



Victor Valley Transit Authority
Mailing Address:
11741 East Santa Fe Ave.
Hesperia, CA 92345
760.948.4710 Fax: 760.948.1380

Bid No: VVTA 2009-03-Fuel

BID INVITATION COVER SHEET

Commodity/Service: Motor Fuels
Closing Time: 11:00AM Friday, November 20, 2009
Opening Time: 3:00 PM Friday, November 20, 2009
Award: On or about December 21, 2009
Bid Opening Location: 11741 East Santa Fe Ave.
Hesperia, CA 92345

For Information Contact: Debi Raymond, 760-948-3262, draymond@vvta.org

This invitation includes the following documents: (* To be returned with bid)

- * **1. Bid Invitation Cover Sheet**
- 2. Instruction To Bidders
- 3. Standard Purchase Terms and Conditions
- 4. Contract Agreement Provisions
- 5. Specifications
- * **6. Bid Sheet**
- * **7. Minority/Women Owned Business Certification**

TO BE COMPLETED BY BIDDER

The undersigned agrees, if this bid offer is accepted within 120 calendar days after date of opening, to fully comply in strict accordance with the invitation, bid, specifications and provisions attached thereto for the amounts shown on the accompany bid sheet(s).

Firm: _____

Signature of Person Authorized
to Sign bid: _____

Signor's Name and Title
(print or type): _____

Date: _____, Telephone: _____, Fax: _____

INSTRUCTION TO BIDDERS

1. **PROPOSAL/BID INTERPRETATION:** Any explanation desired by a bidder regarding the meaning or interpretation of the **invitation, provisions, specifications, etc. must be requested in writing to the Victor Valley Transit Authority, 11741 East Santa Fe Ave., Hesperia, CA 92345 no later than 11:00 am, November 20, 2009.** Correspondence shall be submitted with sufficient time allowed for evaluation and reply to all prospective bidders before the submission of their bids. The bid invitation number must appear on all correspondence, inquiries, etc. pertaining to the invitation. Oral explanations or instructions given before the award of the contract are not binding and do not form a part of or alter in any way, the written agreement.
2. **SPECIFICATIONS:** The specifications herein shall be the basis of comparison and where a definite item is specified it is not the intention to discriminate against any product made by another manufacturer, but rather, the intention to set a definite standard, style and function. Bidders are required to quote equipment that will meet or exceed the minimum or maximum specifications herein.
3. **SUBSTITUTIONS:** It is the intention of the Victor Valley Transit Authority to purchase commodities/services similar or equal to that specified. **Variations from the specification must be noted in bid by bidder. Absence of noted variations will be interpreted to mean that the item quoted is in exact accordance with the specification.** Each bidder, if not bidding on specified equipment, is required to furnish with his bid, a complete detailed description and specifications of each item upon which he is bidding, supported by the manufacturer's catalog, photographs, guarantee, complete name and any other pertinent information. An "or equal" item must reflect the general appearance, design, dimensions, or color of the item specified, and must be of equivalent materials, function, quality, construction, performance and suitability of the item(s) specified. SAMPLES, if required, shall be furnished free of expense to the Authority and if not used or destroyed in examination and testing will be returned to the bidder, if requested at the bidder's expense. Each sample must be marked with Bidder's name and address and Bid Number reference. Approval of substitute or "or equal" items remains with the Authority and in all cases is final. In the event an item is not accepted as "or equal" upon receipt of delivery, bidder may be allowed to supply equipment meeting the specifications at the bid price.
4. **MATERIALS:** The bidder certifies all materials and equipment supplied resulting from this bid invitation shall be new and unused, unless noted elsewhere in the invitation.
5. **CORRECTIONS, ADDITIONS OR DELETIONS:** To any portion of the invitation will be in the form of a written amendment or addendum.
6. **BID ITEMS:** Bidders are expected to examine all specifications, drawings, standard provisions and instructions. **FAILURE** to do so will be at the bidder's risk. Bids are to be submitted on each item and the total extended, however more than one bid may be submitted on products that meet the specifications.
7. **TAXES:** All quotations are to be submitted less Federal Excise. Tax exemption certificates will be executed upon request. The Authority's federal tax identification number is 33-0564770.
8. **AUTHORIZED SIGNATURE:** Bids must show vendor name and address and be manually signed. Person signing bid must have authority to bind his firm in a **contract**. The person signing the offer or others which show evidence of authority must initial any erasures or other changes,
9. **MODIFICATION OR WITHDRAWAL OF BIDS:** Bid pricing **CANNOT** be altered or amended after the closing time. Bids may be modified or withdrawn prior to the closing hour and date by written or faxed notice to VVTA. A bid may also be withdrawn in person by a bidder or his authorized agent, provided his identity is made known and he signs a receipt for the bid. No bid may be withdrawn after the closing time and date with out acceptable reason in writing and with approval of VVTA

