaces closest to the Lynden Transit Station building designated by WTA for exclusive use associated with the Space. The concourse area, seating area, and restrooms within the building, and other parking spaces on the property are shared areas jointly used by WTA personnel, riders, and customers.

This RFP seeks proposals and offers to enter a lease agreement with WTA for use of the Space.

The Space includes a concession area with outdoor area, a storage room, and restrooms. The particulars of the Space include the following:

- Electrical power 220 amp receptacle available
- Electrical connections for oven hood
- Gas connection for fryer and grill
- Dry storage area
- Locked access
- Serving window (Sliding walk-up/take out window)
- Hot water
- Built in counters

Lessee will provide all equipment necessary for successful business operations.

## 2. C Technical Requirements

The successful Proposer will be required to execute the Lease attached as Appendix A (“Lease”), and provide a Personal Guaranty attached as Appendix B (“Guaranty”). These terms and conditions, include the following particulars:

### Permitted Uses:

The property sits within in the City of Lynden’s Regional Commercial Services (CSR) zone. Proposers will ensure that Lynden zoning ordinance<sup>1</sup> permits the type of business.

The proposed business must not impact WTA’s ability to provide transit service<sup>2</sup>. Similarly, the proposed business will ensure any advertisements or displays meet WTA’s transit advertising content policy in Appendix C.

### WTA Will Provide:

1. Landscape Maintenance
2. Supply and install all replacement exterior lamps/bulbs including the parking lots.
3. Maintenance and repairs as needed to building system equipment, including but not limited to:
  - Furnace
  - Air conditioner
  - Water heater
  - Outdoor clock on building south side
  - Clock embedded in west wall of lobby area
  - Hard-wired emergency lights
  - Hard-wired smoke detectors

### Lessee Will Provide:

- Signage approved by WTA and City of Lynden.
- Supply and install all replacement interior lamps/bulbs
- All necessary personnel and financing to run Lessee’s business throughout the lease term including potential extension options.
- Compliance with standards and recommendations of the State and local health departments in all matters concerning health and sanitation, where applicable.
- The portion of actual electricity, water, sewer and garbage charges allocable to the Lessee. Any additional utilities such as telephone, cable, and internet are at the expense of the Lessee.
- Insurance meeting the requirements outlined in the Lease provided on Appendix A.

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<sup>1</sup> Lynden Municipal Code 19.23.020

<sup>2</sup> FTA C5010.1E Chapter 2, part 2i

**Rent:**

WTA is required and must receive fair market rental value, the range of which is established at \$675 – \$700 per month.

- A. Monthly Leasehold Excise Tax payment (current rate 12.84%), assessed as a separate line in addition to monthly rent.
- B. The previous month's utilities invoiced as a separate line item at the same time as current month's rent.

Each year the lease is in effect, a rent increase of 3% will be assessed on the anniversary date.

A deposit of \$5,000 will be due at lease signing and held until WTA accepts the Space after the lease ends. WTA may withhold funds to cover outstanding rent or repairs.

**2. D Scope of Work**

Lessee shall, at a minimum:

1. Keep the property, all improvements, Lessee's equipment and personal property in a clean and orderly condition and appearance at all times.
2. Maintain, repair, and replace, as needed, all Lessee provided equipment.
3. Lessee shall be responsible for all janitorial services including supplies on the property including but not limited to:
  - Window washing of interior and exterior windows.
  - All floor cleaning and related floor care services including daily floor cleaning, regular stripping and sealing of hard surface flooring, and commercial carpet cleaning.
  - Daily litter removal and clean up in and around facility, sidewalks, and concourse.
  - Cleaning all interior surfaces and equipment in the facility, including ventilation grills in ceilings and walls.
  - Emptying trash containers on a regular basis, except for two surface-mounted trash cans in front of the bus stop shelters.
  - Maintenance of restrooms including restocking, cleaning and sanitation of all surfaces and fixtures.
  - Regular cleaning of patio area including seating and tables.
  - Regular cleaning of entry doors, interior and exterior surfaces.
  - Maintain sidewalks surrounding main building, including pressure washing as needed.
  - Provide cardboard recycling (e.g. covered bin or tote or shed type shelter) in a secure area.
  - Provide notification to WTA for repairs needed to the facility that are not in the Lessee's scope of responsibilities.

