



PROCUREMENT MANUAL





500-11 Lee County Transit Procurement Manual

Policy

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Purpose

Lee County Transit's Procurement Manual has been developed to ensure that all FTA Procurement Requirements are met when using Federal funds for the procurement of goods, services, materials, and equipment.

Effective Date: August 11, 2012

Revised Date(s): September 20, 2012; March 3, 2015; April 24, 2015, December 15, 2015, December 1, 2016

Procedure:

All elements of Lee County Transit's Procurement Manual must be adhered to when using grant funds from the Federal Transit Administration. The Lee County Transit Procurement Manual sets forth guidelines when using Federal funds for the procurement of goods, services, materials, and equipment to ensure compliance with FTA C 4220.1F.

FTA Circular 4220.1F will be updated in fiscal year (FY) 2017 in order to incorporate the provisions of the Super Circular, 2 CFR Part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and the Super Circular, the Super Circular controls.

The old Common Grant Rule, 49 CFR parts 18 and 19, was superseded by 2 CFR parts 200 and 1201, effective December 26, 2014. The Super Circular consolidates eight existing grant-related circulars into one set of uniform regulations located in Title 2 of the CFR.

2 CFR Part 200 applies to the administration of all Federal grants, cooperative agreements, and amendments as of December 26, 2014. Procurements under grants and cooperative agreements executed prior to December 26, 2014 continue to be subject to 49 CFR Parts 18 and 19 as in effect on the date of such grants or agreements.

2 CFR Part 200 contains certain notable changes to FTA grants management. The Super Circular increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before

December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 49 CFR 18.36(d)). The simplified acquisition threshold is periodically adjusted for inflation. The micro-purchase threshold, which also is adjusted periodically for inflation, increased from \$3,000 to \$3,500 effective October 1, 2015.

Similarly, the Buy America public interest waiver, which exempts “small purchases” from Buy America regulations, increased to \$150,000 per the adoption of 2 CFR Part 200. Effective October 1, 2015, the small purchase waiver was incorporated into the statute in 49 USC 5323(j)(13), and now applies to purchases of not more than \$150,000 and will not automatically increase when the simplified acquisition threshold increases. Per the statute, the small purchase waiver applies to *purchases* of not more than \$150,000. The waiver is based on the total cost of the contract, including labor and options, and may be used for purchases of not more than \$150,000 even if the total cost of the project is in excess of \$150,000.

On December 4, 2015, the Fixing America’s Surface Transportation (FAST) Act was signed, reauthorizing surface transportation programs through Fiscal Year 2020. Section 3019 of the FAST Act included several innovative procurement provisions, including permitting grantees to purchase off of another state’s schedule. It also provides for capital leasing of rolling stock and related equipment, including leasing certain zero emission vehicle components. The FAST ACT increased the domestic percentage content requirements for rolling stock through incremental increases. By FY 2020, the Buy America requirement for rolling stock will increase to more than 70 percent.

The Procurement Manual is attached to Policy 500-11 and is available online. Lee County Transit’s Procurement Manual and other procurement resources are available on our website at:

<http://www.rideletran.com/FTAProcurement.html>

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Section 1: Purpose and Introduction

a. Objective

The purpose of this procurement and management manual is to define the basic policies and procedures that govern the procurement of supplies, equipment, and services, including construction services, by Lee County Transit (Lee County Transit). Lee County Transit is the designated recipient of State and Federal funds for public transportation in the Lee County urbanized area. Procurements made by Lee County Transit and funded in whole or in part by Federal and/or State funds must comply with Federal and State requirements. This manual is to specify policy for all Lee County Transit staff, sub-grantees, and third-party contractors/vendors involved in the procurement process.

Section 2: General Procurement Policy Standards

a. General Procurement Policy/Standards

Lee County Transit staff are responsible for ensuring that procurement procedures comply with applicable State and local laws and regulations and applicable Federal laws. If Florida State law related to the procurement is more restrictive than the applicable Federal law, the State law will be applied. All purchases are initiated by a procurement request and a purchase order (see Attachment 1). Specific requirements are applicable to specific procurements, which are indicated by required Federal clauses and must be listed on each purchase order.

b. Responsibilities

Procurements are made either directly by Lee County Transit staff or indirectly by sub-grantees and contractors/vendors. Lee County Transit staff, sub-grantees, and contractors/vendors are responsible for understanding and meeting procurement requirements and for keeping abreast of changes in Federal Transit Administration (FTA) requirements through the FTA Third-Party Procurement Update email subscription service. As the recipient, Lee County Transit staff are responsible for routinely monitoring procurements of the sub-grantees and contractors/vendors for compliance and to ensure that each sub-grantee is aware of and complies with all applicable Federal statutory and regulatory requirements.

Lee County Transit staff include the Transit Director, the Fiscal Manager, and the Department Managers. These individuals work together to meet the procurement compliance responsibilities. The Transit Director serves as the Contracting Officer, the person with delegated authority to sign contracts and amendments on behalf of Lee County Transit.

c. Contract Administration System

Lee County Transit staff will maintain a contract administration system that ensures that contractors/vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

d. Written Standards of Conduct

Lee County Transit staff will maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

- i. Personal Conflict of Interest** – No employee, officer, agent, immediate family member, or Board member of Lee County Transit will participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.
- ii. Gifts** – No employee, officer, agent, or Board member of Lee County Transit will solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
- iii. Violations** – To the extent permitted by State or local laws or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by any employee, officer, agent, or Board member of Lee County Transit or by contractors, subcontractors, or sub-grantees or their agents.

(See Attachment 2 – Lee County Transit Employee Code of Ethics Policy.)

e. Federal Cost Principles

In accordance with the Common Grant Rule, project costs will conform to applicable Federal cost principles by providing only for:

- i. Costs determined to be necessary and reasonable.
- ii. Costs allowable to the project.
- iii. Costs authorized or not prohibited by Federal law or regulation.
- iv. Compliance with all Federal cost principles applicable to Lee County Transit as a government agency.

Section 3: Management and Oversight of Sub-Grantees

a. Responsibilities of Lee County Transit for Management and Oversight of Sub-Grantees

As the designated recipient, Lee County Transit staff are responsible for routinely monitoring procurements of the sub-grantees to ensure that each is aware of and complies with all applicable Federal statutory and regulatory requirements. This responsibility includes:

- Applying for and receiving FTA grants on behalf of its Grant 5307 sub-grantees and performing on-going project management.
- Submitting sub-grantee's sub-award information to the Federal Funding Accountability and Transparency Act of 2006 (FFATA) Sub-award Reporting System at the end of the month after

the month in which any sub-award under the grant has been made and not the month after which FTA awarded the direct grant.

- Ensuring adherence to Federal program guidelines through contractual agreements with all sub-grantees.
- Receiving, verifying, and submitting for reimbursements from the FTA for all eligible project expenses.
- Passing through the reimbursements received from FTA for all eligible project expenses.
- Receiving financial and status reports from all sub-grantees.
- Completing financial and progress status reports in the FTA electronic grants management system (TEAM).
- Other such grant administrative actions as necessary to ensure project completion in accordance with all applicable federal rules, regulations, and guidance.

b. Annual Monitoring of Sub-Grantees

As the designated recipient of FTA Grant 5307 funds, Lee County Transit is responsible for ensuring that it and its sub-grantees or partners have established and maintain adequate internal controls over all functions which affect the implementation of a project utilizing such funds, including operating, accounting, financial, and administrative systems. To assure proper accountability for grant or cooperative agreement funds, internal controls used by sub-grantees shall be integrated with the management systems used by Lee County Transit to regulate and guide its operations.

Resources shall be used in accordance with all applicable state, local, and Federal laws, regulations, and policies, as well as the terms of the grant or cooperative agreement. Resources shall be safeguarded against waste, loss, and misuse. In addition, reliable data on resource use and safeguards must be accumulated, maintained, and fairly disclosed in reports to the designated recipient manager and FTA.

Lee County Transit shall be responsible for monitoring sub-grantees no less than once per contract year and more often, should it be necessary. Lee County Transit shall assist any of its sub-grantees in setting up the monitoring in order to ensure adherence to FTA guidelines.

Lee County Transit’s annual monitoring of its sub-grantees shall include a physical site visit to the location where the sub-grantee maintains its project records. The timing of the site visit shall occur six months from the beginning of any contract and occur at annual intervals while the contract is in force. Any deficiencies noted will result in more frequent inspections or the implementation of a corrective action plan until the deficiencies have been resolved.

Lee County Transit shall utilize the following procedures for monitoring sub-grantees:

- Review of operation of project for scope of work accuracy and efficiency.
- Review of the filing system, the system maintenance, and presence of grant information.
- Review of the grant matching documentation.

- Review of the sub-grantee’s Drug and Alcohol Policy.
- Review of the sub-grantee’s Title VI Plan and access, if there are current complaints.
- Review of marketing efforts associated with the project.

Section 4: Best Practices

a. Ensuring Most Efficient and Economic Purchase

Proposed procurements must be reviewed by Lee County Transit staff to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

When appropriate, an analysis will be made of lease vs. purchase alternatives to determine the most economical approach.

Additionally, to ensure sufficient procurement planning and forecasting, consideration should be given to establishing contractual relationships with suppliers and obtaining bids on repetitive purchase items—for example, parts or shelter repairs—to ensure competitive pricing based upon economies of scale. Grouping and bidding these purchases will ensure favorable pricing based on economies of scale. Creating blanket agreements will lead to a decrease in prices and an increase in efficiency.

b. Ensuring Environmental Compliance and Energy Efficiency

Lee County Transit will comply with applicable environmental requirements and implement them as necessary through third-party contracts. In addition, Lee County Transit also will seek products and services that, to the extent practicable and economically feasible, conserve natural resources, protect the environment, and are energy efficient. This includes, but is not limited to:

- i. Environmental mitigation
- ii. Compliance with applicable Federal law, including but not limited to the National Environmental Policy Act (NEPA), the Clean Air Act, and the Clean Water Act.
- iii. Parks, recreation area, wildlife, and waterflow refuges and historic sites
- iv. Recycled products
- v. Other Federal environmental protection requirements
- vi. Energy conservation

c. Intergovernmental Procurement Agreements

- i. Lee County Transit staff will use available state and local intergovernmental agreements for procurement or use of common supplies, equipment and services. When doing so, Lee County Transit staff must ensure that all federal requirements, required clauses, and certifications (including Buy America pre-award and post-award certifications) are properly included, followed, and documented, whether in the master intergovernmental contract or in the purchase order.

- ii. Lee County Transit staff will jointly procure supplies, equipment, and services with other grantees. When doing so, Lee County Transit staff must ensure that all federal requirements, required clauses, and certifications are properly followed and are included in the resulting joint solicitation and contract documents.
- iii. FTA has determined that grantees may not purchase items from certain buying cooperatives such as the National Joint Powers Alliance (NJPA) and the Houston-Galveston Area Council (HGAC). The FTA regional office should be consulted before entering into any agreements with such organizations. The FAST Act created a pilot program to allow nonprofit organizations to enter into cooperative procurement contracts for rolling stock and related equipment. FTA is in the process of developing the pilot program.
- iv. Lee County Transit staff may assign existing contract rights to purchase supplies, equipment, or services (piggybacking); however, staff must ensure that the original contract contains an assignability clause and must verify that the terms and conditions of the contract meet FTA requirements. (See Appendix A.) Prior to October 1, 2015, grantees were not permitted to purchase vehicles from another state's schedule. Effective October 1, 2015 section 3019 of, the FAST Act now permits grantees to purchase rolling stock and related equipment from another state's schedule. If Lee County Transit piggybacks on another grantee's procurement contract for purchasing revenue vehicles Lee County Transit may rely on the pre-award audit completed prior to the original contract; however Lee County Transit must review the audit and prepare its own signed certifications.

A "tag-on" is defined as adding on to contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and treating the add-on portion as though it met the requirements of competition. Tag-ons are not permitted.

d. Use of Excess or Surplus Federal Property

Lee County Transit staff will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

e. Use of Value Engineering in Construction Contracts

Lee County Transit staff will use Value Engineering (VE) clauses in contracts for construction projects. VE is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes, and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating, and maintenance) over the life of a project, consistent with the requirements of performance, reliability, maintainability, safety, and esthetics.

f. Metric Conversions

Lee County Transit will accept property and services with dimensions expressed in metric measurements, to the extent practical and feasible, in compliance with the Metric Conversion Act.

Section 5: Competition

a. Full and Open Competition

All procurement transactions will be conducted in a manner that provides full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- i. Unreasonable requirements placed on companies in order for them to qualify to do business.
- ii. Unnecessary experience and excessive bonding requirements.
- iii. Non-competitive pricing practices between firms or between affiliated companies.
- iv. Non-competitive awards to any person or firm on retainer contracts.
- v. Organizational conflicts of interest—because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee, a contractor’s objectivity in performing the contract work is or might be otherwise impaired, or a contractor has an unfair competitive advantage.
- vi. Specifying only a “brand name” product instead of allowing an “equal” product to be offered.
- vii. Taking any arbitrary action in the procurement process.

b. Prohibition against Geographic Preferences

Lee County Transit staff will conduct procurements in a manner that prohibits the use of statutorily- or administratively-imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application allows an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Written Procurement Selection Procedures

Lee County Transit’s procurement selection procedures:

- i. Will incorporate a clear and accurate description of the technical requirements for the material, product, or service needed into the procurement process. This description will include minimum essential characteristics and standards to which the property or services must conform to be determined satisfactory by Lee County Transit staff.
- ii. Will not, in competitive procurements, contain features that unduly restrict competition.
- iii. Will avoid, to the extent possible, detailed product specifications. Lee County Transit staff must detail technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- iv. Will use a “brand name or equal” description to define the characteristics of procurement when it is impractical or uneconomical to make a clear and accurate description of the technical requirements. The specific features of the named brand, which must be met by offerors, will be clearly stated.

- v. Will identify all requirements that must be fulfilled and all other factors to be used in evaluating bids or proposals.
- vi. Will document the need for the property and services being requested.
- vii. Will discuss the use of lease or purchase alternatives.

d. Pre-qualification Criteria

Lee County Transit staff will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring supplies, equipment, and services are current and include enough qualified sources to ensure maximum full and open competition. Also, Lee County Transit staff will not preclude potential bidders from qualifying during the solicitation period—from the issuance of the solicitation to its closing date.

e. Disadvantaged Business Enterprises (DBE)

Lee County Transit has adopted a Disadvantaged Business Enterprise (DBE) Program as required by the Code of Federal Regulations (CFR) at 49 CFR Part 26. The DBE Program sets goals for DBE participation in federally-funded contracts, monitors these contracts to determine DBE participation, and reports DBE participation to FTA. Lee County Transit informs its contractors of these goals and monitors DBE participation by subcontractors. See Attachment 3 for the Lee County DBE Program. See also http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl.

f. Buy America

Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America rules apply to utility work that is within the scope and budget of an FTA funded project. Buy America applies to the entire project, including contracts funded with non-Federal funds.

General waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software. The FAST Act amended 49 USC 5323(j)(13) to include a specific general waiver for purchases of not more than \$150,000.

The small purchase waiver provides that the term “small purchase” means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. Purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if

the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

If a bidder or offeror certifies that it cannot comply with the Buy America requirements, then Lee County Transit must request, receive, and retain a waiver from the FTA Chief Counsel's Office before it may award a contract to that bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

For all procurements of more than \$150,000, Lee County Transit shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate.

Lee County Transit will not obtain signed Buy America certifications after contract award for its own contracts or contracts of other grantees to make the contracts eligible for Federal funding. Lee County Transit may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. Lee County Transit should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

Note, however, that the "Buy America" waiver does not apply to products purchased with American Recovery and Reinvestment Act (ARRA) grant funds. All products purchased with ARRA grant funds must be produced in the United States as required by the "Buy America" law.

g. Suspension/Debarment

Federal agencies use the government-wide non-procurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible. Lee County Transit staff are required to ensure, to the best of their knowledge and belief, that none of its principals, sub-grantees, or third-party contractors/vendors and subcontractors is debarred, suspended, ineligible, or voluntarily excluded from participation in Federally-assisted transactions or procurements. See [49 CFR Part 29](#).

Lee County Transit will determine responsibility after receiving bids or proposals and before making a contract award. FTA expects the prospective contractor to demonstrate affirmatively to Lee County Transit that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.”

Lee County Transit staff is required to review the System for Award Management (SAM) before entering into any third-party contracts and print the screen with the results of the search for inclusion in the grant or procurement file. See <https://www.sam.gov/portal/public/SAM>.

