



# Oregon

Theodore R. Kulongoski, Governor

**Department of Administrative Services**  
**State Services Division**  
**STATE PROCUREMENT OFFICE**  
1225 Ferry Street SE U140  
Salem, Oregon 97301-4285  
Phone (503) 373-2106  
FAX (503) 373-1626

February 23, 2009

Schetky NE Sales, Inc.  
Attn: Ed Wakeman  
8430 NE Killingsworth Street  
Aberdeen, OR 97220

RE: ADA Accessible Transit Vehicles - Statewide Price Agreement # 9703

### **Notice to Proceed**

The Department of Administrative Services, State Procurement Office (DAS SPO) hereby provides this Notice to Proceed to the contract resultant of ITB 102-1402-08. DAS SPO has completed its analysis of the process and signed the contract.

You will find attached a copy of the signed contract for your contract file and the ORPIN generated contract number # 9703. This is Schetky NW Sales, Inc Notice to Proceed in accordance with the terms and condition of the signed Contract.

Congratulations and thank you for your interest in conducting business with the state of Oregon.

Bill Bolliger  
State Procurement Analyst  
DAS-State Procurement Office

**Price Agreement # 9703**  
**for**  
**ADA Accessible Transit Vehicles**

Contractor: Schetky NW Sales Inc.

Address: 8430 NE Killingsworth Street  
Portland, Oregon 97220

Contact Name: Ed Wakeman

Contact Phone / Fax Numbers: Phone: 503 382-3128

Date of Execution: February 17, 2009

Issuing Office: State of Oregon, Department of Administrative Services  
State Procurement Office, Salem OR 97301

Price Agreement Administrator: Bill Bolliger, OPBC  
State Procurement Analyst  
DAS/State Procurement Office  
1225 Ferry St SE, U140  
Salem, OR 97301-4285

Ph. 503-373-2106  
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[William.a.bolliger@das.state.or.us](mailto:William.a.bolliger@das.state.or.us)

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**PRICE AGREEMENT**

9703  
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**BY AND BETWEEN STATE OF OREGON, ACTING BY AND THROUGH ITS  
DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS SPO")  
AND  
SCHETKY NW SALES, INC. ("Contractor")**

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This Price Agreement is between the State of Oregon, acting by and through its Department of Administrative Services, State Procurement Office ("DAS SPO") and the undersigned ("Contractor") in Section 10.

- A. DAS SPO issued ITB # **102-1402-08** seeking offers from qualified and responsible vendors to provide to Authorized Purchasers the Goods and Services described in Sections 6 and 7 of this Price Agreement.
- B. Contractor submitted a Bid in response to the ITB offering to provide to Authorized Purchasers the Goods and Services described in Section 6 at the prices set forth in Section 7 according to the terms and conditions of this Price Agreement
- C. DAS SPO has awarded Contractor's a Price Agreement for the Goods and Services.
- D. The Price Agreement is a mandatory use contract for all agencies subject to DAS SPO authority and a convenience contract for ORCPP, WSPC, and agencies that have delegated authority.

**AGREEMENT**

In consideration of the foregoing recitals and subject to the covenants, terms and conditions set forth below the parties agree as follows:

## SECTION 1.0 - DEFINITIONS

**Acceptance:** When all products have been ordered, shipped, delivered to the complete satisfaction of the Authorized Purchaser.

**A/C:** Air Conditioning.

**A/T:** Automatic Transmission

**ARB:** Air Research Board, State of California.

**Authorized Agency:** Those State Agencies that are subject to the procurement authority of the Director of the Oregon Department of Administrative Services (the "Department") pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term also includes the Department when the Department is engaged in Public Contracting (as defined under OAR 279A(1)(010)(aa).

**Authorized Purchaser:** The State of Oregon, acting by and through DAS SPO, Authorized Agencies submitting Purchase Orders pursuant to DAS SPO purchasing authority and direction and Independent Agencies submitting Purchase Orders pursuant to independent purchasing authority. It also includes ORCPP Participants and WSPC Participants with appropriate purchasing authority under their applicable statutes, rules, regulations or ordinances that submit Purchase Orders to Contractor.

**C/C:** Cruise control.

**Contract:** The entire agreement between the Contractor and the Authorized Purchaser, comprised of this Price Agreement, including any amendments and a signed Purchase Order.

**Contractor:** The person or entity with whom DAS SPO enters into a Price Agreement and with whom Authorized Purchasers enter into Contracts for the purchase of Goods and Services.

**DAS SPO:** The State of Oregon acting by and through its Department of Administrative Services - State Procurement Office.

**EPA:** Environmental Protection Agency.

**Ext Cab:** Extended Cab.

**Flexible Fuel Vehicle:** One that operates on either gasoline or ethanol blended with gasoline mixture of 10% ethanol and 90% gasoline.

### **Floor / Vehicle:**

**Low floor** - The floor height in the passenger compartment is uniform, except where wheel-wells bump up above the floor. All passengers, both ambulatory and customers using mobility devices, enter the vehicle via a ramp; there are no steps for passengers.

**High floor** - (Standard floor) The floor height in the passenger compartment is uniform, except where wheel-wells bump up above the floor. Steps and/or a mechanical lift are necessary for customers to enter the vehicle.

**Raised floor** - The floor is flat in the passenger compartment, without any wheel-well bumps. Steps and/or a mechanical lift are necessary for customers to enter the vehicle.

**F.O.B.:** Has the meaning found in ORS 72.3190.

**Goods:** The individual items and related Services, if any, described in Sections 6.

**GAWR:** Gross Axle Weight Rating. This includes the loaded weight of each axle as distributed by vehicle components, baggage and passengers.

**GVWR:** Gross Vehicle Weight Rating. This includes the weight of the vehicle, passengers and payload.

**Independent Agencies:** Those State Agencies with independent procurement authority pursuant to ORS 279A.050, 279A.170 and other provisions of applicable State law.

**LWB:** Long wide bed.

**Mandatory Use Contract:** "A Public Contract, Department Price Agreement, or other agreement that a State Agency subject to DAS purchasing authority is required to use for the Procurement of Supplies and Services."

**Model Year:** The year of vehicle manufacture, as designated by the manufacturer; not consistent with the calendar year.

**MPG:** Miles per gallon.

**Options or Vehicle Options:** Everything the manufacturer of the Vehicles offers and makes available during the applicable Model Year as optional equipment on the Vehicles. A list is attached hereto as Attachment A2 – Pricing Page - Options.

**ORCPP:** The Oregon Cooperative Purchasing Program, whose Participants include but are not limited to: State Agencies not subject to DAS purchasing authority, cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRFs), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, and American Indian tribes or agencies. ORCPP also includes quasi-State Agencies such as Oregon University System, Oregon Health Sciences University, and Oregon State Lottery with statutory authority or autonomy to solicit for Goods/Services independently.

**ORPIN:** The on-line electronic Oregon Procurement Information Network administered by DAS SPO, as further defined in OAR 125-246-0500.