- 10. PRICES:** Bidder is to quote its lowest and best price. Pricing shall include the daily Oil Price Index Service (OPIS) plus a cost for facility maintenance and upkeep and profit. Any trade and cash discounts will be taken if earned. Cost for fueling at non company owned facilities must also be included. Bids must be firm, however if a bidder believes it necessary to base its price on a different price adjustment, such a bid may be considered, but only as an alternate bid. Pricing is to be submitted on units of quantity specified with extended totals, however in the event of a discrepancy in extension, the unit prices shall govern. Pricing shall be entered on the bid sheet in ink or typewritten.
- 11. INTERRUPTION OF SUPPLY:** The vendor must keep VVTA advised at all times as to the status of its available supply. When an interruption of supply can be foreseen, the vendor shall give prior notice to the Transportation Supervisor. Default on supply, without acceptable reasons, or failure to meet specifications without remedy shall cause the Authority to purchase the goods elsewhere, and charge any increase in cost to the defaulting vendor. This does not limit any other remedies to the Authority for damage entitled under the Uniform Commercial Code.
- 12. EVALUATION FACTORS:** The Authority will award purchase orders and/or contracts to the lowest and best responsible bidder which represents the most advantageous bid to the Authority, price and other factors considered. In determining the most advantageous bid or proposal, price, quantifiable factors, and other factors are considered. This would include specifications, delivery requirements, the initial purchase price, life expectancy, cost of maintenance and operation over time, operating efficiency, training requirements, disposal value, and other factors contributing to the overall acquisition cost of an item. Consideration may be given, but not limited to conformity to the specifications, product warranty, a bidder's proposed service, ability to supply and provide service, delivery to required schedules, past performances in other contracts with the Authority including timely delivery. The Authority reserves the right to extend any contract when most advantageous to the Authority. NOTE: Other evaluation and award criteria may be included in the invitation documents.
- 13. PARTIAL AWARD:** Bidders may furnish pricing for all or any portion of the bid invitation. **UNLESS bidder specifies otherwise in his bid, the Authority may award contracts for any item or group of items listed.**
- 14. RESERVATIONS:** The Authority expressly reserves the right to accept, reject or cancel any and all bids AND:
- a. Waive any defect, irregularity or informality in any bid or bidding procedure;
 - b. Extend the bid closing time and date;
 - c. Reissue a bid invitation or proposal;
 - d. Procure any item by other means;
 - e. Increase or decrease the quantity specified, unless the bidder specifies otherwise;
 - f. Waive as informality, minor deviations from specifications at a lower price than the low bid meeting all aspects of the specifications and consider it, if it is determined that total cost is lower and the overall function is improved or not impaired;
 - g. Consider and accept an alternate bid as provided herein when most advantageous to the Authority;
 - h. Extend any contract when most advantageous to the Authority; and
 - i. Review references and/or past history as a bid evaluation criteria.
- 15. SUBMISSION OF BIDS:** Sealed bids are to be returned by the closing time and date stated on the bid invitation cover sheet in the following manner by one of the following delivery methods. Bids are to be delivered in an envelope marked on the outside as indicated below with the bidder's name and address, the bid number and opening date and returned to:
- a. **By MAIL:** This is how your envelope should look! Enter Bidders Name/Address is to be in upper left corner. Address to Victor Valley Transit Authority, 11741 East Santa Fe Ave.,

Hesperia, CA, 92345. The BID NUMBER; BID OPENING DATE and SEALED BID FOR (Commodity/Service); should be in the lower left corner. If submitting a NO BID indicate so beneath the BID NUMBER.

- b. **By DELIVERY SERVICE OR IN PERSON:** Sealed bids may be delivered in person or by delivery service to the Victor Valley Transit Authority, 11741 East Santa Fe Ave., Hesperia, CA, 92345.
 - c. **CLOSING TIME & DATE:** Bids must be returned in sufficient time to be received by the Authority on or before the advertised closing time and date shown in the invitation.
 - d. **LATE BIDS:** Bids received after the advertised closing time and date regardless of the mode of delivery will be refused and will be returned unopened to the bidder.
 - e. **SINGLE BIDS:** If only one bid is received for consideration, such bid can be opened at the advertised time and place in accordance with FTA rules. **FAX BIDS:** Fax transmission bids are not accepted.
- 16. ACCEPTANCE:** Acceptance of bidder's offer for an open market purchase will be in the form of a purchase order or contract. The IFB and resulting bid may stand as the contract and in the case of any conflict the IFB "controls".
- 17. BID PROTEST PROCEDURE:** Any actual or prospective Bidder, or Proposer who believes they are aggrieved in connection with the awarding of a bid or a proposal may file a protest. They must deliver a written complaint to the VVTA General Manager in person or by certified mail within five (5) business days of receipt of notification of bid award recommendation being submitted to VVTA Board that identifies the following:
1. Name, mailing address and business phone number of the complainant.
 2. Appropriate identification of the bid or proposal being questioned.
 3. A precise statement of reasons for the protest.
 4. Supporting exhibits of evidence or documents to prove any claims.
 5. VVTA will attempt to resolve all allegations. If the allegations are successfully resolved by mutual agreement, documentation of the resolution with specifics on each point addressed in the protest will be forwarded to the Authority Manager's office.