4. Provide public access to the restrooms during normal hours of operation. Restroom facilities will be available for Lessee & WTA employees and customers use. Lessee will open restroom facilities upon arrival.
5. Provide a presence on the site to report behavior or medical problems. The Lessee is not acting for or on behalf of the WTA as a security agent and Lessee is not authorized to forcibly or otherwise confront any person with a behavior or medical problem and should at all-times report any such problems to 911.
6. Answer transit related questions and be familiar with the bus schedule as it pertains to Lynden Station.
7. Repair any damage to the Property caused by Lessee or its agents, employees or invitees.

WTA will maintain full access to the building and parking lot for public transit use. Upon notice from WTA, Lessee and its/his/her customers shall take all action requested by WTA regarding the use of the property outside of the Space, including termination of any use, as determined to be necessary by WTA to provide transit services. Such shall include, but is not limited to, the obligation to cease using parking spaces on the Property beyond the four (4) designated spaces and areas outside the Premises.

Lessee will occupy the space no less than 48 hours per week and during WTA operation hours. The Lessee has the option to be open during holidays that the WTA does not provide service over and above the 48 hour minimum. Similarly, Lessee has the option to close during those holidays that the WTA does provide service.

Lessee shall not hold any special event or apply for any liquor licenses for the property without the written consent of WTA, which WTA may withhold in its sole discretion and without cause. Special events include, but are not limited to: car rallies, farmers markets, craft fairs, special open house outside of normal business, etc.

Lessee shall be solely responsible, at its/his/her own costs, for all repairs and maintenance of the Lessee's equipment and personal property on the property and shall maintain all improvements in a good, workmanlike manner.

## **2. E Contract Deliverable Requirements**

For the entire term of the lease, WTA requires current copies of the following documentation. Cost of permits and licenses are responsibility of the Lessee.

1. A valid City of Lynden Business License.
2. A valid Health Department permit, where applicable.
3. Valid proof of insurance.

### Part 3 - Submission Guidelines

All submittals become the property of WTA.

#### 3. A Procurement Schedule

Activity	Date – 2019
Request for Proposal Released	August 22
Clarification Deadline	September 16
Submissions Due	September 23 no later than 12:00 PM PST
Finalist In Person Interviews*	October 18
Final Selection (Best & Final Offer)*	October 25
Notice of Intent to Award**	November 1
Estimated Award Date	November 21
Occupancy Begins	No later than March 1, 2020

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

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

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

WTA may invite the top one (1) to three (3) proposers for an interview/presentation. Interviews will be scheduled no later than close of business on October 11. Requirements of the interview will be provided when scheduled.

#### 3. B Proposal Guidelines

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

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

WTA reserves the right to:

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



A proposal will be rejected when:

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

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

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

Proposal pricing shall be valid for a period of 120 days from proposal or BAFO deadline, if a BAFO occurs.

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

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

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

- Have a State of Washington and all required local government business license(s) and endorsements<sup>3</sup>.
- Be registered with SAM.gov and not be suspended or debarred.
- Not be disqualified from bidding under RCW 39.06.010 or 39.12.065 (3).
- Demonstrate there are no outstanding and/or repetitive violations with Labor and Industries, Department of Revenue, or Employment Security.
- Possess or will possess at the time of commencement of operations, all permits, registrations, and licenses as required by city, state, and Federal ordinances, rules, laws, and regulations. When requested by WTA, Proposer shall provide documents confirming that he/she/it has obtained any local business registrations or permits that may be required.
- Have experience in providing proposed services to the public for no less than 3 years.