**Participants:** Members of ORCPP and WSPC.

**Price Agreement:** This agreement for the procurement of Goods and Services between the Contractor and DAS SPO under which the Contractor agrees to hold prices, terms and conditions firm for a specified period of time for the benefit of Authorized Purchasers with no guarantee of minimum or maximum purchases.

**Price Agreement Administrator:** Bill Bolliger, who can be contacted via phone at (503) 373-2106, via fax at (503) 373-1626, via email at [william.a.bolliger@state.or.us](mailto:william.a.bolliger@state.or.us), or by regular mail delivered to 1225 Ferry ST. SE, U140, Salem, OR 97301-4285.

**Price Pages:** Price Agreement Attachments A1- Pricing Page – Vehicles and A2 - Pricing Page – Options.

**Purchase Order:** The purchase document in proper form as described in section 2.7 and attached as Exhibit B that is submitted by an Authorized Purchaser to Contractor and which together with this Price Agreement creates a Contract between Contractor and Authorized Purchasers for the purchase of the Goods and Services described in the Purchase Order.

**Required Equipment:** Vehicle equipment that is required by the specifications to be included in the Unit Price.

**Services:** The services described in Section 4 and Section 6, to be performed by Contractor under the Contract that is incidental to the purchase of Vehicles.

**Specifications:** Any description of the physical or functional characteristics of, or of the nature of, goods or services to be procured by a contracting agency. This may include a description of the requirements for inspecting, testing, or preparing goods or services for delivery.

**Standard or Standard Equipment:** Everything related to the Goods that the manufacturer of the Vehicles offers and makes available during the applicable Model Year as standard equipment on the Vehicles.

**State:** The State of Oregon.

**State Agency or State Agencies:** Boards, commissions, departments, or agencies of the State of Oregon, whose costs are paid, in whole or in part from funds held in the State Treasury.

**Std Cab:** Standard Cab.

**SWB:** Short wide bed. The floor bed length for any Vehicle offered as a short wide bed must be a minimum of 6.0 feet.

**SULEV:** Super ultra low emissions Vehicle as defined by the California Air Research Board.

**T/W:** Tilt wheel.

**UCC:** The Uniform Commercial Code, ORS chapters 71 and 72, as applicable and as amended from time to time.

**Unit(s):** A Good or Goods.

**Unit Price:** The price submitted for the Vehicle in the Unit Price column on the Price Pages. The Unit Price shall include the cost for the Vehicle, Required Award Equipment, and other required costs.

**Vehicle(s):** Automotive vehicles, self-propelled wheeled vehicles.

**WSPC:** Washington State Purchasing Cooperative.

## SECTION 2.0 - PRICE AGREEMENT TERMS AND CONDITIONS.

**2.1 AGREEMENT TO PROVIDE GOODS AND SERVICES:** During the term of the Price Agreement, Contractor agrees to provide Goods and Services of the kind identified in Attachments A1 and A2, in the quantity requested and at the time and place requested by an Authorized Purchaser. The Price Agreement constitutes a firm offer by the Contractor regardless of whether any order or purchase has been made or any performance has been tendered under the Price Agreement. The Price Agreement is enforceable for the period stated in the Price Agreement and notwithstanding ORS 72.2050; obligations hereunder are not revocable by the Contractor.

**2.2. PRICE DECREASE:** The Authorized Purchaser shall be given the immediate benefit of any price decrease. Contractor shall promptly notify DAS SPO of the amount and effective date of each decrease. This decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the Authorized Purchaser's Purchase Order document was written. Should such decreased prices again increase during the term of the Contract, including extensions.

DAS SPO shall consider a request for price increase if acceptable documentation verifying the increase is submitted to DAS SPO. Price Increases may be considered ninety (90) calendar days after the Price Agreement has been executed and then ninety (90) calendar days from the previous increase. DAS SPO shall determine what constitutes acceptable documentation in considering a request for Price Increase. Increases shall become effective 30 calendar days from the date of SPO approval and acceptance of the increase.

**2.3 TERM OF PRICE AGREEMENT:** The initial Price Agreement Term shall be five (5) years beginning on the date that DAS SPO signs the Price Agreement, and all necessary approvals have been obtained, if any. DAS SPO may extend the term of the Price Agreement for additional periods, unless terminated earlier in accordance with the termination provisions set forth herein

**2.4. EXTENSIONS:** DAS SPO shall notify Contractor in writing if the DAS SPO intends to extend the Price Agreement ("Renewal Notice") at least thirty (30) days prior to the expiration of the then current term. If Contractor consents to the extension, it shall sign and return the Renewal Notice to DAS SPO within the time period specified therein. If the Contractor does not consent, the Price Agreement shall expire according to its terms, unless earlier terminated.

**2.5. ONE MONTH EXTENSION OPTION:** Notwithstanding the foregoing, the DAS SPO reserves the right in its sole discretion to extend the Price Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS SPO shall notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions obtained under this Section are not allowed.

**2.6 TERMINATION:**

**2.6.1** DAS SPO and Contractor may terminate the Price Agreement at any time by mutual written consent.

**2.6.2.** DAS SPO may, at its sole discretion, terminate the Price Agreement upon 30 days written notice to Contractor for any reason, including the reasons set forth in ORS 279B.140.

**2.6.3** DAS SPO may terminate the Price Agreement if Contractor is in default under the Price Agreement or any Contract.

**2.7 PURCHASE ORDERS:**

**2.7.1** Contractor shall only accept purchase orders that: (a) contain the mandatory purchase order language set forth in Section 2.7.3, below, except that for Authorized Agencies, Contractor shall only accept purchase orders that comply with Section 2.7.2, below; (b) specify the quantity of Goods ordered; (c) specify a delivery schedule, if any; (d) specify delivery location; (e) specify invoicing address; and (f) specify Authorized Purchaser's authorized representative ("Purchase Order"). Contractor shall only accept Purchase Orders that do not vary, amend, modify, or add Contract provisions other than changes to the Authorized Purchaser's authorized representative, identification of Goods and order quantities, optional Services, equipment and accessories offered under the terms of the Price Agreement, delivery schedules in accordance with the terms of the Price Agreement, delivery destination and invoicing address. Each such Purchase Order Contractor accepts shall create a separate Contract between the parties, enforceable in accordance with the terms thereof and independent of all other such Contracts.

**2.7.2 STATE AGENCIES:** Authorized Agencies shall use the DAS SPO-approved Purchase Order form attached as Exhibit B to order Goods under the Price Agreement unless otherwise

authorized by DAS SPO. Such Purchase Order form shall reference the Price Agreement number and Price Page item number(s) of the Goods ordered.

### 2.7.3 MANDATORY PURCHASE ORDER LANGUAGE:

THIS PURCHASE IS SUBMITTED PURSUANT TO STATE OF OREGON SOLICITATION #102-1402-08 AND PRICE AGREEMENT # 9703. THE PRICE AGREEMENT INCLUDING CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESS OR IMPLIED.