Section 6: Acquisition Planning and Documentation

a. Initiation of Procurement

Lee County Transit staff will meet annually to develop a “Program of Projects” for the FTA grant applications to be submitted prior to the October 1 deadline. Projects included will be consistent with Lee County’s adopted Transit Development Plan (TDP) and Transportation Improvement Program (TIP). The project development effort will include identifying:

- i. Activity line item description, including complete, clear, accurate, and unambiguous specifications
- ii. Estimate of cost
- iii. Method of purchase
- iv. Preliminary vendor list
- v. Proposed delivery schedule
 - a. RFP or IFP
 - b. Contract award
 - c. Contract complete
- vi. All procurements require an independent cost estimate (see ii above) and a cost or price analysis.

b. Procurement Flow Chart

Lee County Transit staff must use the following Procurement Flow Chart in preparing Purchase Orders:

Procurement Flow Chart

1. Document reason for procurement on Procurement Summary (Appendix B).
2. Complete Procurement Decision Matrix (Appendix C).
3. Complete Independent Cost Estimate (Appendix D) and document on Procurement Summary.
4. Complete Fair and Reasonable Price Determination (Appendix E).
5. Review Contract Clause Matrix (Appendix F) and add appropriate Federal clauses for micro, small, or large purchases.
6. Obtain at least three quotes; if sole source, complete Sole Source Justification Form (Appendix G).
7. Complete Procurement Request form for approval.
8. Complete Procurement Summary.
9. Submit Purchase Order for approval.

c. Procurement Methods

- Procurement by Micro-Purchase – \$ 3,500 or less
 - Procurement by Small Purchase – more than \$ 3,500 but not more than \$ 100,000
 - Procurement by Sealed Bids/Invitation for Bid (IFB) – over \$ 100,000
 - Procurement by Competitive Proposal/Request for Proposals (RFP) – over \$ 100,000
- i. **Procurement by Micro-Purchase** – A Micro-Purchase is a purchase under \$ 3,500. Purchases below \$ 3,500 may be made without obtaining competitive quotes if the price to be paid is fair and reasonable. The method of determining if the price is fair and reasonable must be documented on the Fair and Reasonable Price Determination Form (Appendix E). There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid the requirements for competition above the micro-purchase threshold. The Davis-Bacon Act applies to wages in construction contracts between \$ 2,000 and \$ 3,500. See <http://www.gpo.gov/davisbacon/referencemat.html>.
 - ii. **Procurement by Small Purchase** – Purchases that meet or exceed \$ 3,500, but are less than or equal to, the threshold for Category Two of \$ 100,000 may be made using written quotes, written records of telephone quotes, or informal bids to be opened upon receipt, whenever practical. If Small Purchase procedures are used, price or rate quotes will be obtained from at least two qualified sources.
 - iii. **Procurement by Sealed Bids/Invitation for Bid (IFB)** – All purchases in excess of the threshold amount for Category Two or \$ 100,000 require formal competitive solicitations per State law (Chapter 287, F.S.). Bids must be publicly solicited, and the award must be made to the lowest (best price), most responsive (meets all specifications), and most responsible (is qualified to perform the work) bidder. (See Attachment 4.)
 - iv. **Procurement by Competitive Proposal/Request for Proposals (RFP)** – This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. Either a fixed-price or a cost-reimbursement type contract is awarded under an RFP. The process used is defined in the “Florida Consultants Competitive Negotiation Act” (Chapter 287, F.S.). “Request for Proposals” means a written solicitation for competitive, sealed proposals. Proposals are publicly solicited from an adequate number of sources, and the award is made to the firm whose offer is most advantageous to the grantee. Lee County Transit staff must identify their evaluation factors and indicate the relative importance that each has towards the award. Price must be one of the evaluation factors. (See Attachment 5.)
 - v. **Procurement of Architectural and Engineering Services (A&E)** – Architectural and Engineering services must be procured using a qualifications-based process. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications, and price is negotiated with the most qualified firm. Services subject to this requirement are program management, construction management, feasibility studies,

and preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. (See Attachment 6.)

- vi. **Procurement by Non-competitive Proposals (Sole Source)** – Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals. Sole-source, single-bid, and brand name or equal awards can be used only with appropriate documentation. In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis. With a single bid award, the documentation should include a cost analysis and an explanation of why a single bid was obtained. For brand name or equal awards, the procurement specification should list the product’s salient or unique characteristics and allow an equal product to be offered. A contract change or change order that is not within the scope of the original contract is considered a sole-source procurement that must comply with procurement procedures. (See Attachment 7.)
- vii. **Procurement by Design-Bid-Build** – The Design-Bid-Build procurement method requires separate contracts for design services and for construction.
 - a. *Design Services* – Procurement for design services must use qualifications-based procurement procedures through the procurement of A&E services (see subsection 6.v above).
 - b. *Construction* – Qualifications-based procurement procedures may not be used for the actual construction, alteration, or repair of real property. Therefore, the competitive procedures outlined in subsections 6.iii and 6.iv above must be used for construction contracts.
- viii. **Procurement by Design-Build** – The Design-Build procurement method consists of contracting for design and construction simultaneously, with the contract awarded to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction. The Design-Build procurement method requires the contract procurement method and selection process to be based on the services with the greatest total cost of all contract activities and the selection process to be undertaken using a one- or two-step method. (See Attachment 8.)
- ix. **Options** – Lee County Transit staff may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract or may elect to extend the term of the contract. If an option is included, there are specific requirements. Lee County Transit staff must evaluate bids or offers contained in a solicitation if it intends to exercise those options after the contract is awarded. (See Attachment 9.)

- x. **Restricted or Prohibited Contracting Methods** – The following contract types are prohibited or restricted:
 - a. *Cost Plus a Percentage of Cost* – The use of Cost Plus a Percentage of Cost contracts is expressly prohibited as a method of contracting.
 - b. *Time and Materials* – Lee County Transit staff may exercise the use of a Time and Materials contract only after determining that no other contract type is suitable and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

d. Adequate Third-Party Contract Provisions

Lee County Transit staff reserve the right to request additional information or to seek clarification from any bidder or offer or about any statement in its bid or proposal that is deemed ambiguous.

e. Revenue Contract

A revenue contract provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA-assisted property. To ensure fair and equal access to FTA-assisted property and to maximize revenue derived from such property, Lee County Transit will conduct its revenue contracting as follows:

- i. *Limited Contract Opportunities* – If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), Lee County Transit will use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- ii. *Open Contract Opportunities* – If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and Lee County Transit is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition is not necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

f. Written Record of Procurement History/File Retention

Lee County Transit staff will maintain records of all official correspondence relating to the administration of purchase orders or contracts. The FTA Master Agreement requires grantees to maintain records for three (3) years following project completion and the date of final payment. However, records related to equipment purchases for \$5,000 or over must be kept for the life of the asset.

At a minimum, these records will include:

- i. Rationale for the procurement method
- ii. Selection of contract type
- iii. Reasons for contractor selection or rejection
- iv. Basis for contract price

g. Monitoring of FTA-Funded Procurements

One of the principles of contracting with Federal funds received directly or indirectly from FTA is the recognition that, as a condition of receiving the funds, certain specific Federal requirements must be met, not only by the recipient of the funds (Lee County Transit) but also by sub-grantees and Lee County Transit third-party contractors/vendors. The Federal requirements to be met by Lee County Transit's third-party contractors/vendors or sub-grantees will be defined by the clauses included in its third-party contracts. Compliance with Federal requirements is a condition of receipt of Federal funds. Failure to comply with these provisions may, in accordance with the terms of a Grant or Cooperative Agreement, be grounds for default of that agreement and result in the loss of the funds.

FTA Circular 4220.1F requires that a current but not all-inclusive and comprehensive list of statutory and regulatory requirements applicable to procurements (such as the Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) be contained in the FTA Master Agreement; grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts, but also to purchase orders. Refer to the Appendix F, Contract Clause Matrix, for the appropriate clauses for each purchase. Refer to Appendix N, General Provisions Document, for the applicable contract clauses.

All procurement requests made directly by the designated recipient will originate with Lee County Transit staff. The Fiscal Staff, in collaboration with the Project Manager or Requisitioners, will prepare these procurements and is responsible for ensuring that they comply with FTA requirements. The Fiscal Manager will review the contracts and Requisition Forms for Purchase Orders and obtain the necessary approvals depending on the dollar threshold. The Department Director will approve all Requisitions up to \$50,000. The County Manager must approve all Purchase Orders/Contracts over \$50,000 and up to \$100,000, and the Board will approve amounts over \$100,000. After all FTA Requirements have been met, and the approval has been obtained, the requisition will be entered into the online system and must be approved electronically by the Lee County Procurement Director before the purchase order or contract will be issued. The approved purchase order will be sent by the Fiscal Staff to the Requisitioner who will notify the vendor. A copy will be placed in the appropriate files and retained as required by FTA

The Project Manager, in conjunction with the Fiscal Staff, is responsible for monitoring sub-grantee and contractor procurements to ensure compliance with Federal requirements, documentation that the monitoring has taken place is required. (See Attachment 10.)

h. Written Protest Procedures

Lee County Transit staff will have written protest procedures to handle and resolve disputes relating to its procurements and will, in all instances, disclose information regarding protests to FTA, inform FTA about the status of the protest in its next quarterly Milestone Progress Report, and at its next Project Management Oversight review, if any. A protester must exhaust all administrative remedies with Lee County Transit before pursuing a protest with FTA. Bidders or proposers whose direct economic interest

would be affected by the award of a contract or by failure to award a contract may make protests. Lee County Transit will consider all protests in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests must be submitted in writing. Protest submissions should be concise and logically arranged and should clearly state the grounds for protest.

Lee County Transit is required to notify FTA upon receipt of a third-party contract protest and to keep FTA informed of the status of the protest by documenting the following information:

- i. *Subjects* – a list of protests involving third-party contracts and potential third-party contracts that:
 - a. Have a value exceeding \$100,000, or
 - b. Involve a controversial matter, irrespective of amount, or
 - c. Involve a highly publicized matter, irrespective of amount.
- ii. *Details* – the following information about each protest:
 - a. A brief description of the protest
 - b. The basis of disagreement, and
 - c. If open, how far the protest has proceeded, or
 - d. If resolved, the agreement or decision reached, and
 - e. Whether an appeal has been taken or is likely to be taken.
- iii. *When and Where* – Lee County Transit will provide the following information:
 - a. In its next quarterly Milestone Progress Report, and
 - b. At its next Project Management Oversight review, if any.
- iv. *Upon Denial of Bid Protest* – Should Lee County Transit deny a bid protest, it will:
 - a. Inform the FTA Regional Administrator for the region administrating a regional project or the FTA Associate Administrator for the program office administering a headquarters project directly, and
 - b. Disclose information about any third-party procurement protest to FTA upon request. FTA reserves the right to require Lee County Transit to provide copies of a particular protest or all protests and any or all related supporting documents as FTA may determine necessary.

(See Attachment 11 – Lee County Written Protest Procedures.)

i. Scope of Project

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

j. Contract Term Limitation

Lee County Transit staff cannot enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years, inclusive of options. Once a contract has been awarded,

an extension of the contract term length that amounts to an out-of-scope change will require a sole-source justification.

k. Contract Cost and Price Analysis for Every Procurement Action

Every award must include a determination that the price is fair and reasonable; the extent of the analysis will depend on the value and nature of the contract. Small purchases under \$15,000 that are sole-sourced would depend on the nature of the product or service. For example, if the procurement was for standard commercial items sold in substantial quantities to the general public, then a price analysis would be sufficient. If the procurement were for services, then some breakdown of the price would be required to determine that the labor hours, rates, profit, etc., were reasonable. For micro-purchases, staff must make a determination that the price is reasonable, which can be based on the buyer's familiarity with the product or service, etc., and does not need to entail a cost breakdown or detailed analysis of cost elements. However, the method for determining how the price is fair and reasonable must be documented. Lee County Transit staff are directed to the following templates and forms provided in this manual for proper price determination and analysis:

- Appendix B—Procurement Summary/Memorandum
- Appendix C—Procurement Decision Matrix
- Appendix D—Independent Cost Estimate
- Appendix E—Fair and Reasonable Price Determination
- Appendix G—Sole Source Justification Form
- Appendix J—Cost Analysis Form
- Appendix K—Price Analysis

l. Bonding Requirement

Bonding is required for construction or facility improvement contracts or subcontracts exceeding \$100,000. Minimum criteria must be met. (See Attachment 12.)

m. Payment Provisions in Third-Party Contracts

- i. *Advance Payments* – FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless pre-approval is obtained from FTA. Local matching funds can be used for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.
- ii. *Contract Payments* – Progress payments may be used provided the following requirements are followed.
 - a. Progress payments are made to the contractor only for costs incurred in the performance of the contract.
 - b. Lee County Transit staff must obtain adequate security for progress payments. Adequate security may include taking title, a letter of credit, or equivalent means to protect Lee County Transit's interest in the progress payment.

- iii. *Bus Testing* – Lee County Transit will have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle purchased. Effective October 31, 2016, the effective date of the revision to 49 CFR Part 665, Lee County Transit will certify that the bus models submitted to Altoona following the effective date received a passing score before FTA funds are spent on that vehicle. Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA grantees in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

Section 7: Contract Administration

a. Project Management

In most cases, the Department Manager will be the Project Manager. The Project Manager will be responsible for determining if work performed or products delivered conform to specifications or the scope of work included in the contract or purchase order. Conformance with specifications or scope will be the basis for payment of invoices submitted. If the project involves construction and will occur over an extended period of time, the Department Manager will also act as the Contracting Officer Technical Representative (COTR). In the case of construction, Lee County Transit staff would be augmented by the use of a consultant as a Construction Manager.

b. Contract Award Announcement

If Lee County Transit staff announce contract awards for any procurement having a combined value of \$500,000 or more, they will:

- i. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award.
- ii. Express the amount as a percentage of the total costs of the planned acquisition.

c. Davis-Bacon Compliance

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.*, and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). “Construction,” for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a).

The contractor will submit weekly, for each week in which any contract work is performed, a copy of all payrolls to Lee County Transit, or its designee, for transmission to FTA. The payrolls submitted must set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i)

of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and must certify the following:

- That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete.
- That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3.
- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 must satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

d. Buy America

Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America rules apply to utility work that is within the scope and budget of an FTA funded project. Buy America applies to the entire project, including contracts funded with non-Federal funds.

General waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software. The FAST Act amended 49 USC 5323(j)(13) to include a specific general waiver for purchases of not more than \$150,000.

The small purchase waiver provides that the term "small purchase" means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. Purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient

or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

If a bidder or offeror certifies that it cannot comply with the Buy America requirements, then Lee County Transit must request, receive, and retain a waiver from the FTA Chief Counsel's Office before it may award a contract to that bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

For all procurements of more than \$150,000, Lee County Transit shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate.

Lee County Transit will not obtain signed Buy America certifications after contract award for its own contracts or contracts of other grantees to make the contracts eligible for Federal funding. Lee County Transit may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. Lee County Transit should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

Note, however, that the "Buy America" waiver does not apply to products purchased with American Recovery and Reinvestment Act (ARRA) grant funds. All products purchased with ARRA grant funds must be produced in the United States as required by the "Buy America" law.

Consistent with section 29 CFR 663, Lee County Transit must conduct the following audits under the “Buy America” law:

- i. *Pre-Award Audit* – A pre-award audit must be completed prior to the purchase of revenue service rolling stock with FTA funds and must ensure that a pre-award audit under this part is complete prior to entering into a purchase contract.
- ii. *Post-Delivery Audit* – A post-delivery audit must be completed after purchasing revenue service rolling stock with FTA funds before title to the rolling stock is transferred to the Lee County Transit.

(See Attachment 13, Buy America Pre-Award and Post-Audit Requirements [49 CFR 663].)

e. Contract Closeout

Prior to the closeout of the Lee County Transit contract with FTA, Lee County Transit’s Fiscal Manager, Project or Department Manager, and Transit Director will meet to confirm that all procurement and associated activities have been finalized. If the contract can be completed on schedule, the Fiscal Manager shall proceed with contract closure and final billings. If the contract cannot be completed as scheduled, the Fiscal Manager will notify FTA via the required Quarterly Progress Reports.

f. Contract Termination

The performance of work under a contract may be terminated in part or in whole if Lee County Transit’s Transit Director, in consultation with Lee County Transit’s legal counsel, determines that such termination is in the best interests of Lee County Transit. Contracts may be terminated for default (e.g., the contractor has failed to perform in accordance with the terms of the contract) or convenience. The Fiscal Manager will issue a “Notice of Termination” to the Contractor via Certified Mail, Return Receipt Requested. The Notice must specify the reason for termination, the extent to which the performance of work is terminated, and the date upon which termination becomes effective. After issuance of a Notice of Termination and pursuant to the Termination/Default section of the contract, settlement of claims must be accomplished as soon as practicable to protect Lee County Transit’s interests and minimize its liability. This applies to all contracts in excess of \$10,000.

g. Liquidated Damages Provisions

Lee County Transit may use liquidated damages if it may reasonably expect to suffer damages and if the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages will be at a specific rate per day for each day of overrun in contract time, and the rate must be specified in the third-party contract. Any liquidated damages recovered will be credited to the project account involved, unless FTA permits otherwise.

h. Remedial Action

Contracts and subcontracts must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which contractors/vendors violate or breach contract terms, including sanctions and penalties as may be appropriate. This rule is for all contracts in excess of the Small Purchase threshold.

Section 8: Signature Authority

The Transit Director is authorized to sign Purchase Orders for amounts up to and including \$50,000. The County Manager is authorized to sign Purchase Orders for amounts over \$50,000 and up to and including \$100,000. Lee County Board of County Commissioner approval is required for all Purchase Orders over \$100,000.