If the allegations for the bid or proposal solicitation is not successfully resolved, the protest along with the comments will be forwarded to the Authority Manager's office. The Authority manager or her/his designee will review all documentation. If the Authority manager or his/her designee desires further information, the Authority Manager or her/his designee will notify all interested parties of the additional information required. The decision reached by the Authority manager or his/her designee shall be final and conclusive.

**VICTOR VALLEY TRANSIT AUTHORITY
CONTRACT AGREEMENT PROVISIONS**

1. **QUANTITIES:** Bidder agrees to furnish all requirements of the Victor Valley Transit Authority during the contract period. Quantity(s) listed are estimates only, actual quantity(s) ordered will be determined by fleet requirements and availability of funds.
2. **TERM OF CONTRACT:** Thirty-six months from approval of the Victor Valley Transit Authority Board and date of notice to contractor. With the option by The Authority to extend for up to two twelve month periods
3. **PRICING TERMS:**
 - a. **Selling Price:** The selling price shall be based on the daily Oil Price Index Service (OPIS) and bidders profit and overhead (constant).
 - b. **Profit and Overhead (constant):** Bidder shall add a profit and overhead rate (constant) in dollars/cents per gallon in the appropriate Bid Sheet column. The profit and overhead rate shall not change through-out the contract period. Profit and overhead (constant) shall include all costs associated with the purchase, storage (if applicable), and facility maintenance and upkeep.
 - c. **State and Federal Taxes:** The Authority is exempt from certain Federal Use Taxes, a tax exemption will be provided to the awarded vendor. Applicable taxes will be added to invoice upon billing.
 - d. **Invoicing and payment:** Invoicing shall be based on proper measurement, net gallons by vehicle. A cardlock system with security measures shall be used.
4. **INTENT:** It is the intent of the Victor Valley Transit Authority to purchase motor fuels at the lowest cost. A bidder may not, however, price product higher than the daily Oil Price Index Service (OPIS). A listing of the daily OPIS is to be submitted to the contract administrator upon request for validation of this requirement. Contract administrator is the Victor Valley Transit Authority.
5. **SPILLAGE AND CLEANUP:** Bidder is responsible and agrees to clean-up any spills of product during transit fueling operations.
6. **INSURANCE:** Successful bidder must supply a certified copy of certificate of insurance within ten (10) days of notification of bid award. Contracted vendor shall keep in full force and effect during the term of this contract insurance coverage in the following types and amounts:

TYPE	AMOUNT
Workers Compensation	Statutory
Property Damage Liability	\$100,000
Comprehensive general liability including products and completed operations liability.	\$500,000

Insurance coverage can be satisfied if the policy has excess coverage (umbrella) with limits in excess of the amounts stated.

All policies shall also contain the following provisions:

- ◆ Victor Valley Transit Authority, California its officers, servants, agents and employees, named as additional insured.
- ◆ Such certificates shall state that such insurance shall not be canceled or materially changed without a minimum of thirty (30) days advance notice, in writing, to the Victor Valley Transit Authority.
- ◆ The preceding minimum amounts notwithstanding, The Authority reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided by the bidder in these documents.

**SPECIFICATIONS
FOR
BULK MOTOR FUELS**

- I. **Scope:** This specification is designed to describe motor fuels used by the Victor Valley Transit Authority. The specification includes sections on Scope, Classification, Applicable Specifications and Functional and Performance Requirements.
- II. **Classification:** Fuels provided under this specification will be used for motor fleets owned by the Victor Valley Transit Authority for on or off road purposes.
- III. **Applicable Specification:** Motor fuels shall meet appropriate designation for fuel type and grade under ASTM designation D439 gasoline's and D975 diesel latest update. Vendor shall provide motor fuels in accordance with Federal, State of California and Victor Valley Transit Authority regulations and ordinances for product of this type. Vendor is not responsible for motor fuel specifications for cardlock/fueling locations not under their ownership.
- IV. **Functional and Performance Requirements:**
- A. **Product Specification:** Copy of refiner's specification is to be submitted with bid.
1. **Regular Unleaded Grade Gasoline**, per ASTM designation D439, latest issue with minimum octane rating of 87 (R+M/2 method) with a high level of detergent additive as recommended for all engines with injection or conventional fuel systems.
 2. **No. 2 Diesel**, Low Sulfur, ASTM designation D975, latest issue.

SEE ATTACHMENT A

3. **Non-Compliance of Product:** Bidder is required to provide the authority test results for three independent tests of product for each twelve month period. Testing will be performed by an independent testing lab. Product not meeting specification shall be removed from tanks and replaced with fuel meeting specification. Removal of any product shall require re-testing of new product at contractor's expense.