2.7.3.1 Notwithstanding any other provision of this Price Agreement, in the event that an Authorized Purchaser uses a credit card to pay for an order, an Authorized Purchaser generated Purchase Order is not a necessary document to the transaction. In lieu of a Purchase Order document, a Contractor order acknowledgement document will become a part of the Contract. However, in no event will an order acknowledgement, web order page or other Contractor generated document used to acknowledge the order such modify or provide additional terms and conditions of the Contract. Such order acknowledgement document shall be for the sole purpose of acknowledging the order and payment and are not part of this Price Agreement or any resulting Contract.

2.7.3.2 In the event a court of competent jurisdiction determines that a Purchase Order constitutes an offer rather than an acceptance, then acceptance by Contractor shall be limited to the terms and conditions of the Contract as set forth in this Price Agreement.

2.8 WASHINGTON TAXES: WSPC Participants who enter into a Contract shall be responsible for paying all sales, use and other taxes, fees, and charges imposed by the State of Washington on the transaction.

2.9 SALES TO UNAUTHORIZED PURCHASERS: It is the Contractor's responsibility to verify Authorized Purchasers' authority to contract pursuant to the Price Agreement. If Contractor is found to have entered into two or more Contracts with an entity other than an Authorized Purchaser, Contractor will be deemed to be in material breach of the Price Agreement.

### 2.10 VERIFICATION OF PARTICIPANT AUTHORITY:

2.10.1 ORCPP: ORCPP Participants can be verified on the DAS SPO website:

(A) <http://www.oregon.gov/DAS/SSD/SPO/coop-menu.shtml> .

(B) Procurement Centers (located throughout Oregon). Call (503) 378-4649 for information or to view list of centers identified on DAS SPO Web page.

2.10.2 WSPC: WSPC Participants can be verified (A) by accessing Internet Address: <https://fortress.wa.gov/ga/inet/servlet/PCACoopListSv> ; or (B) by calling (360) 902-7415.

### 2.11 VOLUME SALES REPORTS:

2.11.1 CONTENT: Contractor shall furnish to the Price Agreement Administrator a Volume Sales Report (VSR) of sales made under the Price Agreement on a quarterly basis. The reports shall identify the:

- a) Contractor name,
- b) Price Agreement number, and
- c) Year and quarter of report.

The VSR shall also provide information in the following specific categories:



- a) Price Agreement item number,
- b) Recycled/non-recycled content,
- c) Customer name. Separately identify Authorized Agencies, Independent Agencies, ORCPP and WSPC Participants.
- d) Purchase Order number,
- e) Date ordered,
- f) Quantity of each item number ordered (price list items),
- g) Unit price and extended total for each item number ordered,
- h) Total dollar amount for ending quarter,
- i) Date delivered,
- j) Quantity delivered.

**2.11.2 COMPLIANCE AUDITS:** DAS SPO shall monitor Contractor for compliance through Price Agreement VSRs required throughout the term of the Price Agreement. DAS SPO reserves the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's records and other pertinent data, to determine and verify the figures reported in any administrative reports furnished by Contractor.

**2.11.3 REPORTING DATES:** Volume Sales Reports are due by the 15th day following the end of each calendar quarter during the term of the Price Agreement. Calendar quarters end March 31, June 30, September 30 and December 31. DAS SPO RESERVES THE RIGHT TO TERMINATE THE PRICE AGREEMENT IF CONTRACTOR DOES NOT SUBMIT VSRs AS SCHEDULED.

**2.11.4 VOLUME SALES REPORT FORMAT:** Contractors shall supply VSRs in a format approved by both parties. VSRs via email are preferred. Hard copy reports are NOT acceptable. The following format examples are preferred for sales information reports:

1. Excel Spreadsheet
2. Lotus Spreadsheet, if compatible with excel
3. Quattro Spreadsheet, if compatible with excel

All other report formats must be approved and agreed upon by Price Agreement Administrator and Contractor before submission of the first report.

**2.12 LIMITATION OF LIABILITY:** Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies or quasi-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies or quasi-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Goods or Services and the resulting contractual relationship, if any, with each such contracting party.

### SECTION 3.0 - STANDARD CONTRACT TERMS AND CONDITIONS.

**3.1 ORDER OF PRECEDENCE:** The printed terms and conditions set out in this Section 3 are the Standard Terms and Conditions for State of Oregon contracts for Goods. DAS SPO may also provide Special Contract Terms and Conditions in Section 4, which apply only to the Contract. Whenever possible, all terms and conditions of this Price Agreement are to be harmonized. In the event of a conflict between the Standard and Special Contract Terms and Conditions, the Special Contract Terms and Conditions take precedence, unless the Standard term in question is required by law. In the event of any other conflict, the Contract will be interpreted in the following order of precedence: (i) amendments, (ii) addenda (iii) the Special Contract Terms and Conditions, (iv) Specifications, (v) these Standard Contract Terms and Conditions, and (vi) Price Agreement Terms and Conditions.

**3.2 PAYMENT:** Authorized Purchaser will pay the prices as set forth in Section 7 and Attachments A1 and A2 for Goods purchased under this Price Agreement. Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under the Contract. **AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THE CONTRACT.** Payment is due by Authorized Purchaser within thirty (30) days after the date of the invoice pursuant to ORS 293.462.

**3.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser, in accordance with the provisions of ORS 293.462(3), up to a maximum rate of two-thirds of one percent per month (8% per annum) in accordance with the provision of ORS 293.462(4).

**3.4 PAYMENT ADDRESS:** Authorized Purchaser will send payment to Contractor at the address specified in the invoice.

**3.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery and acceptance of all Goods ordered. Contractor shall invoice Authorized Purchaser using an invoice format approved by the State. Invoices shall be sent to the address specified by Authorized Purchaser. Contractor shall include in its invoice the Price Agreement#, Contract #, if any, Goods ordered and volume or quantity of Goods delivered, the price per item or quantity of Goods, the total amount due, and address to which payment is to be sent.

**3.6 MOST FAVORABLE PRICES AND TERMS:** Contractor represents that all prices, terms and benefits offered by Contractor under the Contract are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other state or local government unit or commercial customer.

**3.6.1** Should Contractor, during the term of the Contract, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, the Contract shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the State. This provision applies to comparable Goods and services, and to purchase volumes by the State that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms.

**3.6.2** Section 3.6.1 does not apply to donations of Goods to charitable, nonprofit or government entities, if the donations are recognized as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other government units or commercial customers that call for the application of section 3.6.1.

**3.7 INSPECTIONS/ACCEPTANCE:** The Authorized Purchaser shall have fourteen (14) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods or negotiate an extension of the acceptance date in writing. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notification of rejection. Notice of rejection shall include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). Notice of rejection shall also indicate whether cure will be allowed.