Section 9: List of Attachments

- Attachment 1: Sample Purchase Order and Request (Requisition) Form
- Attachment 2: Lee County Transit Employee Code of Ethics Policy
- Attachment 3: Lee County Transit DBE Program
- Attachment 4: Procurement By Sealed Bids/Invitation For Bid (IFB)
- Attachment 5: Procurement By Competitive Proposal/Request for Proposals (RFP) Requirements
- Attachment 6: Architectural and Engineering Services
- Attachment 7: Non-competitive Proposals – Single & Sole-Source Justification
- Attachment 8: Design-Build Proposals
- Attachment 9: Requirements for Options
- Attachment 10: Monitoring Checklist
- Attachment 11: Written Protest Procedures
- Attachment 12: Bonding
- Attachment 13: America Pre-Award and Post-Award Audit Requirements (49 CFR 663)

Section 10: List of Appendices

- Appendix A: Piggybacking Checklist
- Appendix B: Procurement Summary/Memorandum
- Appendix C: Procurement Decision Matrix
- Appendix D: Independent Cost Estimate
- Appendix E: Fair and Reasonable Price Determination
- Appendix F: Contract Clause Matrix
- Appendix G: Sole-Source Justification Form
- Appendix H: Responsibility Determination Form
- Appendix I: Statement of Work Template
- Appendix J: Cost Analysis Form
- Appendix K: Price Analysis
- Appendix L: Change Order Review Checklist
- Appendix M: Contract Administration Planning Process
- Appendix N: General Provisions Document

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Attachment 1

Sample Request (Requisition) Form & Purchase Order

LEE COUNTY TRANSIT REQUISITION FORM

<p>NEW PURCHASE ORDER _____</p> <p>OPEN PURCHASE ORDER #: _____</p> <p>MODIFY EXISTING PURCHASE ORDER #: _____</p> <p>PAID BY CASH _____</p>	<p>CREDIT CARD _____</p> <p>OTHER COUNTY DEPTS. _____</p> <p>DIRECT VOUCHER _____</p>																																																																											
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PURCHASE ORDER

Page No.: 11

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
 DIVISION OF PURCHASING
 PO BOX 398
 FORT MYERS, FL 33902 - 0398
 (239) 533-8881 TELEPHONE (239) 485-8383 FAX

BILL TO: LEE COUNTY FINANCE DEPARTMENT
 PO DRAWER 2238
 FORT MYERS, FL 33902-2238
 (239) 533-2100

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

FLORIDA SALES TAX EXEMPTION NO. 85-8012622170C-4

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the County; may not be awarded or perform work as a contractor, supplier, subcontractor, or a consultant under a contract with the County; and may not transact business with the County in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list.

VENDOR: 436905

**THE AFTERMARKET PARTS CO LLC/TRANSIT HOL
 DBA NEW FLYER PARTS
 3229 SAWMILL PARKWAY
 DELAWARE, OH 43015**

**SHIP TO: LEE TRAN
 3401 METRO PKWY
 FORT MYERS, FL 33901**

BUSINESS PHONE:
 FAX NUMBER:

REQUISITIONER: PATTERSONM
 BUYER: PATTERSONM

P.O. NO.: 17333278

ORDER DATE: 10/25/2016
 DELIVERY DATE: 10/25/2016
 INSTRUCTIONS:

FREIGHT TERMS: NONE
 CONFIRM TO:

QUOTE/CONTRACT NO.: W-960141
 BRANCH/PLANT: TRANOR

PAY ANY OUTSTANDING INVOICES FOR THE PREVIOUS FISCAL YEAR AND OPEN A NEW PURCHASE ORDER FOR THIS FISCAL YEAR.

NOTE: PLEASE DO NOT SHIP ANY PRODUCT OR PROVIDE SERVICES AT THIS TIME; COUNTY PERSONNEL WILL CONTACT YOU TO ORDER PRODUCT OR REQUEST SERVICE ON AN AS-NEEDED BASIS THROUGHOUT THE YEAR.

LEE COUNTY WAIVER NO.: W-960141 NEW FLYER PARTS
 BLUE SHEET APPROVED BY THE BOARD 8/4/98
 OPEN ENDED WAIVER
 SOLE SOURCE PROVIDER.

ATTACHMENT:
 -BLUESHEET

Delivery Method is Mixed.

Line	Rev	Item	Description/Account	Ordered	UOM	Unit Price	Extended Price	Req. No.	Type
1.000	0	55700	TRANSIT BUS ACCESSORIES & PARTS, MISCELLANEOUS KI5440148600.504635.41		EA	.0000	10,000.00	00576679	OR

Total Order: 10,000.00

PURCHASING AUTHORIZATION: MARY G. TUCKER

Attachment 2

Lee County Transit Employee Code of Ethics

Effective Date: July 19, 2011

Purpose: To establish for the Lee Transit Program controls and standards for adherence to a Code of Ethics.

Procedure: Lee County Transit employees, officers, and agents shall adhere to the Code of Ethics for Public Officers and Employees as set forth in Part III of Chapter 112, Florida Statutes.

Lee County Transit believes that ethical principles should govern the conduct of every person employed by any public sector procurement or materials management organization and shall be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

No procurement staff member shall solicit or accept anything of value including a gift, loan, reward, or promise of future employment, favor, or service based on the understanding that any official action or judgment of the employee would be influenced thereby. Procurement staff, officers, and agents shall not accept gifts of any type, price, or size from any person or firm doing business with the County or any person who intends to do business with the County.

Employees shall not directly or indirectly seek or accept personal gain that would influence, or appear to influence, the conduct of their official duties. Employees will not use public property or resources for personal gain.

Lee County Transit employees and agents are required to disclose to the Procurement official any actual or perceived conflict of interest that exists between themselves and an offeror. If a conflict of interest is perceived to exist, a County employee, officer, or agent may be ineligible to serve on an evaluation committee, oversee contract negotiations, or participate in the solicitation process in any manner.

The employee shall exercise prudence and integrity in the management of funds in his/her custody and in all financial transactions.

The employee shall demonstrate professional integrity in the issuance and management of information and, during bid and or contract solicitations, shall respect and protect privileged information. The evaluation committee is prohibited from discussing the procurement with potential vendors outside of the solicitation process.

Employees shall refrain from engaging in any outside matters of financial or personal interest that are incompatible with the impartial and objective performance of their duties.

Lee County believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Any violation of Lee County Transit's Procurement Ethics Policy will result in disciplinary action up to and including termination and may also result in the punishment prescribed in Part III of Chapter 112, Florida Statutes.

Attachment 3

Lee County Transit DBE Program

Lee County Transit Disadvantaged Business Enterprise Program



Your Ride Is Here

February 25, 2013

Lee County Transit
Disadvantaged Business Enterprise Program

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Lee County Transit Disadvantaged Business Enterprise Program

Policy Statement

Section 26.1, 26.23: Objectives/Policy Statement

Lee County Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (US DOT), 49 CFR Part 26. Lee County Transit has received Federal financial assistance from US DOT and, as a condition of receiving this assistance, Lee County Transit has signed an assurance that it will comply with 49 CFR Part 26.

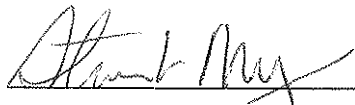
It is the policy of Lee County Transit to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Lee County Transit's policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts.
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Sherrie Sharps, Lee County Transit's Fiscal Manager, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Sharp is responsible for implementing all aspects of the DBE program.

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Lee County Transit in financial assistance agreements with the US DOT.

Lee County Transit has distributed this statement to Lee County Division of Procurement Management and Florida Gulf Coast University's DBE Coordinator and Small Business Development Center. It is also posted on Lee County Transit's website at <http://www.rideLee County Transit.com/FTAProcurement.html> and published in the local newspaper tri-annually along with its notice of the proposed three-year DBE goal.



Steven L. Myers, Lee County Transit Director

2/26/2013
Date

Subpart A—General Requirements

Section 26.1: Objectives

The objectives are found in the policy statement on the fourth page of this document. Section 26.3
Applicability

Lee County Transit is the recipient of Federal transit funds authorized by Titles I, III, V, and VI of Intermodal Surface Transportation Efficiency Act of 1991(ISTEA), Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178.

Section 26.5: Definitions

Lee County Transit will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7: Non-Discrimination Requirements

Lee County Transit will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering the DBE program, Lee County Transit will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11: Record Keeping Requirements

26.11(a): Uniform Report of DBE Award or Commitment and Payments

Lee County Transit will report DBE participation to FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

26.11(c): Bidders List

Lee County Board of Commissioners approved an agreement with DOT and the Florida Department of Transportation (FDOT) that establishes Lee County Transit as a non-certifying member of the national Unified DBE Certification Program (UCP) in November, 2002. Lee County Division of Procurement Management maintains a bidders list of all DBE and non-DBE firms, which includes the name, address and other relevant contact information about the firm. However, it does not collect annual gross receipts information of firms. Such information is collected by certifying members of the National Unified Certification Program (UCP). Attachment 8 includes a copy of UCP Agreement executed by Lee County Board of County Commissioners.

FDOT's website provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/UCPMemberList.aspx>

Lee County Transit uses Lee County Division of Procurement Management bidder's list to assist in calculating the overall DBE goal.

Any prospective bidder interested in doing business with the Lee County Transit is encouraged to review Lee County Division of Procurement Management business guidelines that are posted on its webpage at:

<http://www.leegov.com/gov/dept/procurementmanagement/Pages/default.aspx>.

Section 26.13: Federal Financial Assistance Agreement

Lee County Transit has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

26.13(a): Federal Financial Assistance Agreement Assurance

Lee County Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. Lee County Transit shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. Lee County Transit's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out the terms shall be treated as a violation of this agreement. Upon notification to Lee County Transit of failure to carry out the approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 {31 U.S.C. 3801 et seq.}.

This language will appear in financial assistance agreements with sub-grantees.

26.13(b): Contract Assurance

Lee County Transit will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-grantee, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Lee County Transit deems appropriate.

Subpart B—Administrative Requirements

Section 26.21: DBE Program Updates

Since Lee County Transit has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a Federal fiscal year, Lee County Transit will continue to carry out this program until all funds from DOT financial assistance have been expended. Lee County Transit will provide updates representing DOT representing significant changes in the program.

Section 26.25: DBE Liaison Officer

Lee County Transit has designated the following individual as the DBE Liaison Officer (DBELO):

Sherrie E. Sharps, Fiscal Manager
Lee County Transit
3401 Metro Parkway
Ft. Myers, FL 33901
Phone: (239) 533-0370
Fax: (239) 931-6811

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Lee County Transit complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to Steven L. Myers, Lee County Transit Director concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
- Analyzes Lee County Transit's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the Transit Director on DBE matters and achievement.
- Participates in pre-bid meetings.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Participates in DBE training seminars.
- Acts as liaison to the State of Florida UCP.
- Provides outreach to DBEs and community organizations to advise them of opportunities.

Lee County Transit utilizes the FDOT website DBE Directory.

Section 26.27 DBE: Financial Institutions

It is the policy of Lee County Transit to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the

community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

Lee County Transit has reviewed FDOT's website DBE Directory and has determined there are no listing for financial institutions owned and controlled by socially and economically disadvantaged individuals. Lee County Transit will re-evaluate whether DBE financial institutions are available every twelve (12) months.

Section 26.29: Prompt Payment Mechanisms

26.29(a): Prompt Payment

Lee County Transit will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of the contract no later than 30 days from the receipt of each payment the prime contract receives from Lee County Transit. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Lee County Transit. This clause applies to both DBE and non-DBE subcontracts.

26.29(b): Retainage

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Lee County Transit. This clause applies to both DBE and non-DBE subcontracts.

26.29(d): Monitoring and Enforcement

Lee County Transit shall require in all DOT funded contracts language that allows it to monitor and enforce that prompt payment and return of retainage is in fact occurring on any contract, which involves sub-contracting. Attachment 3.3 highlights Lee County Transit's monitoring procedures.

Lee County Transit will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Lee County Transit will also consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists or revocation of DBE certification if applicable, pursuant to Section 337.16; and 339.0805, Florida Statutes.

Section 26:31: Directory

Lee County Transit utilizes the FDOT website DBE Directory. The directory lists the firm's name, contact person, address, phone number, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is updated in "real time," and is the single source for establishing program eligibility.

Lee County Transit distributes information about the FDOT website DBE Directory at pre-bid meetings, mailing lists, newsletters and brochures. Lee County Transit also encourages all interesting persons to go to Lee County Division of Procurement Management's website:

<http://www.leegov.com/gov/dept/procurementmanagement/Pages/default.aspx>.

The Division of Procurement Management website provides a website link to the State of Florida Uniform Certification Program Directory:

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/UCPMemberList.aspx>.

FDOT's website DBE Directory is located at:

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

FDOT's website provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

Section 26.33: Overconcentration

Lee County Transit has not identified that overconcentration exists in the types of work that DBEs perform in the greater Lee County. Lee County Transit will re-evaluate whether there is an overconcentration every twelve (12) months.

Section 26.35: Business Development Programs

Lee County Transit refers DBE firms to the following two organizations for assistance with business development planning:

Florida Department of Management Services

Office of Supplier Diversity

2012 Capital Circle S.E., Suite 100

Tallahassee, FL 32399-2152

Phone: (850) 487-0915

Fax: (850) 922-6852

Website:

http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd

Email: www.osd.dms.state.fl.us

Small Business Development Center Florida Gulf Coast University

Lutgert College of Business

10501 FGCU Boulevard

South Fort Myers, FL 33965

Website: <http://sbdc.fgcu.edu>

Lee County contracts with the Florida Gulf Coast University Small Business Development Council to offer the following services to DBE firms in Lee County:

- One-on-one confidential professional counseling
- Ongoing educational entrepreneurial seminars and workshops
- Steps necessary to starting a small business
- Guidance with business and marketing plan research, preparation and review
- Assistance with loan package development
- Marketing, Branding and Sales planning consultation
- Assistance with accounting and recordkeeping, software, and how to use the information to help you grow.
- Government Contracting
- State Certification as a Woman, Minority or Disabled Veteran Enterprise
- Improving Customer Service
- Distributes electronic information on upcoming bids, training sessions and other relevant information

Section 26.37: Monitoring and Enforcement Mechanisms

Lee County Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

Lee County Transit will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

Lee County Transit will consider similar action under Lee County Transit's own legal authorities, including responsibility determinations in future contracts. The regulation, provisions, and contract remedies available to in the events of non-compliance with the DBE regulation by a Lee County Transit prime contractor include: actions for breach of contract; prosecution for any criminal activity or violation of County Code or Ordinance; enforcement of claims against any retainage, bond, surety or insurance provided by contractor or any subcontractor; legal action on any County cause of action created under the applicable provisions of state or Federal law; revocation, cancellation or termination of the contract between the Lee County Transit and the prime contractor for the project; any other action permitted at law or in equity; or, any self-help measures that Lee County Transit may lawfully undertake to rectify the default.

Lee County Transit and prime contractor will also jointly provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This compliance monitoring shall include the following steps:

The prime contractor shall, prior to undertaking work on the project, provide Lee County Transit with an accurate list of all DBEs who are or who are anticipated to be subcontractors working on the project, which list shall include an accurate, detailed description of all work to be done by each DBE. This list shall be updated any time there is a change in the DBEs working on the project or a change in the allocation of work between or among DBEs. The prime contractor shall provide this list with a sworn certification that it is true and accurate.

Lee County Transit shall review the sworn DBE list provided by the prime contractor and confirm its accuracy. Lee County Transit may request, and prime contractor shall provide, copies of any subcontracts or other contractual documentation between prime contractor and any subcontractors to confirm the scope of work for each.

The prime contractor shall notify Lee County Transit of the dates/times when the DBEs are anticipated to be performing each contractual task related to the project, so that Lee County Transit can verify DBE participation in the project, and can verify that the DBEs identified on the sworn list are participating in the project. This shall be performed as a component of construction inspection and supervision relating to the project, or may be performed as a standalone compliance verification process if Lee County Transit determines the same to be necessary.

On all payment notifications required to be provided to Lee County Transit, the prime contractor shall identify each DBE receiving payment, and any DBE receiving payment shall indicate its status as a DBE on its payment notifications.

The prime contractor and its subcontractors shall agree to comply with any further measures that Lee County Transit determines to be necessary or appropriate to impose for the purpose of verifying DBE participation in the project.

The prime contractor shall provide and Lee County Transit shall maintain a running tally of actual payments to DBE firms for work committed to them at the time of contract award, verified at the time of any payments to prime contractor for the project, and verified at the time DBE firms certify to Lee County Transit that they have been paid, as required under prime contractors subcontractor agreement.

Section 26:39: Small Business Participation

Lee County Transit has incorporated the following non-discriminatory elements to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small business):

Lee County Transit will administer its Small Business Participation program on a race neutral basis through a contract with the Florida Gulf Coast University Small Business Development Center located at:

Small Business Development Center
Florida Gulf Coast University (FGCU)
Lutgert College of Business
10501 FGCU Boulevard

South Fort Myers, FL 33965
Website: <http://sbdc.fgcu.edu>

Small Business Program

Definition - For the purpose of this section, a small business is defined as a firm that meets the definition as contained in 49 CFR 26.5 and Section 3 of the Small Business Act, 15 U.S.C. 631 et seq, which do not exceed the cap on average gross receipts specified in 49 CFR 26.65(b).

A Small Business Concern is one that:

Is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;

Has the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.

Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.

A Small Business Concern shall not have average annual gross receipts (over the firm's previous three fiscal years) in excess of \$22.41 million. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

Program participants will be required to establish eligibility via (1) DBE certification in connection with the Florida Unified Certification Program; (2) U.S. Small Business Administration (SBA) SA certification, or (3) documentation establishing participation as a registered Dynamic Small Business with SBA. This documentation must be provided to Florida Gulf Coast University Small Business Development Council in order to verify eligibility.

Certified DBEs are presumptively eligible to participate in the program. None of the provisions of this Section shall be interpreted to impose any geographic preferences or limitations, and the program is open to all small business concerns regardless of their location.

