

Lee County Transit Procurement Manual

for

FTA Funded Procurements



Lee County Transit Department
3401 Metro Parkway
Fort Myers, FL 33901

Updated: April 2024



POLICY 500-12: LeeTran Procurement Manual

Policy Effective Date: May 6, 2022

Policy Revised: September 20, 2012, March 3, 2015, April 24, 2015, December 15, 2015, December 1, 2016, May 25, 2017, June 19, 2020, May 6, 2022.

LeeTran Procurement Manual Revised: May 2015, December 2016, May 2017, November 2023, October 2024.

Purpose

Lee County Department of Transit's (LeeTran) Procurement Manual has been developed to ensure that all Federal and state Procurement Requirements are met when using Federal and state funds for the procurement of goods, Services, materials, and Equipment.

Procedure:

All elements of Lee Tran's Procurement Manual must be adhered to when using grant funds from a Federal or state agency (i.e., Federal Transit Administration (FTA) and/or Florida Department of Transportation (FDOT)). The Lee Tran Procurement Manual sets forth guidelines when using Federal and state funds for the procurement of goods, Services, materials, and Equipment to ensure compliance.

Federal Updates:

Buy America Preference for Infrastructure – On November 15, 2021, the Infrastructure Investment and Jobs Act, which includes the Build America, Buy America Act was signed into law. The Act requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and Construction materials used in the project are produced in the United States.” (Pub. L. No. 117-58 & Pub. L. No. 117-58, §§ 70901-52)

Micro-Purchase and Simplified Acquisition Thresholds for Financial Assistance – On June 20, 2018, OMB issued memorandum OM-18-18, “Implementing Statutory Changes to the Micro- Purchase and the Simplified Acquisition Thresholds for Financial Assistance.” In accordance with recent statutory changes set forth in the National Defense Authorization Acts (NDAA) for fiscal years 2017 and 2018, this memorandum raises the threshold for micro-purchases under Federal financial assistance Awards to \$10,000 and raises the threshold for simplified acquisitions to \$250,000 for all recipients. The increases for micro-purchases and the simplified acquisition threshold apply to FTA-funded procurements made on or after June 20, 2018. The increase in the simplified acquisition threshold to \$250,000 does not apply for Buy America purposes, as the small purchase amount is established at \$150,000 in FTA’s statute at 49 U.S.C. 5323(j)(13) and is no longer tied to the simplified acquisition threshold.

FTA Circular 4220.1F was updated in fiscal year (FY) 2017 and incorporated the provisions of the Super Circular, 2 CFR Part 200.

The 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 more than \$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 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. the cost of the components and subcomponents produced in the U.S. must be:

- more than 60 percent for FY2016 and FY2017
- more than 65 percent for FY2018 and FY2019
- more than 70 percent for FY2020 and beyond

Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-Award and post-delivery Buy America audit provisions set forth in 49 U.S.C. § 5323(m) and 49 CFR part 663.

State Updates: 2019 Procurement Guidance for Transit Agencies

Procurements should be in accordance with Chapter 287 of the Florida Statutes (F.S.), Chapter 60A of the Florida Administrative Code (F.A.C.) and the Federal Transit Administration (FTA) 2 CFR 200-318-327 and C 4220.1F. Additionally, geographic preferences are prohibited when procurements involve federal funds (reference: 49 CFR 18.36 (c)(1)(2) and FTA C 4220.1F, Ch. VI, Section 2.a(4)(g)).

In 2022 and 2023 Local Procurement Ordinances were updated No. 22-06 and 23-21.

The LeeTran Procurement Manual is attached to Policy 500-12 and is available online. LeeTran’s Procurement Manual and other procurement resources are available on the Lee County website at: <https://www.leegov.com/leetran/about-leetran/doing-business-with-us>

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SECTION 1: PURPOSE AND INTRODUCTION

The purpose of this procurement 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 (LeeTran). LeeTran is the designated recipient of Federal funds for public transportation in the Lee County urbanized area. Procurements made by LeeTran and funded in whole or in part by Federal funds must comply with Federal requirements. This manual is to specify policy for all LeeTran staff, sub-grantees, and third-party Contractors involved in the procurement process.

SECTION 2: DEFINITIONS

For the purposes of this manual and any documents pertaining to the use of this manual (e.g., Contracts, Purchase Orders, etc.), the following terms, phrases, words, and their derivations shall have the meaning given herein, unless otherwise specifically defined in any specific document:

Addendum. A written change, addition, alteration, correction, or revision to a Solicitation. An Addendum is not to be confused with a Contract "Amendment."

Advertisement. A public announcement, as required by local law, announcing a Competitive Procurement and seeking Responses from interested Vendors.

Amendment. Any modification to the provisions of any executed Contract accomplished by mutual written agreement of the parties to the Contract.

Appropriation. Legal authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. An Appropriation is usually limited in amount and also, to the time when it may be expended.

Award. The acceptance, by the County, of the successful Offeror's Bid, Proposal or Quotation.

Bid. A formal written price offer by a Bidder offering to furnish specific Commodities, Services or Construction to the County in Response to an Invitation to Bid.

Bid Bond. An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Bidder will not withdraw the Bid. The Bidder shall furnish a Bid Bond in the amount required by the Solicitation, and if the Bidder is Awarded, the Bidder must accept the County's Purchase at the price Bid and under the terms described by the Solicitation, including the County's Contract terms, if required by the County, or else the surety must pay the County the sum provided for in the Solicitation.

Bidder. Any entity submitting a Bid in Response to an Invitation to Bid issued by the County.

Board. The Board of County Commissioners, the legislative body of the County of Lee, Florida.

Brand Name or Approved Alternate. A Specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet the County requirements and that provide for the submission of equivalent Commodities.

Business. Any corporation, partnership, individual, sole proprietorship, joint venture, joint stock



company, or any other private legal entity engaged in the commercial provision of Commodities, Services or Construction.

CCNA Thresholds. The monetary threshold in Section 287.017, Florida Statutes, category five, for basic Construction cost, and in Section 287.017, Florida Statutes, category two, for planning or study activities.

Change Order. A written order amending the scope, price, time of, or correcting errors, omissions, or discrepancies in, a Contract or Purchase Order, which is signed by the Vendor and approved in accordance with this Ordinance but does not include a Field Directive Change Order. This term includes County Project Modification (CPM).

Commodity. Anything that can be purchased other than Services or Real Property, including Equipment. Objects that can satisfy people's wants, goods.

Competitive Procurement. An open and competitive process for the Procurement of Commodities and/or Services, including, but not limited to, Invitations to Bid, Invitations to Negotiate and Requests for Proposal.

Cone of Silence. The prohibition of any communication between a Vendor and a County officer, employee, or agent regarding a pending Competitive Procurement, except for such communications with the County's designated representative noted in the Competitive Procurement documents, or at a duly noticed Pre-Proposal Conference or oral presentation.

Construction. The process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvements of any kind to any Real Property including roadways, utilities, and facility site work. Electrical projects are not considered Construction.

Construction Manager at Risk. A managing general Contractor who is Procured to provide advice on various design and Construction alternatives and scheduling during the design phase of a public Construction project, and then takes on the financial obligation for Construction of the project for a Guaranteed Maximum Price.

Consultants' Competitive Negotiation Act (CCNA) Professional Services. Services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper and any other professions covered by Section 287.055, Florida Statutes, in connection with his or her professional employment or practice.

Continuing Contract. For CCNA Professional Services, a Contract defined in Section 287.055(2)(9), Florida Statutes.

Contract. An agreement for the Purchase or disposal of Commodities, Services, or Real Property, which is signed by the Vendor and approved and executed by the County.

Contractor. A person or company that undertakes a contract to provide materials or labor to perform a service or do a job.

Cooperative Procurement. Competitive Procurement conducted by, or on behalf of, more than one public entity.

Cost Analysis. The recipient must obtain a Cost Analysis when a Price Analysis will not provide sufficient information to determine the reasonableness of the Contract cost. The recipient must obtain a Cost Analysis when the Offeror submits elements (that is, labor hours, overhead,



materials, and so forth) of the estimated cost, (such as professional consulting and A&E Contracts, and so forth). The recipient is also expected to obtain a Cost Analysis when price competition is inadequate, when only a Sole Source is available, even if the procurement is a Contract modification, or in the event of a Change Order.

County. The County of Lee, Florida.

County Manager. The chief executive of the County or that person's Designee.

Debarment. Action by the County to prohibit a Vendor from submitting Bids, Proposals, Quotations, or Responses to any Competitive Procurement, or otherwise conducting business with the County until such time as the Vendor is reinstated by the County.

Department. Any of the various operating departments and divisions of the County under the control of the County Manager.

Department Director. The County employee in charge of a department, or that person's Designee.

Department Manager. Is responsible for the operations and employees of a specific business unit within an organization.

Design-Build Contract. A single Contract with a Design-Build Vendor for the design and Construction of a public Construction project.

Design Criteria Package. Concise, performance-orientated drawings or Specifications for a public Construction project, the purpose of which is to provide sufficient information to permit Design-Build Vendors to prepare a Response to a Competitive Procurement for Design-Build Services.

Designee. The duly authorized representative of a person.

Direct Voucher. A document used by the County department authorizing a payment to be processed without the requirement of a Contract or Purchase Order being in place.

Emergency. Any occurrence or threat thereof whether natural, manmade, or technological, in war or in peace, which results or may result in substantial injury or harm to public health, safety, or welfare; substantial damage to or loss of property; or those situations where the operation of an essential Department would be seriously impaired if immediate action was not taken.

Emergency Procurement. An expeditious Purchase of Commodities, Services or Construction to address an Emergency.

Equipment. Tools, machinery, devices, and other major items that are not expendable except through depreciation or wear and tear and which, although they may be fixed or positioned in prescribed places, do not lose their identity, or become integral parts of other items or installations.

Field Directive Change Order. A written order making a minor modification to a Contract or Purchase Order, which is signed by the Vendor and approved by the County. A modification is minor if it does not change, (i) the scope of the project, (ii) the amount of the Purchase or compensation, or (iii) the time for execution or completion of the Contract.



Fiscal Manager. Responsible for ensuring that an organization operates within its budget and maintains fiscal stability.

Guaranteed Maximum Price (GMP). The total maximum price of a public Construction project provided by a Construction Manager at Risk at the conclusion of the design and planning phase of the project. The Guaranteed Maximum Price shall include all direct Construction costs, management Services, the Construction Manager at Risk's fee, owner allowances, and contingencies.

Immediate Family. Any parent, spouse, child, sibling, father- or mother-in-law, or son- or daughter-in-law of an individual.

Independent Cost Estimate (ICE). The Independent Cost Estimate is a tool to assist in determining the reasonableness or unreasonableness of the Bid or Proposal being evaluated and is required for all procurements regardless of dollar amount. FTA Circular 4220.1F, Ch. VI, Para. 6, advises grantees to "perform a cost or Price Analysis in connection with every procurement action, including Contract modifications . . . the starting point for these cost/price analyses is an Independent Cost Estimate which is made before receiving Bids or Proposals."

Informal Procurement. The process of obtaining Commodities and Services through petty cash, Purchasing Cards, or written Quotations from Vendors without formal Advertising and receipt of competitive Responses.

Invitation to Bid (ITB). A written Solicitation used for Competitive Procurement of Commodities, Services or Construction when Specifications are available, and the selection will be based upon the lowest Responsive Bid submitted by a Responsible Vendor.

Invitation to Negotiate. A written Solicitation used for the Competitive Procurement of Commodities, Services or Construction when the County is seeking to select one or more Businesses with which to commence negotiations.

Lease. A Contract by which the County (lessee) enters a Contract with a second party (lessor) for possession and use of property (Equipment) for a specified period of time at a predetermined cost. There are two primary Lease categories: Operating and Financial.