**3.7.1 CURE:** The Authorized Purchaser may elect to have the Contractor deliver substitute Goods that comply with the Contract specifications and warranties. The Contractor shall submit a Cure plan within 10 days of receipt of notice of rejection from Authorized Purchaser for an opportunity to cure. Failure to complete Cure within the time frame identified in the Cure plan shall constitute a material default of the Contract.

**3.7.2 REMOVAL/REIMBURSEMENT:** If the Goods are rejected or acceptance is revoked, the Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall, at Contractor's sole cost and expense, remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

Nothing contained in this Section 3.7 shall preclude Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

### **3.8 REPRESENTATIONS; WARRANTIES:**

**3.8.1 AUTHORITY; BINDING OBLIGATION:** Contractor represents and warrants that Contractor has the power and authority to enter into and perform the Contract and that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

**3.8.2 WARRANTY ON MATERIALS, DESIGN, MANUFACTURE:** Contractor represents and warrants that all Goods shall be new, unused, current production models, where applicable, and shall be free from defects in materials, design and manufacture for the duration of the warranty period specified by the manufacturer. All categories of vehicles listed use manufacturer's standard warranty. Where specifications have been made a part of the ITB, Contractor further represents and warrants that all Goods shall be in compliance with and meet or exceed all specifications.

**3.8.3 WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner, and in accordance with the highest applicable professional or industry standards.

**3.8.4 WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, and that Contractor has full legal title to the Goods, and that no other person has any right, title or interest in the Goods which shall be superior to or infringe upon the rights granted to the Authorized Purchasers hereunder.

**3.8.5 WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under the Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA)

**3.8.6 WARRANTIES CUMULATIVE:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Contract. All warranties provided in the Contract shall be cumulative, and shall be interpreted expansively so as to afford the Authorized Purchasers and the State the broadest warranty protection available.

**3.8.7 MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchasers at time of delivery at no charge.

**3.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract, included those listed in the rest of this Section 3.9. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders, as they may be amended from time to time during the term of the Contract, to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal

and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. The State's performance under the Price Agreement and Contracts is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 the terms of which are incorporated by reference herein.

3.9.1 FMVSS (Federal Motor Vehicle Safety Standards) certification,

3.9.2 FMCSA (Federal Motor Carrier Safety Administration) certification ,

3.9.3 Buy America certifications (required for federally-funded purchases > \$100,000.00).

3.9.2 RECYCLED PRODUCTS: Contractor shall to the maximum extent economically feasible use recycled and recyclable products in the performance of the Contract. These products shall include recycled paper, recycled PETE products, as defined in ORS 279A.010(1)(hh), and other recycled plastic resin products.

3.9.3 NONCOMPLIANT GOODS: In the event of a conflict between the specifications and applicable federal and State laws, the federal or State laws shall prevail. Provided, however, in the event any conflict is based solely upon minimum standards, such as quality or safety, the higher or more stringent standard shall apply. Contractor shall be responsible for making any modifications required to achieve compliance with the required laws and standards. Contractor shall notify DAS SPO and Authorized Purchasers of any such required modifications upon receipt of knowledge or notification of such.

3.9.4 In the event any Good or component part is recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable standards, Contractor shall immediately notify DAS SPO and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Authorized Purchaser may elect to (a) cancel any portion of the Contract, (b) reject the Goods (c) revoke its acceptance of the Goods, or (d) terminate the Contract in whole or in part, based upon such recall or non-compliance. In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for payments made.

3.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Oregon Authorized Purchaser's shall be entitled to withhold final payment under the Contract until Contractor has met this requirement.

3.11 MATERIAL SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Contract which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods.

3.12 TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence for Contractor's performance obligations under the Contract.

3.13 FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract. The Authorized Purchaser may terminate the Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Contract.

3.14 INSURANCE: Contractor shall obtain prior to performing under the Contract, and maintain during the term of the Price Agreement and any Contract (including all warranty periods), the insurance required under Section 5. With regard to workers' compensation insurance, all employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors, if any, complies with these requirements.

3.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an Authorized Agency or an Independent Agency, the Authorized Purchaser represents that it has sufficient funds available and authorized within its biennial appropriation or limitation to pay the cost of purchases under the Contract prior to the end of the current biennium. Contractor understands and agrees that such an Authorized Purchaser's payment of amounts under the Contract attributable to purchases made after the last day of the current biennium is contingent on that Authorized Purchaser's receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to make payments under the Contract.

**3.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:**

3.16.1 Contractor shall perform all required Services as an independent Contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods to be delivered and the Services to be performed and (ii) to evaluate the quality of the completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required by the Contract.

3.16.2 If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to the Contract declares and certifies that: Contractor's Work to be performed under the Contract creates no potential or actual conflict of interest as defined by ORS 244 and no State or federal rules or regulations of would prohibit Contractor's Work under the Contract. Contractor is not an "officer", "employee", or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265.

3.16.3 Contractor shall be responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under the Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under the Contract, except as a self-employed individual.

**3.17 INDEMNIFICATION:**

3.17.1 CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE AUTHORIZED PURCHASER, THE STATE AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW). (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST ANY AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS, EMPLOYEES AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF CONTRACTOR, ITS EMPLOYEES, AGENTS, RELATED TO THE CONTRACT, (II) ANY ACT OR OMISSION BY CONTRACTOR THAT CONSTITUTES A MATERIAL BREACH OF THE CONTRACT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS.

AUTHORIZED PURCHASER SHALL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM THAT AUTHORIZED PURCHASER OR STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS OR EMPLOYEES, OR (II) AGENCY'S MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

3.17.2 PROVIDED, HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE AND/OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES AND/OR AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND/OR THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

### 3.18 EVENTS OF DEFAULT.

3.18.1 Default by Contractor. Contractor shall be in default under the Contract if:

3.18.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

3.18.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within ten (10) business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or

3.18.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under the Contract including but not limited to breach of the Price Agreement, and such breach, default or failure is not cured within ten (10) business days after delivery of Authorized Purchaser's or DAS-SPO's notice of default or such longer period as Authorized Purchaser or DAS-SPO may specify in such notice.

3.18.2 Default by Authorized Purchaser. Authorized Purchaser shall be in default under the Contract if Authorized Purchaser commits any material breach or default of any covenant, warranty, or obligation under the Contract and such breach, default or failure is not cured within thirty (30) business days after Contractor's delivery of a notice of default or such longer period as the Contractor may specify in such notice.

### 3.19 REMEDIES

3.19.1 Authorized Purchaser's Remedies. In the event Contractor is in default under Section 3.18.1, in addition to the remedies afforded elsewhere herein, the Authorized Purchaser, shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of Contract, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. The Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under the Contract and at law or in equity, including, but not limited to:

3.19.1.1 Termination of the Contract under Section 3.21;

3.19.1.2 Withholding all monies due for invoiced for invoiced Goods or Services that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

3.19.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

3.19.1.4 Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty.

3.19.1.5 These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 3.18.1, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 3.21.2.1.