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

### 3. D Proposal Submission

Proposals via email or a dedicated CD/USB Flash Drive is the required method of submission. Hard copies will returned unopened.

Clearly identify all proposals "Sealed Proposal RFP #2019 - 231" and submit to:

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

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

### 3. E Submission Packages

Proposals will conform to the following:

- Pages of the proposal should be numbered
- Sections clearly identified
- Single spaced and no columns
- Minimum twelve (12) point font
- No more than ten (10) double sided pages, excluding forms requested in the exhibits

Marketing materials, alternate agreements, and any other information not requested will count against the page limit.

At a minimum, all proposals should include the following information:

- Principal place of business of Proposer, description of services provided.
- A summary of the experience of the Proposer, references, and qualifications to operate the business.
- Business plan through entire 5 (five) year lease including, but not limited to:
  - Annual revenue projections, estimates of income and expenses for the first year of operations.
  - Investment in permanent improvements to the facility, i.e. equipment and fixtures.
  - Proposed ideas for marketing of the business to increase foot traffic to the location. Concepts for partnering with WTA to increase transit use from the station are encouraged.
  - Planned hours of operation including days of the week.
- Proposed rent in the range of Fair Market Value established in Section 2.C above.
- No less than three (3) financial references confirming that Proposer is able to make timely rent payments and meet deposit requirement. One (1) financial reference

will come from a financial institution confirming sufficient cash flow availability to meet the five (5) year lease obligation. The remainder will be from previous and current vendors attesting to the proposers ability to pay ongoing obligations in full and on time. *(Proposers are advised that financial information like balance sheets and bank statements become open to public disclosure under RCW 42.56 once submitted to WTA.)* More than three (3) references are encouraged.

- A list and explanation of additional equipment (if any) Proposer will be providing at the site.
- An explanation of routine cleaning and preventative maintenance schedules intended to assure an attractive appearance for any proposer supplied equipment and prevent operating problems.

### 3. F Conflict of Interest

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

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

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

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

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

### 3. G Addenda

Addenda will be issued to all Proposers should questions or clarifications be deemed significant enough to affect received proposals. Proposers must ensure they receive all issued addenda prior to the submission deadline, and acknowledge each addenda on Exhibit A.

### 3. H Contact with WTA

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

### 3. I Protest Procedures

**Filing a Protest** Any party with an interest in the award of the solicitation may file a protest that WTA staff did not follow its own policies and procedures regarding a Procurement Action, or the procedures and restrictions set out in this RFP.<sup>4</sup> Any protest must be submitted in writing to WTA's Procurement & Grants Coordinator, and include the following information:

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

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

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

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

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<sup>4</sup> "Procurement Action" includes: specific procurement steps, such as setting the calendar of events; producing the proposal/bid document; advertising the proposal or bid in legal paper of record; maintaining a list of proposal/bid holders; conducting a pre-proposal meeting; responding to all approved equals/clarifications received by the appropriate time and date; addenda issued straightforwardly to all proposal/bid holders; enforcing closing time and date; providing proctoring services to the project manager and evaluation committee; setting criteria weights; conducting interview process with top-scoring Proposers and evaluation committee; creating notes to file regarding the proposal/bid process; issuing award/non-award letters; and maintaining a written record of the procurement.

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

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

### **Review of Protests**

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

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

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

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

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

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

The RFP and the PROPOSAL SUBMITTED constitute an "offer" and "acceptance" of all of the terms and conditions for an enforceable contract, subject to WTA's formal award of a bid, which remains in its exclusive discretion. Once a proposal is accepted and awarded by WTA, the parties will have an enforceable "contract" whose terms and conditions will comprise those set out in the RFP and the proposal. WTA reserves the right to seek to have such contract enforced, and to seek specific performance from the successful Proposer



based upon the terms set out in the RFP and the proposal. Throughout this RFP, the term “Contract” shall mean the terms and conditions contained in this RFP and an awarded proposal, and a formal written contract entered pursuant to Part 4.