Local Vendor. Any Vendor whose physical Business address, in the sole opinion of the County, is located within the boundaries of Lee County, Florida; at least two (2) fulltime employees in Lee County; and a Local Business Tax Receipt issued by Lee County at least one year prior to Solicitation opening.

Material Deviation. Any non-conformity or variance from the Procurement requirements or a mistake in a Bid or Proposal that gives one Offeror a substantial competitive advantage over other Offerors in a Competitive Procurement.

Minor Irregularity. A minor defect or variation in a Bid or Proposal from the exact requirements of the Solicitation that does not affect price or other mandatory requirements and does not give one Offeror a substantial competitive advantage. A defect that is easily correctable. Generally, a matter of form rather than substance.

Minority Business Enterprise. A Business as defined and certified in accordance with Section 287.0943, Florida Statutes.



Negotiation Team. A group of individuals established by the County for the purpose of conducting negotiations as part of a Competitive Procurement.

Notice of Intended Decision. The written notice by the Procurement Management Department to notify Vendors of the County's intent to Award.

Notice of Intent to Protest. The written notice by a Vendor of its intent to protest the Notice of Intended Decision to a Competitive Procurement.

Notice to Proceed. When required in the terms of a Contract, a written notice given by the Procurement Management Department establishing the original date on which the Contract times will commence. The Vendor shall begin to perform his/her obligation according to the Contract documents on the date(s) provided in the Notice to Proceed. At the County's discretion, issuance of a Purchase Order may serve as the Notice to Proceed.

Offeror. A person or entity who submits an offer in Response to a County Solicitation, including Bidders and Proposers.

Payment Bond. The approved form of security furnished by a Vendor and its surety that assures payments, as required by law, to all persons supplying Commodities, Services or Construction for the completion of work under the Vendor's Contract.

Performance Bond. The approved form of security furnished by a Vendor and its surety as a guaranty that the Vendor will fully perform in accordance with the terms of the Vendor's Contract.

Personal Property. Property consisting of movable articles that are either tangible, such as furniture or computers, or intangible, such as stocks, bonds, licenses.

Piggybacking. The use of another federal, State, or local government Procured Contract.

Posting. An act whereby the County places a listing that indicates the County's public Procurement-related meetings, recommendations for Awards, and Solicitations for Procurements through a computer system or on a bulletin Board in a designated location, and/or on the County website.

Pre-Proposal Conference/Pre-Bid Conference. A meeting held with prospective Vendors prior to Solicitation of, or the date of receipt of, Bids or Proposals to recognize state of the art limits, technical aspects, Specifications, and standards relative to the subject, and to elicit expertise and Vendors' interest in pursuing the task.

Price Analysis. If the recipient determines that competition was adequate, a Price Analysis, rather than a Cost Analysis, is required to determine the reasonableness of the proposed Contract price. One method to record this Price Analysis is through the use of a preprinted form on which a Contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and Services.

Procurement Protest. A formal, written document submitted by an interested party to challenge the Notice of Intended Decision to a Competitive Procurement.



Project Manager. The person in overall charge of the planning and execution of a particular project.

Professional Services. The technical, and/or unique functions performed by independent Vendors whose Business is the rendering of such Services. This includes accountants, appraisers, attorneys, auditors, medicine and the medical arts, management, and systems consultants, research, the arts, and other professionals as designated by the Procurement Management Department but does not include CCNA Professional Services.

Proposal. An executed formal document submitted by a Proposer to the County stating the Commodities and/or Services offered to satisfy the need as requested in the Solicitation documents.

Proposer. A person or entity who submits a Proposal in Response to a Request for Proposal.

Purchase/Procurement. Buying, procuring, renting, leasing, or otherwise acquiring any Commodities, Services or Real Property required by the County for public purposes.

Purchase Order. A document generated by the County documenting a written sales agreement between the County and a Vendor detailing the exact Commodities, CCNA Professional Services, Professional Services, and/or Services rendered from a single Vendor. Purchasing Cards. County issued credit cards, also referred to as "P-Cards."

Qualifying Project. For purposes of the Public-Private Partnership process, this means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
2. An improvement, including Equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the County, only those projects that the Board designates as Qualifying Projects pursuant to this section.

Quotation. Any written informal offer by a Vendor to the County to furnish specific Commodities, Services or Construction at a stated price.

Real Property. Property consisting of land and all rights, privileges, or improvements belonging to and passing to lands, including, but not limited to buildings, crops, or mineral rights.

Request for Proposal (RFP). A written Solicitation used for Competitive Procurement of Proposals for Commodities and/or Services for which the scope of work, Specifications, or Contractual terms and conditions cannot always be well defined. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to Award.



Request for Quotation. A written request used for Informal Procurement to solicit prices for specific, defined Commodities, Services or Construction that may or may not require public Advertisement.

Response. An offer, Bid, Proposal or Quotation submitted to the County in Response to a Competitive Procurement or an Informal Procurement.

Responsible Vendor. A Vendor submitting a Response who has the capability in all respects to perform fully the Contract requirements and the experience, integrity, reliability, capacity, facilities, Equipment, credit, sufficient qualified personnel, and a record of timely and acceptable past performance to assure good faith performance.

Responsive Bid/Proposal. A Response that substantially conforms in all material respects to the requirements and criteria set forth in the Competitive Procurement.

Revenue-Generating Contract. A Contract whose primary purpose is to generate revenue or to create a business opportunity for the County.

Services. The furnishing of labor, time, or effort by a Vendor, not involving the delivery of a specific product other than that which is not defined as supplies, and which is merely incidental to the required performance. This term includes CCNA Professional Services, Professional Services, and Construction Services, but does not include employment agreements or collective bargaining agreements.

Single Source. A Procurement decision whereby purchases are directed to one source because of standardization, warranty considerations, economic feasibility, or other factors, even though other competitive sources may be available.

Sole Source. A Procurement decision whereby purchases are directed to one source because the Commodity or Service that can be legally procured from only one Vendor. This is usually due to the Vendor owning patents and/or copyrights. A requirement for a particular proprietary Commodity does not justify a Sole Source Procurement if there is more than one potential Vendor for that Commodity. Use of Brand Names or Approved Alternate does not constitute a Sole Source.

Solicitation. An Invitation to Bid, Request for Proposal, Invitation to Negotiate, Request for Quotation or any document issued by the County for the purpose of obtaining Bids, Proposals, or other offers from Businesses for the purposes of Procurement.

Specifications/Statement of Work. A description of the physical or functional characteristics of the nature of Commodity or Service needed. It may include a description of any requirement for inspection, testing, recycled or degradable material content, or preparing the delivery of a Commodity, or completion of a necessary Service.

Splitting. The illegal act of dividing a single Procurement into two or more Purchases to the same Vendor, or multiple Vendors, within a specific period to acquire Commodities, Services or Construction over the limitations and requirements set forth herein, and/or to avoid compliance with/adherence to the requirements set forth herein.

Subcontractor. A contract between a party to an original contract and a third party.

Suspension. A Vendor under Suspension is prohibited from submitting Bids, Proposals,



Quotations, or other Responses to any Informal Procurement or Competitive Procurement, or otherwise conducting business with the County for a definite period.

Tie. When two or more Responses are equal with respect to price, and it appears the quality and Service offered by the Vendors are otherwise comparable or are equal with respect to final points, as applicable.

Transit Vehicle Manufacturers (TVM). Only those Transit Vehicle Manufacturers listed on FTA's eligible TVMs 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.

Unsolicited Proposal. A plan for a Qualifying Project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined, and which is received from a private entity without being solicited by a County Competitive Procurement.

Value Engineering. A systematic method for evaluating products, processes, and projects to maximize their value.

Vendor. A person or entity that provides, or desires to provide, Commodities and/or Services to the County

Work Order. A written order authorizing and directing the performance of a certain task and issued to the person who is to direct the work. Among the items of information shown on the order are the nature and location of the job, Specifications, or the work to be performed, and a job number which is referred to in reporting the amount of labor, materials and Equipment used. This term includes Supplemental Task Authorization (STA), County Project Authorization (CPA), and Task Orders.

SECTION 3: GENERAL PROCUREMENT POLICY STANDARDS

LeeTran staff includes the Lee County Transit Director, the Fiscal Manager and staff, and the Department Managers. These individuals work together to meet the procurement compliance responsibilities.

3.1 Responsibilities

LeeTran staff are responsible for ensuring that procurement procedures comply with applicable Federal, State, and local laws and regulations. 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.

(<https://www.leegov.com/leetran/Documents/LEE%20COUNTY%20TRANSIT%20GENERAL%20PROVISIONS%20DOCUMENT.pdf>)

LeeTran staff, sub-grantees, and Contractors 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. (https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new?topic_id=USDOTFTA_22) As the recipient, LeeTran staff is responsible for routinely monitoring procurements of the sub-grantees and Vendors for compliance and to ensure that each sub-grantee is aware of and complies with all applicable Federal statutory and regulatory requirements.

3.2 Written Standards of Conduct

LeeTran staff will maintain written standards of conduct governing the performance of its



employees engaged in the Award and administration of Contracts.

- ✓ **Personal Conflict of Interest** – No employee, officer, agent, Immediate Family member, or Board member of Lee County 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.
- ✓ **Gifts** – No employee, officer, agent, or Board member of Lee County will solicit or accept gifts, gratuities, favors, or anything of monetary value from Vendors, Contractors, potential Contractors, or parties to Subcontracts.
- ✓ **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 or by Vendors, Contractors, Subcontractors, or sub-grantees or their agents.

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

3.3 Federal Cost Principles

In accordance with the Common Grant Rule and 2 CFR Part 200, project costs must be *allowable, allocable, reasonable, and consistent*. Though these principles may change depending on the project, they must be used to determine whether the costs are appropriate for a sponsored project.

SECTION 4: MANAGEMENT AND OVERSIGHT OF SUB-GRANTEES

4.1 Responsibilities

As the designated recipient, LeeTran staff is responsible for routinely monitoring procurements of 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 (TrAMS).
- Other such grant administrative actions as necessary to ensure project completion in accordance with all applicable federal rules, regulations, and guidance.



4.2 Annual Monitoring

As the designated recipient of FTA Grant 5307 funds, LeeTran 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 LeeTran 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.

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

LeeTran'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.

LeeTran 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 5: BEST PRACTICES

5.1 Ensuring Most Efficient and Economic Purchase

Proposed procurements must be reviewed by LeeTran staff to avoid purchase of unnecessary or duplicative items. 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.

5.2 Ensuring Environmental Compliance and Energy Efficiency

LeeTran will comply with applicable environmental requirements and implement them as necessary through third-party Contracts. In addition, LeeTran 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:

- Environmental mitigation

- 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.
- Parks, recreation area, wildlife, and waterflow refuges and historic sites
- Recycled products
- Other Federal environmental protection requirements
- Energy conservation

5.3 Intergovernmental Procurement Agreements

LeeTran staff will use available state and local intergovernmental agreements for procurement or use of common supplies, Equipment, and Services. When doing so, LeeTran staff must ensure that all federal requirements, required clauses, and certifications (including BABA and 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.

LeeTran staff will jointly procure supplies, Equipment, and Services with other grantees. When doing so, LeeTran 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.

FTA has determined that grantees may utilize cooperative purchasing organizations that have minimum and maximum quantities and have the required federal clauses and certifications. Grantees may also utilize their State GSA type Contracts but must add federal clauses to those Contracts with the first Purchase Order issued by the grantee. Grantees may also use joint procurements with other grantees where the advertised and Contracted quantities represent the needs of the grantee organizations involved, and the Contracts otherwise comply with FTA Circular 4220.1F.

LeeTran 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.) Effective October 1, 2015, section 3019 of, the FAST Act permits grantees to purchase rolling stock and related Equipment from another state's schedule. If LeeTran piggybacks on another grantee's procurement Contract for purchasing in-service revenue vehicles, LeeTran may rely on the pre-Award audit completed prior to the original Contract; however, LeeTran must review the audit and prepare required certifications and clauses as needed.