3.19.2 Contractor's Remedies: In the event Authorized Purchaser terminates the Contract for convenience under Section 3.21.2.1, or in the event Authorized Purchaser is in default under Section 3.18.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 3.21.3, Contractor's sole remedy shall be:

(a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser

(b) with respect to Services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser.

(c) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

3.20 ATTORNEYS' FEES: With the exception of defense costs and expenses pursuant to 3.17, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to the Contract.

### 3.21 TERMINATION – AUTHORIZED PURCHASER

3.21.1 MUTUAL CONSENT: The Contract may be terminated at any time by mutual written consent of the parties.

#### 3.21.2 AUTHORIZED PURCHASER

3.21.2.1 AUTHORIZED PURCHASER may, at its sole discretion, terminate the Contract, for convenience, at any time upon 30 days written notice.

3.21.2.2 AUTHORIZED PURCHASER is excused from performance and may in its sole discretion terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as the Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) the Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods to be purchased under the Contract; or (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by the Authorized Purchaser under the Contract is prohibited, or the Authorized Purchaser is prohibited from paying for such Goods from the planned funding source; or (c) Contractor commits any material breach

of the Contract. Pursuant to this Section 3.21.2.2, upon receipt of written notice of termination, Contractor shall stop performance under the Contract as directed by the Authorized Purchaser.

**3.21.3 CONTRACTOR:** Contractor may terminate the Contract immediately upon notice to Authorized Purchaser, or at such later date as it may establish in such notice as set forth in Section 3.18.2., upon Authorized Purchaser's failure to pay for the Goods, in accordance with the terms of the Contract.

**3.22 ACCESS TO RECORDS:** Contractor shall retain, maintain, and keep accessible all records relevant to the Price Agreement and Contracts (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records shall also be kept in accordance with generally-accepted accounting principles. During the Record-retention period established in this Section 3.22, the Contractor shall permit the Authorized Purchaser, the State, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

**3.23 NOTICES:** All notices required under the Price Agreement and Contract shall be in writing and addressed to the party's authorized representative. For Authorized Purchasers, the authorized representative shall be identified in the Purchase Order. Contractor's authorized representative shall be the individual identified in Section 10. Mailed notices shall be deemed received five (5) days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed received upon electronic confirmation of successful transmission to the designated fax number. Personal delivery shall be effective upon delivery.

**3.24 PURCHASE ORDERS and ACKNOWLEDGEMENTS:** The parties agree that other than designation of order quantities, types of Goods, delivery destination, and dates of order and scheduled delivery of other performance, any Purchase Orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under the Contract and that no other terms or conditions contained in those documents shall be of any force or effect or be binding upon the parties.

**3.25 GOVERNING LAW:** The Price Agreement and Contract shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of the Price Agreement and Contract, the UCC shall govern transactions.

**3.26 VENUE; CONSENT TO JURISDICTION:**

**3.26.1 STATE CONTRACT VENUE; CONSENT TO JURISDICTION:** Any claim, action, suit or proceeding (collectively, "Claim") between the State or an Authorized Agency or an Independent Agency and Contractor, that arises from or relates to the Price Agreement or Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.** Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

**3.26.2 ORCPP, WSPC CONTRACT VENUE; CONSENT TO JURISDICTION:** Any Claims between Contractor and an ORCPP or WSPC Authorized Purchaser that arise from or relate to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP or WSPC Authorized Purchaser resides, or at the ORCPP or



WSPC Authorized Purchaser's option, within such other county as the ORCPP or WSPC Authorized Purchaser shall be entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP or WSPC Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP or WSPC Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

**3.27 SURVIVAL:** Any terms of the Price Agreement or a Contract, which by their context or nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions shall survive the termination or expiration.

**3.28 SEVERABILITY:** If any provision of the Price Agreement or a Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Price Agreement or Contract did not contain the particular provision held to be invalid.

**3.29 ASSIGNMENT/SUBCONTRACT/SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under the Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. Subject to the other terms of this section, the provisions of the Contract shall be binding upon, and shall inure to the benefit the parties to the Contract and their respective successors and permitted assigns.

**3.30 MERGER CLAUSE; AMENDMENT; WAIVER:** The Contract constitutes the entire agreement between the Authorized Purchaser and Contractor on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Contract. No waiver, consent, or amendment of terms of the Contract shall bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of the Contract shall not constitute a waiver by the Authorized Purchaser of that or any other provision.

#### **3.30.1 AMENDMENTS**

All amendments to this Agreement shall comply with applicable statutes and administrative rules and the following provisions.

A. Scope of Amendments. During the term of this Agreement, one or more of the following amendments may be made to this Agreement:

1. Amendments to extend the term of this Agreement for additional periods;
2. Amendments to add new Manufacturers within the scope of the solicitation, if any, or if no solicitation, to the extent permitted by applicable statutes and administrative rules;
3. Amendments to add new options as they become available.
4. Amendments to delete Manufacturers or models no longer available.

B. Amendment Process. Upon identification of any of the circumstances set forth in Section A requiring an amendment to this Agreement by either party, the parties may enter into negotiations regarding the proposed amendment to this Agreement.

## SECTION 4 – SPECIAL CONTRACT TERMS AND CONDITIONS.

### 4.1. BUS TESTING REQUIREMENTS:

4.1.1 THIS PROCUREMENT IS SUBJECT to the Federal Transit Administration (FTA) " Bus Testing Program" requirements in 49 CFR part 665. All vehicles delivered as a part of the Contract will comply with the Bus Testing Regulations that are in effect at the time the contract is awarded. The bus shall meet all requirements of the Americans With Disabilities Act even though the specific items may not be listed in detail in this specification

4.1.2 IF THE MODEL to be furnished has been tested at the bus testing facility at Altoona, Pennsylvania, a copy of the test results shall be included with the Bid. if the model is new and/or currently at Altoona for testing, a copy of the Altoona report shall be provided to the Authorized Purchaser prior to the delivery of the first vehicle.

4.2. FEDERAL TRANSPORTATION ADMINISTRATION (FTA) REQUIREMENTS.  
See Attachment 1 of the Price Agreement

### 4.3 Materials

All materials used in conversion of the bus shall be new and unused; returned or reconditioned components will not be accepted. Brand names Or equivalent and part/model numbers of the major components will be listed and must comply with the brands and models specified..

## SECTION 5 – INSURANCE REQUIREMENTS

5.1 As provided by Section 3.14, Contractor shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and are acceptable to DAS SPO.

### 5.2 COMMERCIAL GENERAL LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability or Garage Liability Coverage Insurance for Garage Operations and "Garagekeepers" Legal Liability Coverage for Autos left for service, repair, storage or safekeeping covering bodily injury and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. Combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.

5.3 AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.

5.4 EMPLOYERS' LIABILITY. If Contractor is a subject employer, as defined in ORS 656.023, with regard to work under the Contract, Contractor shall obtain employers' liability insurance coverage with combined single limit per occurrence of not less than \$500,000, and annual aggregate limits of not less than \$1,000,000.