As part of this program element the Lee County Transit will include the following strategies:

Major Construction Project—When Lee County Transit undertakes the planning, design and construction of any new major facility it will require A&E firms and/or construction management firms to prepare a written assessment of opportunities that may exist for small businesses to compete for direct prime construction contracts and subcontracts as part of the overall scope of a construction project. This assessment will be performed based on the individual work elements of the project as compared to the types of regional small businesses that have the ability to undertake the work. Based on this assessment the A&E firm and/or construction management firm will be directed to prepare small business contract bundle(s), if appropriate, that will be reflected in the preparation of final construction

documents prior to bid. This assessment will include the opportunity to unbundle specific scopes of work that are valued at \$250,000 or less that can be bid as separate prime contracts, or identified in prime contracts as subcontract opportunities for certified small businesses.

The value selected will be based on the total estimated cost of the project and estimated costs for unbundling such areas as excavation, trucking, HVAC work, Electrical work, painting and other finishing work.

Lee County Transit will include in its construction contract provisions a requirement that prime contractors affirmatively seek out small businesses as part of its subcontractor workforce. Prime contractors will be required to provide information with their bid that identifies the small businesses that will participate as subcontractors and the scopes of work that will be undertaken. Lack of small business participation will require the bidder to provide evidence of the good faith efforts that were made. The good faith effort requirement will be the same as identified in Section 26.53 - Good Faith Procedures.

Small Capital Procurements - Small capital purchases that require procurements undertaken by Lee County Transit are in connection with bus equipment, bus shelters, and enhancements. These purchases include a wide variety of goods and services that are necessary to manage the transit system.

Lee County Transit will analyze small business contracting opportunities in connection with contracts awarded to support operations and maintenance activities. Lee County Transit DBELO will work with the purchasing department to identify contracting opportunities for certified small businesses and prepare an annual assessment for increasing small business participation. This assessment may include establishing small business set asides if it is determine that at least two certified small businesses exist to allow for a competitive procurement environment.

Lee County Transit will utilize the Small Business Development Center, at the Florida Gulf Coast University to seek out and develop a listing of local and regional small businesses. Additional outreach efforts will include:

- Developing lists of the small business organizations identified;
- Contacting small business organizations to make them aware of how to do business with Lee County Transit;
- Placing upcoming contracting opportunities on the Lee County Transit's and Lee County Division of Procurement Management's websites;
- Providing information and refer small business concerns interested in DBE certification to FDOT's website which provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

General Operations Procurements—The vast majority of procurements undertaken by Lee County Transit are in connection with general operations of the transit system. These purchases also include a wide variety of goods and services including security and computer services, maintenance to vehicles and assets, advertising and temporary staffing services for administration assistance.

Lee County Transit will utilize Small Business Development Center at Florida Gulf Coast University to seek out and develop a listing of local and regional small businesses. It will also provide outreach efforts similar to those outlined in Small Capital Procurements section above.

For additional information about the Small Business Program, certification process, or to apply for certification, firms should review FDOT's website, which provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

The principal responsible person for overseeing and implementing the Lee County Transit Small Business Program will be the Lee County Transit's DBELO.

Subpart C—Goals, Good Faith Efforts, and Counting

Section 26.43: Set-asides or Quotas

Lee County Transit does not use quotas in any way in the administration of this DBE program.

Section 26.45: Overall Goals

In accordance with Section 26.45(f) the Lee County Transit will submit its triennial overall DBE goal to FTA on August 1, 2013 (assigned to Group A).

Lee County Transit will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

Project or contract-specific DBE goals are adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). Lee County Transit will work with Lee County Division of Procurement Management to establish contract-specific DBE goals, if applicable.

The process used by Lee County Transit to establish overall DBE goals conforms with Section of the DBE regulation and is based on the demonstrable evidence of DBE firms ready, able, and willing to participate/perform contracting opportunities derived from Lee County Transit's DOT-assisted projects/contracts.

Lee County Transit's Overall DBE Goal is established using a two-step process. Step 1 involves determining a Base Figure of available DBE firms in Lee County Transit's relevant market ready, willing and able to participate in Lee County Transit contracts. The Base Figure of available ready, willing and able DBE firms is derived using FDOT's UCP DBE Directory and Census Bureau data.

Step 2 requires establishment of a DBE goal based on the availability of DBE firms after adjusting the availability Base Figure to account for actual DBE utilization rates in Lee County Transit contracts and other relevant factors. After the adjusted DBE goal identified, Lee County Transit analyzes what proportion of the DBE goal can be achieved using race-and gender-neutral methods based on the level of utilization of DBEs relative to their availability.

Before establishing the overall three year goal, Lee County Transit will consult with Small Business Development Center at Florida Gulf Coast University, chambers including local minority and ethnic chambers of commerce, small and local business associations (both DBE and non-DBE), and minority and women's organizations, general contractor and consultant groups, community organizations, elected public officials and other public agencies. To obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Lee County Transit efforts to establish a level playing field for the participation of DBEs.

Following this consultation, Lee County Transit will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Lee County Transit's principal office for 30 days following the date of the notice, and informing the public that Lee County Transit and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in the local newspapers and on Lee County Transit's webpage. Lee County Transit will issue this notice by June 1 of each year that the three-year overall DBE goal is due. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Lee County Transit's overall three year goal submission to DOT will include: the goal including the breakout of estimated race-neutral and race-conscious participation, as appropriate; a copy of the methodology, used to develop the goal; a summary of information and comments received during this public participation process and Lee County Transit's responses; and proof of publication of the goal in the media outlets listed above.

Lee County Transit will begin using the overall goal on October 1 of the specified year, unless Lee County Transit receives other instructions from DOT. If Lee County Transit establishes a goal on a project basis, Lee County Transit will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project. Lee County Transit's overall goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47: Goal Setting and Accountability

If the awards and commitments shown on Lee County Transit's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, Lee County Transit will:

- Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
- Establish specific steps and milestones to correct the problems identified in the analysis;
- Submit the plan to FTA within 90 days of the end of the affected fiscal year, if requested by FTA.

Section 26.49: Transit Vehicle Manufacturers Goals

Lee County Transit will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Only those TVMs listed on FTA's certified list or that

have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. Lee County Transit will include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid.

Section 26.51: Meeting Overall Goals/Contract Goals

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated every three years when the goal calculation is updated.

Lee County Transit will use contract goals to meet any portion of the overall goal Lee County Transit does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Lee County Transit will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Lee County Transit need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

Lee County Transit will express the contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53: Good Faith Efforts Procedures

26.53(a): Award of Contracts with a DBE Contract Goal

In those instances where a contract-specific DBE goal is included in procurement or /solicitation, Lee County Transit will not award the contract to a bidder who does not either: (1) Meet the contract goal with verified, countable DBE participation; or (2) Documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

26.53(a) & (c) Evaluation of Good Faith Efforts

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive; Lee County Transit's DBELO and Transit Director.

Lee County Transit evaluation of good faith efforts will be conducted in accordance with Appendix A to Part 26 - Guidance Concerning Good Faith Efforts.

The processes used by Lee County Transit to determine whether good faith efforts have been made by a bidder are as follows:

If bidder/offeror does not meet the established DBE goal, and is required to submit documentation of good faith effort, then a good faith efforts submission shall be provided within three business days from the bid/proposal submittal date, which shall include a signed DBE Good Faith Efforts

Checklist (form provided by Lee County Transit) and supporting documentation that the bidder/proposer made a good faith effort to meet the goal. Lee County Transit may allow a longer period based on submittal of a request demonstrating good cause for such extension. Good faith efforts at a minimum include, without limitation, the following where applicable:

1. Attendance at the pre-bid meeting.
2. Advertisement in trade association newsletters and minority-focused media within a reasonable time before bids are due for specific sub-bids that would be at least equal to the percentage goal for DBE utilization specified for the project.
3. Notifications in writing to minority contractor associations within a reasonable time before bids are due of a solicitation for specific sub-bids.
4. Direct negotiation with DBEs for specific sub-bids.

Lee County Transit will ensure that all information is complete and accurate and adequately documents the bidder's/offeree's good faith effort before we commit to the performance of the contract by the bidder//offeror.

26.53(b): Information to be Submitted

Lee County Transit treats bidders'/offerors' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and address of DBE firms that will participate in the contract.
2. A description of the work that each DBE will perform.
3. The dollar amount of the participation of each DBE firm participating.
4. Written and signed documentation of commitment to use a DBE subcontracting whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contracts commitment, and
6. If the contract goal is not met, evidence of good faith efforts.

26.53(d): Administrative Reconsideration

Within 15 days of being informed by Lee County Transit that it is not responsive, because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official: Lee County Procurement Director, 1825 Hendry Street, Fort Myers, FL 33901, Phone (239) 533-5450 and Fax (239) 485-5460. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with Lee County Procurement Director to discuss the issue of

whether it met the goal or made adequate good faith efforts to do. Lee County Division of Procurement Management will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

26.53(f): Good Faith Efforts When a DBE is Terminated/Replaced on a Contract with Contract Goals

Lee County Transit requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Lee County Transit's prior written consent. Prior written consent shall be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to Lee County Transit its request to terminate, the prime contractor shall give notice in writing to the DBE of its intent to do so. A copy of this notice shall be provided to Lee County Transit prior to consideration of the request to terminate. The DBE shall have five (5) days to respond and advise Lee County Transit why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity, e.g., safety.

In those instances where "good cause" exists to terminate a DBE's contract, Lee County Transit requires the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor shall notify Lee County Transit immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain Lee County Transit prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified Lee County Transit may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, Lee County Transit may issue a termination for default proceeding.

The following statement is placed in every DOT-assisted prime contract:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Lee County Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ___percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 3.7), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder's/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55: Counting DBE Participation

Lee County Transit will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Subparts D & E—Certification and Standards

Section 26.81: Unified Certification Programs

Lee County Transit is a member of the national UCP administered by FDOT. We will use and count for DBE credit only those DBE firms certified by FDOT. A brief description of the State's UCP can be found at:

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

Section 26.91: Procedures for Certification Decisions

Lee County Transit distributes information about FDOT's website, which provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

Any firm or complainant may appeal the FDOT's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights
Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, DC 20590

Lee County Transit will coordinate with FDOT to promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

Subpart F – Compliance and Enforcement

Section 26.109: Information, Confidentiality, and Cooperation

Lee County Transit will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, Lee County Transit will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

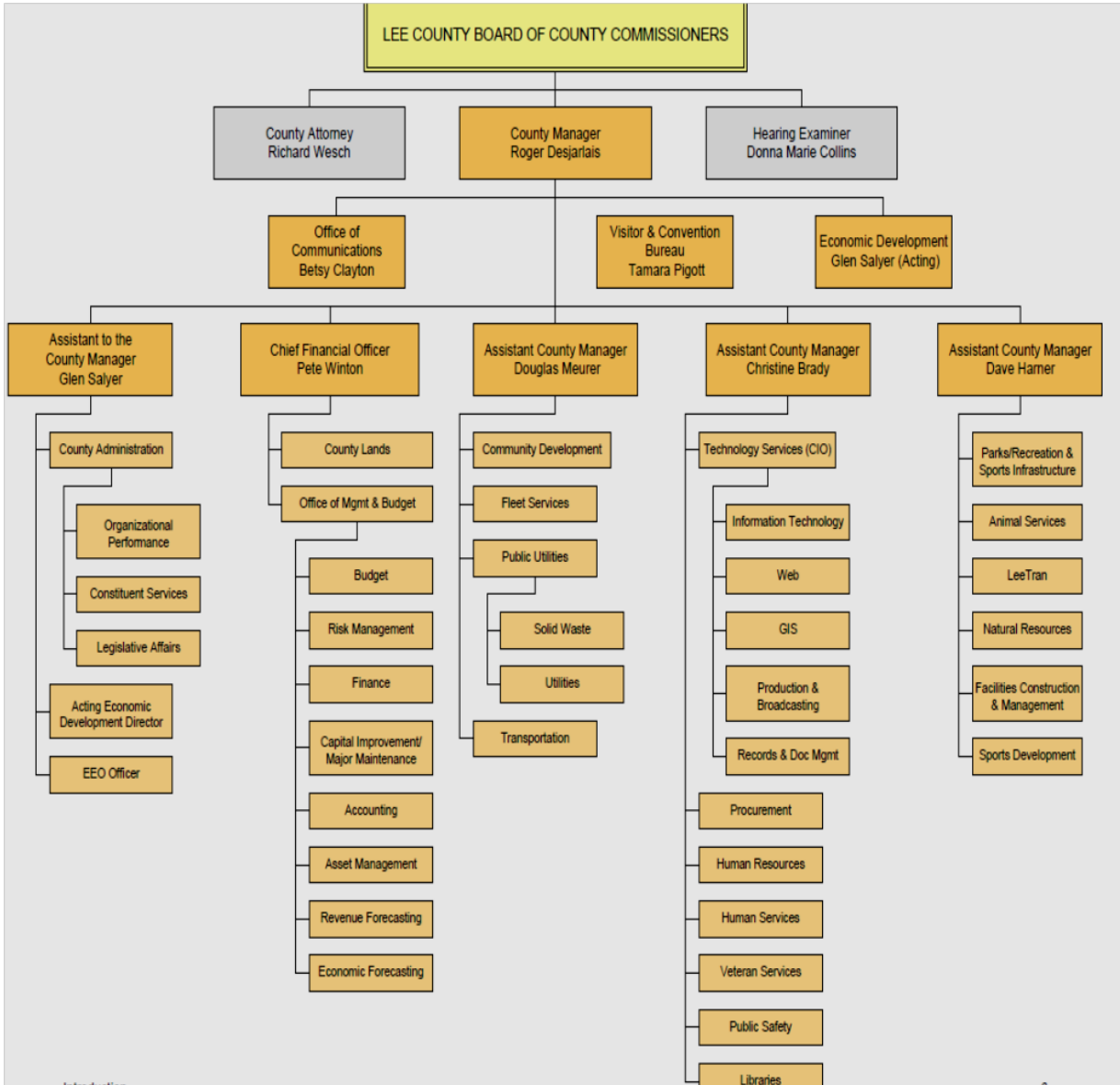
Monitoring Payments to DBEs

Lee County Transit will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be available for inspection upon request by any authorized representative of the Lee County Transit or DOT. This reporting requirement also extends to any certified DBE subcontractor.

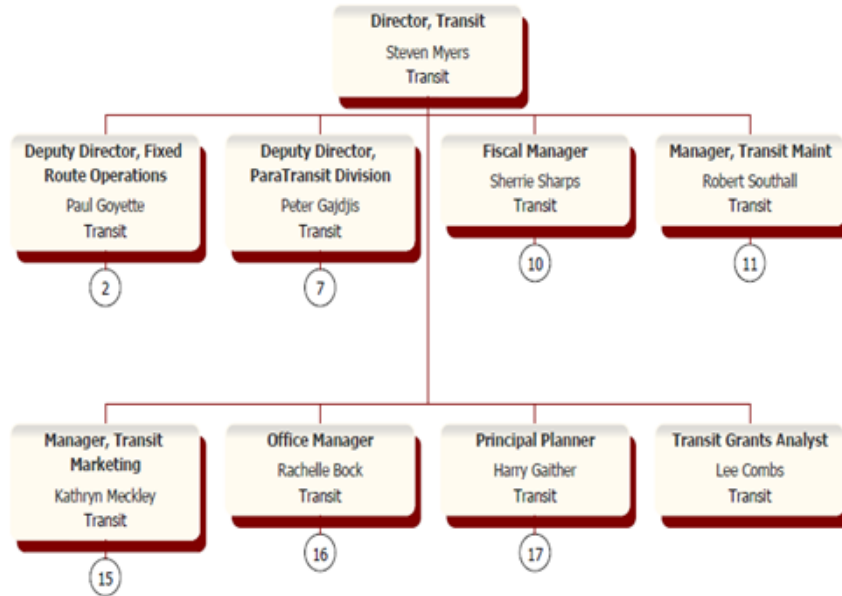
Lee County Transit will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Attachment 3.1

Lee County Organization Chart



Lee County as of December 2016



Attachment 3.2

Instructions on How to Access the DBE Directory

Lee County Transit does not certify DBEs but rather uses the list of DBEs identified in the FDOT Uniform Certification Program (UCP) Directory.

FDOT's website DBE Directory is located at:

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

FDOT's website provides a list of UCP agencies that provide certification services and non-certification services in the State of Florida.

<http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

If you have any questions, contact:

Florida Department of Transportation
Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, FL 32399-0450
Tel: (850) 414-4747
Fax: (850) 414-4879

Attachment 3.3

DBE Monitoring and Enforcement Mechanisms

In the event that a DBE goal has been established by the Solicitation the prime contractor covenants and agrees as follows:

1. Lee County Transit requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Lee County Transit's prior written consent. Prior written consent shall be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to Lee County Transit its request to terminate, the prime contractor shall give notice in writing to the DBE of its intent to do so. A copy of this notice shall be provided to Lee County Transit prior to consideration of the request to terminate. The DBE shall have five (5) days to respond and advise Lee County Transit why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity, e.g., safety.

2. In those instances where "good cause" exists to terminate a DBE's contract, Lee County Transit requires the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor shall notify Lee County Transit immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.
3. Lee County Transit Management requires the prime contractor to obtain Lee County Transit prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified Lee County Transit may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, Lee County Transit may issue a termination for default proceeding.