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

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

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

## Part 4 – Proposal Evaluation

### 4. A Evaluation Procedures

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

Factor	Score
Conformity with Minimum Proposer Qualifications (3.C)	Pass/Fail
Complete Package Submission (3.E)	Pass/Fail
All Exhibits Completed (Part 8)	Pass/Fail
Amount of Proposed Rent	0-5

Rent score is calculated using the following normalizing formula.  
(Highest Overall Proposed Rent ÷ Rent Being Evaluated) × 5 = Score.

2. A member of the Evaluation Committee and/or the Procurement & Grants Coordinator will check references of the proposals. The Evaluation Committee will then review Proposals receiving 3 “Pass” scores against the following Evaluation Criteria, which are listed in the order of importance.

Evaluation Factor	Score
Management qualifications and experience	0-5
Business Plan	0-5
Financial capability and responsibility	0-5
References	0-5
<b>+ Rent points above</b>	<b>5</b>
<b>Total Possible Cumulative Evaluation Score</b>	<b>25</b>

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

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

Scores are in whole numbers only or rounded down. (e.g. 4.5 will round to 4). Scores will then be averaged to determine the final score.

3. The top two to four (2 – 4) proposals (Competitive Range) may be invited for presentation. Proposals and presentations are re-scored against the Evaluation Factors based on information provided by interviewees. Price scores will be re-calculated based on the number of proposers in competitive range.



4. Competitive Range scores, Initial Evaluation scores, and cost scores will be added to determine the highest scoring proposer.
5. The highest scoring responsive and responsible Proposer will be selected. Nothing in this request obligates the WTA to award a contract to the lowest cost Proposer, or any Proposer.

In the event that the top two (2) proposals are within two (2) points of each other, they are considered comparative equals. The Evaluation Committee may re-review proposals and presentations, require best and final offers (BAFO) be submitted for evaluation, or ask additional clarifying questions. The Evaluation Committee will review any additional information against all of the evaluation factors to render a final score.

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

##### **4. B.1 Management Qualifications and Experience in Proposed Business.**

Proposer will provide detail clearly demonstrating its ability to provide the services outlined in the 2.D Scope of Work against the information provided in 3.E Submission Packages. Discuss topics including, but not limited to products/services offered, compatibility of proposed uses with surrounding area, and compatibility with intercity bus transit service.

##### **4. B.2 Business Plan**

WTA will review the Proposers' operational plan including what services are offered, proposed hours of operation, what improvements it/he/she will potentially make to the Property, potential income and expenses, and what marketing it/he/she has to increase foot traffic to the location. WTA is especially interested in ideas for increasing transit use to and from the station. Proposers are cautioned that WTA is limited in its ability to provide free and reduced goods and services<sup>5</sup>.

##### **4. B.3 Financial Capability and Responsibility**

Proposers' current financial capability to operate business for five (5) years including the ability to pay its operating costs. Credit references through credit reporting agencies will be reviewed along with no less than three (3) financial references requested in the submission package. More than three (3) references are encouraged

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

WTA staff will review provided references and verify that the Proposer has performed satisfactorily on other contracts including past transactions, on time rent payment, ease to work with, problems, etc. Similarly, WTA will ask about staff skills, ability to perform the work, and that contract requirements were met.

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



#### **4. B.5 Rent**

Staff will review rent proposals against the fair market value range provided in Section 2.C above. The highest proposed rent receives the maximum score, indicating the most potential revenue for WTA.

#### **4. C Responsibility Review**

WTA will only award to proposers who have the ability, willingness, and integrity to meet to all requirements of the proposal and subsequent contract.