"Tag-ons" are not permitted and 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.

5.4 Use of Excess or Surplus Federal Property

LeeTran 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.

5.5 Use of Value Engineering in Construction Contracts

Value Engineering is encouraged but not mandatory - Lee County will work with an Awarded Contractor who will make recommendations with respect to the selection of systems and materials and cost reducing alternatives (i.e., value engineering and life cycle Cost Analysis) including assistance to the Project Architect-Engineer and Lee County in evaluating alternative comparisons versus long-term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the PROJECT. The Contractor will furnish pertinent information as to the availability of materials and labor that will be required. The Contractor will submit to Lee County, Permitting Authority and Project Architect-Engineer such comments as



may be appropriate concerning Construction feasibility and practicality (i.e., constructability analysis). The Contractor will call to Lee County's and the Project Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents.

5.6 Metric Conversions

LeeTran 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 6 – GENERAL REQUIREMENTS

6.1 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:

- Unreasonable requirements placed on companies for them to qualify to do Business. Unnecessary experience and excessive bonding requirements.
- Non-competitive pricing practices between firms or between affiliated companies.
- Non-competitive Awards to any person or firm on retainer Contracts.
- 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.
- Specifying only a "brand name" product instead of allowing an "equal" product to be offered.
- Taking any arbitrary action in the procurement process.

6.2 Prohibition against Geographic Preferences

LeeTran 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.

6.3 Written Procurement Selection Procedures

LeeTran 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 the statutory required number of 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. (See Appendix B)

At a minimum, these records will include:

- Appendix B – Procurement Summary
- Statement of Work from Project Manager
- Appendix C – Procurement Decision Matrix
- Appendix D – ICE
- Appendix E – Fair and Responsible
- Appendix F – Contract Clause Matrix



- Appendix H – Responsibility Determination
- Appendix K – Price Analysis
- Appendix N – General Provision Document

6.4 Disadvantaged Business Enterprises (DBE)

U.S. Department of Transportation's (USDOT) DBE Program seeks to ensure nondiscrimination in the Award and administration of USDOT-assisted Contracts in the Department's highway, transit, and airport financial assistance programs and to create a level playing field on which DBEs can compete fairly for USDOT-assisted Contracts. The FTA Office of Civil Rights is responsible for monitoring FTA recipients' DBE programs and ensuring their compliance with USDOT's DBE regulations found at 49 CFR Part 26.

Lee County Transit (LeeTran) DBE Goals as current and updated every three (3) years:
<https://www.leegov.com/leetran/about- LeeTran/doing-Business-with-us>.

It is LeeTran's policy to:

1. Ensure nondiscrimination in the Award and administration of USDOT-assisted Contracts.
2. Create a level playing field on which DBE's can compete fairly for USDOT-assisted Contracts.
3. Ensure that LeeTran's DBE program is narrowly tailored in accordance with applicable law.
4. Help remove barriers to the participation of DBE's.
5. Promote the use of DBEs in all types of federally assisted contacts and procurement activities.
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
7. Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.
8. Ensure that TVMs are eligible to Bid – TVMs are listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of Solicitation.
(<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>)

6.5 Buy America

Buy America regulations require that all steel, iron, and manufactured products used in projects 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 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 LeeTran 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 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, LeeTran will include in its Bid or Request for Proposal an appropriate notice of the Buy America provision. Such specifications will 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.

LeeTran 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. LeeTran may, however, obtain signed Buy America certifications before buying off state GSA-type Contracts to make them eligible for Federal funding. LeeTran 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.

6.5.1 Buy America – Rolling Stock

As provided for in the 2017 Fixing America's Surface Transportation (FAST) Act, as of January 2020, 70% of rolling stock components procured with FTA funds must be U.S.-made. Final assembly must also take place in the United States.

(<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/buy->

[America/58191/buy-america-handbook-rpt0106.pdf\)](https://www.leetran.com/America/58191/buy-america-handbook-rpt0106.pdf)

- Pre-Award Buy America Certification:

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre- Award audit under [49 CFR part 663] is complete before the recipient enters into a formal Contract for the purchase of such rolling stock. (49 CFR § 663.21)

The recipient must keep on file a Pre-Award Buy America Certification that certifies that:

1. There is a letter from FTA granting a waiver from the Buy America requirements for the vehicle procurement, or
2. The recipient is satisfied that the rolling stock to be purchased meets the Buy America requirements 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:
 - a. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - b. 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.

- Post-Award Buy America Certification:

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, or before the rolling stock is put into service, whichever is first. 49 CFR § 663.31 and § 663.5(b).

A recipient's Post-Delivery Buy America Certification certifies either that the recipient:

1. Obtained a letter from FTA granting a waiver from Buy America requirements for the vehicle procurement; or
2. Confirmed, based on an audit prepared by someone other than the manufacturer or the manufacturer's agent, that:
 - a. The vehicle(s) contain components that meet or exceed the required percentage of domestic content, by cost.
 - b. Final assembly of the vehicles took place in the U.S.; and
 - c. Final assembly activities were compliant with Buy America requirements.

6.6 BABAA: Infrastructure Investment and Jobs Act – The Build America, Buy America Act (M-22-11)

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each Award with an infrastructure project.

The Act requires the following Buy America preference:

- (1) All iron and steel used in the project are produced in the United States. This means



all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All Construction materials are manufactured in the United States. This means that all manufacturing processes for the Construction material occurred in the United States.

6.7 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. LeeTran 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 are debarred, suspended, ineligible, or voluntarily excluded from participation in Federally assisted transactions or procurements. See [49 CFR Part 29](#).

LeeTran will determine responsibility after receiving Bids or Proposals and before making a Contract Award. FTA expects the prospective Contractor to demonstrate affirmatively to LeeTran that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible."

LeeTran staff is required to review the System for Award Management (SAM) before entering 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>.

6.8 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 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.

6.9 Federal Requirements

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 (LeeTran) but also by sub-grantees and LeeTran third-party Contractors/Vendors. The Federal requirements to be met by LeeTran'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 the General Provisions Document, for the applicable Contract clauses.

All procurement requests made directly by the designated recipient will originate with LeeTran staff. The LeeTran Fiscal Staff, in collaboration with the LeeTran Project Manager or Requisitioners, will prepare these procurements and is responsible for ensuring that they comply with FTA requirements. The LeeTran Fiscal Manager will review the Contracts and Requisition Forms for Purchase Orders and obtain the necessary approvals depending on the dollar threshold.

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 or Designee before the Purchase Order or Contract will be issued. The approved Purchase Order will be sent by the LeeTran 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 LeeTran 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 5.)

6.9.1 FTA Required Clauses – FTA required clauses must be included in ALL procurements where FTA funding is utilized. Master list of all clauses included in Appendix N.

6.9.2 FTA Required Certifications:

- Debarment & Suspension – All procurements over \$25,000.
- Lobbying – All procurements over \$100,000.
- Buy America Requirements – All procurements over \$150,000.

SECTION 7 – PROCUREMENT PROCESS

7.1 Procurement Planning

LeeTran staff will meet annually to develop a “Program of Projects” for the FTA grant applications to be submitted prior to the October 1st 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:

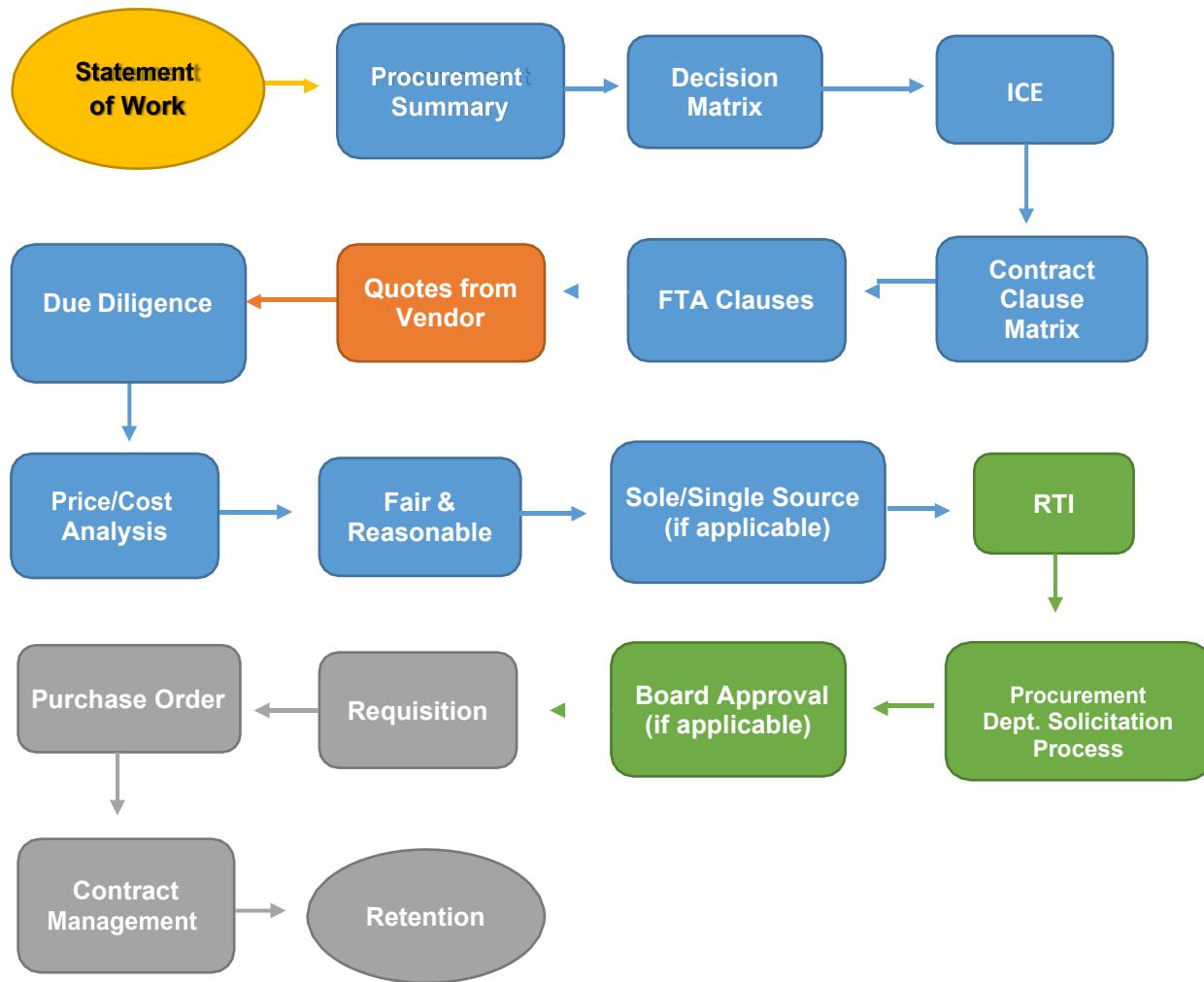
- Activity line-item description, including complete, clear, accurate, and unambiguous specifications.
- Estimate of cost/Independent Cost Estimate
- Method of purchase.
- Preliminary Vendor list.
- Proposed delivery schedule:
 - RFP or IFB.
 - Contract Award.
 - Contract complete.
- All procurements require an Independent Cost Estimate and, depending on threshold, a cost/Price Analysis.

7.2 Procurement Flowchart

LeeTran staff must use the following flowchart in preparing procurements. Note: this flowchart shows the general procurement process for all procurement methods utilizing FTA funds.

LeeTran staff must adhere to Lee County Ordinance 22-06, 23-21 and FTA guidelines when determining which procurement method to use. LeeTran staff must utilize appropriate Appendices listed in Appendix Section dependent on Procurement Method used.