5.5 WORKERS' COMPENSATION: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

5.6 ADDITIONAL INSURED: The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include the State of Oregon, and its departments, divisions, commissions, branches, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

5.7 "TAIL" COVERAGE: If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. If Continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for a duration of not less than twenty-four (24) months from the end of the Contract. This will be a condition of the final acceptance of work or services.

5.8 NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from the Contractor or its insurer(s) to DAS SPO. Any failure to

comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of the Contract by DAS SPO.

**5.9 CERTIFICATE(S) OF INSURANCE:** Prior to performing under the Contract, as evidence of the insurance coverage required by the Contract, the Contractor shall furnish Certificate(s) of Insurance for all required insurance to DAS SPO prior to the award of the Price Agreement if required by the ITB, but in all events prior to Contractor's commencement of work under a Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insured (or Loss Payees). Insurance coverage required under the Contract shall be obtained from insurance companies acceptable to DAS SPO. The Contractor shall pay for all deductibles, self-insured retention and/or self-insurance included hereunder.

## SECTION 6 – SPECIFICATIONS.

### 6.1 SPECIFICATIONS

**6.1.1 SILENCE OF SPECIFICATIONS:** The apparent silence of the Specifications and/or any supplemental Specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used. However, if any omitted specification results in ambiguity as to material characteristics of the Goods and Services, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, a Bidder shall seek a formal request for change, as set forth in section C.5.4 of the ITB 102-1402-08. Failure to make such a request is at Contractor's risk, and the Bidder awarded a Contract shall be required to provide Goods and Services meeting the Authorized Purchaser's needs with regard to any omitted specification for which change should reasonably have been sought.

**6.1.2 ADHERENCE TO THE SPECIFICATIONS.** Deviations discovered after purchase shall be corrected at no cost to the Authorized Purchaser.

#### 6.1.3 RESERVED

**6.1.4 NEW AND UNUSED:** All goods shall be new, unused, produced from current standard production components, and shall be delivered ready for use.

### 6.2 DELIVERY:

**6.2.1** Delivery date requested BY DAS SPO - 150 to 180 calendar days from date of order Is SPO's suggested delivery schedule. Failure to provide a delivery schedule or submittal of proposed delivery schedule in Attachment A1 of the Price Agreement may result in Bid rejection. Submittal of delivery dates providing for earlier delivery than required by the State will bind the Contractor, should it be awarded the Contract, but shall not be considered for award purposes.

**6.2.2** FOB Destination – Vehicle will be prepared for delivery and unless otherwise requested driven to purchaser's in-state location by Dealer's agent at no additional cost. (FOB selling dealership for Washington customers)

**6.2.3** Vehicle, together with all Delivery Components, warranty documentation, inspection reports, and certifications, where applicable shall constitute the delivery.

**6.2.4** AUTHORIZED PURCHASER RESERVES THE RIGHT TO PICK UP ORDERED VEHICLE(S) AT CONTRACTOR'S BUSINESS ADDRESS AND NOT INCUR ANY DELIVERY CHARGES.

6.3 TRAINING:

6.3.1. Contractor shall provide as an option the services of a qualified factory-authorized service representative at an hourly rate for training in the operation, adjustment, service, repair and maintenance of the Goods identified herein, and at the locations identified herein. All costs of training, including but not limited to: the factory representative's salary and fees, travel, lodging, meals, training materials, etc., shall be included in the hourly rate bid on Attachment A-1 Pricing Page - Vehicles.

6.4 Classification of Vehicles:

Light-Duty, and Heavy-Duty ADA Accessible Transit Vehicles.

6.5 Identification of Vehicles

The Data Plate shall list the following:

NOMENCLATURE _____
MAKE AND MODEL _____
CHASSIS SERIAL NUMBER (VIN) _____
VEHICLE CURB WEIGHT: _____ KG (LBS)
PAYLOAD, MAXIMUM: _____ KG (LBS)
GROSS VEHICLE WEIGHT RATING, MAX. _____ KG (LBS)
GROSS COMBINATION WEIGHT RATING, MAX. _____ KG (LBS)
DATE OF DELIVERY: _____ MONTH _____ YEAR
WARRANTY: _____ MO. _____ KM (MILES)
CONTRACT NUMBER _____
RPN NUMBER _____

The above form can be used if a plate is not available. Completed the using a permanent marking pen and covering with a transparent sheet to prevent degradation. :

The Data Plate shall be located inside the vehicle in the driver's area in an easily viewed location such as the forward bulkhead.

6.6 Detection of Defects

If the Purchaser detects a defect within the warranty periods, it shall promptly notify the Contractor's representative. Within five (5) working days after receipt of notification, the Contractor representative shall either agree that the defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Bidder's representative or is removed and examined at Purchaser property or at the Bidder's plant. At that time the status of warranty coverage on the subsystem or component shall be mutually resolved between the Purchaser and the Contractor. Work necessary to affect the repairs shall commence within ten (10) working days after receipt of notification by the Contractor. If within eight (8) working days of notification to Contractor, the Purchaser and Contractor are unable to agree whether a defect is covered by the warranty provisions, the Purchaser reserves the right to commence repairs and seek reimbursement through any legally available means.

**6.6.1 Scope of Warranty Repairs**

When warranty repairs are required, the Purchaser and the Contractor's representative shall agree within five (5) working days after notification of a detected defect on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five (5)-day period, the Purchaser reserves the right to commence the repairs.

**6.6.2 Fleet Defects**

A fleet defect is defined as cumulative failures of any kind in the same components in the same or similar application where such items are covered by the warranty and such failures occur within the warranty period in at least ten (10) percent of the vehicles delivered under the Contract. The State shall have final approval of corrections or changes under these conditions.

**6.6.2.1 Intended Use**

The vehicles covered by this Price Agreement are intended for general non tactical use by the Purchaser in transporting passengers. Intended operation is on paved roadways with some semi-improved road surface use.

**6.6.3 Repair Parts and Service**

Continuous operation of the vehicles is of utmost importance. It is necessary that the Contractor be in a position to render prompt service by furnishing a list of branch offices or agencies where complete stocks of repair parts are maintained and can be secured within a reasonable time after ordering by part number from the manufacturer's part books.

**6.6.4.0 Quality Assurance Provisions**

Acceptance of designs by the Purchaser does not relieve the Contractor from the responsibility to meet all the requirements and specifications herein, whether reviewed by the Purchaser or not. It shall be the Contractor responsibility to assure all production documentation results in the production of vehicles that are in compliance with these requirements and specifications.

- PWO- Provide With Offer
- FVI - First Vehicle Inspection

The type of verification to be submitted for acceptance is listed below:

- COC - Confirmation of Compliance- Validation by analysis or production builds documentation to be performed by the Contractor and submitted for acceptance by the Purchaser. Verification may be in the form of analysis summaries, build documentation, purchase orders, or similar written documentation.
- ET - Engineering Test- to be performed by the Contractor and results accepted by the Purchaser. Engineering tests are tests resulting in data output from engineering instruments used to take measurements of parameters such as temperatures, sound levels, etc. Verification may be in the form of an engineering report, test result sheet, or test summary with results documented.