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

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

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

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

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

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

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



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

Proposers are permitted to request a debriefing Procurement and Grants Coordinator after the Notice of Intent is issued. Documents and information relating to the procurement that are not marked as “Confidential” or “Proprietary” may be requested by submitting a Public Disclosure Request to [RecordsRequests@ridewta.com](mailto:RecordsRequests@ridewta.com). Refer to Part 6 of this RFP for the process of releasing documents marked as “Confidential” or “Proprietary”.

A City of Lynden endorsement will be required as a condition of contract award to the highest scoring Proposer<sup>6</sup>.

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<sup>6</sup> Lynden Municipal Code 5.02.020

## Part 5 – Special Terms and Conditions

A successful Proposer will execute a formal Lease with WTA, which Lease shall include expressly or by reference the terms of this Request for Proposal, the general terms and conditions set out in Appendix A, and the following particular terms and conditions. Each and all of these applicable terms and conditions should be factored into any proposal:

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

1. Contract Term: The initial length of the Contract will be five (5) year
2. Invoices: Payment will be based on Net thirty (30) day terms.
3. Rent must be addressed to Accounts Receivable. WTA will not be responsible for late payments due to incorrect routing on the part of the vendor.

### 5. B Contract Modifications & Change Request

No alterations or variation of any of the terms, conditions, prices, quantities, or specifications of the Request for Proposal or Lease shall be effective without prior endorsement of the WTA's General Manager and execution by both parties of any written Amendment.

Either party may initiate a Change Request to the other in writing.

### 5. C Independent Contractor

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

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

As a recipient of State funds, Lessee shall provide, and require any sub-lessee or Contractor to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:

- a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives
- b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives
- c. Washington State Auditor
- d. WTA, member agencies, and its Contractors

## 5. E Insurance Requirements

Lessee will not commence use of the Premises until proof of insurance has been received and approved by WTA. Insurers must be licensed to conduct business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker) and approved by the state insurance commissioner. Insurers must have a minimum rating of A- and a financial rating of Class VII or higher in the most recently published edition of the A.M. Best's Key Rating Guide.

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

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

- Bodily Injury/Death;
- Personal Injury;
- Property Damage, Including Premise And Operations, Fire Damage, And Medical Expense;
- Independent Lessee's Coverage;
- Protective Liability; And
- Completed Operations And Products.

Lessee must procure the following minimum insurance:

1. Commercial General Liability in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) per project aggregate;
2. Umbrella or Excess Liability in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; and

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

Lessee must furnish the following endorsements separate of the Certificate of Liability:

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



Lessee must maintain Worker's Compensation Insurance. If Lessee is not eligible for Worker's Compensation Insurance, it/he/she will indemnify and hold WTA harmless for any claims resulting from Lessee's actions.

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

#### **5. F Limitations of Liability**

WTA is unable to agree to any limitation of liability in the event of a claim or issued judgment through the performance of a contract. This is considered a gift of public funds, and is unenforceable by the Washington State Constitution<sup>7</sup>.

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

## Part 6 – Public Disclosure Law

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

WTA will not execute non-disclosure agreements.

### **Proposals Marked Confidential:**

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

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

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

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

## Part 7 – Exhibits and Appendices

### Proposer’s Checklist

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


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

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









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

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

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

The below exhibits and appendices are embedded into the RFP as indicated with this symbol: 

Proposers are responsible for ensuring they can access them.

<b>Exhibit A</b> Proposal Confirmation & Cover Sheet		<b>Appendix A</b> DRAFT Lease	
<b>Exhibit B</b> Vendor Demographics & References		<b>Appendix B</b> Personal Guaranty	
<b>Exhibit C</b> RESERVED		<b>Appendix C</b> Defining Prohibited Transit Advertising (Policy)	
<b>Exhibit D</b> Conflict of Interest Certification		<b>Appendix D</b> Site Map	
<b>Exhibit E</b> Debarment and Compliance Statement			
<b>Exhibit G</b> Request for Exceptions, Deviations, Substitutions	