Figure 1: Procurement Flowchart



7.2.1 Procurement Flowchart Details – Use Appendices attached to this manual.

- Complete *Statement of Work* (Appendix I) or equivalent
- Document the project history utilizing the *Procurement Summary* (Appendix B)
- Complete *Procurement Decision Matrix* (Appendix C)
- Complete *Independent Cost Estimate* (Appendix D) and document on *Procurement Summary*.
- Obtain at least three quotes; if Sole Source, complete *Sole Source Justification* (Appendix G).
- Complete due diligence utilizing the *Responsibility Determination* (Appendix H)
- Complete *Price Analysis* (Appendix K); for Sole Source procurements, a Cost Analysis must be completed (Appendix J) and document on *Procurement Summary*.
- Complete *Fair and Reasonable Price Determination* (Appendix E)
- Review *Contract Clause Matrix* (Appendix F) and add appropriate Federal clauses.
- For Piggybacks – Use *Piggyback Checklist* (Appendix A)
- Complete Procurement Request to Initiate
- Complete *Procurement Summary* (Appendix B)
- Submit Purchase Order for approval.



7.3 Scope of Project

The property, Commodities 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.

7.4 Contract Term Limitation

LeeTran staff cannot enter any Contract for rolling stock or replacement parts with a period of performance exceeding five (5) years, inclusive of options.

7.5 Cost and Price Analysis

A cost or Price Analysis must be performed in connection with every procurement exceeding the Federal Simplified Acquisition Threshold, including Contract modifications, after receiving Bids, but before Awarding a Contract. The method and degree of analysis is dependent on the facts surrounding the procurement situation, and an independent estimate must be completed before receiving Bids or Proposals.

- Cost Analysis must be performed for the following, a Price Analysis may be performed for all other procurements (See Appendix J – Cost Analysis):
 - Procurements which require that Offerors submit detailed elements of direct and indirect costs.
 - Procurements where adequate price competition is lacking.
 - Sole-source procurements unless price reasonableness can be established based on market prices.
- Price Analysis can be completed using catalog or market prices. (See Appendix K – Price Analysis)
- Independent Cost Estimate (ICE) is a tool to assist in determining the reasonableness of the Bid or Proposal being evaluated; and, to assist in performing the cost or Price Analysis. The ICE is the starting point for conducting the price or Cost Analysis. It is required for all procurements exceeding the Federal Simplified Acquisition Threshold. An ICE is completed prior to receipt of Bids or Proposals. (See Appendix D – ICE)

7.6 Written Protest Procedures

7.6.1 Any Notice of Intended Decision of a Competitive Procurement may be protested by a Vendor with a substantial interest on the grounds of Material Deviations in the Procurement procedure or Material Deviations in the evaluation of the Responses. To initiate a protest, the protestor must file a Notice of Intent to Protest the Procurement in writing with the Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision in accordance with Lee County Ordinance 22-06 and 23-21, Section 5.7. A formal written Procurement Protest must then be filed with the Lee County Procurement Management Director within ten (10) Business days of Posting of the Notice of Intended Decision. Failure to file a timely Notice of Intent to Protest or failure to file a timely formal written Procurement Protest shall constitute a waiver of the protestor's right to protest the Competitive Procurement and Award.

- Only protestors with a "substantial interest" that has been adversely affected by the County's intended Award may protest the selection by complying with the requirements set forth herein. A protestor has a "substantial interest" if the protestor would have been Awarded the Contract but for the alleged mistake or irregularity described in the protest. If the Procurement Management Director determines that a protestor does not have a "substantial interest," that protestor is precluded from bringing a

protest pursuant to this section.

- A protestor objecting to terms, conditions, Specifications, procedures, selection criteria, or other matters set forth in the Competitive Procurement documents must make such objections in writing during the period set forth for questions and answers in the Competitive Procurement documents. A protestor who has not raised such objections in writing during the question-and-answer time may not use the Procurement Protest process to object to these matters once a Notice of Intended Decision has been Posted.

7.6.2 The Notice of Intent to Protest shall contain at a minimum:

- Name of the protestor
- Protestor's address
- E-mail address.
- Fax number and phone number
- Name of the protestor's representative to whom notices may be sent.
- Project name and number of the Competitive Procurement
- A brief factual summary of the basis of the intended protest.

7.6.3 The formal written Procurement Protest shall:

- Identify the protestor and the Competitive Procurement involved.
- Include a clear statement of the grounds on which the protest is based, refer to the Statutes, laws, Ordinances, or other legal authorities which the protestor deems applicable to such grounds, and specifically request the relief to which the protestor deems itself entitled by application of such authorities to such grounds.
- Any other information that the protester deems to be material to the protest.
- A Procurement Protest bond in the form of a certified check, cashier's check, or money order made payable to Lee County in an amount equal to five (5) percent of the protestor's Bid or ten thousand dollars (\$10,000.00), whichever is less, provided, however, if no value is attached then the bond will be \$10,000.00. The entire amount of the bond is forfeited if the County determines that the protest was without merit, was filed to cause harm or delay, or was filed for some other improper purpose.
- The protestor shall mail a copy of the Notice of Intent to Protest and the formal written Procurement Protest to the Awarded Vendor.

7.6.4 Upon receipt of a timely filed and complete formal written Procurement Protest, the Procurement Management Director shall stay Award of the Competitive Procurement until the protest is resolved unless the Procurement Management Director provides a written determination that compelling circumstances exist which require that the Award be processed without further delay in order to protect the County's interest or for the purpose of avoiding an immediate and serious danger to the public health, safety or welfare.

7.6.5 After receipt of the timely filed and complete written Procurement Protest, the Procurement Management Director, at his/her discretion, may meet with the protester to discuss the allegations and to attempt to resolve the matter. The Procurement Management Director shall issue his/her decision on the protest within fourteen (14) Business days of the meeting, or if no meeting is requested, within fourteen (14) Business days of receipt of the timely filed and complete written Procurement Protest. Such decision shall be e-mailed or sent by

facsimile to the protester on the date of issuance.

7.6.6 The protester may appeal the decision of the Procurement Management Director to the County Manager by filing a written appeal with the County Manager's office within three (3) Business days of issuance of the Procurement Management Director's decision. The appeal must be in writing and must include a full explanation of the basis of disagreement with the decision rendered by the Procurement Management Director, as well as the relief sought. The County Manager shall issue his/her decision on the appeal within ten (10) Business days of receipt of the appeal. The County Manager's decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.

7.6.7 The decision of the County Manager may be appealed to the Board by the filing of a written appeal with the Chair of the Board within three (3) Business days of issuance of the County Manager's decision. The Board shall overturn the selection if the protester proves by clear and convincing evidence that the selection did not comply in material respects with the requirements contained in the Competitive Procurement documents, with this Procurement Ordinance, or with applicable law.

7.6.8 Failure by a protestor to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.

7.6.9 Nothing herein relinquishes the County's rights to waive Minor Irregularities. Further, nothing herein shall grant any rights to the unsuccessful Offeror. All decisions of the Board are final.

7.7 Bonding Requirement (Lee County Ordinance 23-21, Section 7)

- **Bid Bond:** All Contracts for Construction or facility improvements governed by 2 CFR §200.326 shall require a Bid Bond for projects exceeding the Federal Simplified Acquisition Threshold in 2 CFR §200.88. If required, the Bid Bond will be five percent (5%) of the amount of the Bid or Proposal. Unsuccessful Vendors are entitled to full return of their Bid Bond. Upon determination by the Lee County Board of County Commissioners, the successful Vendor shall forfeit this Bid Bond, or a portion thereof, upon failure to enter a Contract or act on the Purchase Order issued within ten (10) working days of presentation of a Contract or Purchase Order by Lee County.
- **Payment & Performance Bond:** All Contracts for Construction or repairs of public buildings and public works projects shall require Payment and Performance Bonds in accordance with Section 255.05, Florida Statutes. All Contracts for Construction or facility improvements governed by 2 CFR §200.326 shall require Payment and Performance Bonds for such projects exceeding the Federal Simplified Acquisition Threshold in 2 CFR §200.88. Any required bond(s) shall be noted in the Competitive Procurement documents, if applicable.
 - Payment and Performance Bonds shall be at least 100% of the Contract price.
 - All required bonds shall be from a surety company authorized to do business in the State of Florida to guarantee the full and faithful performance of the Contractual obligations and the payment of labor and material expended pursuant to the Contract whenever and in such amounts as is deemed necessary by the Lee County



Procurement Management Department. Alternative surety devices, such as letters of credit or cash, may be authorized by the Lee County Procurement Management Department.

- The Vendor is required to record the Payment and Performance Bonds and riders with the Lee County Clerk of Court and pay all associated costs.

7.8 Payment Provisions in Third-Party Contracts

7.8.1 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.

7.8.2 Contract Payments – Progress payments may be used provided the following requirements are followed.

- Progress payments are made to the Contractor only for costs incurred in the performance of the Contract.
- LeeTran staff must obtain adequate security for progress payments. Adequate security may include taking title, a letter of credit, or equivalent means to protect LeeTran's interest in the progress payment.

7.8.3 Bus Testing – LeeTran staff shall follow bus testing guidelines outlined by FTA as follows:

A recipient of FTA financial assistance under 49 U.S.C. Chapter 53, often referred to as a "grantee," is responsible for:

- Determining whether a vehicle it plans to acquire is subject to the requirements of [49 CFR Part 665](#) (Part 655) and if it is, how to achieve compliance with those requirements.
- Certifying to FTA that any new bus model acquired with financial assistance from FTA has been tested in accordance with the requirements of Part 665.
- Certifying that it has received a copy of the applicable Bus Testing Report(s) before expenditure of any FTA funding on a bus.

SECTION 8 - PROCUREMENT METHODS

The funding source determines LeeTran's procurement methods and if there is a conflict between two or more funding sources, LeeTran shall comply with the regulations that are most restrictive.

FTA		FDOT		Lee County	
Micro-purchases	\$0 - 10,000	Micro	\$0 - \$2,500	Micro	\$0 - \$9,999
Simplified Acquisitions	\$10,001 - \$250,000	Small	\$2,500 – \$34,999	Small	\$10,000 - \$249,999
Buy America	\$150,000 or more	Competitive	\$35,000 or more	Competitive	\$250,000 or more

8.1 Informal Procurements

8.1.1 Procurements by Micro-Purchase – Purchases below the micro purchase threshold 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 \$2,000 or more.
(<http://www.gpo.gov/davisbacon/referencemat.html>)

8.1.2 Procurements by Small Purchase – Purchases below the small purchase threshold may be made using written quotes, or informal Bids to be opened upon receipt, whenever practical. If Small Purchase procedures are used, price or rate quotes must be obtained from **three qualified sources**. (For purchases below \$10,000, at least two quotes must be obtained per FTA)

8.2 Competitive Procurements

All solicitations must have a complete and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. (CFR 200.319)

8.2.1 Procurement by Sealed Bids/Invitation to Bid (ITB) – All purchases more than the threshold amount of \$250,000 (Lee County Ordinance 23-21) require formal competitive Solicitations. Bids must be publicly solicited, and the Award must be made to the lowest (best price), most responsive (meets all specifications), and most responsible (qualified to perform the work) Bidder. (See Attachment 3.)

8.2.2 Procurement by Competitive Proposal/Request for Proposal (RFP) – This method of procurement is generally used when conditions are not appropriate for the use of sealed Bids. The process used is defined in the “Florida Consultants Competitive Negotiation Act”. “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. LeeTran 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 3.)

8.2.3 Procurement of Architectural and Engineering Services (A&E) – A&E Contracts should follow the Brooks Act (FS Chapter 287.055), which requires the selection of engineering and design related Services based on demonstrated competence and qualifications for the type of Professional Services required. It also includes serial negotiations for fair and reasonable compensation.

- 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 3.)