FTA & VICTOR VALLEY TRANSIT AUTHORITY REQUIREMENTS AND PROVISIONS

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SECTION 1 DEFINITIONS

- 1.1 BID: This term shall include a response to the pertinent Request for Bids (RFB), Request for Proposals (RFP), Invitation for Bid (IFB), Request for Qualifications (RFQ) or other similar solicitation by Victor Valley Transit Authority.
- 1.2 BIDDER: Includes any person or entity who submits a response to a Victor Valley Transit Authority solicitation including an Invitation for Bids, Request For Proposals, Request For Qualifications or a purchase order.
- 1.3 CONTRACTOR: The successful bidder. The person or entity who has been awarded a contract under a Victor Valley Transit Authority solicitation.
- 1.4 DOT: Department of Transportation
- 1.5 FTA: Federal Transit Administration
- 1.6 The Authority: Victor Valley Transit Authority, California
- 1.7 ROLLING STOCK: Includes buses, cars, vans.
- 1.8 C.F.R. Code of Federal Regulations
- 1.9 U.S.C. United States Code
- 1.10 EPA Environmental Protection Agency

SECTION 2. CONTRACTOR STATUS

- 2.1 Contractor is an independent contractor of the Victor Valley Transit Authority, and all persons employed to furnish services or to perform work hereunder are employees, agents or sub-contractors of contractor and not of Victor Valley Transit Authority. No provision of this agreement shall be construed to give rise to a partnership, joint venture, agency,

employer/employee relationship, or any relationship between contractor and Victor Valley Transit Authority other than that of principal and independent contractor.

SECTION 3. FEDERAL - GENERAL CLAUSES

3.1 No Federal Obligation to Third Parties:

- 3.1.1 Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of any contract(s) related to this solicitation, absent the express written consent by the Federal Government, the Federal Government is not a party to any such contract(s) and shall not be subject to any obligations or liabilities to the contractor, and/or subcontractor, or any other party (whether or not a party to any such contract) pertaining to any matter relating in any way to any such contract.
- 3.1.2 Contractor agrees to include the clause above in each subcontract entered into incident to the performance of any contract resulting from this solicitation. Contractor agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3.2 Federal Changes:

- 3.2.1 Contractor shall at all times comply with all applicable FTA regulations, policies, procedure and directives, as they may be amended or promulgated from time to time during the term of any contract related to this solicitation. Contractor's failure to so comply may constitute a material breach of the underlying contract.

3.3 Incorporation of FTA terms

- 3.3.1 The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Victor Valley Transit Authority requests which would cause Victor Valley Transit Authority to be in violation of the FTA terms and conditions.

3.4 Notification of Federal Participation

- 3.4.1 In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

SECTION 4. ETHICS

4.1 Conflict of Interest:

4.1.1 No employee, officer, or agent of Victor Valley Transit Authority shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict arises when any of the following persons has a financial or other interest in a firm selected for an award:

(A) The employee, officer or agent; (B) Any member of his immediate family; (C) His or her partner; or (D) An organization which employs, or is about to employ any such person.

4.1.2 Victor Valley Transit Authority's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

4.2 Interest of Members of or Delegates to the U.S. Congress: *This provision does apply to subcontractors.*

4.2.1 In accordance with 41 U.S.C. § 22, contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the underlying contract or to any benefit derived therefrom.

4.3 Restrictions on Lobbying: - *Certification Required. This requirement does apply to contractors and subcontractors for contracts greater than \$100,000.*

4.3.1 Successful bidder shall be subject to 31 U.S.C. § 1352 and shall be required to file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying."

4.3.2 Successful bidder with bids over \$100,000 must submit to Victor Valley Transit Authority with its bid the CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING. *Contractor's and Subcontractors' certifications must be submitted before a subcontractor may commence performance of a subcontract.*

4.4 Debarment and Suspension: *Certification Required. This requirement does apply to contractors and subcontractors with contracts over \$100,000.*

4.4.1 The successful Bidder with a bid greater than \$100,000 shall complete and execute a debarment and suspension certification that fully discloses information about its debarment and suspension status and that of its officeholders or holders of controlling interests. The successful bidder must submit the CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS. *Contractor's and Subcontractors' certifications must be submitted before a subcontractor may commence performance of a subcontract.*

4.4.2 Contractor agrees to secure and submit to Victor Valley Transit Authority, prior to awarding a subcontract over \$100,000 a complete and fully executed debarment and suspension certification from each subcontractor. Contractor agrees further to refrain from awarding a subcontract of any amount whatsoever to a debarred or suspended subcontractor.

- 4.5. False and Fraudulent Statements and Claims. *This provision does apply to subcontractors.*
- 4.5.1 Contractor acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §3801 et seq. and U.S. Department of Transportation Regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to all contracts resulting from or related to this solicitation. Accordingly, by signing each such contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, makes, or may make pertaining to this solicitation or such contract(s).
- 4.5.2 Further, in addition to other penalties that may be applicable, contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification related to this solicitation or to any contract related to this solicitation, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on any such contract to the extent the Federal Government deems appropriate.