4. The prime contractor shall provide the DBE Liaison Officer with at least thirty (30) days written notice prior to instituting any legal action against a DBE subcontractor.
5. The prime contractor shall provide the DBE Liaison Officer with monthly updates as to the prime contractor's continuing compliance with the DBE requirements set forth in the Solicitation.

The prime contractor shall submit with each invoice a report of DBE expenditures (the "DBE Expenditure Report"). Such report must show each DBE, the amount of such DBE's subcontract, the amount earned to date, the amount earned with respect to that invoice and the amount remaining to be earned. A legible copy of each invoice, along with the DBE

Expenditure Report, shall be submitted directly to the DBE Liaison Officer, or such other address as may be specified by Lee County Transit from time to time. DBE Liaison Officer's address and facsimile (FAX) number:

DBE Liaison Officer
Lee County Transit
3401 Metro Parkway
Ft. Myers, FL 33901
Phone: (239) 533-0370
Fax: (239) 931-6811

6. The prime contractor shall make prompt and full payment to any DBE subcontractor (including the payment of any retainage) within the later of:
 - a. Thirty (30) days after the DBE subcontractor's work is satisfactorily completed, or
 - b. Thirty (30) days after the prime contractor receives payment from Lee County Transit for satisfactory completion of the accepted work.

A DBE subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by Lee County Transit when Lee County Transit has made an incremental acceptance of a portion of the Services, the work of a DBE subcontractor covered by that acceptance is deemed to be satisfactorily completed. The prime contractor shall not withhold payment to any DBE subcontractor as a result of the exercise of Lee County Transit's rights under this Contract.

Lee County Transit will bring to the attention of the US DOT any false, fraudulent, or dishonest conduct in connection with the program, so that US DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. These may include:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 18 USC 1001

Lee County Transit will also consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists or revocation of DBE certification if applicable, pursuant to Section 337.105; 337.16; and 339.0805, Florida Statutes.

Attachment 3.4

Section 26.45 Overall Goal Calculation

Lee County Transit overall goal for FY 2012 is the following: 2% of the Federal Financial assistance Lee County Transit will expend in FTA-assisted contracts (exclusive of FTA funds to be used for the purchase of transit vehicles).

The methodology used to establish the overall goal, including determining the relative availability of DBEs in the normal market area for procurement of goods and services for Lee County Transit, consists of a multi-step process.

A. Identifying the Geographic Scope of the Market Area

1. The first step is to determine the normal market area for procuring goods and services; this will establish geographic parameters for statistical analysis. The parameters are the census-defined Lee County Metropolitan Statistical Area (MSA).
2. Second, the capital improvement program budget for proposed projects or any other relevant documents is examined by Lee County Transit to ascertain the type and scope of projects involving Federal funds proposed for the upcoming Federal fiscal years.
3. The list of projects is analyzed to determine the types of firms/services; by North American Industry Classification System (NAICS) codes that Lee County Transit would likely engage to execute FTA-assisted projects. This information is also placed in a summary table format.
4. Using Census definitions, a list of relevant NAICS codes is compiled based on the firm types identified in Step A.3 above.
5. The market area is refined based on the normal area for procuring goods and services and the viability of NAICS data. The "refined" normal market area has been determined to be the urbanized area and the greater Lee County MSA, as defined by the US Census.

B. Determining the Relative Availability of DBEs in the Market Area (STEP 1)

1. Assessing the availability of DBEs involved attempting to identify the number of minority and women-owned firms in the market area. This effort involves searching for, and researching documents and resource agencies which may have information on the relative availability of DBE's in the Lee County Transit service area. The primary source for this determination included the following: The Unified Certification Program of the State of Florida.
2. From the resource directory, the relative availability of all DBEs within the market area are identified, and placed in a summary table format.
3. This list is further narrowed down through the identification of only firms which performed work relevant to Lee County Transit's capital improvements plan for FTA- assisted projects (i.e., the same NAICS codes identified in step A.3, above).
4. The DBE firms identified in Step B.2 are tallied.

C. Determining Relevant Market Conditions

Using the NAICS numbers identified in Step A, recent census data for the service area is examined to determine the total number of firms that perform the type of work relevant to the Lee County Transit capital improvements plan.

D. Determining the "Base Figure" DBE Goal

1. The number of (all) firms in the relevant NAICS categories serve as the denominator.
2. The number of DBE firms determined in Step B, serve as the numerator.
3. The percent derived from items 1 and 2, above is the "base figure", or Step 1 goal.

ADJUSTMENTS TO BASE FIGURE GOAL (STEP 2):

After the "Base figure" or Step 1 DBE Goal has been developed, additional information and data that is relevant to Lee County Transit's contracting experiences will be considered. The additional information will be used to determine what adjustment, if any is needed to the base figure to derive at a final overall goal.

The types of data or information that can be considered when adjusting the base figure include: Lee County Transit DBEs to Perform Work on FTA- assisted contracts. Determining Current Lee

County Transit DBE's to Perform Work on FTA- assisted Contracts as Measured by the Volume of Work DBE's Have Performed in Recent Years.

The historical overall DBE goals accomplished by Lee County Transit on FTA- projects for several recent fiscal years are examined relative to the above consideration.

Lee County Transit will continually assess the availability of research documents and demographic studies that may provide additional data on the extent to which DBE firms are "ready, willing and able" to engage in contracting opportunities, and successfully performing on contracts as determined by subcontract and prime contract awards.

With all of the factors in STEP 2 considered, Lee County Transit may adjust the base figure DBE goal, first by adding the average availability factors identified and/or derived in section (A) above, and averaging the total resulting in the total goal. Finally, this overall goal may be further adjusted when warranted based on the relative size of DBE firms included in STEP 1 base figure goal analysis.

Once Lee County Transit arrives at a DBE goal, Lee County Transit will publish the DBE goal information in the News-Press, a local daily newspaper, published in Fort Myers, in Lee County, Florida and post it on Lee County Transit's webpage.

Details concerning the methodology used to obtain this goal are available for review for forty- five (45) days following the publication of the notice and can be obtained from the Lee County Transit office. Written comments via the U. S. Postal Service addressed and email comments are accepted for forty-five (45) days from the publication of the notice. Comments may also be directed to FTA Region IV; 230 Peachtree St. NW, Suite 800; Atlanta, GA 30303.

Attachment 3.5

Section 26.51 Breakout of Estimated Race-Neutral & Race Conscious Participation

Lee County Transit will meet the maximum feasible portion of the overall goal by using race-neutral means of facilitating DBE participation. Lee County Transit uses the following race-neutral means to increase DBE participation.

Lee County Transit estimates that, in meeting the overall goal of 2%. The 2% will be obtained from race-neutral participation and 0% through race-conscious measures.

The following is a summary of the basis of Lee County Transit's estimated breakout of race-neutral and race-conscious DBE participation:

- Arranging solicitations, times for presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
- Ensuring distribution of the DBE directory to the widest group of potential prime contractors.
- Providing technical assistance and other services.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBE's and other small business on mailing lists for bidders, and ensuring the dissemination to bidders on prime contractors of lists of potential subcontractors).
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses.
- Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve self-sufficiency.
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low. Lee County Transit has contracted with Florida Gulf Coast University to provide assistance to small business.
- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

In order to ensure that Lee County Transit's DBE program will be narrowly tailored to overcome the effects of discrimination, if Lee County Transit uses contract goals, we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation

through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Lee County Transit will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Attachment 3.6

Lee County Transit Demonstration of Good Faith Effort

Forms 1 and 2 should be provided as part of the solicitation documents.

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract submits documentation demonstrating good faith efforts.

Name of Bidder's/Offeror's Firm: _____

State Registration No. _____

Date: _____

By: _____

Print Name

Signature

Title

FORM 2: LETTER OF INTENT

Name of Bidder's/Offeror's firm _____

Address: _____

City: _____ State: _____ ZIP: _____

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____

Description of work to be performed by DBE firm: _____

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.

The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
Print Name

Signature

Title

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Please submit this page for each subcontractor.)

Attachment 3.7

49 CFR Part 26 Language

The text of 49 CFR Part 26 can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx08/49cfr26.08.html>

Attachment 3.8

State of Florida UCP Agreement


LEE COUNTY
SOUTHWEST FLORIDA
BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 335-2179

Bob Jarvis
District One

Douglas B. Bl. Comy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John B. Alkorn
District Five

Donald D. Gilman
County Manager

James G. Yreger
County Attorney

Elena M. Padar
County Hearing
Examiner

Fax (239) 335-2282

December 5, 2002

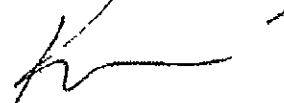
Mr. Art Wright
FDOT - Office of Equal Opportunity
606 Suwannee Street
Mail Station 65
Tallahassee, FL 32399-6544

Dear Mr. Wright:


Enclosed you will find an original signature page from the State of Florida UCP Agreement executed by Lee County Board of County Commissioners. We are signatories as non-certifying members.

If you need additional documentation, please let me know. I can be reached at 239.335.2179 or via email at Kcorbett@leegov.com.

Sincerely,


Kami Corbett
Manager
Office of Equal Opportunity

DEC 06 2002

 Recycled Paper

InfoTransit
P.O. Box 998, Fort Myers, Florida 33002-0998 (239) 335-2111
Internet address <http://www.lee-county.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER



STATE OF FLORIDA
UNIFIED CERTIFICATION PROGRAM
UCP AGREEMENT
SIGNATURE and DECLARATION OF STATUS

IN WITNESS WHEREOF, the UCP Members execute this Agreement prepared
 _____ *2002, by authorized signatures, and attached resolutions if*
appropriate.

ATTEST: *Charlie Green*
clerk of Court

Michelle S. Reiman
 Signature *Deputy Clerk*

Michele G. Cooper
 Name, printed

LEWIS COUNTY BOARD OF COUNTY COMMISSIONERS

 Signatory Entity Name, printed

Ray Judah Chairman
 Signature and Title

 Ray Judah, Chairman
 Name and Title, printed

This 19th day of November, 2002.



Approved as to form:

Scott S. [Signature]
 (Attorney for Signatory) County Attorney's Office

Certifying Member Status

Non-Certifying Member Status



19
74

FedEx USA Airbill Express **8311 5991 2699**

1 **From** 12-5-02 Sender's FedEx Account Number 1401-0200-0
Sender's Name KAMI CORBETT Phone 231-358-3199
Company GREEN COUNTY ADMINSTR. OFC-LEE COUNTY
2115 2ND ST FL 4
City FORT MYERS **State** FL **Zip** 33901

2 **Your Recipient Billing Information** 1121444
To ART WRIGHT
Address FDOT - Equal Opportunity
605 Sunnyside Street
Mail Station 65
12124255cc FL 32399-6814

Sender's Copy

4. Express Package Service
 Priority Overnight **Standard Overnight** Next Business Day
 Priority Mail **Express Letter** **2 Day** **3 Day**
 2 Day Freight **3 Day Freight** **4 Day Freight**

5. Packaging
 FedEx **Flat** **Box**
 Special Handling **Signature Required** **Signature Required - Adult** **Signature Required - Restricted**
 Signature Required - Restricted **Signature Required - Restricted** **Signature Required - Restricted**

6. Payment
 Cash **Check** **Money Order** **Debit Card** **Credit Card**

7. Signature
 Signature **Signature** **Signature**

8. Insurance
 Insurance **Insurance** **Insurance**

9. Tracking
 Tracking **Tracking** **Tracking**

10. Other
 Other **Other** **Other**

11. Additional Information
 Additional Information **Additional Information** **Additional Information**

12. Remarks
 Remarks **Remarks** **Remarks**

13. Tracking Number
 Tracking Number **Tracking Number** **Tracking Number**

14. Special Services
 Special Services **Special Services** **Special Services**

15. Signature Required
 Signature Required **Signature Required** **Signature Required**

16. Signature Required - Adult
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17. Signature Required - Restricted
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26. Signature Required - Restricted
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27. Signature Required - Restricted
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28. Signature Required - Restricted
 Signature Required - Restricted **Signature Required - Restricted** **Signature Required - Restricted**

29. Signature Required - Restricted
 Signature Required - Restricted **Signature Required - Restricted** **Signature Required - Restricted**

30. Signature Required - Restricted
 Signature Required - Restricted **Signature Required - Restricted** **Signature Required - Restricted**

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 Important! Visit our Web site at www.fedex.com or call 1.800.FEDEX for more information.

0196756-938

447



Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20021292

1. **REQUESTED MOTION:** Approve Disadvantaged Business Enterprise (DBE) Uniform Certification Program Agreement

ACTION REQUESTED:

Approve and sign agreement with U.S. Department of Transportation and Florida Department of Transportation establishing Lee County as a non-certifying member of the national DBE Uniform Certification Program.

WHY ACTION IS NECESSARY:

This action is required by federal regulation, 49 CFR Part 26, for all recipients of USDOT funds.

WHAT ACTION ACCOMPLISHES:

Lee County becomes part of the national DBE Uniform Certification Program, which is required by federal regulation.

2. **DEPARTMENTAL CATEGORY:**
COMMISSION DISTRICT #

C6H

3. **MEETING DATE:**

11-19-2002

4. **AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC WALK ON
- TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER
Federal Regulation

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT
- C. DIVISION Transf

BY: Steven L. Myers, Director

7. **BACKGROUND:**

Federal regulations dealing with Disadvantaged Business Enterprises were recently revised. The new regulations require all agencies receiving USDOT funds to participate in the Uniform Certification Program for Disadvantaged Business Enterprises. The agreement establishes a central database for all Disadvantaged Business Enterprises and requires each entity to recognize the DBE certification of the other entities that have signed the Agreement. Lee County does not independently certify Disadvantaged Business Enterprises, therefore the County will be a non-certifying member to the agreement. This means that there is no fee associated with entering into the agreement. Our only obligation will be to recognize the DBE certifications issued by certifying members of the agreement.

8. **MANAGEMENT RECOMMENDATIONS:** Approve and sign agreement

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager
<i>Steven L. Myers</i> 11/14/02	<i>Just Shelden</i> 11/14/02	N/A	<i>Richard</i> 11/14/02	<i>S. Myers</i> 11/14/02	<i>OM</i> 11/14/02	<i>Risk</i> 11/14/02	<i>GC</i> 11/14/02	<i>W. Myers</i>

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Recv. by Collety
Date: 11/14/02
Time: 3:57 PM
Forwarded To:
11-19-2002

RECEIVED BY
COUNTY ADMIN. PM
11/14/02 4:20
COUNTY ADMIN. BL
BE FORWARDED TO:
11/14/02 4:30



Attachment 9 DBE Program Checklist

DBE Program Checklist Pursuant to 49 CFR part 26

Recipient Name:					
Vendor ID:					
Date DBE Program received:					
Date of initial review:					
Date final DBE Program reviewed:					
Review conducted by:					
Date referred to Regional Counsel:					
Name of approving Regional Counsel & date of concurrence:					
Issuance of date of approval letter:					
Date TEAM data entered:					
<p>This form provides an basic overview of the legal requirements and responsibilities of Federal Transit Administration (FTA) recipients under Code of Federal Regulations (C.F.R.) 49 Part (§) 26 for purposes of Regional Civil Rights Officer (RCRO) review. This document is not intended to provide a comprehensive explanation of all requirements and responsibilities of FTA recipients related to DBE, nor is it intended to replace DBE guidance issued by the US Department of Transportation (DOT). Further DOT and FTA guidance can be found on our websites and in 49 C.F.R. § 26. This form is not intended to replace the DBE guidance issued by the US Department of Transportation. This form highlights the major sections of 49 C.F.R. § 26. Recipients should consider each of the topics in preparing their DBE program documents. FTA does not ask recipients to quote or paraphrase portions of the rule in their programs. Rather, recipients' programs should address specifically how the recipient will implement the various program requirements. For example, the program would not paraphrase Section 26.83 concerning internal certification procedures. It would describe how a firm applies to the recipient for certification.</p>					
Chapter/Section	Addressed	Not Addressed	Adequate	Inadequate	Review Comments
OVERALL DBE PROGRAM					
CFR 49 § (Part) 26					See comments below and address any area marked "Not Addressed" and/or "Inadequate." An "Advisory Comment" indicates that this section is not required by the circular but recommended by FTA.
POLICY STATEMENT; §26.33					
Is there a signed and dated policy statement that expresses the agency's commitment to their DBE program, states its objectives, and outlines responsibilities for its implementation?					
Is the statement circulated throughout the organization and to the DBE and non-DBE business communities that perform work on the agency's DOT-assisted contracts?					



DBE Program Checklist
Pursuant to 49 CFR part 26

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequat	Review Comments
Does the statement include the following objectives from part 26.1:					
(a) To ensure nondiscrimination in the award and administration of DOT- assisted contracts;					
(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;					
(c) To ensure the DBE Program is narrowly tailored in accordance with applicable law;					
(d) To ensure that only firms that meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;					
(e) To help remove barriers to the participation of DBEs in DOT- assisted contracts; and					
(f) To assist the development of firms that can compete successfully in market place outside the DBE Program.					
APPLICABILITY: §26.3					
(a) This part applies to recipients of: (2) Federal transit funds authorized by Title I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21 Pub. L. 105-178.					
DEFINITIONS: §26.5					
What do the terms used in this part mean? Definitions should be listed or incorporated by referring to §26.5 (incorporated by reference) if §26 is included as an attachment to the DBE Program.					
NON-DISCRIMINATION: §26.7					
Non-discrimination statements (c) and (b) from this part are included.					