Verification Matrix

SECTION NO.	REQUIREMENT TO BE VERIFIED	TYPE OF VERIFICATION	WHEN VERIFICATION REQUIRED
Altoona Bus Research and Testing Center (ABRTC) <a href="http://www.vss.psu.edu/BTRC/btrc_program.htm">http://www.vss.psu.edu/BTRC/btrc_program.htm</a>	Test Results	COC	PWO

	Water Spray Test Plans	ET	PWO
	TMC RP 803 Inspection Pre-Service Inspection	COC	FVI
	TMC RP 803 Road Test	COC	FVI
	Layout drawings and weight calculations for each Standard Item Number with minimum required equipment and configuration	COC	PWO
Various	Exceptions taken, documentation to validate "or equal" submissions	COC	PWO

6.6.5.0 Vehicle Testing Technical Documents

- 49 U.S.C. 5323(c)  
49 CFR Part 665

Vehicle Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following: H.11.1 THIS PROCUREMENT IS SUBJECT to the Federal Transit Administration (FTA) " Vehicle Testing Program" requirements in 49 CFR part 665.

All vehicles delivered as a part of the Contract will comply with the Vehicle Testing Regulations that are in effect at the time the contract is awarded. The Category of vehicle to be furnished must be tested at the vehicle testing facility at Altoona, Pennsylvania; a copy of the test results shall be included with this Bid. if the model is new and/or currently at Altoona for testing, a copy of the Altoona report shall be provided to the Authorized Purchaser prior to the delivery of the first vehicle to the Authorized Purchaser.



1) A manufacturer of a new vehicle model or a vehicle 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 which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph one (1) above shall provide notice to the operator of the testing facility that the report is available to the public.

3) 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.

4) 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.

**CERTIFICATION OF COMPLIANCE WITH FTA'S VEHICLE TESTING REQUIREMENTS:** The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49.CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

SECTION 7 – PRICING

**See the Attachments:**

Attachment A1 – Pricing Page - Vehicle.

Attachment A2 – Pricing Page - Options.

**NOTE:** This is a Price Agreement for Model Year Vehicles. Contractor shall sell and Authorized Purchaser may purchase any Model Year Vehicle offered for general sale during the Model Year and equipped, as a minimum, as listed in the Specifications. An order listed in Attachment A1 – Pricing Page - Vehicles and A2 - Pricing Page - Options to establish price does not limit Authorized Purchaser's selection of available Model Year Vehicles. Authorized Purchaser may order other trim level and options at the discounted percentage listed in Attachment A-2.

**CREDIT CARD PURCHASES:** Contractors shall list all major credit card brands, if any, that will be accepted. List all credit card brands Contractor will accept:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List the early payment discount, if any, Contractor will offer for credit card purchase payments received sooner than the standard net thirty (30) days:

\_\_\_\_\_ % Discount      Net \_\_\_\_\_ days

### SECTION 8 – CERTIFICATION OF COMPLIANCE WITH TAX LAWS

By my signature in Section 10, I, hereby attest or affirm under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws." For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

### SECTION 9 – CERTIFICATION OF COMPLIANCE WITH NON-DISCRIMINATION LAWS

By my signature in Section 10, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Contractor in this matter, and to the to the best of my knowledge the Contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts, and that the Contractor is not in violation of any Discrimination Laws."

**SECTION 10 – SIGNATURE OF CONTRACTOR'S DULY AUTHORIZED REPRESENTATIVE**

**THIS PRICE AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE BID MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.**

The undersigned acknowledges, attests and certifies individually and on behalf of the Contractor that:

- (1) He/she is a duly authorized representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Price Agreement, if any, issued, and to execute this Price Agreement on behalf of Contractor.
- (2) Contractor is bound by and will comply with all requirements, Specifications, and terms and conditions contained in this Price Agreement (including all listed attachments and Addenda, if any, issued.
- (3) Contractor will furnish the designated Goods and Services in accordance with the Specifications and requirements, and will comply in all respects with the terms of the resulting Price Agreement upon award.
- (4) CONTRACTOR WILL PROVIDE/FURNISH FEDERAL EMPLOYEE IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WITH BID.
- (5) All affirmations contained in Section C.3.1 of the ITB are true and correct.

Contractor's Name: Schetky Northwest Sales, Inc.

Contractor's Street Address: 8430 NE Killingsworth St.

Contractor's City, State: Portland, OR 97220

Authorized Representative: Ed Wakeman

Title of Authorized Representative: Sales Representative

Authorized Representative Signature: 

Date: 01/15/09

FIN ID# or SSN# (required) 93-0625986

Contact Person (Type or Print): Ed Wakeman

Telephone Number: ( 503 ) 382-3128 Fax Number: ( 503 ) 287-2931

Email: edw@schetkynw.com

Alternate Contact Person (Type or Print): Tobi Chassaing

Telephone Number: ( 503 ) 382-3119 Fax Number: ( 503 ) 287-2931

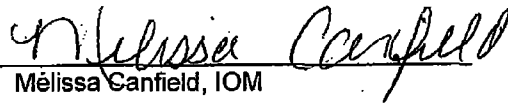
Email: tobic@schetkynw.com

SECTION 11 – STATE SIGNATURE (to be completed by the State of Oregon)

The State of Oregon, acting by and through DAS SPO hereby accepts Contractor's offer and awards a Price Agreement to the above Contractor for the Goods and Services designated in Exhibit A1 and A2, Pricing Pages.

DAS/SPO

Authorized Signature:

  
Melissa Canfield, IOM

Date: 2/17/09

Price Agreement administrator:

DAS SPO Contact Person: Bill Bolliger

Telephone Number: ( 503 ) 373-2106

Fax Number: ( 503 ) 373-1626

Email: [william.a.bolliger@state.or.us](mailto:william.a.bolliger@state.or.us)

# STATE OF OREGON

PURCHASE ORDER NO.

<b>Agency</b>	<b>PO Date</b>	<b>Delivery Date</b>	<b>Bid Number</b>	<b>Requisition No.</b>
<b>Vendor Name and Address</b>		<b>Bill To</b>		
<b>Vendor Number</b>	<b>BPO/Contract Number</b>	<b>Agency Contact/Phone</b>		
<b>Ship To</b>		<b>FOB</b>		
		<b>Terms</b>		

Item	Description	Quantity	U/M	Unit Price	Extended Amt.

	<b>Sub Total</b>	
	<b>Freight</b>	
	<b>Total</b>	
	<b>Authorized Agent/Approved</b>	<b>Date</b>

**STANDARD TERMS AND CONDITIONS  
STATE OF OREGON  
CONTRACTS FOR THE PURCHASE OF SUPPLIES AND/OR SERVICES**

**1. DEFINITIONS:** "Contract" means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; the purchase order or price agreement document.

