



MEMO TO: Darrel Pyle, City Manager
FROM: Taylor Johnson, Transit and Parking Program Manager
THROUGH: Shawn O'Leary, P.E., CFM, Director of Public Works
DATE: June 7, 2023
SUBJECT: Execution of Washington State Contract Documents
for CNG Transit Bus Purchases

BACKGROUND:

The City is currently in the process of purchasing 5 CNG 35' fixed route buses and staff anticipates receiving these vehicles in July-August 2023. Staff visited the factory December 5-9, 2022, to perform the pre-production meeting. Another factory visit is being planned for late July for the final inspection. Below is background information on this bus order.

Utilizing transit 5339 funds allocated from FY21 (grant number OK-2020-026), 1 35' CNG bus will be purchased. These were funds allocated to the Norman urbanized area by formula. In addition, on June 14, 2022 the City Council approved a contract with the Oklahoma Department of Transportation (ODOT) to accept Surface Transportation Block Grant – Urbanized Area (STBG-UZA) funding for the purchase of 2 35' low-floor CNG transit buses. An Authorization to Purchase for these 3 buses was approved by Council on August 23, 2022. A purchase order was issued on September 14, 2022 to the manufacturer.

Utilizing funds received from the FY22 FTA Low- or No-Emissions Vehicle Program, staff proposed to purchase 2 additional CNG 35' fixed route buses. Council approved a resolution accepting the grant and an authorization to purchase the buses on September 27, 2022. The purchase order for 2 buses was issued September 29, 2022.

DISCUSSION:

The Authorizations to Purchase mentioned above were approved by utilizing the Washington State Master Contract No. 06719. There were questions on whether the State of Oklahoma should sign an agreement with Washington State to ultimately provide access to this purchase agreement for not only Norman, but any other entity that would like to utilize it. There were also questions about whether State Statutes prohibited municipalities, such as Norman, to enter into an agreement like this or if the State would have to. After much discussion internally with City Legal, and externally with the Oklahoma Department of Transportation (ODOT) Office of Mobility and Public Transit, it was decided that the City of Norman should move forward with its own direct agreement with Washington State and no State Statutes would be violated.

Attached is the Cooperative Purchasing Agreement that the City needs to execute in order to formalize the order. If approved and executed, staff will work with the Washington State staff to ensure all paperwork is in order for these specific bus purchases.

Happy to answer any questions you may have after your review.

cc: Heather Poole, Assistant City Attorney
Jason Huff, Transit Planner and Grants Specialist



COOPERATIVE PURCHASING AGREEMENT

FOR

TRANSIT BUSES

CONTRACT No. 06719

This Cooperative Purchasing Agreement for Transit Buses ("Agreement") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and City of Norman, a Oklahoma municipality ("Authorized Purchasing Entity") and is dated and effective as of June 9, 2023.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish procurement solutions, including statewide contracts ("Contract"), for goods and/or services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. In addition, Enterprise Services is authorized "to participate in, sponsor, conduct, or administer a cooperative purchasing agreement." See RCW 39.26.060(1).
- C. Cooperative Purchasing Agreements provide an opportunity for Enterprise Services to meet the needs of its customers and, by designing and developing the Competitive Solicitation and resulting Contract to include the opportunity for cooperative utilization by Authorized Purchasing Entities through a Cooperative Purchasing Agreement, to meet the needs of similarly situated purchasing entities who collectively enable an innovative, cost-effective, and efficient procurement solution for awarded contractors and eligible purchasers.
- D. The above-referenced Contract was competitively bid, evaluated, and awarded pursuant to the State of Washington's procurement laws for goods/services. See RCW 39.26. The procurement and resulting Contracts were designed to create competition and awarded contractors for a variety of Transit Buses (contract categories).
- E. The above-referenced Contract was designed to and meets Federal Transit Administration ("FTA") requirements for a State Cooperative Purchasing Contract under the FAST Act Sec. 3019. See Pub.L. 114-94.
- F. There are no pending protests or lawsuits pertaining to the procurement or award of the Contract.

- G. Enterprise Services maintains procurement and contract records pertaining to the Contract including the Competitive Solicitation, Bid Tab, Bidder Profiles, and resulting Contracts. In addition, Enterprise Services Transit Buses website identifies the various awarded contractors.
- H. The purpose of this Agreement is to enable the Authorized Purchasing Entity to utilize the above referenced Contract consistent with the terms thereof and the terms and conditions set forth herein.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** Upon execution, this Cooperative Purchasing Agreement shall continue for the term of the applicable Contract, as amended or extended; *Provided*, however, that, upon written notice to Enterprise Services, Purchasing Entity may terminate its participation in this Cooperative Purchasing Agreement and its ability to utilize the above-referenced Contract.
2. **AUTHORIZATION TO UTILIZE THE CONTRACT.** Consistent with the terms and conditions of the Contract and Purchasing Entity's applicable procurement law, Purchasing Entity is authorized to utilize the above-referenced Contract as a procurement solution. The State of Washington makes no representation or warranty regarding Purchasing Entity's governing law or whether the Contract is an appropriate procurement solution for Purchasing Entity.
3. **CONTRACTOR CONSENT.** Consistent with its applicable procurement authority, Purchasing Entity may propose and negotiate jurisdiction-specific terms with the applicable awarded Contractor to meet Purchasing Entity's needs; *Provided*, however, that any such jurisdiction-specific modifications are subject to agreement with the applicable awarded Contractor. **Under no circumstances, however, will Purchasing Entity's jurisdiction-specific modifications change or modify the Contract obligations between the State of Washington and the applicable awarded Contractor.** Upon execution of Purchasing Entity's agreement with the applicable awarded Contractor, Purchasing Entity shall provide a copy of the same to Enterprise Services prior to making any purchases under the Contract.
4. **VENDOR MANAGEMENT FEE.** The Vendor Management Fee set forth in the Contract shall be paid by the applicable Contractor to Enterprise Services on all applicable purchases. In no event shall Purchasing Entity modify, waive, or terminate the Vendor Management Fee. Any such modification, waiver, or termination of the Vendor Management Fee shall be deemed a material breach of this Agreement and shall terminate the Agreement; and, in the event Purchasing Entity attempts to modify, waive, or terminate the Vendor Management Fee, Purchasing Entity shall, by such act, agree to notify Enterprise Services of the same and to pay to Enterprise Services, within thirty (30) days, the equivalent of the otherwise applicable Vendor Management Fee.
5. **ACCURATE PURCHASES.** Purchasing Entity shall make orders within the scope of the Contract. Any purchases outside of the scope of the Contract shall constitute a breach of this Agreement. IN the event of such breach, Enterprise Services may terminate this Agreement, including the authorization for any purchases by Purchasing Entity under the Contract. Purchasing Entity represents and warrants that it shall use reasonable, good faith efforts to assist the Contractor in obtaining and reporting to Enterprise Services accurate purchases under the Contract for purposes of the applicable Vendor Management Fee.