SECTION 5. REPORTING, RECORD RETENTION AND ACCESS

- 5.1 Contractor agrees to maintain intact and make readily accessible all books, data, documents, papers, reports, records, contracts, and supporting materials directly pertinent to any contract resulting from or related to this solicitation. Contractor agrees to maintain all such items during the term of each such contract, inclusive of term extensions and/or renewals, and for three (3) years thereafter, except that, in the event of litigation or settlement of claims arising from the performance of any such contract, negotiation, audit or other action involving the records begun before the expiration of the 3-year period, contractor agrees to maintain same until Victor Valley Transit Authority, FTA, the Comptroller General, or any of their duly authorized representatives have disposed of such litigation, appeals, claims or exceptions thereto.
- 5.2 Upon request, contractor agrees to permit the General Manager Victor Valley Transit, or, his or her authorized representative and/or any authorized FTA representative to inspect all contract work, materials, payrolls, and other data, and to audit books, records and accounts of contractor and those of any subcontractor that pertain to any such contract.
- 5.3 If a contract is not based on competitive bidding procedures as defined by DOT, contractor shall and agrees to permit Victor Valley Transit Authority, the Secretary of Transportation, and the U.S. Comptroller General, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records, and to audit the books, records and accounts involving the underlying contract.
- 5.4 Contractor agrees to include the clauses above in each subcontract it enters into incident to the performance of any contract resulting from or related to this solicitation. Contractor agrees that the clauses shall not be modified except to identify the subcontractor who will be subject to its provisions.

SECTION 6. ENVIRONMENTAL REQUIREMENTS

6.1 Clean Air Act:

- 6.1.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et. seq. Contractor agrees to report each violation of such act, standards, orders or regulations to Victor Valley Transit Authority, and contractor understands and agrees that Victor Valley Transit Authority, in turn, will report each such violation as required to assure notification to FTA and the appropriate EPA Regional office.
- 6.1.2 Contractor agrees to and shall include the clause above in each subcontract entered into incident to the performance of the underlying contract. Contractor agrees that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

6.2 Federal Water Pollution Control Act:

- 6.2.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et. seq. Contractor agrees to report any violation of these requirements to Victor Valley Transit Authority, and contractor understands and agrees that Victor Valley Transit Authority, in turn, will report each violation as required to assure notification to FTA and the appropriate EPA Regional office.
- 6.2.2 Contractor agrees to and shall include the clause above in each subcontract entered into incident to the performance of the underlying contract. Contractor agrees that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

SECTION 7. CIVIL RIGHTS

7.1 Title VI of the Civil Rights Act of 1964:

- 7.1.1 During the performance of each contract resulting from or related to this solicitation, contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:
- 7.1.2 Compliance with Regulations: Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the DOT, 49 C.F.R. Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of each such contract.
- 7.1.3 Nondiscrimination: Contractor, with regard to the work performed by it during each such contract, shall not discriminate on the basis of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including the procurement of materials and lease of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including

employment practices, when the contract covers a program set forth in Appendix B of the Regulations.

- 7.1.4 Solicitations for Subcontractors Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under the underlying contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, or national origin.
 - 7.1.5 Information and Reports: Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Victor Valley Transit Authority or the FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Victor Valley Transit Authority, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - 7.1.6 Sanctions for Noncompliance: In the event of contractor's noncompliance with these nondiscrimination provisions, Victor Valley Transit Authority shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
 - 7.1.6.1 Withholding of payments to the contractor under the contract until contractor complies, and/or
 - 7.1.6.2 Cancellation, termination or suspension of the contract, in whole or in part.
 - 7.1.7 Incorporation of Provisions: Contractor shall include the provisions of paragraphs 7.1.1 through 7.1.6 of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Victor Valley Transit Authority or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or threatened with litigation with a subcontractor or supplier as a result of such direction, contractor may request Victor Valley Transit Authority to enter into such litigation to protect the interests of Victor Valley Transit Authority, and, in addition, contractor may request the services of the Attorney General in such litigation to protect the interests of the United States.
- 7.2 Equal Employment Opportunity:
- 7.2.1 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. Contractor agrees to take affirmative steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age or national origin. Such steps shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, rates of pay or other

forms of compensation; and selection for training, including apprenticeship. Contractor also agrees to comply with any implementing requirements FTA may issue.

7.3 Disadvantaged Business Enterprise:

- 7.3.1 Policy. Performance of the contract(s) resulting from or related to this solicitation will be financed in whole or in part with Federal funds administered through DOT. It is the policy of the DOT and of Victor Valley Transit Authority that disadvantaged business enterprises (DBE's), as defined in 49 C.F.R. Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds. Consequently the DBE requirements of 49 C.F.R. Part 23 apply to all such contracts.
- 7.3.2 DBE Obligation. Victor Valley Transit Authority and contractor agree to ensure that DBE's as defined in 49 C.F.R. Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with Federal funds. In this regard, contractor agrees to take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23 to ensure that DBE's have the maximum opportunity to compete for and perform contracts and sub-contracts resulting from or related to this solicitation. Victor Valley Transit Authority and its contractor agree that they shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of such contracts.