**DBE Program Checklist
Pursuant to 49 CFR part 26**

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequate	Review Comments
RECORD KEEPING: §26.11*					
(b) Recipient must provide data about the DBE programs by submitting the Uniform Report of DBE Commitments Awards and Payments DOT Form (two number) semi-annually due on June 1 and December 1 for each federal fiscal year they are required to have an annual DBE goal.					
(c) Bidder's list (2) must include the following information about DBE and non-DBE contractors and subcontractors who seek work on federally-assisted contracts:					
(i) Firm name;					
(ii) Firm address;					
(iii) Firm's status as a DBE or non-DBE;					
(iv) Age of the firm; and					
(v) the annual gross receipts of the firm. May be obtained by asking each firm to indicate what gross receipts bracket they fit (i.e. less than \$500,000; \$500,000 - \$1 million).					
RECIPIENT AND CONTRACTOR ASSURANCES §26.13*					
(a) Annual FTA Certifications and Assurance signed - includes required DBE assurance.					
(b) Includes the full contract assurance that must be included in contracts let with DOT funds. (For recipient to include in its contracts and sub-contracts).					
DBE PROGRAM UPDATES: §26.21(2)					
Significant changes in the program must be submitted to FTA for approval.					
DBE LIASON OFFICER §26.25					



DBE Program Checklist
Pursuant to 49 CFR part 36

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequat	Review Comments
DBE Liason officer (DBELO) identified? NOTE: FTA highly recommends that DBELO must not come from Procurement especially if the individual is directly involved in contracts, bids & procuring goods or materials. Similarly, a person in Finance Division should not be the DBELO if the individual is responsible for disbursing funds. Both situations can be conflict of interests.					
DBE Liason officer has direct and independent access to CEO? Has adequate staff and authority to administer this part?					
DBE FINANCIAL INSTITUTIONS §26.27					
Recipient has thoroughly investigated the services offered by DBE financial institutions and has made reasonable efforts to use these institutions per this part?					
PROMPT PAYMENT: §26.29*					
(a) Contractors pay subs for satisfactory performance no later than 30 calendar days from receipt of each payment?					
(b) Recipient assures prompt and full payment of retainage from the prime contractor to the sub within 30 calendar days after the sub's work is completed using one of the 3 methods in this part?					
(c) DBE program provides appropriate means to enforce the requirements of this section?					
(c) Any additional prompt payment mechanisms established per this part?					
DBE DIRECTORY: §26.31					
DBE directory made available per this part?					
OVERCONCENTRATION: §26.33					



DBE Program Checklist
Pursuant to 49 CFR part 26

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequat	Review Comments
Applies only when an overconcentration is identified. If so, is overconcentration addressed appropriately?					
MENTOR-PROTÉGÉ PROGRAMS: §26.35					
May be established per this part.					
MONITORING PERFORMANCE: §26.37*					
appropriate (a) mechanisms to ensure compliance with this part by all program participants, and (b) monitoring and enforcement to ensure work committed to DBEs as contract award is performed by DBEs have been established per this part.					
(c) this mechanism provides for a running tally of actual payments made to DBE firms per this part.					
OVERALL GOALS: §26.45					
Recipient develops a 2-step goal setting process as described in sections (c) - (d) of this part? This goal is based on quantifiable data from reliable sources such as current census Bureau's County Business Pattern (CBP) data, bidder's list, current DBE directories or State UCP directories, current disparity study, NAICS codes, the goal of another DOT recipient (step 1 ONLY) or alternative methods?					
(a)(2) goal is expressed as a percentage of all FTA funds (excluding the purchase of transit vehicles) that will be expended in the forthcoming fiscal year?					
(f)(1) goals are submitted for review on August 1 of each year?					



DBE Program Checklist
Pursuant to 49 CFR part 26

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequate	Review Comments
(f)(3) description of methodology used to arrive at the goal included?					
(g) provide for public participation, in the following order					
(g)(1) consultation with minority, women's and general contractor groups, etc.?					
(g)(2) a published notice per this part? NOTE: Publication of DBE goal in grantee's own website alone does not meet this public participation requirement.					
TRANSIT VEHICLE MANUFACTURERS: §26.49					
(a) Transit vehicle manufacturers (TVM) are required to certify they have a DBE program					
MEANS TO MEET GOALS: §26.51					
The recipient follows the descriptions in this part to meet goals using race-neutral means (a) - (c) or contract goals (d) - (g) as appropriate each federal fiscal year per this part?					
GOOD FAITH EFFORTS PROCEDURES WHEN A DBE IS REPLACED ON A CONTRACT: §26.53					
RECONSIDERATION OFFICIAL: §26.53 (d)					
(2) The Reconsideration Official will not have played any role in the original determination that the bidder/offeree did not document sufficient good faith efforts.					
Demonstration of good faith efforts per 26.53, (a) & (c), (d), (e) Appendix A (c) are met					
CERTIFICATION PROCESS: § 26.61-26.73					
UNIFIED CERTIFICATION PROGRAM PARTICIPATION: §26.81 (a)					
Recipient participates in UCP?					



DBE Program Checklist
Pursuant to 49 CFR part 26

Chapter/Section	Addressed	Not Addressed	Adequate	Inadequat	Review Comments
INFORMATION, CONFIDENTIALITY, COOPERATION; §26.109					
Appropriate rules governing information, confidentiality, cooperation, and intimidation or retaliation are established per this part?					
For state DOT's DBE goal submission attached to this DBE Program Plan, please answer the following:					
(1) Sub-recipients of the state DOT are aggregated in the overall goal: (Y) (N) Comments:					
(2) The state DOT included the names of recipients that submitted DBE goals: (Y) (N) Comments:					
(3) The state DOT accounted for FTA funds received for 5303, 5304, 5310 (non-vehicle awards) and 5311 grants and distributed to its sub recipients: (Y) (N) Comments:					
If the RCRO or designee has contacted the grantee regarding their DBE goal submittal for any reason, notes of the conversation are included in the submittal. For example, if RCRO or designee has granted the grantee an extension to submit the required documentation with a specified timeline for their response or if RCRO has orally approved a grantee's DBE goal, notes reflect the rationale for approving it.					
ATTACHMENTS					
1. Organizational Chart					
2. DBE Directory (hard copy version only)					
3. Agency policies of Monitoring & Enforcement Mechanisms					
4. Overall Goal Calculation					



Attachment 4

Procurement by Sealed Bids/Invitation for Bid (IFB)

1. For sealed bidding to be feasible, the following conditions should be present:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - d. No discussion with bidders is needed.
2. If this procurement method is used, the following requirements apply:
 - a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
 - c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - d. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.
 - e. Any or all bids may be rejected if there is a sound documented business reason.

This method of procurement may be utilized for the purchase of vehicles and equipment. The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (1) above apply.

Attachment 5

Procurement by Competitive Proposal/Request for Proposals (RFP)

Requirements

If this procurement method is used the following requirements apply:

1. Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
2. Proposals will be solicited from an adequate number of qualified sources;
3. Lee County Transit staff will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to Lee County Transit's program with price and other factors considered; and
5. In determining which proposals is most advantageous, Lee County Transit staff may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined as:

A selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

If Lee County Transit staff elects to use the best value selection method as the basis for award, however, the solicitation must contain language, which establishes that an award will be made on a "best value" basis.

Attachment 6

Architectural and Engineering Services

Requirements

Qualifications-based competitive proposal procedures require that:

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

These qualifications-based competitive proposal procedures can only be used for the procurement of the following services: program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the State of Florida adopts or has adopted by statute (FL. Statute 471.003) a formal procedure for the procurement of these services, and the Federal Brooks Act.

Attachment 7

Non-competitive Proposals – Single and Sole-Source Justification

At least one of the following circumstances must apply:

1. The item is available only from a single source;
 - a. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - b. FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval.
 - c. After solicitation of a number of sources, competition is determined inadequate; or
2. The item is an associated capital maintenance item that is procured directly from the original manufacturer or supplier of the item to be replaced. Lee County Transit staff must first certify in writing to FTA that:
 - a. such manufacturer or supplier is the only source for such item; and
 - b. the price of such item is no higher than the price paid for such item by like customers.

A Fair and Reasonable Price Determination, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

Attachment 8

Design-Build Proposals

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

1. *Procurement Method Determined by Value* – The various contract activities to be undertaken must be separated and classified as either design or construction. The estimated total value of each contract activity must then be estimated. Since both design and construction are included in a single procurement, the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.
 - a. *Construction Predominant* – For design-build project that are construction predominant, which is more typical, the competitive negotiations or sealed bids process must be used for the entire procurement rather than qualification-based procurement procedures.
 - b. *Design Services Predominant* – In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects Lee County Transit to use qualifications-based procurement procedures based on the “Brooks Act, 40 U.S.C. Sections 1101 through 1104.

2. *Selection Processes* – Lee County Transit may structure its design-build procurement using one or more steps as described below:
 - a. *One-Step Method* – Lee County Transit may undertake design-build procurement in a single step.
 - b. *Two-Step Method* – Another procurement method Lee County Transit may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
 - i. *Review of Technical Qualifications and Approach* – The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. Lee County Transit may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - ii. *Review of Complete Proposals* – The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

By using this two-step method, it will not be necessary for Lee County Transit to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method.

Attachment 9

Requirements for Options

1. Evaluation of Options
 - a. Option years must be evaluated when making contract awards if the intent is to exercise the option after the contract is awarded. Options exercised that were not evaluated at the time of award should be treated as sole source procurements.
2. Exercise of Options
 - a. A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - b. An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
3. In the event that an item to be purchased can be obtained through the State of Florida Department of General Services contract, this purchasing option will be exercised at the vendor's and Lee County Transit staff's discretion. This option can expedite the purchase process since State contract vendors are selected through a competitive bid process.

Attachment 10

Monitoring Checklist

Lee County Transit Checklist for Monitoring Procurements of Sub-grantees

The following is a checklist for required annual monitoring of procurements:

_____ Requirements for Procurement: Sub-grantee has read Lee County Transit's procurement manual and is aware of requirements imposed upon them by Federal Statutes and regulations as well as by the State of Florida and local law. Sub-grantees have their own procurement guidelines that follow the Federal Statutes and regulations as well as State and local law.

_____ (3) Sample procurements examined.

_____ Clauses: Sub-grantee has included clauses required by Federal Statute and executive orders and their implementing regulations on all purchase orders/contracts.

_____ Record Retention: Sub-grantee has retained records for three years detailing the history of all procurements.

_____ Written standards of conduct: Sub-grantee maintains a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts, particularly related to conflict of interest issues.

_____ Full and open competition: All procurement transactions are conducted in a manner providing full and open competition, including prohibiting geographic preferences.

_____ Sub-grantee has followed the regulations regarding methods of procurement by cost (ex. Micro-purchase, Small Purchase, IFB, etc.)

_____ Contract Cost and Price Analysis for Every Procurement Action: Sub-grantee makes independent estimates before receiving bids or proposals.

_____ Buy America: Sub-grantee abides by the "Buy America" Federal Statutes for expending Federal monies.

Name *Date*

Name of Sub-grantee representative *Date*

Name of Sub-grantee organization

Attachment 11

Written Protest Procedures

Lee County Written Protest Procedures

Any contractor/vendor/firm that has submitted a formal bid/quote/proposal to Lee County, and who is adversely affected by an intended decision with respect to the award of the formal bid/quote/proposal, must file a written "Notice of Intent to File a Protest" with the Lee County Procurement Management Director not later than seventy-two (72) hours (excluding Saturdays, Sundays and Legal Holidays) after receipt of the County's "Notice of Intended Decision" with respect to the proposed award of the formal bid/quote/proposal.

The "Notice of Intent to File a Protest" is one of two documents necessary to file a Protest. The second document is the "Formal Written Protest." Both documents are described below.

The "Notice of Intent to File a Protest" document must state all grounds claimed for the Protest, and clearly indicate it as the "Notice of Intent to File a Protest." Failure to clearly indicate the Intent to file the Protest shall constitute a waiver of all rights to seek any further remedies provided for under this Protest Procedure.

The "Notice of Intent to File a Protest" shall be received ("stamped in") by the Procurement Management Director or Public Works Director not later than four o'clock (4:00) PM on the third working day following the day of receipt of the County's Notice of Intended Decision.

The affected party shall then file its Formal Written Protest within ten (10) calendar days after the time for the filing of the Notice of Intent to File a Protest has expired. Except as provided for in the paragraph below, upon filing of the Formal Written Protest, the contractor/vendor/firm shall post a bond, payable to the Lee County Board of County Commissioners in an amount equal to five percent (5%) of the total bid/quote/proposal, or Ten Thousand Dollars (\$10,000.00), whichever is less. Said board shall be designated and held for payment of any costs that may be levied against the protesting contractor/vendor/firm by the Board of County Commissioners, as the result of a frivolous Protest.

A clean, Irrevocable Letter of Credit or other form of approved security, payable to the County, may be accepted. Failure to submit a bond, letter of credit, or other approved security simultaneously with the Formal Written Protest shall invalidate the protest, at which time the County may continue its procurement process as if the original "Notice of Intent to File a Protest" had never been filed.

Any contractor/vendor/firm submitting the County's standard bond form (CMO: 514), along with the bid/quote/proposal, shall not be required to submit an additional bond with the filing of the Formal Written Protest.

The Formal Written Protest shall contain the following:

- County bid/quote/proposal identification number and title.
- Name and address of the affected party, and the title or position of the person submitting the Protest.
- A statement of disputed issues of material fact. If there are no disputed material facts, the Formal Protest must so indicate.
- A concise statement of the facts alleged, and of the rules, regulations, statutes, or constitutional provisions, which entitle the affected party to relief.
- All information, documents, other materials, calculations, and any statutory or case law authority in support of the grounds for the Protest.
- A statement indicating the relief sought by the affected (protesting) party.
- Any other relevant information that the affected party deems to be material to Protest.

Upon receipt of a timely filed "Notice of Intent to File a Protest", the Procurement Management Director or Public Works Director (as appropriate) may abate the award of the formal bid/quote/proposal as appropriate, until the Protest is heard pursuant to the informal hearing process as further outlined below, except and unless the County Manager shall find and set forth in writing, particular facts and circumstances that would require an immediate award of the formal bid/quote/proposal for the purpose of avoiding a danger to the public health, safety, or welfare. Upon such written finding by the County Manager, the County Manager may authorize an expedited Protest hearing procedure. The expedited Protest hearing shall be held within ninety-six (96) hours of the action giving rise to the contractor/vendor/firm's Protest, or as soon as may be practicable for all parties. The "Notice of Intent to File a Protest" shall serve as the grounds for the affected party's presentation and the requirements for the submittal of a formal, written Protest under these procedures, to include the requirement for a bond, shall not apply.

The Dispute Committee shall conduct an informal hearing with the protesting contractor/vendor/firm to attempt to resolve the Protest, within seven working days (excluding Saturdays, Sundays and legal holidays) from receipt of the Formal Written Protest. The Chairman of the Dispute Committee shall ensure that all affected parties may make presentations and rebuttals, subject to reasonable time limitations, as appropriate. The purpose of the informal hearing by the Dispute Committee, the protestor and other affected parties is to provide an opportunity: (1) to review the basis of the Protest;(2) to evaluate the facts and merits of the Protest: and (3) to make a determination whether to accept or reject the Protest.

Once a determination is made by the Dispute Committee with respect to the merits of the Protest, the Dispute Committee shall forward to the Board of County Commissioners its recommendations, which shall include relevant background information related to the procurement.

Upon receiving the recommendation from the Dispute Committee, the Board of County Commissioners shall conduct a hearing on the matter at a regularly scheduled meeting. Following presentations by the affected parties, the Board shall render its decision on the merits of the Protest.

If the Board's decision upholds the recommendation by the Dispute Committee regarding the award, and further finds that the Protest was either frivolous and/or lacked merit, the Board, at its discretion, may assess costs, charges, or damages associated with any delay of the award, or any costs incurred with regard to the protest. These costs, charges or damages may be deducted from the security (bond or letter of credit) provided by the contractor/vendor/firm. Any costs, charges or damages assessed by the Board in excess of the security shall be paid by the protesting contractor/vendor/firm within thirty (30) calendar days of the Board's final determination concerning the award.

All formal bid/quote/proposal solicitations shall set forth the following statement:

"FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIMEFRAMES AS PRESCRIBED HEREIN AND ESTABLISHED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA, SHALL CONSTITUTE A WANER OF YOUR PROTEST AND ANY RESULTING CLAIMS."

Attachment 12

Bonding

Minimum Criteria:

1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
3. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the Federal interest are as follows:
 - a. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - b. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - c. \$2.5 million if the contract price is more than \$5 million.
4. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

Attachment 13

Buy America Pre-Award and Post-Award Audit Requirements (49 CFR 663)

Subpart A—General

§663.1 Purpose.

This part implements section 12(j) of the Federal Mass Transit Act of 1964, as amended, which was added by section 319 of the 1987 Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100-17). Section 12(j) requires the Federal Transit Administration, by delegation from the Secretary of Transportation, to issue regulations requiring pre-award and post-delivery audits when a recipient of Federal financial assistance purchases rolling stock with funds made available under the Federal Mass Transit Act, as amended.

§663.3 Scope.

This part applies to a recipient purchasing rolling stock to carry passengers in revenue service with funds made available under sections 3, 9, 18, and 16(b)(2) of the Federal Mass Transit Act, as amended; 23 U.S.C. 103(e)(4); and section 14 of the National Capital Transportation Act of 1969, as amended. Buy America requirements also apply to capital leases for rolling stock and related equipment.

§663.5 Definitions.