6. AGREEMENT MANAGEMENT; NOTICES; PURCHASING ENTITY CONTRACT ADMINISTRATOR.

- (a) **AGREEMENT MANAGEMENT; NOTICES.** The parties hereby designate the following contacts as the respective single points of contact for purposes of this Agreement. The parties may change such individuals by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Bus Purchases
Department of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Email: buspurchases@des.wa.gov

Insert

Attn: Transit and Parking Division
City of Norman – Department of Public Works
PO Box 370
Norman, OK 73069

Tel: (405) 307-7219

Email: transit@normanok.gov

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- (b) **PURCHASING ENTITY INFORMATION.** Purchasing Entity hereby designates the following contract administrator as the single point of contact for business activities under this Agreement.

Purchasing Entity Information	
Organization Name	City of Norman
Tax Identification Number	73-6005350
State Business Identification Number (Required for Non-Profit entities)	NS
Contact Name for Contract Administrator	Taylor Johnson
Title	Transit and Parking Program Manager
Address	1310 Da Vinci Street
City, State, Zip	Norman, OK 73069
Phone Number	405-217-7761
Email Address	Taylor.johnson@normanok.gov

7. **COMMUNICATION.** In the event Purchasing Entity becomes aware of a significant contract performance issue pertaining to the Contract that, in Purchasing Entity's reasonable judgment, could adversely impact the State of Washington, Purchasing Entity shall communicate the same to Enterprise Services.
8. **CONTRACTOR DISPUTES.** Purchasing Entity is responsible for resolving any disputes between itself and the applicable Contract Contractor regarding its purchases. Purchasing Entity shall notify Enterprise Services of any material dispute between Purchasing Entity and the applicable Contract Contractor. When appropriate, Enterprise Services may assist Purchasing Entity in resolving such disputes.

9. **NO LIABILITY.** Other than those obligations expressly set forth in this Agreement, including the right of the State of Washington to the Vendor Management Fee, the parties shall have no liability whatsoever to each other with regard to transactions arising out of this Agreement or the Contract.
10. **TAXES/FEES.** Unless otherwise agreed with Contractor, Purchasing Entity shall pay applicable sales and use taxes imposed by the tax jurisdictions in which purchase delivery occurs. Contractor agrees not make any charge for federal excise taxes and Purchasing Entity shall furnish Contractor with an exemption certificate where appropriate.
11. **SCOPE OF PARTICIPATION.** Purchasing Entity shall provide Enterprise Services with Purchasing Entity's estimates for purchases under the Contract. Purchasing Entity shall provide timely updates regarding such estimated purchases if there is a material change in such planned purchases. The purchasing estimates are for Enterprise Services' planning purposes in managing and approving purchases on the Contract.

Category	Estimated Purchases
Heavy Duty	5 35-foot CNG Transit Buses
Light/Medium Duty	
Double Decker	
Rebuilt	
Refurbish	
Repower	

12. **APPROVAL PROCESS.** Purchasing Entity shall submit purchase information to Enterprise Services for approval of purchases under the Contract. Purchasing Entity shall provide necessary purchase information for each purchase including but not limited to, the final purchase order, the use of FTA funding, FTA grant number, and applicable Department of Transportation contact for approval. Enterprise Services shall include the respective state Department of Transportation for purchasing using FTA funds which require state DOT approval.


13. **GENERAL PROVISIONS**

- (a) **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. There are no representations or understandings of any kind not set forth herein.
- (b) **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Agreement may not be amended or modified except in writing signed by a duly authorized representative of each party.
- (c) **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (d) **ELECTRONIC SIGNATURES.** An electronic signature or electronic record of this Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

- (e) COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.


EXECUTED as of the date and year first above written.

TRANSIT BUSES COOPERATIVE
STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: 
Name: Jaime Rossman
Title: Assistant Director

AUTHORIZED PURCHASING ENTITY
CITY OF NORMAN

By: 
Name: Darrel Pyle
Title: City Manager

By: 
Name: Heather Poole
Title: Assistant City Attorney

Return this Agreement to Enterprise Services at:
buspurchases@des.wa.gov