8.2.4 Procurement by Non-competitive Proposals (Sole/Single 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/Single Source, single Bid, and brand name or equal Awards can be used only with appropriate documentation of the required specification of the material, product, or service being procured. In the case of a Sole/Single Source Award, the documentation should be a Sole/Single Source justification, which includes a price or Cost Analysis. With a single Bid Award, the documentation should include a price or Cost Analysis, and an explanation of why a single Bid was obtained. For brand name or equal Award, the procurement specification should clearly list the salient or unique characteristics and allow an equal to be offered.

8.2.5 Procurement by Design-Bid-Build – The Design-Bid-Build procurement method requires separate Contracts for design Services and for Construction.

- *Design Services* – Procurement for design Services must use qualifications-based procurement procedures through the procurement of A&E Services (see subsection 8.2.3 above).
- *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 8.2 above must be used for Construction Contracts.

8.2.6 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 contact activities and the selection process to be undertaken using a one- or two-step method. (See Attachment 3.)

8.2.7 Options – LeeTran 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. LeeTran staff must evaluate Bids or offers contained in a Solicitation if it intends to exercise those options after the Contract is Awarded. (See Attachment 4.)

8.2.8 Restricted or Prohibited Contracting Methods – The following Contract types are prohibited or restricted:

- *Cost Plus a Percentage of Cost* – The use of Cost Plus a Percentage of Cost Contracts is expressly prohibited as a method of Contracting.
- *Time and Materials* – LeeTran 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.

8.3 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, LeeTran will conduct its revenue Contracting as follows:

- *Limited Contract Opportunities* – If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), LeeTran will use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- *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 LeeTran 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.

SECTION 9 – SIGNATURE AUTHORITY

The Transit Director has authorized signature authority for Purchase Order up to \$49,999.99. The County Manager has authorized signature authority for Purchase Order is in the amount of \$50,000 to \$99,999.99. Lee County Board of County Commissioners signature authority is required for Purchase Order \$100,000 and over.

SECTION 10 – CONTRACT ADMINISTRATION

10.1 Project Management

In most cases, the LeeTran 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, the Department Manager may also act as the Contracting Officer Technical Representative (COTR). In the case of Construction, LeeTran staff would be augmented using a consultant as a Construction Manager.

10.2 Contract Closeout

Prior to the closeout of the LeeTran Contract with FTA, LeeTran'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.

10.3 Contract Termination

The performance of work under a Contract may be terminated in part or in whole if the Transit Director, in consultation with Lee County Procurement Management, determines that such termination is in the best interest of Lee County. Contracts may be terminated for default (e.g., the Contractor has failed to perform in accordance with the terms of the Contract) or



convenience. A "Notice of Termination" will be issued to the Contractor, via E-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's interests and minimize liability.

10.4 Liquidated Damages Provisions

LeeTran may use liquidated damages per Contract specifications. Any liquidated damages recovered will be credited to the project account involved unless FTA permits otherwise.

10.5 Remedial Action

Contracts 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 more than the Small Purchase threshold.

SECTION 11 - ATTACHMENTS

- Attachment 1: Sample Purchase Order and Request (Requisition) Form
- Attachment 2: Lee County Transit Employee Code of Ethics Policy
- Attachment 3: Types and Methods of Procurements
- Attachment 4: Requirements for Options
- Attachment 5: Monitoring Checklist
- Attachment 6: Written Protest Procedures
- Attachment 7: Bonding
- Attachment 8: America Pre-Award and Post-Award Audit Requirements (49 CFR 663)



Attachment 1

Sample Request (Requisition) Form & Purchase Order

LEE COUNTY TRANSIT REQUISITION FORM

PURCHASE ORDER OPEN PURCHASE ORDER #: MODIFY EXISTING PURCHASE ORDER #: PETTY CASH	CREDIT CARD OTHER COUNTY DEPTS. DIRECT VOUCHER							
DATE								
VENDOR NUMBER:	REQUESTED BY:							
NAME:	DEPARTMENT:							
ADDRESS:	APPROVAL SIGNATURE:							
VENDOR CONTACT:	OPERATING 48600 YES NO							
TELEPHONE NUMBER:	TRANSIT CAPITAL 48840 YES NO							
ORDER WILL BE PLACED BY:	GRANTS NUMBER:							
REQUESTOR:	GRANTS REVIEWER APPROVAL							
PURCHASING:	QUOTES OBTAINED: YES NO							
PICK-UP:								
REASON FOR PURCHASE / SPECIAL INSTRUCTIONS		DELIVERY CHARGES:						
SHIP TO:		DATE REQUIRED:						
BID / QUOTE#	CONTRACT#	APPROVAL DATE:	BLUE SHEET / AGENDA#:					
COMMODITY	ITEM / DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	BUSINESS UNIT		
SHIPPING CHARGES (ESTIMATE) \$ -								
RPO#:	ORDER DATE:	GRAND TOTAL:			\$ -			



PURCHASE ORDER

Page No.: 1

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

Acceptance of this Purchase Order constitutes acceptance by the vendor of the Lee County Standard Terms and Conditions as provided at:
<https://www.leegov.com/procurement/Documents/POTermsAndConditions.pdf>

VENDOR: 429869

CUMMINS INC DBA
CUMMINS SALES AND SERVICE
2671 EDISON AVE
FORT MYERS, FL 33916

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

BUSINESS PHONE: 239 349 8217
FAX NUMBER: 239 337 7851

REQUISITIONER: CAMPBELL
BUYER: KHANDL

P.O. NO.: 24330246

ORDER DATE: 10/2/2023 FREIGHT TERMS: FOB - THEIR LOCATION
DELIVERY DATE: 10/2/2023 CONFIRM TO:
INSTRUCTIONS:

QUOTE/CONTRACT NO.: B220402LLP
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.

FY24

CONTRACT SUMMARY INFORMATION

SUMMARY: Purchase is made in accordance with the Terms and

Conditions of Lee County Solicitation Number....

Solicitation No.: B220402LLP

Project Title: Cummins OEM Parts for LeeTran

Start Date: 12/20/2022

Expiration Date: 12/19/2025

Board Date: 12/20/2022

Agenda Item: 21

Term: Three Years

Renewal Options: One (1) additional three (3) year period.

Address Book (E1) No.: 429869

Awarded Vendor: Cummins, Inc. dba Cummins Sales and Service

Contact Person: Darren Meltinger, Bids & Contracts Manager

Phone No.: 305/821-4200 (Branch) / 901/626-9641 (Bids)

Fax No.: N/A

Cell Phone/Page No.: N/A

Email Address: csabids@cummins.com (Bids)

Paul.J.connolly@cummins.com or

Richard.dancer@cummins.com (Parts)

Award Amount or Details: Discount off all Cummins OEM parts offered by

PURCHASING AUTHORIZATION: MARY G. TUCKER

The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For Construction Manager at Risk (CMAR), firm fixed price, lump sum, Time & Material (T&M) and/or Time & Equipment (T&E) procurements, this Purchase Order represents a Vendor's Notice to Proceed (NTP). Line-item Extended Price(s) shall be considered Not to Exceed (NTE) ceiling value(s). Additionally, the Total Order value for a Purchase Order represents a NTE ceiling value. If the Vendor anticipates exceeding either of these NTE values, they should contact the Lee County Procurement Department for a change order. If a Vendor exceeds a Line Item or Total Order NTE value, it does so at its own risk.



Attachment 2 - Code of Ethics Policy

500-10 Ethics

Effective Date

July 19, 2011, Revised: November 18, 2019

Purpose

To establish a LeeTran controls and standards for adherence to a Code of Ethics.

Procedure

LeeTran 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.

LeeTran 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, which would influence, or appear to influence, the conduct of their official duties. Employees will not use public property or resources for personal gain.

LeeTran employees and agents are required to disclose to the Procurement official any actual or perceived conflict of interest that exists between themselves and an offerer. 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 their 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 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 is not tolerable.

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



Attachment 3

Types & Methods of Procurements

The following is from Lee County Ordinance 22-06 and 23-21

A. Invitation to Bid

1. The Invitation to Bid is used when the County is capable of establishing precise Specifications or defining, with specificity, a scope of Services for the Commodities, Services or Construction sought. Through this process, Vendors are able to compete on a cost or revenue basis for like Commodities, Services or Construction.
2. Invitations to Bid shall include Specifications, required qualifications, and all principal terms and conditions applicable to the Procurement.
3. The Award will be made to the Responsible Vendor with the lowest Responsive Bid, or the highest estimated revenue for the County for revenue-generating contracts.
4. In an Invitation to Bid process, the County may consider the following factors in addition to price when determining whether a Vendor is responsible, and a Bid is Responsive:
 - a. Ability, capacity, and skill of the Vendor to perform the Contract.
 - b. Whether the Vendor can perform the Contract within the time specified, without delay, interference, or conflict with current workload.
 - c. Character, integrity, reputation, judgment, experience, and efficiency of the Vendor.
 - d. Quality of performance of previous engagements.
 - e. Previous and existing compliance by the Vendor with laws and regulations relating to the Contract.
 - f. Sufficiency of the financial resources and ability of the Vendor to perform the Contract or provide the Commodity, Service or Construction.
 - g. Quality, availability and adaptability of the Commodities, Services or Construction to the particular use required.
 - h. Ability of the Vendor to provide further maintenance and Service for the use of the subject of the Contract.
 - i. Number and scope of conditions attached to the Bid.
 - j. Qualifications of Vendor, licensing, and corporate qualifications.
 - k. Evidence of negative litigation history.
 - l. Use of one or more subcontractors with a record of poor performance.
5. For the purposes of this Section, the County may consider evidence from the ten (10) year period preceding the subject Invitation to Bid.

6. In the event the lowest, Responsive Bid submitted by a Responsible Vendor exceeds the architectural or engineering cost estimates, the County Manager or Designee is authorized, when time or economic considerations preclude rebidding of work of a reduced scope, to negotiate an adjustment of the scope of work with the Responsible Vendor with the lowest, Responsive, Bid, in order to bring the Bid within the amount of available funds.

B. Request for Proposal

1. The Request for Proposal method of Procurement is used when it is not practicable for the County to specifically define the scope of work for which the Commodities, Services or Construction are needed. Instead, the County can describe what it wants to accomplish but the methods or means to accomplish the desired outcome cannot be easily defined. There may be several methods available to accomplish a task and the County is considering all the available options.
2. Requests for Proposal shall include a description of desired outcome to be accomplished through the Procurement, evaluation criteria for the specific Procurement, which set forth the relative importance of price, if any, and the other evaluation criteria, and all principal terms and conditions applicable to the Procurement.
3. All Responses to a Request for Proposal that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be distributed to an evaluation committee for review in accordance with the established time frames outlined in the Competitive Procurement. Proposers shall be ranked by an evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Request for Proposal. The evaluation committee may request presentations/interviews for further consideration.
4. The selection will be Awarded to the highest ranked Proposer or as outlined in the Solicitation documents.

C. Invitation to Negotiate

1. The Invitation to Negotiate is used when the scope of the project is not clearly defined, and the county has determined that negotiations may be necessary to receive the best value. The Invitation shall invite Vendor input on the scope, schedule, and process for initiating the project. This method of Procurement may be used in areas of Procurement experiencing constant change in the marketplace, when the County wants the opportunity to obtain current up-to date Commodities, ei: Services or Construction at the time of Contracting, and/or if the County wishes to identify one or more Responsible Vendors with whom to negotiate.
2. Invitations to Negotiate shall include a description of the questions or issues being explored, the facts being sought, and the specific goals or problems that are the subject of the Procurement, along with evaluation criteria, and all principal terms and conditions applicable to the Procurement.
3. All Responses to an Invitation to Negotiate that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be



distributed to an evaluation committee for review. Proposers shall be ranked and analyzed by the evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Invitation to Negotiate. The evaluation committee may request presentations/interviews for further consideration.