SECTION 8. PROCUREMENT PROHIBITIONS/RESTRICTIONS

8.1 Exclusionary or Discriminatory Specifications Prohibited:

- 8.1.1 Both Victor Valley Transit Authority and contractor agree that they will comply with the requirements of 49 U.S.C. § 5323(h)(2) and contractor will refrain from the use of exclusionary and/or discriminatory specifications to secure and/or perform a contract awarded by Victor Valley Transit Authority resulting from or related to the solicitation.

8.2 Geographic Restrictions:

- 8.2.1 Both Victor Valley Transit Authority and contractor agree to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA, such as those that may be permissible in the acquisition of management, architectural and engineering services.

SECTION 9. GENERAL CONTRACT REQUIREMENTS

9.1 Cargo Preference. *This requirement does apply to some subcontractors.*

- 9.1.1 Pursuant to 46 C.F.R. 381.7 (b), if any equipment, materials or commodities may be transported by ocean vessel in carrying out the contract, contractor agrees:

- 9.1.1.1 to use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved whenever shipping any equipment, materials, or

commodities pursuant to the underlying contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- 9.1.1.2 to furnish within twenty (20) working days following the date of loading for shipment originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph above to Victor Valley Transit Authority (through the prime contractor in the case of subcontractor bills-of-lading) and, to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.
 - 9.1.1.3 to include these requirements in all subcontracts issued pursuant to the underlying contract when the subcontractor may involve the Transport of equipment, materials, or commodities by ocean vessel.
 - 9.2 No Assignment: Any contract resulting from or related to this solicitation and all rights and obligations thereunder are non-assignable in whole or in part by contractor without the prior express written consent of Victor Valley Transit Authority, and any attempted assignment without such consent shall constitute a material default of contractor under the underlying contract, and may be considered void for all purposes at the election of Victor Valley Transit Authority.
 - 9.3 Invoicing: A contractor shall be required to separately itemize the amounts paid to DBE subcontractors on all invoices submitted to Victor Valley Transit Authority incident to a contract that results from this solicitation that reflects separately the amounts which have been paid to DBE subcontractors, and specifies such amounts included in the current invoice for such subcontractors.
 - 9.4 Contract Ambiguity: In case of ambiguity or lack of clarity in stating prices or quantities in the bid, Victor Valley Transit Authority reserves the right to adopt the most advantageous construction thereof to Victor Valley Transit Authority or to reject the bid or proposal.
 - 9.5 Contract Documents: The Contract Documents resulting from this solicitation shall consist of the applicable IFB/RFP, contractor's bid, and the underlying contract. The Contract Documents represent the full, final and complete agreement of the parties and may not be added to, contradicted or otherwise modified by evidence of prior or contemporaneous agreements or subsequent oral agreements or statements of either of the parties, nor by any writing not signed by both parties after the date of this writing. In case of any apparent ambiguity or conflict among any of the terms or provisions of such the Contract Documents, they shall be construed as nearly as possible so as to effectuate each and all of such terms and provisions, keeping in mind that the overriding purpose of the contract resulting from this solicitation is the public purpose related to this solicitation, and the prudent use of public monies. In case of irreconcilable conflict, the provisions of this writing, (including the specifications set out in the RFB and the provisions of Victor Valley Transit Authority's General Solicitation Packet, all of which are hereby incorporated by reference in this writing) shall control over all other documents, terms and provisions. Only provisions of the RFB shall control over any Contract Document other than this writing.

- 9.6 Notices: Any notices or other communication required or allowed to be given by one party to the other pursuant to the contract that results from this solicitation shall be deemed properly delivered when personally delivered to a party at its address as shown in the first paragraph of the contract that results from this solicitation, to the individual in charge of the party's operations at such address, or, if delivered by mail, any such notice shall be deemed properly delivered on the date it is placed in the custody of the U.S. Postal Service with proper postage affixed, and addressed as follows to a party at its address shown on the Contract, or such other address as such party has subsequently specified in writing for notice, to the party.
- 9.7 No Third Party Beneficiaries: Except to the extent expressly set out in the Contract Documents, no third party shall have the benefit of or any rights under the contract resulting from this solicitation. However, the underlying contract shall be binding on the heirs, successors and assigns of Victor Valley Transit Authority and contractor.
- 9.8 Entire Agreement: The contract that results from this solicitation represents the entire agreement between the parties thereto; no representations, inducements, promises or agreements, oral or otherwise between the parties thereto not embodied herein (including any provisions incorporated by reference) shall be of any force or effect. The underlying contract may be amended only by a written instrument signed by the parties thereto subsequent to the execution of the contract.
- 9.9 Metric System - To the extent practicable and feasible, the bidder agrees to accept products and services with dimensions expressed in the metric system of measurement.
- 9.10 State & local government employees - The minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, apply to employees performing work on this procurement involving commerce, including such state and local government employees as public transit authority employees, participating in the Project.