As used in this part—

- (a) *Pre-award* means that period in the procurement process before the recipient enters into a formal contract with the supplier.
- (b) *Post-delivery* means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.
- (c) *Recipient* means a recipient of Federal financial assistance from FTA.
- (d) *Revenue service* means operation of rolling stock for transportation of fare-paying passengers as anticipated by the recipient.
- (e) *Rolling stock* means buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.
- (f) *Audit* means a review resulting in a report containing the necessary certifications of compliance with Buy America standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards, required by section 319 of STURAA and this part.
- (g) *FTA* means the Federal Transit Administration.

§663.7 Certification of compliance to FTA.

A recipient purchasing or leasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed in this part. In addition, such a recipient must maintain on file the certifications required under subparts B, C, and D of this part.

§663.9 Audit limitations.

(a) An audit under this part is limited to verifying compliance with

(1) Applicable Buy America requirements [section 165 of the Surface Transportation Assistance Act of 1982, as amended,]; and

(2) Solicitation specification requirements of the recipient.

(b) An audit under this part includes, where appropriate, a copy of a manufacturer's self-certification information that the vehicle complies with Federal Motor Vehicle Safety Standards or a certification that such standards are inapplicable.

(c) An audit conducted under this part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

§663.11 Audit financing.

A recipient purchasing revenue rolling stock with FTA funds may charge the cost of activities required by this part to the grant which FTA made for such purchase.

§663.13 Buy America requirements.

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title.

§663.15 Compliance.

A recipient subject to this part shall comply with all applicable requirements of this part. Such compliance is a condition of receiving Federal financial assistance from FTA. A recipient determined not to be in compliance with this part will be subject to the immediate suspension, withholding, or repayment of Federal financial assistance from FTA or other appropriate actions unless and until it comes into compliance with this part.

Subpart B—Pre-Award Audits

§663.21 Pre-award audit requirements.

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.

§663.23 Description of pre-award audit.

A pre-award audit under this part includes—

- (a) A Buy America certification as described in §663.25 of this part;
- (b) A purchaser’s requirements certification as described in §663.27 of this part; and
- (c) Where appropriate, a manufacturer’s Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.

§663.25 Pre-award Buy America certification.

For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that—

- (a) There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- (b) The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—
 - (1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - (2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

§663.27 Pre-award purchaser’s requirements certification.

For purposes of this part, a pre-award purchaser’s requirements certification is a certification a recipient keeps on file that—

- (a) The rolling stock the recipient is contracting for is the same product described in the purchaser’s solicitation specification; and
- (b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient’s specification set forth in the recipient’s solicitation.

Subpart C—Post-Delivery Audits

§663.31 Post-delivery audit requirements.

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is complete before title to the rolling stock is transferred to the recipient.

§663.33 Description of post-delivery audit.

A post-delivery audit under this part includes—

- (a) A post-delivery Buy America certification as described in §663.35 of this part;
- (b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and
- (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.

§663.35 Post-delivery Buy America certification.

For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—

- (a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- (b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—
 - (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
 - (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

§663.37 Post-delivery purchaser's requirements certification.

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—

- (a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—
 - (1) Provide accurate records of all vehicle construction activities; and
 - (2) Address how the construction and operation of the vehicles fulfills the contract specifications.
- (b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.

(c) For procurements of:

(1) Ten or fewer buses; or

(2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or

(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

[56 FR 48395, Sept. 24, 1991, as amended at 71 FR 14118, Mar. 21, 2006]

§663.39 Post-delivery audit review.

(a) If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.

(b) This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

Subpart D—Certification of Compliance with or Inapplicability of Federal Motor Vehicle Safety Standards

§663.41 Certification of compliance with Federal motor vehicle safety standards.

If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

§663.43 Certification that Federal motor vehicle standards do not apply.

(a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.

(b) This subpart shall not apply to rolling stock that is not a motor vehicle.

Appendix A

Piggybacking Checklist

Definition: Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. (“FTA Dear Colleague” letter, October 1, 1998).

To assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Deliver audits?		
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the “certifications” required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation – i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency – e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14)(i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1.		

Note: This worksheet is based upon the policies and guidance express in (a) the FTA Administrator’s “Dear Colleague” letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3 –Joint Procurements of Rolling Stock and “Piggybacking.”

Appendix B

Procurement Summary/Memorandum

PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____
 PO / Contract No. _____ Source of Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
 Small Purchase: _____ A&E Services: _____ Sole Source: _____

Justification if Non-Competitive:

Reason for the Procurement

Contract Type:

Rationale for contract type:

Reason for selection/rejection:

Lowest responsive, responsible bidder: (IFBs)

Evaluation results were (RFPs):

Basis for Contract Price:

Accepted contractor's proposed pricing:

Negotiated Price (attached memorandum)

Other:

Cost / Price Analysis:

The price offered by the supplier was within ____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____

Pricing discrepancies between the offers was attributed to _____

Other sources/data used to affirm price reasonableness were _____

Summary of Responsibility and Responsiveness Checks

Award

Date of contract award: _____

Board Approval (Attach Meeting Minutes): _____

Change Orders: Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

Appendix C

Procurement Decision Matrix

Method of Procurement

Micro-Purchase	
Amount < \$3,500	
Multiple Sources	

Small Purchase	
Amount < \$100,000	
Complete & Adequate Specification or Description	
Two or more quotes available	

Sealed Bid (IFBs) > \$100,000	
Complete & Adequate Specification or Description	
Two or more responsible bidders willing to compete	
Selection can be made on the basis of price alone	
Firm Fixed Price Contract is used	
No discussion with bidders required after receipt of bids	

Competitive Proposals (RFPs) > \$100,000	
Complete Specifications Not Feasible	
Bidder Input Needed	
Two or more responsible bidders willing to compete	
Discussion needed with bidders after proposals	
Fixed price can be set after discussions –OR– A cost reimbursement contract is determined	

Competitive Procurement	
Amount > \$3,500	
Multiple Sources	
Not an Emergency	

Selection of Contract Type

Type of Contract	
Fixed Price	
Firm fixed unit prices	
Cost plus fixed fee	
Time and materials (T&M)	
Blanket purchase order	
Indefinite Delivery Indefinite Quantity (IDIQ)	

Justification for T&M Type Contract (if selected)

Appendix D

Independent Cost Estimate

Contract Type: _____

Date of Estimate: _____

Description of Goods / Service:

Method of Obtaining Estimate:

- I have obtained the following estimate from _____
- Published Price List / Past pricing (date)
- Engineering or technical estimate
- Independent Third-Party estimate
- Other (specify) _____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be \$_____. Details are shown below.

A. Cost of Standard Items

Product	Cost (\$/ea)		Notes / Data Sources
	Delivered	No Freight	

B: Cost of Services, Repairs, or Non-Standard Items

Item / Task	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated Overhead			

The preceding cost estimate was prepared by:

Signature *Date*

For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.

Appendix E

Fair and Reasonable Price Determination

I hereby determine the price to be fair and reasonable based on at least one of the following (*check one or more*):

- Found reasonable on recent purchase
- Obtain from current price list
- Obtain from current catalog
- Commercial market sales price from advertisements
- Similar in related industry
- Personal knowledge of item procured
- Regulated rate (utility)
- Other

Comments:

- Copy of purchase order, quotes, catalog page, price list, etc., is attached.

Purchasing Agent

Date

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Appendix F

Contract Clause Matrix

Applicability of third-party contract provisions (excluding Micro-Purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000).

PROVISION	Professional Services/ A& E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,00 if 49 CFR Part 18 applies.	>\$10,00 if 49 CFR Part 18 applies.	>\$10,00 if 49 CFR Part 18 applies.	>\$10,00 if 49 CFR Part 18 applies.	>\$10,00 if 49 CFR Part 18 applies.
Civil Rights (Title, VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprise (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel	For property transported by ocean vessel	For property transported by ocean vessel
Fly America	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel	For foreign air transport or travel

PROVISION	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1, Section 2				All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	All	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

Appendix G

Sole-Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

- The item is available only from a single source (sole source justification is attached).
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
- The item is an associated capital maintenance item as defined in 49 U.S.C 5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments: _____

- Independent Estimate and Cost Analysis are attached.

Purchasing Agent

Senior Manager

Date

Date

Appendix H

Responsibility Determination Form

Bid/RFP No:		
Supplier:		
Date:		
For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.		
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> yes <input type="checkbox"/> no	Can review standard ratios on submitted financial reports or ask for D&B report
2. Ability to meet the delivery schedule	<input type="checkbox"/> yes <input type="checkbox"/> no	Conduct an analysis of the offeror's technical approach
3. Satisfactory period of performance	<input type="checkbox"/> yes <input type="checkbox"/> no	Tied to reference check; can also use D&B Past Performance Evaluation service/product
4. Satisfactory record of integrity, not on declined or suspended listings	<input type="checkbox"/> yes <input type="checkbox"/> no	Attach the results from checking the Excluded Parties website at https://www.sam.gov/
5. Ability to get bonding and insurance	<input type="checkbox"/> yes <input type="checkbox"/> no	Evaluate insurance certificate and assurances from Bonding company_____

Appendix I

Statement of Work Template

Statement of Work Title:
1.0 Project Background
<ul style="list-style-type: none"> Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought. Short statement of the problem to be resolved. Expected project duration. Transit Agency organizational units and/or key individuals involved in managing the project. Alternative solutions or implementation strategies evaluated
<p>Transit Agency requires these products and / or services due to:</p> <p>Transit Agency is attempting to complete a _____ project on and requires supplier/contractor assistance in the:</p> <p>The completion of this work will help Transit Agency:</p>
2.1 Results
<p>Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.</p>
2.2 Anticipated Benefits
<p>Describe what the organization will gain through completion of this project.</p>
2.3 Business Processes Impacted
<p>Review major changes in the way work will be conducted once the project is complete (if any).</p>
2.4 Customers / End Users Impacted
<p>Identify the specific individuals or groups whose work will be most affected during and after the project's execution.</p>

3.0 Applicable Documents	
List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.	
List any publications, manuals and regulations that the supplier / contractor must abide by:	
a)	
b)	
c)	
Define any Acronyms:	
4.0 Summary of Requirements	
These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work.	
List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.	
Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use "work" words, such as:	
1. Review ...	
2. Analyze ...	
3. Repair ...	
4. Install ...	
5. Construct ...	
All tasks should have quantifiable or observable results.	
5.0 Schedule and Deliverables	
List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point(s). Include the acceptance criteria for each.	
Milestone or Major Project Deliverable	Planned Completion Date

6.0 Quality Assurance Plan

Explain what the Transit Agency's quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the output / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

- a. All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this document.
- b. All milestones or services will be achieved and all reports will be submitted on time in accordance with Section 5.0 of the SOW.
- c. Supplier / Contractor work will be monitored by Transit Agency project and Contract Management Staff.
- d. Specific quality requirements for this contract are as follows:
 - 1) On time delivery =
 - 2) Acceptable quality =
 - 3) Responsiveness =
 - 4) Service level =

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Appendix J

Cost Analysis Form

			PAGE	OF	PGS		
COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts) (See Instruction below)							
SOLICITATION #			SUPPLIES AND/OR SERVICES TO BE FURNISHED				
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE							
DIVISION(S) AND LOCATIONS(S) WHERE WORK IS TO BE PERFORMED			APPROVAL SIGNATURE				
DETAIL DESCRIPTION OF COST ELEMENTS							
1. DIRECT MATERIAL			Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis	
A.PURCHASED PARTS							
B.SUBCONTRACTED ITEMS							
C.OTHER – (1) RAW MATERIAL							
(2) STANDARD COMMERCIAL ITEMS							
TOTAL DIRECT MATERIAL							
2. MATERIAL OVERHEAD (RATE % X \$ BASE *)							
3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance	
<i>TOTAL DIRECT LABOR</i>							
4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance	
OH Rate							
X BASE (labor total above)							
<i>TOTAL LABOR OVERHEAD</i>							
5. OTHER DIRECT COSTS			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance	
A.SPECIAL TOOLING/EQUIPMENT							
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>							
B.TRAVEL							
(1)TRANSPORTATION							
(2)PER DIEM OR SUBSITENCE							
<i>TOTAL TRAVEL</i>							

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C.INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D.OTHER				
<i>TOTAL OTHER</i>				
E. <i>SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINSTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. <i>SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. <i>SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
12. <i>TOTAL ESTIMATED COST AND FEE OR PROFIT</i>				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

- a. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendors quotes, invoice prices, etc.).
- b. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- c. Other:
 - (1) Raw Material: Review any materials in a form of state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
 - (2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost form another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. **DIRECT LABOR**

Analyze comparative rates and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. **LABOR OVERHEAD**

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available.

5. **OTHER DIRECT COSTS**

- a. Special Tooling/Equipment. Analyze the price and necessity of specific equipment and unit prices.
- b. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- c. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
- d. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions).

6. **GENERAL AND AMINISTRATIVE EXPENSE**

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. **ROYALTIES**

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item of component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties.

8. **SUBTOTAL ESTIMATED COST**

Compare to the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. **CONTRACT FACILITIES CAPITAL AND COST OF MONEY**

Analyze the offeror's supporting calculations and compare to known standards.

10. **SUBTOTAL ESTIMATED COST**

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fee or Profit. Remember that the HUD prohibits cost plus percentage of cost contracting.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate.

Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Appendix K

Price Analysis

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

DATE: _____

PREPARED BY: _____

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

Attachments:

Appendix L

Change Order Review Checklist

Date: _____

Contract Number: _____

Contractor: _____

Contract Title Reviewer: _____

New Contract Total: _____

Change Order Number: _____

Dollar Value Increase: _____

Length of Time Extension Granted: _____

New Performance Period End Date: _____

Change Order Checklist	Included	N/A	Comment
1. In-House Estimate Prepared			
2. Project Manager Approval			
3. AWO Scope Meeting Held			
3a. Scope of Change Adequate for Bidding			
Contractor Proposal Includes Impact Cost, Price			
5. Cost Analysis Conducted			
5a. If Price > 10% of ICE			
6. Negotiation Memorandum			
7. Written Record of Change			
7a. Signed Change Order in File			
8. Evidence of Board Approval prior Initiation of Changed Work			
9. Notice to Proceed in file			
10. Work Authorized within Contract Scope			
11. No Evidence of Arbitrary Action			
Other Comment			

Appendix M

Contract Administration Planning Process

Tasks	Related Standards
<p>1. Determine the required level of contract surveillance</p>	<p>Consider key factors that may affect the need for contract surveillance, including: The criticality (i.e., importance to the Government) of the supplies or services. Generally, contracts are designated as:</p> <ul style="list-style-type: none"> a. Critical contracts, including: <ul style="list-style-type: none"> - Contracts negotiated under unusual and compelling urgency; and - Contracts for major systems b. Other contracts for items needed to: <ul style="list-style-type: none"> - Maintain a Government or contractor production or repair line; - Preclude out-of-stock conditions; or - Meet user needs for non-stock items c. All other contracts <p>Contract requirements for reporting production progress and performance</p> <ul style="list-style-type: none"> • The contract performance schedule • The contractor’s production plan • The contractor’s history of contract performance • The contractor’s experience with the contract supplies or services • The contractor’s financial capability • Any special circumstances identified by the contracting office <p>Contracts at or below the simplified acquisition threshold should not normally require production surveillance</p>
<p>2. Determine what contract administration functions (if any) will be delegated</p>	<p>Consider:</p> <ul style="list-style-type: none"> • Agency and contracting activity policy on the delegation of contract administration • Any additional delegations authorized by prior agreement with the contract administration office (CAO), provided that: <ul style="list-style-type: none"> - The required CAO resources are available - The head of the contracting activity or designee has approved the delegation of any authority to issue orders under provisioning procedures in existing contracts or under basic ordering agreements for items and services identified in the schedule; and - The delegation does not require the CAO to undertake new or follow-on acquisitions • Prior coordination with the contract administration office (when required) • The need for special surveillance of major system acquisition • The need for specialized support services at a contractor or subcontractor facility; and • The resources available at the contract administration office (CAO)

<p>3. Delegate contract administration as applicable</p>	<p>As provided in agency procedures, delegate contract administration or specialized support services. The delegation should include:</p> <ul style="list-style-type: none"> • The name and address of the CAO designated to perform the administration (this information also must be entered in the contract) • Copies of all contracting agency regulations or directives <ul style="list-style-type: none"> - Referenced in the contract; or - Otherwise necessary for contract administration (unless previously provided) <p>A CAO or contracting office retaining contract administration, may request support from the CAO cognizant of the contractor location where performance of specific contract administration function is required. The request must:</p> <ul style="list-style-type: none"> • Be in writing • Clearly state the specific functions to be performed; and • Be accompanied by a copy of pertinent contractual and other necessary documents <p>Subcontract administration support may be requested as long as the request conforms to FAR requirements and good business practice</p>
<p>4. Develop a contract administration plan</p>	<p>The plan should be designed to facilitate effective and efficient contract administration considering:</p> <ul style="list-style-type: none"> • The required level of contract surveillance • Contract terms and conditions related to administration • Contractor performance milestones • Government performance milestones (e.g., for providing Government furnished property or responding to contractor plans and other required submission) • Contractor reporting procedures • Contract quality requirements • Name, position, and authority of contract administration team members; and • Milestones for any reports required from contract administration team members <p>Documentation of the plan should meet the requirements of the agency, activity, and good business practice</p>

<p>5. Identify qualified personnel (as authorized and necessary) to represent the Contracting Officer in administering contract requirements</p>	<p>Contracting and contract administration offices typically include a wide variety of full-time specialists who represent the Contracting Officer in contractor system reviews and other contract administration activities. These specialists may include:</p> <ul style="list-style-type: none"> • Quality Assurance Representatives (QARs) • Software specialists • Property specialists; and • Others <p>When authorized by the contract and necessary for effective and efficient contract administration, the Contracting Officer may also appoint technical representatives for specific contracts. The representatives may be known by a variety of names, including:</p> <ul style="list-style-type: none"> • Contracting Officer Representative (COR) • Contracting Officer’s Representative (COR) • Contracting Officer Technical Representative (COR); or • Technical Representative of the Contracting Officer (TRCO) <p>Technical representative designations must follow agency and activity guidelines. Generally:</p> <ul style="list-style-type: none"> • The cognizant Contracting Officer must assure that each representative possesses the necessary technical qualifications • Technical representatives must undergo training on their responsibilities and authority as a representative of the contracting Officer • The delegation must include a copy of the applicable portion of the contract and other necessary guidance • The delegation remains in effect throughout the life of the contract unless canceled or modified by the cognizant Contracting Officer
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Appendix N

General Provisions Document

Appendix N

General Provisions Document

**LEE COUNTY TRANSIT POLICIES
AND
PROCEDURES**

**GRANT-FUNDED PROCUREMENTS (500-11)
GENERAL PROVISIONS**



**3401 Metro Parkway
Fort Myers, FL 33901**

Revision Date: May 12, 2016

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LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

I. PROVISIONS APPLICABLE TO ALL CONTRACTS

A. Americans with Disabilities Act

All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

B. Application of Federal Laws Clause

Contractor understands that Federal, state and local laws, regulations, policies, and related administrative practices ("Laws") applicable to the Contract on the date the Contract was executed (the "Execution Date") may be modified from time to time, or new Laws may be established after the Execution Date. Contractor agrees that the most recent of such Laws will govern the administration of the Contract at any particular time, unless there is sufficient evidence in the Contract of a contrary intent. Such contrary intent might be evidenced by express language in the Contract, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of the Contract.