4. The evaluation committee will complete initial negotiations with all Proposers meeting the criteria outlined above.
5. The evaluation committee will provide recommendations to the Board. The listing will be provided in the order of Proposers providing the most benefit to Lee County.
6. Once the Board selects a proposal, award and negotiations will proceed as outlined in Section 5.4 of this Ordinance.

D. Procurement Methods

Other Procurement methods may be used as deemed necessary by the County Manager or Designee.

¹ Lee County Ordinance 23-21-06, Section 5.1



Attachment 4

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 5

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 6

Written Protest Procedures

The following is from Lee County Ordinance 22-06

Procurement Protest.

A. Any Notice of Intended Decision of a Competitive Procurement may be protested by a Vendor that submitted a Bid, Proposal, or Response to the County, with a substantial interest, as defined below, on the grounds of Material Deviations in the Procurement procedure or Material Deviations in the evaluation of the Responses. To initiate a protest, the protestor must file a Notice of Intent to Protest the Procurement in writing with the Procurement Management Director within seventy-two (72) hours, excluding weekends and County holidays, of Posting of the Notice of Intended Decision in accordance with Section 5.4. A formal written Procurement Protest must then be filed with the Procurement Management Director within ten (10) Business days of Posting of the Notice of Intended Decision. Failure to file a timely Notice of Intent to Protest or failure to file a timely formal written Procurement Protest shall constitute a waiver of the protestor's right to protest the Competitive Procurement and Award.

1. Only protestors with a "substantial interest" that has been adversely affected by the County's intended Award may protest the selection by complying with the requirements set forth herein. A protestor has a "substantial interest" if the protestor would have been Awarded the Contract but for the alleged mistake or irregularity described in the protest. If the Procurement Management Director determines that a protestor does not have a "substantial interest," that protestor is precluded from bringing a protest pursuant to this section.

2. A protestor objecting to terms, conditions, Specifications, procedures, selection criteria, or other matters set forth in the Competitive Procurement documents must make such objections in writing during the period of time set forth for questions and answers in the Competitive Procurement documents. A protestor who has not raised such objections in writing during the question-and-answer time may not use the Procurement Protest process to object to these matters once a Notice of Intended Decision has been Posted. 38 3. The protest shall only come from the firm submitting the Proposal. Subcontractors cannot file protests.

B. The Notice of Intent to Protest shall contain at a minimum:

1. Name of the protestor;
2. Protestor's address;
3. E-mail address;
4. Fax number and phone number;
5. Name of the protestor's representative to whom notices may be sent;



6. Project name and number of the Competitive Procurement; and

7. A brief factual summary of the basis of the intended protest.

C. The formal written Procurement Protest shall:

1. Identify the protestor and the Competitive Procurement involved.

2. Include a clear statement of the grounds on which the protest is based, refer to the Statutes, laws, Ordinances, or other legal authorities which the protestor deems applicable to such grounds, and specifically request the relief to which the protestor deems itself entitled by application of such authorities to such grounds.

3. Any other information that the protester deems to be material to the protest.

4. A Procurement Protest bond in the form of a certified check, cashier's check, or money order made payable to Lee County in an amount equal to five (5) percent of the protestor's Bid or ten thousand dollars (\$10,000.00), whichever is less, provided, however, if no value is attached then the bond will be \$10,000.00. The entire amount of the bond is forfeited if the County determines that the protest was without merit, was filed to cause harm or delay, or was filed for some other improper purpose.

5. The protestor shall send a copy of the Notice of Intent to Protest and the formal written Procurement Protest to the Vendor(s) named on the Notice of Intended Decision, on the same date that the notice is filed with the County. Receipt of notification must be provided to the County upon request.

6. Upon receipt of a timely filed and complete formal written Procurement Protest, the Procurement Management Director shall stay Award of the Competitive Procurement until the protest is resolved unless the Procurement Management Director provides a written determination that compelling circumstances exist which require that the Award be processed without further delay in order to protect the County's interest or for the purpose of avoiding an immediate and serious danger to the public health, safety or welfare.

7. After receipt of the timely filed and complete formal written Procurement Protest, the Procurement Management Director, at his/her discretion, may meet with the protester to discuss the allegations and to attempt to resolve the matter. The Procurement Management Director shall issue his/her decision on the protest within fourteen (14) Business days of the meeting, or if no meeting is requested, within fourteen (14) Business days of receipt of the timely filed and complete written Procurement Protest. Such decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.

D. The protester may appeal the decision of the Procurement Management Director to the County Manager by filing a written appeal with the County Manager's office within three (3) Business days of issuance of the Procurement Management Director's decision. The appeal must be in writing and must include a full explanation of the basis of disagreement with the decision rendered by the Procurement.



Management Director, as well as the relief sought. The County Manager shall issue his/her decision on the appeal within ten (10) Business days of receipt of the appeal. The County Manager's decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.

E. The decision of the County Manager may be appealed to the Board by the filing of a written appeal with the Chair of the Board within three (3) business days of issuance of the County Manager's decision. The Board shall overturn the selection if the protester proves by clear and convincing evidence that the selection did not comply in material respects with the requirements contained in the Competitive Procurement documents, with this Procurement Ordinance, or with applicable law.

F. Failure by a protestor to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.

G. Nothing herein relinquishes the County's rights to waive Minor Irregularities. Further, nothing herein shall grant any rights to the unsuccessful Offeror. All decisions of the Board are final.



Attachment

Bonds

The following is from Lee County Ordinance 22-06

A. The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement. All Contracts for Construction or facility improvements governed by 2 CFR §200.325 shall require a Bid Bond in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88. If required, the Bid Bond will be five percent (5%) of the amount of the Bid or Proposal. Unsuccessful Vendors are entitled to full return of their Bid Bond. Upon determination by the Board, the successful Vendor shall forfeit this Bid Bond, or a portion thereof, upon failure to enter into a Contract or act on the Purchase Order issued within ten (10) working days of presentation of a Contract or Purchase Order by the County.

B. The Procurement Management Department shall determine if Payment Bonds and Performance Bonds are required. All Contracts for Construction or repairs of public buildings and public works projects shall require Payment and Performance Bonds in accordance with Section 255.05, Florida Statutes. All Contracts for Construction or facility improvements governed by 2 CFR §200.325 shall require Payment and Performance Bonds in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88. Any required bond(s) shall be noted in the Competitive Procurement documents, if applicable.

1. Payment and Performance Bonds shall be at least 100% of the Contract price.
2. All required bonds shall be from a surety company authorized to do business in the State of Florida to guarantee the full and faithful performance of the Contractual obligations and the payment of labor and material expended pursuant to the Contract whenever and in such amounts as is deemed necessary by the Procurement Management Department. Alternative surety devices, such as letters of credit or cash, may be authorized by the Procurement Management Department.
3. The Vendor is required to record the Payment and Performance Bonds and riders with the Lee County Clerk of Court and pay all associated costs.



Attachment

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 follow 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.

SECTION 12 - 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 Form
- Appendix L: Change Order Review Checklist
- Appendix M: Contract Administration Planning Process
- Appendix N: General Provisions Document
- Appendix O: Buy America Certification – Rolling Stock
- Appendix P: Buy America Certification – Manufactured Products
- Appendix Q: Lobbying Certification
- Appendix R: Debarment & Suspension Certification
- Appendix S: E-Verify Affidavit

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 History/Summary/Memorandum

Date: _____ Completed By: _____

PO/Contract No. _____ Source of Funding: _____

Reason for Procurement

Method of Procurement

Micro Purchase
Small Purchase
Sole Source
Sealed Bid – ITB
Proposals – RFP

Contract Type

Fixed Price
Firm Fixed Unit Price
Cost Plus Fixed Fee
Time and Materials
IDIQ

Rationale for Method of Procurement

Rationale for Contract Type/Justification for Non-competitive

Basis for Contract Price

Lowest Responsive, Responsible Bid:
Evaluation Top Ranked Proposal:
Negotiated Price (CCNA):
Other:

Price/Cost Analysis Completed

Price offered by Vendor was within _____ % of ICE.

Rationale for Contractor Selection

Summary of Responsibility and Responsiveness Checks:

Sam.gov Check Completed:

Award:

Date of Contract Award: _____

Board Approval (Attached): _____



Appendix C

Procurement Decision Matrix

Method of Procurement

Determine suitable procurement method by checking appropriate boxes. All elements must apply to use that method.

Micro-Purchase		Competitive Procurement	
Amount < \$10,000		Amount > \$3,500	
Multiple Sources		Multiple Sources	
Small Purchase		Single or Sole Source/Non-Competitive Procurement	
Amount < \$100,000		Single Source - Custom Item OR	
Complete & Adequate Specification or Description		Sole Source - Only One Source OR	
Two or more quotes available		Competition Inadequate after Solicitation OR	
Sealed Bid (ITB) > \$100,000		Emergency/Public Exigency	
Complete & Adequate Specification or Description			
Two or more responsible bidders willing to compete			
Selection can be made based on price alone			
Firm Fixed Price Contract is used			
No discussion with bidders required after receipt of bids			
Competitive Proposals (RFP) > \$100,000		Piggyback Procurement	
Complete Specifications Not Feasible		Lee County Piggyback Contract	
Bidder Input Needed		Other Agency Piggyback	
Two or more responsible bidders willing to compete		State GSA Schedule	
Discussion needed with bidders after Proposals			
Fixed price can be set after discussions –OR— A cost reimbursement contract is determined			

Selection of Contract Type

Type of Contract	
Fixed Price	
Firm fixed unit prices	
Cost plus fixed fee	
Blanket Purchase Order	
Indefinite Delivery Indefinite Quantity (IDIQ)	
Time & Materials – Must Provide Justification	
**Cost plus a percentage of cost- and cost-plus percentage of construction	

Justification for T&M Type Contract (if selected)

*T&M contract must have Not to Exceed/ceiling amount stated within final contract, Purchase Order, or similar work authorization document(s).



Appendix D

Independent Cost Estimate

Contract Type:

Date of Estimate:

Description of Goods / Service:

Method of Obtaining Estimate (Choose all that apply):

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 cost of the goods/Services is expected to be \$_____. Details are shown below.

A. Cost of Standard Items

Product	Quote	QTY	TOTAL	Notes

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.
- Obtained from current price list.
- Obtained 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



Appendix F

Contract Clause Matrix

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

Last updated: Friday, September 8, 2023

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	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	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (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	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.				
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs				
Prompt Payment	All	All	All	All	All

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
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	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	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.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All



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 several 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 Agent

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.

	Yes	No	
1. Appropriate financial, Equipment, facility, and personnel			<i>Can review standard ratios on submitted financial reports or ask for D&B report</i>
2. Ability to meet the delivery schedule			<i>Conduct an analysis of the Offeror's technical approach</i>
3. Satisfactory period of performance			<i>Tied to reference check; can also use D&B Past Performance Evaluation service/product</i>
4. Satisfactory record of integrity, not on declined or suspended listings			<i>Attach the results from checking the Excluded Parties website at https://www.sam.gov/</i>
5. Ability to get bonding and insurance			<i>Evaluate insurance certificate and assurances from Bonding company. _____</i>



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
Transit Agency requires these products and / or Services due to:
Transit Agency is attempting to complete a _____ project on and requires supplier/Contractor assistance in the:
The completion of this work will help Transit Agency:
2.1 Results
Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.
2.2 Anticipated Benefits
Describe what the organization will gain through completion of this project.
2.3 Business Processes Impacted
Review major changes in the way work will be conducted once the project is complete (if any).
2.4 Customers / End Users Impacted
Identify the specific individuals or groups whose work will be most affected during and after the project's execution.