"Contractor" means a person or organization with which the State of Oregon has contracted for the purchase of goods the terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes;

"State" means the state agency making the purchase and is synonymous with "Buyer" as used in ORS chapter 12. "State" also means an ORCPP member if the purchase is being made under the State's cooperative purchasing program authorized by ORS 190.240.

**2. WORKERS' COMPENSATION:** The Contractor, its subcontractor, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

**3. STANDARD AND SPECIAL TERMS AND CONDITIONS:** The terms and conditions printed on this page are standard to State of Oregon contracts for the purchase of goods. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which apply only to this contract.

**4. DELIVERY:** All deliveries shall be F.O.B destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

**5. INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the State at times and place determined by the State. If the State finds goods furnished to be incomplete or not in compliance with solicitation specifications, the State may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the State, the State may reject the goods and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the State's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**6. WARRANTIES:** Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this contract. All warranties shall run to the State.

**7. CASH DISCOUNT:** If the State is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

**8. PAYMENT:** Payment for completion of State contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% APR) on the outstanding balance (ORS 293.462).

**9. TERMINATION:** This contract may be terminated by mutual consent of both parties or by the State at its discretion. The State may cancel an order for goods at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by the State. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered and accepted if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).

**10. FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond the party's reasonable control. The State may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this contract.

**11. BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this contract, the State reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by the State as the result of Contractor's breach of contract including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170 in the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification on State of contracts, as provided in ORS chapter 279 and OAR chapter 137.

**12. HOLD HARMLESS:** Contractor shall indemnify, defend and hold harmless the State and its divisions, officers, employees, agents and members, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.

**13. ACCESS TO RECORDS:** The Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principle and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. The State and its agencies, the Secretary of State Audits Division, the federal government and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this contract, to perform examination, and audits and make excerpts and transcripts.

**14. AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State.

**15. SEVERABILITY:** If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with the law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as of the contract did not contain the particular provision held invalid.

**16. WAIVER:** Failure of the State to enforce any provision of this contract shall not be a waiver or relinquishment by the State of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

**17. GOVERNING LAW; JURISDICTION, VENUE:** This contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the State (and/or any other agency or department of the State of Oregon) and the contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

**18. ASSIGNMENT/SUBCONTRACT/SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under this contract in whole or in part, without the prior written approval of this State. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the State under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

**19. COMPLIANCE WITH APPLICABLE LAWS:** Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this contract, including, without limitation, the provisions of ORS 279C.505, 279C.515, and 279B.235, as set forth below and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101-336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**20. PAYMENTS REQUIRED BY ORS 279C.505 AND 279B.220:** For all goods provided under this contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**21. STATE PAYMENT OF CONTRACTOR CLAIMS:** If Contractor fails, neglects or refuses to pay promptly if due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this contract, the State may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this contract. The payment of a claim by the State pursuant to this paragraph 21 shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

**22. HOURS OF LABOR:** No person shall be employed by the Contractor for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279B.020 and 279C.540.

**23. SAFETY AND HEALTH REQUIREMENTS:** Goods and services provided under this contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

**24. AWARD TO FOREIGN CONTRACTOR:** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. The State shall withhold final payment under this contract until Contractor has met this requirement.

**25. RECYCLABLE PRODUCTS:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.

**26. MATERIAL SAFETY DATA SHEET:** In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the State with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437-155-005 (2); 437-155-025). In addition, Contractor must label, tag or mark such goods.

REVISED BY THE ATTORNEY GENERAL 9/94  
DOCUMENT TITLE CHANGED AND ORS 279 REFERENCES UPDATED BY DAS  
FORMS COMMITTEE 04/05

CATEGORY E - MEDIUM SIZE, MEDIUM DUTY ADA							Delivery Schedule		Manufacturer / Model
Sub-Category	Passengers	Approximate Length / Width	Wheel Chair Stations	Floor Height	Lift / Ramp	Approximate GVWR - 16K to 26K	Suggested	Contractor	
1	16-30 Passenger	25 ft - 30 ft 96" wide	2	Low-Floor	Lift		160 days		No Bid
2	16-30 Passenger	25 ft - 30 ft 102" wide	2	Low-Floor	Lift	26,000	160 days	180 days	Eldorado National / Passport, 29'
						23,000	160 days	180 days	General Coach / EZ-Trans, 26'

3

CATEGORY F - MEDIUM SIZE, MEDIUM DUTY ADA							Delivery Schedule		Manufacturer / Model
Sub-Category	Passengers	Approximate Length	Wheel Chair Stations	Floor Height	Lift / Ramp	Approximate GVWR - 14K to 26K	Suggested	Contractor	
1	16-30 Passenger	25 ft - 30 ft	2	Hi-Floor	Lift	19,500	160 days	160 days	Eldorado National / AeroElite, 29'
						17,500	160 days	160 days	American Coach, 26.5'

CATEGORY G - MEDIUM SIZE, LIGHT DUTY ADA (Curaway)							Delivery Schedule		Manufacturer / Model
Sub-Category	Passengers	Approximate Length	Wheel Chair Stations	Floor Height	Lift / Ramp	Approximate GVWR - 10K to 16K	Suggested	Contractor	
1	12-16 Passenger	20 ft - 25 ft	1-2 (2 minimum on vehicles over 22 ft length)	Low-Floor	Lift		160 days		No Bid

10

CATEGORY H - MEDIUM SIZE, LIGHT DUTY ADA (Curaway)							Delivery Schedule		Manufacturer / Model
Sub-Category	Passengers	Approximate Length	Wheel Chair Stations	Floor Height	Lift / Ramp	Approximate GVWR - 10K to 16K	Suggested	Contractor	
1	12-16 Passenger	20 ft - 25 ft	1-2 (2 minimum on vehicles over 22 ft length)	Hi-Floor	Lift	11,500	160 days	160 days	Eldorado National / Aerotech, 21'
							160 days	160 days	American Coach, 23'
							160 days	160 days	Elkhart Coach / EC II, 22.5'



**Warranty Information**

example: 5 years / 125,000 miles

\*\* Due to the greatly varying number of warranties and coverages contained within each category and sub-category, please reference our warranty summary contained within each submission for the extensive warranty coverage offered for each manufacturer and model submitted.\*\*

**Category**

- A Body & Frame  
Drive train  
Subsystems & Components
- B Body & Frame  
Drive train  
Subsystems & Components
- C Body & Frame  
Drive train  
Subsystems & Components
- D Body & Frame  
Drive train  
Subsystems & Components
- E Body & Frame  
Drive train  
Subsystems & Components
- F Body & Frame  
Drive train  
Subsystems & Components
- G Body & Frame  
Drive train  
Subsystems & Components
- H Body & Frame  
Drive train  
Subsystems & Components
- I Body & Frame  
Drive train  
Subsystems & Components
- J Body & Frame  
Drive train  
Subsystems & Components