C. Access to Records and Reports

The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under the Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulation Parts 30 and 31 (48 C.F.R. 30 and 31). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submissions required for the Contract, or any Change Order or claim, and a copy of the cost summary submitted to LEE COUNTY BOARD OF COUNTY COMMISSIONERS (LCBOCC). LCBOCC, the U.S. Government, and the State Government or their authorized representatives shall have access, at all times during normal business hours, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Contractor will provide proper facilities for such access and inspection. The rights granted LCBOCC, and the government under this provision shall remain in full force and effect for the longer of: (a) three (3) years after termination of the Contract for whatever reason, or (b) the date on which all litigation, appeals, claims or exceptions related to any litigation or settlement of claims arising from the performance of the Contract are resolved or otherwise terminated. The foregoing record keeping obligations shall extend to any subcontractor performing Work valued in excess of ten thousand dollars (\$10,000.00). In addition, with respect to major capital projects, Contractor agrees to provide access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

D. Civil Rights Requirements

The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability, in accordance with the following Federal statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. Sec. 2000d) and VII (42 U.S.C. Sec. 2000e); Age Discrimination

Act of 1975, as amended, Sec. 303 (42 U.S.C. 6102); Age Discrimination Action of 1967 as amended, Sec. 4 (29 U.S.C. Sec 623); Americans with Disabilities Act of 1990, as amended, Sec. 202 (42 U.S.C. 12132), and Sec. 102 (42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. Sec. 5332); Executive Order 11246, as amended by Executive Order 11375 42 U.S.C. Sec. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration (FTA).

E. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any Contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

F. Disadvantaged Business Enterprise (DBE)

Contractor will conform to 49 C.F.R. Part 26. Lee County Transit, has established goals for the use of DBE subcontractors, and encourages the use of small business and veterans.

G. Energy Conservation

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 USC § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart C.

H. False or Fraudulent Statements or Claims – Civil and Criminal Fraud

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the

Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in which whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

I. Federal Assistance and Incorporation of FTA Terms

The procurements under the Contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Federal Transit Laws, and then current or applicable FTA Master Agreement. When so funded, the Contract shall be subject to all rules and regulations promulgated pursuant thereto, as they may be amended from time to time during the course of the Contract. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the Contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, Third Party Contracting Guidance and 2 CFR Part 200, Uniform Administrative Requirements, Cost principals, and Audit Requirements for Federal awards, as the same may be amended or superseded from time to time, 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 the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any LCBOCC requests which would cause LCBOCC to be in violation of the FTA terms and conditions.

J. Federal Changes

Contractor shall all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current FTA Master Agreement (which may be obtained at: <http://www.fta.dot.gov/grants/15072.html>) between Lee County Board of County Commissioners and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

k. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to

the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

L. No Government Obligation to the Third Parties

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

M. Termination

1. **Termination for Convenience.** LCBOCC may terminate the Contract, in whole or in part, at any time and for any reason by written notice to the Contractor when it is in the best interest of LCBOCC, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA . The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to LCBOCC to be paid to the Contractor. If the Contractor has any property in its possession belonging to LCBOCC, the Contractor will account for the same, and dispose of it in the manner LCBOCC directs.
2. **Termination for Default.** If the Contractor fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of ten (10) days after receiving such notice from LCBOCC , thereafter, LCBOCC may terminate the Contract for default and have the Work completed and the Contractor shall be liable for any resulting cost to LCBOCC . In the event of termination for default, the Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LCBOCC.
3. **Termination Due to Insufficient Funds.** If at any time during the term of the Contract the LCBOCC Governing Board makes a determination that LCBOCC has insufficient funds with which to carry out its performance and obligations under the Contract, then

LCBOCC may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LCBOCC.

4. **Termination Due to Failure to Receive a Grant or other Funding Device.** If at any time during the term of the Contract LCBOCC ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services Contracted for, then, unless otherwise directed by the LCBOCC Governing Board, LCBOCC may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LCBOCC.
5. **Damages upon Termination.** Any damages to be assessed to the Contractor as a result of a default termination or any claim by Contractor for costs resulting from a termination for convenience by LCBOCC , a termination due to insufficient funds by LCBOCC , or a termination due to a failure to receive a grant or other funding device by LCBOCC will be computed and allowable in accordance with federal regulations in effect at the time of termination.

N. Conformance with Intelligent Transportation System (ITS) National Architecture

For all respect to all Contracts involving the provision of Intelligent Transportation Systems ITS property and services the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the National ITS Architecture and Standards to the extent required by 23 USC Section 517 (d) and 23 CFR Part 655 and 940.

O. Cargo Preference (Required for Transport of materials by Ocean Vessels)

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Use of United States – Flag Vessels:

- a. The Contractor agrees 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, material, 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
- b. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding

paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LCBOCC (through the Contractor in the case of a subcontractor's bill-of-lading.)

- c. Include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

P. Recycled Products

With respect to contracts for items designated by the Environmental Protection Agency, when LCBOCC procures at least Ten Thousand Dollars (\$10,000) of such materials per year, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

Q. Program Funding

LCBOCC's performance and obligations to pay under the Contract are contingent upon the availability of various Federal, State and local funding.

R Immigration Law Affidavit Certification (E-Verify Requirement)

Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements. Vendors/bidders are required to enroll in the E-Verify program and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Exceptions to the program: Commodity based procurement where no services are provided.

II. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS

A. Suspension and Debarment

The Contract is a "covered transaction" for purposes of 49 C.F.R. Part 29. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into. Contractor certifies as follows:

1. The certification in this clause is a material representation of fact relied upon by LCBOCC.

2. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to LCBOCC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
3. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while its offer is valid and throughout the period of any contract that may arise from its offer.
4. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

III. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS BY STATUTE (\$100,000)

A. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by the U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20 to the extent consistent with 31 U.S.C. §1352, as amended, and other applicable federal laws, regulations, and guidance prohibiting the use of Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352, as amended. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to LCBOCC.

B. Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to LCBOCC and understands and agrees that LCBOCC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to LCBOCC and understands and agrees that LCBOCC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

D. Contract Work Hours and Safety Standards

The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of \$100,000, involving employment of laborers or mechanics, including watchmen and guards, provided, however, that these provisions shall not apply to contracts for

transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

1. **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (3) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

IV. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD - ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)

A. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA - funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$150,000). Separate requirements for rolling stock are set out at U.S.C. 5323(j) (C) and 49 CFR 661.11. Rolling stock must be

assembled in the United States and have a 60 percent domestic content. Contractor must submit to LCBOCC a Buy America certification with respect to all FTA funded contracts, except those subject to a general waiver. This requirement does not apply to lower tier subcontractors.

B. Resolution of Disputes, Breaches, or Other Litigation

Disputes – Disputes arising in the Performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the Procurement Director of LCBOCC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnished a written appeal to the Procurement Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence of its position. The decision of the Procurement Director of LCBOCC shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by LCBOCC, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between LCBOCC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Lee County, Florida.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder 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 LCBOCC or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

C. Bonding Requirements (Non-Construction)

Contractor may be required to obtain performance and payment bonds when necessary to protect LCBOCC's interest.

1. The following situation may warrant a performance bond:
 - a. LCBOCC property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
 - b. Contractor sells assets to or merges with another concern, and LCBOCC, after recognizing the later concern as the successor in interest, desires assurance that it is financially capable.
 - c. Substantial progress payments are made before delivery of end items starts.
 - d. Contracts are for dismantling, demolition, or removal of improvements.

2. When determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
 - a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless LCBOCC determines that a lesser amount would be adequate for the protection of LCBOCC.
 - b. LCBOCC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increased contract price. LCBOCC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when performance bond is required, and if the use of payment bond is in the interest of LCBOCC.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bond as follows:
 - a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and half million if the contract price is more than \$5 million.

V. PROVISIONS APPLICABLE TO ROLLING STOCK PURCHASE CONTRACTS

A. Bus Testing

Contractor agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to LCBOCC at a point in the procurement process specified by LCBOCC, which will be before LCBOCC's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph (a) 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. This must be provided to LCBOCC before LCBOCC, and A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA'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" (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.

5. Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LCBOCC.

B. Pre-award and Post Delivery Audit Requirements

Contractor agrees to comply with 49 U.S.C. 5323(1) and FTA's implementation regulation at 49 C.F.R. Part 663 and to submit the following certifications: **

1. **Buy America Requirements** - The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America requirements. If the Contractor certifies compliance with the Buy America requirements, it shall submit documentation which lists (i) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and (ii) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. **Solicitation Specification Requirements** - The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. **Federal Motor Vehicle Safety Standards ("FMVSS")** - The Contractor shall submit (i) manufacturer's FMVSS self certification sticker information that the vehicle complies with relevant FMVSS or (ii) manufacturer's certified statement that the Contracted buses will not be subject to FMVSS regulations.

** Buy America requirements are applicable to rolling stock procurements exceeding \$150,000.

VI. PROVISIONS APPLICABLE TO CONSTRUCTION PROJECTS

A. Davis-Bacon Act and Copeland Anti-Kickback Acts

With respect to all construction contracts and subcontracts over two thousand dollars (\$2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

1. **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also,

regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the

classification under the Contract from the first day on which Work is performed in the classification.

- 2. Withholding** - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under the Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LCBOCC may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 3. Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LCBOCC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

- 4. Apprentices and trainees** – (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work

actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(II) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

5. **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.
6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit

Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

7. **Contract termination: debarment.** A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.
8. **Compliance with Davis - Bacon and Related Act requirements.** All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility** – (i) By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

B. Bonding Requirements for Construction Contracts Exceeding One Hundred FIFTY Thousand (\$150,000)

Bid Bond Requirements (Construction).

1. Bid security - A Bid Bond must be issued by a fully qualified surety company acceptable to LCBOCC and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.
2. Rights Reserved – In submitting the Bid, it is understood and agreed by bidder that the right is reserved by LCBOCC to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of LCBOCC. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of LCBOCC, shall refuse or be unable to enter into the contract, as LCBOCC provided above, or refuse or be unable to furnish adequate and acceptable Performance Bond and labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, bidder shall forfeit the bid security to the extent of LCBOCC's damages occasioned by such withdrawal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check shall prove inadequate to fully recompense LCBOCC for the damages occasioned by default, then such bidder agrees to indemnify LCBOCC and pay over to LCBOCC the difference between the bid security and LCBOCC's total damages, so as to make LCBOCC whole.

Performance and Payment Bonding Requirements (Construction).

The Contractor shall be required to obtain performance and payment bonds as follows:

1. Performance bonds
 - a. The penal amount of performance bonds shall be 100 percent of the original Contract price, unless LCBOCC determines that a lesser amount would be adequate for the protection of LCBOCC.
 - b. LCBOCC may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. LCBOCC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
2. Payment bonds
 - a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and half million if the contract price is more than \$5 million.
 - b. If the original contract price is \$5 million or less, LCBOCC may require additional protection as required by subparagraph 1 of the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. LCBOCC shall determine the amount of the advance payment bond necessary to protect LCBOCC.

Warranty of the Work

1. The Contractor warrants to LCBOCC, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by LCBOCC, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by LCBOCC and shall replace or repair any defective materials or

equipment or faulty workmanship during the period of the guarantee at no cost to LCBOCC.

C. Seismic Safety Requirements for the Construction of New Buildings or Addition to Existing Buildings

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

VII. PROVISIONS APPLICABLE TO OPERATIONS/MANAGEMENT CONTRACTS

A. Charter Service Operations

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve charter service operations.

B. School Bus Requirements

Contractor agrees to comply with 69 U.S.C. 5323(f) and 49 C.F.R. Part 605, which provide that recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, Contractor agrees not to use federally funded equipment, vehicles, or facilities. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve school bus operations.

C. Transit Employee Protective Agreements Provisions

With respect to Contracts for "transit operations" as classified by the FTA, and performed by employees of a Contractor recognized by FTA to be a transit operator, the Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- 1. General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations Work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department

Of Labor to FTA applicable to LCBOCC's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department Of Labor letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this Section.

2. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities** - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for LCBOCC , the Contractor agrees to carry out the Work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. Department of Labor's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with LCBOCC. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. Department of Labor letter.
3. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto.
4. **Requirements Apply to Subcontracts.** The Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with assistance provided by FTA.

D. Drug and Alcohol Testing

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 40 and 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or LCBOCC , to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 15th of each year and to submit the Management Information System (MIS) reports before December 31st of each year to LEE COUNTY, LEE COUNTY TRANSIT DIRECTOR, 3401 Metro Parkway, Fort Myers, FL 33901. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

VIII. PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT CONTRACTS

A. Patent and Rights in Data

The following requirements apply to each Contract involving experimental, developmental or research work:

1. Patent Rights

- a. General – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this section applies and that inventions, improvement, or discovery is patentable under the laws of the United States of America or any foreign county, LCBOCC and Contractor agree to take action necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- b. Unless the Federal Government later make a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individually), LCBOCC and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- c. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

2. Rights in Data

- a. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- b. The following restrictions apply to all subject data first produced in the performance of the Contract to which this Section applies:
 - i. Except for its own internal use, LCBOCC or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may LCBOCC or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this

restriction on publication, however, does not apply to any contract with an academic institution.

- ii. In accordance with 49 CFR § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (b)(ii)(A) and (b)(ii)(B) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- iii. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in that work. Therefore, unless FTA determines otherwise, LCBOCC and the Contractor performing experimental, developmental, or research Work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for LCBOCC or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- iv. Unless prohibited by state law, upon request by the Federal Government, LCBOCC, and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by LCBOCC or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither LCBOCC nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- v. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of

any license or other right otherwise granted to the Federal Government under any patent.

- vi. Data developed by LCBOCC or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract to which this Section applies is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause , provided that LCBOCC or Contractor identifies that data in writing at the time of delivery of the Contract work.
 - vii. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.
- c. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), LCBOCC and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- d. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

Required Federal Contract Clauses

Required Federal Contract Clauses	Rolling Stock	Operating	Construction	Consultant Services	Research	Goods	Professional Services
Fly America	x	x	x	x	x	x	x
ADA	x	x	x	x	x	x	x
Buy America	>\$150,000		>\$150,000			>\$150,000	
Charter Bus and School Bus		x					
Cargo Preference - Required for transport of materials by ocean vessels	x		x			x	
Seismic Safety			New Bldg/additions				
Energy Conservation	x	x	x	x	x	x	x
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Bus Testing	x	Turnkey					
Pre-Award and Post delivery Audit	x	Turnkey					
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Access to Records and Reports	x	x	x	x	x	x	x
Federal Changes	x	x	x	x	x	x	x
Bonding			>\$150,000				
Recycled products		>\$10,000	>\$10,000				
Davis-Bacon & Copeland Anti-Kickback Act			>\$2,000				
Contract Work hours and Safety Standards Act	>\$100,000		>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
No Federal Government Obligation to Third parties	x	x	x	x	x	x	x
Program Fraud and False or Fraudulent Statements and Related Acts	x	x	x	x	x	x	x
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Government-wide Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Privacy Act	x	x	x	x	x	x	x
Civil Rights	x	x	x	x	x	x	x
Breach and Dispute Resolution	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Patent and Rights in Data					x		
Transit Employee protective Agreements		x					
Disadvantaged Business Enterprise (DBE)	x	x	x	x	x	x	x
Intelligent Transportation Systems - National Architecture	x	x	x	x	x	x	x
Incorporation of Federal Transit Administration Terms	x	x	x	x	x	x	x
Drug and Alcohol Testing		x					