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 =



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
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 (\$)
TOTAL DIRECT LABOR				
4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)
OH Rate				
X BASE (labor total above)				
TOTAL LABOR OVERHEAD				
5. OTHER DIRECT COSTS		Vendor A (\$)	Vendor B (\$)	Independent Estimate
A. SPECIAL TOOLING/EQUIPMENT				
TOTAL SPECIAL TOOLING/EQUIPMENT				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
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 from 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 number 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 ADMINISTRATIVE 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 or 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/like item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time. (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

<hr/> <hr/>			
<p>Date: _____</p>			
<p>Contract Number: _____</p>			
<p>Contractor: _____</p>			
<p>Contract Title Reviewer: _____</p>			
<p>New Contract Total: _____</p>			
<p>Change Order Number: _____</p>			
<p>Dollar Value Increase: _____</p>			
<p>Length of Time Extension Granted: _____</p>			
<p>New Performance Period End Date: _____</p>			
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			
<hr/> <hr/>			



Appendix M

Contract Administration Planning Process

Tasks	Related Standards
1. Determine the required level of Contract surveillance	<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.</p> <p>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 systemsb. 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>
2. Determine what Contract administration functions (if any) will be delegated	<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)

3. Delegate Contract administration as applicable	<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>
4. Develop a Contract administration plan	<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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LEE COUNTY TRANSIT POLICIES AND PROCEDURES

GRANT-FUNDED PROCUREMENTS (500-12) GENERAL PROVISIONS



3401 Metro Parkway Fort Myers, FL 33901

Revision Date: October 2024

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Revision Date: October 2024

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GRANT FUNDED CONTRACT PROVISIONS

1. CONTRACT PROVISIONS FOR ALL CONTRACTS

1.1 ACCESS TO RECORDS AND REPORTS

(49 USC § 5325(g), 2 CFR § 200.333, 49 CFR part 633)

- Record Retention. The Contractor will retain and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, Leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- Access to Records. The Contractor agrees to provide sufficient access to FTA and its Contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractor's access to the sites of performance under this Contract as reasonably may be required.

1.2 AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities. All design and Construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

1.3 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 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.

1.4 CIVIL RIGHTS (EEO, TITLE VI & ADA)

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 USC Sec. 2000d) and VII (42 USC Sec. 2000e); Age Discrimination Act of 1975, as amended, Sec. 303 (42 USC 6102); Age Discrimination Action of 1967 as amended, Sec. 4 (29 USC Sec. 623); Americans with Disabilities Act of 1990, as amended, Sec. 202 (42 USC 12132), and Sec. 102 (42 USC Sec. 12112) and implementing regulations (29 CFR Part 1630), Federal

transit law (49 USC Sec. 5332); Executive Order 11246, as amended by Executive Order 11375 (42 USC Sec. 2000e note) and implementing regulations (41 CFR 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.

1.5 COMPLIANCE WITH LAW

Contractor shall perform all Work hereunder in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, any applicable licensing or permitting laws. The Contractor shall use only personnel to perform Work required by law to be performed by such personnel and shall bear the costs of obtaining all necessary licenses and permits.

1.6 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 extend required by 23 USC Section 517 (d) and 23 CFR Part 655 and 940.

1.7 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:

- 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, USC § 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.
- 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.

1.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Contractor will conform to 49 CFR Part 26. LeeTran has established goals for the use of DBE Subcontractors and encourages the use of small business and veterans.

1.9 DOMESTIC PREFERENCES FOR PROCUREMENTS

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal Award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Contracts and Purchase Orders for work or products under this Award.

(b) For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all

manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and Construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

1.10 ENERGY CONSERVATION

(42 USC 6321 et seq.; 49 CFR part 622, subpart C)

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.

1.11 FEDERAL CHANGES

(49 CFR part 18)

Contractor shall always comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

1.12 FLY AMERICA

(49 USC § 40118; 41 CFR part 301-10; and 48 CFR part 47.4)

The Contractor agrees to comply with 49 USC § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR 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.

1.13 INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or subsequent revisions, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

1.14 NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES

- Contractor acknowledges and agrees 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.
- 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.

1.15 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(49 USC § 5323(I) (1); 31 USC §§ 3801-3812; 18 USC § 1001; and 49 CFR part 31)

- The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801-3812 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR 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.
- 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 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(I)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- 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.

1.16 PROGRAM FUNDING

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

1.17 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a Contract to procure or obtain; or

(3) Enter into a Contract (or extend or renew a Contract) to procure or obtain Equipment, Services, or systems that uses covered telecommunications Equipment or Services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications Equipment is telecommunications Equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications Equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance Services provided by such entities or using such Equipment.
- (iii) Telecommunications or video surveillance Equipment or Services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications Equipment and Services, to procure replacement Equipment and Services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

1.18 SEAT BELT USE

The CONTRACTOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (2) Including a "Seat Belt Use" provision in each third-party agreement related to this Contract.

1.19 DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING

The CONTRACTOR agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

- (1) The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease

crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.

- (2) The CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- (3) The CONTRACTOR agrees to include the preceding “Distracted Driving, Including Text Messaging While Driving” provisions in each third-party agreement related to this Contract.

1.20 PROMPT PAYMENT

The prime CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's 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 Recipient. This clause applies to both DBE and non-DBE subcontracts.

1.21 ALCOHOL MISUSE AND TESTING

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

1.22 FEDERAL TAX LIABILITIES AND RECENT FELONY CONVICTIONS

- (1) The contractor certifies that:
 - (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.
- (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement

2. CONTRACT PROVISIONS FOR CONTRACTS EXCEEDING \$10,000

2.1 RECYCLED PRODUCTS (*Operations/Management, Construction, and Materials & Supplies Contracts*) (42 USC § 6962; 40 CFR part 247; and 2 CFR part § 200.322)

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 USC 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 CFR Part 247.

2.2 TERMINATION

(2 C.F.R § 200.339; 2 CFR part 200, Appendix II (B))

- **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.
- **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.
- **Termination Due to Insufficient Funds.** If at any time during the term of the Contract the LCBOCC Governing Board decides 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.
- **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.
- **Damages upon Termination.** Any damages to be assessed to the Contractor because 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.

3. CONTRACT PROVISIONS FOR CONTRACTS EXCEEDING \$25,000

3.1 SUSPENSION & DEBARMENT

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

Contractor certifies as follows:

- The certification in this clause is a material representation of fact relied upon by LEETRAN.
- If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to LEETRAN, the Federal Government may pursue available remedies, including but not limited to Suspension and/or Debarment.
- The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while its offer is valid and throughout the period of any Contract that may arise from its offer.
- The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3.2 RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

(NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS)

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or 18 Jun-24 a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under

the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

4. CONTRACT PROVISIONS FOR CONTRACTS EXCEEDING \$100,000

4.1 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *(Operations/Management, Rolling Stock, and Construction)* (40 U.S.C §§ 3701-3708; and 29 CFR part 5)

The following provisions shall apply with respect to all U.S. federal government financed Contracts and Subcontracts more than \$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.

- **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.
- **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.
- **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.
- **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (3) of this section and 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.

4.2 BYRD ANTI-LOBBYING MENDMENT

(31 USC § 1352; 2 CFR § 200.450; 2 CFR part 200 appendix II (J); and 49 CFR part 20)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, Amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The undersigned shall require that the language of this certification be included in the Award documents for all sub-Awards at all tiers (including Subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Contractor's authorized Official

Name and Title of Contractor's Authorized Official

Date

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each Subcontract or purchase under this Contract that may involve international air transportation.

5. CONTRACT PROVISIONS FOR CONTRACTS EXCEEDING \$150,000

5.1 BUY AMERICA (*Rolling Stock, Construction, and Materials & Supplies*)

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provides 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 CFR 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 USC 5323(j)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 70-percent domestic content. Contractor must submit to the COUNTY a Buy America certification with respect to all FTA funded Contracts, except those subject to a general waiver.

5.2 CLEAN AIR & WATER

(42 USC §§ 7401 – 7671q; 33 USC §§ 1251-1387; and 2 CFR part 200, Appendix II (G))

The Contractor agrees:

- It will not use any violating facilities.
- It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities.”
- It will report violations of use of prohibited facilities to FTA.
- It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 USC §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 USC §§ 1251-1387).

6. CONTRACT PROVISIONS FOR CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD (\$250,000)

6.1 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.

6.2 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. SPECIAL CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES/A&E CONTRACTS

6.3 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Operations/Management, Rolling Stock, and Construction)

(40 USC §§ 3701-3708; and 29 CFR part 5)

The following provisions shall apply with respect to all U.S. federal government financed Contracts and Subcontracts more than \$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.

- **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.
- **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.
- **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.

- **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (3) of this section and 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.

6.4 PATENT RIGHTS AND RIGHTS IN DATA (RESEARCH & DEVELOPMENT)

(2 CFR part 200, Appendix II (F); 37 CFR part 401)

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. In accordance with 49 CFR § 18.34 and 49 CFR § 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.
- ii. 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.
- iii. 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.

- iv. 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.
- v. 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.
- vi. 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 CFR 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.

7. SPECIAL CONTRACT PROVISIONS FOR OPERATIONS/MANAGEMENT CONTRACTS

7.1 CHARTER SERVICE OPERATIONS

(49 USC 5323(d) and (r); and 49 CFR part 604)

The Contractor agrees to comply with 49 USC 5323(d), 5323(r), and 49 CFR part 604, which provides that recipients and sub recipients 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 as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(d);
2. FTA regulations, "Charter Service," 49 CFR part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective

measures and remedies may include:

1. Barring it or any Subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The Contractor should also include the substance of this clause in each Subcontract that may involve operating public transit Services.

7.2 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS (49 USC § 5333(b) ("13(c)"); and 29 CFR part 215)

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 USC A 5333(b), and U.S. Department of Labor guidelines at 29 CFR 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 USC § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 USC § 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 USC § 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 USC § 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 USC § 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 USC § 5333(b), U.S. Department of Labor guidelines at 29 CFR 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 USC § 5311 in Nonurbanized Areas - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 USC § 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.

7.3 RECYCLED PRODUCTS (CONTRACTS EXCEEDING \$10,000)

(42 USC § 6962; 40 CFR part 247; and 2 CFR part § 200.322)

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 USC 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 CFR Part 247.

7.4 SCHOOL BUS OPERATIONS

(49 USC 5323(f); and 49 CFR part 605)

The Contractor agrees to comply with 49 USC 5323(f), and 49 CFR part 604, and not engage in school bus operations using federally funded Equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(f);
2. FTA regulations, "School Bus Operations," 49 CFR part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded Equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each Subcontract or purchase under this Contract that may operate public transportation Services.

7.5 SUBSTANCE ABUSE REQUIREMENTS – DRUG AND ALCOHOL TESTING

(49 USC § 5331; 49 CFR part 655; and 49 CFR part 40)

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR 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 CFR 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.

8. SPECIAL CONTRACT PROVISIONS FOR ROLLING STOCK CONTRACTS

8.1 BUS TESTING

Contractor agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

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

8.2 BUY AMERICA (CONTRACTS EXCEEDING \$150,000)

When procuring rolling stock, recipients must ensure that the cost of the components and subcomponents produced in the United States meets the following threshold requirements: (i) for fiscal years 2016 and 2017, more than 60-percent of the cost of all components of the rolling stock; (ii) for fiscal years 2018 and 2019, more than 65-percent of the cost of all components of the rolling stock; and (iii) for fiscal year 2020 and each fiscal year thereafter, more than 70-percent of the cost of all components of the rolling stock. Additionally, final assembly of the rolling stock must occur in the United States. See 49 USC § 5323(j) (2) (C). For further information about implementation of this requirement, see FTA's Federal Register Notice of Policy on the Implementation of the Phased Increase in Domestic Content under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances, Sept. 1, 2016.

8.3 CARGO PREFERENCE

(46 USC § 55305; 46 CFR part 381)

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:

- 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.