SECTION 10. CONTRACT DISPUTES/BREACHES/DAMAGES/MISCELLANEOUS

- 10.1 Contractor Liability: The mention in the solicitation or contract documents of any specific duty or liability imposed upon the contractor shall not be construed as a limitation or restriction of any general liability or duty imposed upon the contractor by the contract documents or by any provision of law, the reference to any specific duty or liability being construed as being made merely for the purpose of explanation, illustration, inclusion or addition.
- 10.2 Dispute Resolution: Unless a contract resulting from or related to this solicitation provides otherwise, all claims, counterclaims, disputes and other matters in question between Victor Valley Transit Authority and contractor arising out of or relating to this solicitation or any such contract, or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within San Bernardino, California.
- 10.2.1 The duties and obligations imposed by these solicitation documents and all contract documents resulting from or related to this solicitation, and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or

failure to act by Victor Valley Transit Authority shall constitute a waiver of any right or duty afforded either party under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach under this solicitation or under any such contract, except as may be specifically agreed in writing.

- 10.3 Sanctions for Breach of Contract: Should contractor fail to perform its obligations under any contract resulting from or related to this solicitation strictly in accordance with the terms hereof, contractor shall be guilty of a default or breach hereof and shall be liable to Victor Valley Transit Authority for all damages and expenses, direct and consequential, resulting from such failure or growing out of or related in any manner to such breach. Contractor shall also be liable to Victor Valley Transit Authority for exemplary damages if its failure to act or its breach involves malice or if contractor knowingly or willingly attempts to damage or injure Victor Valley Transit Authority or its officers, employees or agents or any property belonging to any of them. Without limiting in any manner other remedies or damages to which Victor Valley Transit Authority may be entitled in law or in equity and/or under any such contract in the event of a breach by the contractor, Victor Valley Transit Authority shall be entitled to recover the full amount of its costs which are related in any manner to soliciting new bids and to the award of such new contract, where the solicitation includes all or any portion of the work the contractor has agreed to perform under a contract resulting from or related to this solicitation, and to recover all additional costs of having the work performed by a person other than the contractor. Contractor shall also be liable to Victor Valley Transit Authority, and Victor Valley Transit Authority shall also be entitled to recover all attorneys fees and related expenses incurred by or on behalf of Victor Valley Transit Authority growing out of or related in any manner to contractor's breach of any provision of any such contract, including any action or proceeding in law or equity to enforce or interpret the terms of any such contract.
- 10.4 Termination:
- 10.4.1 Termination for Convenience. Victor Valley Transit Authority may terminate, in whole or in part, for its convenience and at any time, any contract resulting from or related to this solicitation by giving written notice to the contractor specifying that the termination is for the convenience of Victor Valley Transit Authority, and the termination date. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to Victor Valley Transit Authority to be paid. If the contractor has any property in its possession belonging to Victor Valley Transit Authority, contractor will account for the same, and dispose of it in the manner Victor Valley Transit Authority directs.
- 10.4.2 Termination for Default. If contractor fails to deliver conforming goods, materials, or supplies in accordance with the contract delivery schedule specified in this solicitation or in any contract resulting from or related to this solicitation (when the contract involves the purchase or procurement of such items) or contractor fails to perform in the manner called for in this solicitation or in any such contract (when the contract involves performing work or rendering services) or contractor fails to comply with any other provision of any such contract, Victor Valley Transit Authority may terminate such contract(s) for default. Termination shall be effected by serving a notice of termination on contractor setting forth the manner in which contractor is in default and the effective date of termination. Contractor will be paid only the contract price for conforming

goods, materials, or supplies delivered and accepted, or the actual value to Victor Valley Transit Authority of work completed or services performed up to the time of termination in accordance with the manner of performance set forth in the contract. Contractor shall promptly submit its termination claim to Victor Valley Transit Authority and the parties shall negotiate the termination settlement, if any, to be paid to contractor. The contractor shall account for any property in its possession paid for from funds received from Victor Valley Transit Authority, and property supplied to the contractor by Victor Valley Transit Authority.

- 10.4.3 Reinstatement. If, after serving a notice of termination for default, Victor Valley Transit Authority determines that the contractor has an excusable reason for not performing, such as strike, fire, flood, or other events which are not the fault of, or are beyond the control of the contractor, Victor Valley Transit Authority, after setting up new delivery or performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.
- 10.5 Cumulative Remedies: The rights and remedies of Victor Valley Transit Authority specified in this solicitation document, and those specified in any contract resulting from or related to this solicitation. In the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement by Victor Valley Transit Authority of any other right or remedy authorized by law or by this solicitation or any such contract. No waiver by Victor Valley Transit Authority of any violation shall be deemed or construed to constitute a waiver of any other violation or breach and Victor Valley Transit Authority's forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.
- 10.6 Funding For Future Years: Victor Valley Transit Authority's financial obligation under any multi-fiscal year contract that results from this solicitation shall be subject to the availability of approved/budgeted funds in current and future fiscal years beginning with the fiscal year after the contract term begins.
- 10.7 Governing Law and Venue: The contract resulting from this solicitation shall be interpreted in accordance with the law of the State of California, except to the extent the laws of the United States of America control. The underlying contract is entered into and is to be performed, wholly or in part, in the State of California and in San Bernardino, California. The parties hereby agree that venue for any suit or proceeding related to the underlying contract, including any proceeding to interpret any of the terms of such contract, to enforce any such terms or to recover damages due to or to enjoin a breach of such contract shall lie solely in San Bernardino, California.
- 10.8 Arrears of Taxes Offset to Debt Against The Authority: This agreement is subject to Article VIII Section 8 of the Victor Valley Transit Authority, California Charter, as amended, a copy of which is attached hereto as Exhibit I and incorporated herein for all purposes.
- 10.9 Offset of Other Debts Against The Authority: Contractor agrees that the Victor Valley Transit Authority, California ("The Authority") is entitled to counterclaim and offset against any debt, claim, demand, or account owed by the Authority to Contractor, pursuant to this agreement, for any debt owed to the Authority, other than for arrearage of taxes which are governed by Section 8 of this agreement. The Authority may withhold, from payment under this agreement,

an amount equal to the total amount of debts owed to the Authority by Contractor. The Authority may apply the amount withheld to the debts owed to The Authority by Contractor until said debts are paid in full.

**CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION,
AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower Tier Participant, _____, certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by an Federal department or agency.

(If the Lower Tier Participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

The Lower Tier Participant, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____(entity) hereby certifies that the _____ (entity) has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

**MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE
ORDER**

CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING

I, _____, hereby certify on
(Printed Name and Title of Contractor Official)

behalf of _____ that:
(Printed Name of Contractor)

- (1) It will not use federal funds to support lobbying.
- (2) No federal funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (3) If any funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (4) *All subcontractors and subrecipients shall certify and disclose accordingly.*

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20_____.

By _____
(Signature of Authorized Official)

(Title of Authorized Official)

Note: Bidder shall make copies of this blank page and obtain certification from all subcontractors that bidder is recommending, and submit such certifications to Waco Transit prior to such subcontractors beginning any work under this contract.

MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE ORDER

**VICTOR VALLEY TRANSIT AUTHORITY
Bid Sheet**

BID INVITATION NO: VVTA 2009-03-Fuel

BIDDER: _____
 AUTHORIZED
 SIGNATURE: _____

1. Refer to "Instruction To Bidders" before completing Bid Sheet.
2. Price, quote your best price at company owned fueling sites, on each item.
3. In submitting this bid, I certify:
 - a. Items bid are in exact accordance with specification, unless noted in bid.
 - b. That prices in this bid have been arrived at independently, without consultation or agreement with any competitor for the purpose of restricting competition.

Item No.	Description Or Specification
----------	------------------------------

1.0 Regular Grade Unleaded (87) Gasoline.

Estimated Annual Quantity: 225,000 gallons
 Daily OPIS price/Gallon (Yes/No): _____
 Profit/Overhead/Gallon \$ _____
 Any additional cost/gal for fueling at non-owned fueling facilities \$ _____

SELLING PRICE/GALLON:
 for **October 19, 2009** less state and federal taxes \$ _____
 Branded/unbranded (Yes/No): _____
 Mfg. of additive package: _____
 Description of additive package: _____

1.1 Diesel No. 2 Grade

Estimated Annual Quantity: 32,000 gallons,
 Daily OPIS price/Gallon (Yes/No): _____
 Profit/Overhead/Gallon \$ _____
 Any additional cost/gal for fueling at non-owned fueling facilities \$ _____

SELLING PRICE/GALLON:
 for **October 19, 2009** less state and federal taxes \$ _____
 Branded/Unbranded (Yes/No): _____
 Mfg. of additive package: _____
 Description of additive package: _____

Payment Terms: Payment will made lump sum thirty (30) days after receipt of invoice unless a _____% early payment discount is offered for payment in fifteen (15) days.

MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE ORDER

Minority/Women Owned Business Certification

The Victor Valley Transit Authority is committed to assuring that all businesses are given prompt, courteous, and equal opportunity to provide goods and services to the Authority. To achieve this goal, the Authority Council requests the minority women owned status of each vendor on the Authority vendor list.

Definition: A Disadvantaged Minority and Woman owned Business Enterprise means a business concern owned and controlled by socially and economically disadvantaged individuals. This means any business concern that a) is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of publicly owned businesses, at least 51% of the stock which is owned by one or more socially or economically disadvantaged individuals; and b) whose management and daily operations are controlled by one or more other socially and economically disadvantaged individuals who own it. The groups included in this program are Black Americans, Hispanic Americans, Women, Asian Pacific Americans, and Native Americans.

Certification: Bidder declares a minority and/or women owned business status:

___ YES; ___ NO.

If yes, check one, or more, of the following blocks:

Female ___; Asian ___; Black ___; Hispanic ___; Native American ___

NOTE: Caltrans certification is required and a copy must be attached.

MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE ORDER

ATTACHEMENT A