- 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.)
- 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.

8.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(40 U.S.C §§ 3701-3708; and 29 CFR part 5)

The following provisions shall apply with respect to all U.S. federal government financed Contracts and Subcontracts more than \$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.

- **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.
- **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.
- **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.
- **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (3) of this section and 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.

8.5 PRE-AWARD AND POST DELIVERY REVIEWS FOR ROLLING STOCK

FTA requires that recipients purchasing revenue passenger rolling stock undertake reviews of the rolling stock before Award of the Bid, during manufacture, and following delivery of the rolling stock. Applicants seeking to acquire rolling stock must certify that they will comply with FTA's pre-Award and post-delivery review requirements. See 49 USC § 5323(m) and FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663.

9. SPECIAL CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

9.1 BONDING REQUIREMENTS (CONTRACTS EXCEEDING \$250,000)

Common Grant Rule requires bonds for all Construction Contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

- **Bid Guarantee.** Both FTA and the Common Grant Rule generally requires each Bidder to provide a Bid guarantee equivalent to a 5-percent of its Bid price. The "Bid guarantee" must consist of a firm commitment such as a Bid Bond, certified check, or other negotiable instrument accompanying a Bid to ensure that the Bidder will honor its Bid upon acceptance.
- **Performance Bond.** Both FTA and the Common Grant Rule generally requires the third-party Contractor to obtain a Performance Bond for 100-percent of the Contract price. A "Performance Bond" is obtained to ensure completion of the obligations under the third-party Contract.
- **Payment Bond.** The Common Grant Rule generally requires the third-party Contractor to obtain a standard Payment Bond for 100 percent of the Contract price. A "Payment Bond" is obtained to ensure that the Contractor will pay all people supplying labor and material for the third-party Contract as required by law. FTA, however, has determined that Payment Bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - **1 Less Than \$1 Million.** 50-percent of the Contract price if the Contract price is not more than \$1 million,
 - **2 More Than \$1 Million but Less Than \$5 Million.** 40-percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million, or
 - **3 More Than \$5 Million.** Two and one half million dollars if the Contract price is more than \$5 million.
- **Acceptable Sureties.** The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain Construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- **Reduced Bonding.** FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit

its policy and rationale to the Regional Administrator for the region administering the project.

- **Excessive Bonding.** Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective Contractor. This is particularly so if the risk results from the likelihood of the Contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

9.2 BUY AMERICA (CONTRACTS EXCEEDING \$150,000)

For any FTA assisted project, the steel, iron, and manufactured products acquired for use in the Construction project must be produced in the United States, unless FTA has granted a waiver. See 49 USC § 5323(j); 49 CFR part 661. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in the Federal Acquisition Regulation (FAR) at 48 CFR chapter 1, subchapter D, part 25, subparts 25.1 and 25.2.

9.3 CARGO PREFERENCE

(46 USC § 55305; 46 CFR part 381)

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:

- 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.
- 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.)
- 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.

9.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(40 U.S.C §§ 3701-3708; and 29 CFR part 5)

The following provisions shall apply with respect to all U.S. federal government financed Contracts and Subcontracts more than \$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.

- **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.
- **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.
- **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.
- **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (3) of this section and 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.

9.5 DAVIS BACON ACT AND COPELAND ANTI KICKBACK ACTS (CONTRACTS EXCEEDING \$2,000)

Under 49 USC § 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted Construction, alteration, and repair projects. Third party Contracts for Construction, alteration, or repair at any Contract tier exceeding \$2,000 must include provisions requiring compliance with the Davis-Bacon Act, 40 USC § 3141 et seq., and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,” 29 CFR part 5. The Davis-Bacon Act requires that Contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis Bacon Act also requires Contractors to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 USC § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the Construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise

entitled.

9.6 RECYCLED PRODUCTS (CONTRACTS EXCEEDING \$10,000)

(42 USC § 6962; 40 CFR part 247; and 2 CFR part § 200.322)

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 USC 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 CFR Part 247.

9.7 SEISMIC SAFETY (CONSTRUCTION OF NEW BUILDINGS & ADDITIONS)

42 USC 7701 et seq.; 49 CFR part 41; and Executive Order 12699

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 CFR 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 follows the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

9.8 VETERANS PREFERENCE

As provided in 49 USC § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

1. Will give a hiring preference to veterans, as defined in 5 USC § 2108, who have the skills and abilities required to perform Construction work required under a third-party Contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 USC chapter 53; and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

10. SPECIAL CONTRACT PROVISIONS FOR MATERIALS & SUPPLIES CONTRACTS

10.1 BUY AMERICA (CONTRACTS EXCEEDING \$150,000)

For any FTA assisted project, the steel, iron, and manufactured products acquired for use in the Construction project must be produced in the United States, unless FTA has granted a waiver. See 49 USC § 5323(j); 49 CFR part 661. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in the Federal Acquisition Regulation (FAR) at 48 CFR chapter 1, subchapter D, part 25, subparts 25.1 and 25.2.

10.2 CARGO PREFERENCE

(46 USC § 55305; 46 CFR part 381)

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:

- i. 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.

- ii. 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.)
- iii. 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.

10.3 RECYCLED PRODUCTS (CONTRACTS EXCEEDING \$10,000)

(42 USC § 6962; 40 CFR part 247; and 2 CFR part § 200.322)

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 USC 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 CFR Part 247.

APPENDIX D
PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -- MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 3(l)
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 4.e
Access to Third Party Contract Records		§ 16.s
Changes to Federal Requirements		§ 3.j.(1)
Equal Employment Opportunity (except special DOL construction clause)		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.e
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 16.d
Prompt Payment		49 CFR 26.29
Prohibition on Certain Telecommunications Equipment		2 CFR 200.216 FAR 52.204-24
Awards Exceeding \$10,000		
Terminations		§ 11 and § 16.d.(2)
Debarment and Suspension	Awards exceeding \$25,000	§ 4.h
Notice to FTA and U.S. DOT Inspector General of waste, fraud, abuse...	Awards exceeding \$25,000	§ 39(b)
Lobbying	Awards exceeding \$100,000	§ 4.c and § 16.d(8)
Awards Exceeding the Simplified Acquisition Threshold (\$250,000)		
Resolution of Disputes, Breaches, or Other Litigation		§ 39
Awards Exceeding \$150,000 by Statute		
Clean Air	42 U.S.C. 7401-7671q.	§ 16.d.(7)
Clean Water	33 U.S.C 1251-1387	§ 16.d.(7)
Buy America	When tangible property or construction will be acquired. The threshold for applicability is no longer tied to the simplified acquisition threshold. It is statutorily fixed in 49 U.S.C. §5323(j)(13).	§ 15.a and b

Note: The Special EEO Clause for Construction is now shown on next page under "Construction Activities" for all contracts.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

— THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 15.c
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 15.d
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 16.d.(4)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 16.d.(5)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 16.d.(4)
Special EEO Provision for Construction	All construction contracts	§ 16.d.(3)
Bonding for Construction Activities Exceeding \$250,000	5% bid guarantee bond. 100% performance and payment bond.	§ 16.n
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.b
Veterans Preference	All construction contracts	16.u
Non-construction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 35.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 35.b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States	.	§ 37
Miscellaneous Special Requirements		
Energy Conservation	All Contracts	§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 16.d.(10)
Prohibition on Certain Telecommunications Equipment	All Contracts	2 CFR 200 Appendix II 2 CFR 200.216
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 16.l
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.h
Assignability Clause	Procurements through assignments (“piggybacking”).	§ 16.a, which incorporates FTA circular 4220.1

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	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	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (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	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
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	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	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.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with major changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron, manufactured products and construction materials exceeding \$150,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards - Preaward and Post Delivery Reviews	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		2 CFR § 200.318(b)
Record of Procurement History		2 CFR § 200.318(i)
Protest Procedures		2 CFR § 200.318(k)
Selection Procedures		2 CFR § 200.320 b.
Cost/Price Analysis		2 CFR § 200.324
Justification for Noncompetitive Awards	If Applicable.	2 CFR § 200.320 c.
No Excessive Bonding Requirements		2 CFR § 200.319(b) (2)
No Exclusionary Specifications		2 CFR § 200.319(d) (1)
No Geographic Preferences	Except for A&E Services	42 CFR § 200.319 c.



Appendix O

BUY AMERICA CERTIFICATION FOR ROLLING STOCK

BUY AMERICA CERTIFICATION

Procurement of buses, other rolling stock, and associated Equipment

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and the regulations at 49 CFR 661.11:

Date _____

Print Name of Authorized Official _____

Title _____

Signature of Authorized Official _____

Company Name _____

Company Address _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR 661.11 but may qualify for an exception pursuant to 49 U.S.C. Sections 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.11.

Date _____

Print Name of Authorized Official _____

Title _____

Signature of Authorized Official _____

Company Name _____

Company Address _____



Appendix P

BUY AMERICA CERTIFICATION FOR MANUFACTURED PRODUCTS

BUY AMERICA CERTIFICATION

Procurement of steel, iron, or manufactured products

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5:

Date _____

Print Name of Authorized Official _____

Title _____

Signature of Authorized Official _____

Company Name _____

Company Address _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. Part 661.5., but it may qualify for an exception pursuant to 49 U.S.C. Sections 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Print Name of Authorized Official _____

Title _____

Signature of Authorized Official _____

Company Name _____

Company Address _____



Appendix Q

LOBBYING CERTIFICATION

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, Amendment or modification of any Federal Contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the Award documents of all sub-Awards at all tiers (including Subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The Contractor/Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor/Consultant's Authorized Official

Name & Title of Contractor/Consultant's Authorized Official

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

Approved by OMB
4040-0013

1. * Type of Federal Action: <input type="checkbox"/> a. contract <input checked="" type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. * Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input checked="" type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. * Report Type: <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
4. Name and Address of Reporting Entity: <input checked="" type="checkbox"/> Prime <input type="checkbox"/> SubAwardee * Name: <input type="text"/> * Street 1: <input type="text"/> Street 2: <input type="text"/> * City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/> Congressional District, if known: <input type="text"/>		
5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: <input type="text"/>		
6. * Federal Department/Agency: <input type="text"/>		7. * Federal Program Name/Description: <input type="text"/> CPDA Number, if applicable: <input type="text"/>
8. Federal Action Number, if known: <input type="text"/>		9. Award Amount, if known: \$ <input type="text"/>
10. a. Name and Address of Lobbying Registrant: Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/> * Street 1: <input type="text"/> Street 2: <input type="text"/> * City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/>		
b. Individual Performing Services (including address if different from No. 10a) Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/> * Street 1: <input type="text"/> Street 2: <input type="text"/> * City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/>		
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
* Signature: <input type="text"/> * Name: Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/> Title: <input type="text"/> Telephone No.: <input type="text"/> Date: <input type="text"/>		
Federal Use Only:		Authorized for Local Reproduction Standard Form -LLL (Rev. 7-97)



Appendix R

DEBARMENT & SUSPENSION CERTIFICATION

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

CONSULTANT/CONTRACTOR/VENDOR Covered Transactions

- (1) The prospective CONSULTANT/CONTRACTOR/VENDOR, _____ of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

CONSULTANT/CONTRACTOR/VENDOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date



Appendix S

E-VERIFY AFFIDAVIT

Immigration Law Affidavit Certification

This Affidavit is required and should be signed by an authorized principal of the firm, notarized, and submitted with County Procurements where applicable. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, upon request by County personnel. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company.

Lee County will not intentionally Award County Contracts to any Vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA").

Lee County may consider the employment by any Vendor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the Contract by Lee County.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at any time upon request by the County.

Company Name _____

Print Name _____ Title _____

Signature _____ Date _____

State of _____

County of _____

The foregoing instrument was signed and acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 20____, by

(Print or Type Name) who has produced _____ as identification.
(Type of Identification)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of these Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.