



Advertise Date: Tuesday, July 11, 2023

Lee County Board of County Commissioners  
DIVISION OF PROCUREMENT MANAGEMENT

Invitation to Bid (B)  
Construction

Solicitation No.: **B230375SML**  
Solicitation Name: **LeeTran Lehigh Acres Park and Ride**  
Open Date/Time: **Wednesday, August 16, 2023** Time: **2:30 PM**  
Location: Lee County Procurement Management  
2115 Second Street, 1st Floor  
Fort Myers, FL 33901  
Procurement Contact: Sara Long Title Procurement Analyst  
Phone: (239) 533-8886 Email: [SLong@leegov.com](mailto:SLong@leegov.com)

Requesting Dept. Facilities Construction & Management

**Pre-Bid Conference:**

Type: NON-Mandatory  
Date/Time: **7/20/2023 9:00 AM**  
Location: LeeTran Headquarters  
3401 Metro Parkway  
Fort Myers, FL 33901

All solicitation documents are available for download at  
[www.leegov.com/procurement](http://www.leegov.com/procurement)

**FUNDED IN PART OR IN WHOLE BY:  
Federal Transit Administration (FTA)**



Advertise Date: Tuesday, July 11, 2023

**Notice to Bidder**

**Invitation to Bid (B) Construction**

Lee County, Florida, is requesting bids from qualified individuals/firms for

**B230375SML, LeeTran Lehigh Acres Park and Ride**

Then and there to be publicly opened and read aloud for the purpose of selecting a vendor to furnish all necessary labor, services, materials, equipment, tools, consumables, transportation, skills and incidentals required for Lee County, Florida, in conformance with solicitation documents, which include technical specifications and/or a scope of work.

Those individuals/firms interested in being considered for this solicitation are instructed to submit, in accordance with specifications, their Bids, pertinent to this project prior to

**2:30 PM Wednesday, August 16, 2023**

to the office of the **Procurement Management Director, 2115 Second Street, 1st Floor, Fort Myers, FL 33901**. The Invitation to Bid shall be received in a sealed envelope, prior to the time scheduled to receive Bid(s), and shall be clearly marked with the solicitation name, solicitation number, bidder name, and contact information as identified in these solicitation documents.

The Scope of Work/Specifications for this solicitation is available from [www.leegov.com/procurement](http://www.leegov.com/procurement). Bidders who obtain Scope of Work/Specifications from sources other than [www.leegov.com/procurement](http://www.leegov.com/procurement) are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from [www.leegov.com/procurement](http://www.leegov.com/procurement). It is the bidder's responsibility to check for posted information. The County may not accept incomplete Bids.

**A Non-Mandatory Pre-Bid Conference has been scheduled for the following time and location:**

**9:00 AM July 20, 2023 LeeTran Headquarters, 3401 Metro Parkway, Fort Myers, FL 33901** for the purpose of discussing the proposed project. Prospective bidders are encouraged to attend. All prospective bidders are encouraged to obtain and review plans, specifications, and scope of work for this bid before the pre-bid conference so that they may be prepared to discuss any question or concerns they have regarding this project. A site visit may follow the pre-bid conference. Questions regarding this solicitation are to be directed, in writing, to the individual listed below using the email address listed below or faxed to (239) 485 8383 during normal working hours.

**Sara Long, [SLong@leegov.com](mailto:SLong@leegov.com)**

Sincerely,

Robin Dennard, CPPB  
Procurement Manager

\*[WWW.leegov.Com/Procurement](http://WWW.leegov.Com/Procurement) is the County's official posting site

**Terms and Conditions**  
**INVITATION TO BID (B)**  
**CONSTRUCTION**

**1**        **DEFINITIONS**

- 1.1        **Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract Agreement/Contract. Addendum/Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation.
- 1.2        **Approved Alternate:** Solicitation documents may make reference of specific manufacturer(s) or product(s). These references serve only as a recommendation and a guide to minimum quality and performance. The references are not intended to exclude approved alternatives of other manufacturer(s) or product(s).
- 1.3        **Bid/Proposal Package:** A bid/proposal is a document submitted by a vendor in response to some type of solicitation to be used as a basis for negotiations or for entering into a contract.
- 1.4        **Bidder/Responder/Proposer:** One who submits a response to a solicitation.
- 1.5        **County:** Refers to Lee County Board of County Commissioners.
- 1.6        **Due Date and Time/Opening:** Is defined as the date and time upon which a bid or proposal shall be submitted to the Lee County Procurement Management Division. Only bids or proposals received prior to the established date and time will be considered.
- 1.7        **Liquidated Damages:** Damages paid usually in the form of monetary payment, agreed by the parties to a contract which are due and payable as damages by the party who breaches all or part of the contract. May be applied on a daily basis for as long as the breach is in effect.
- 1.8        **Procurement Management:** shall mean the Director of Lee County's Procurement Management Department or designee.
- 1.9        **Responsible:** A vendor, business entity or individual who is fully capable to meet all of the requirements of the bid/proposal solicitation documents and subsequent contract. Must possess the full capability including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
- 1.10       **Responsive:** A vendor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the bid/proposal solicitation documents and all of its requirements, including all form and substance.
- 1.11       **Solicitation:** An invitation to bid, a request for proposal, invitation to negotiate or any document used to obtain bids or proposals for the purpose of entering into a contract.

**2**        **ORDER OF PRECEDENCE**

- 2.1        In resolving conflicts, errors, and discrepancies, the order of precedence of the bid document is as follows
  - 2.1.1      Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, "Public Business", Chapter 287 "Procurement of Personal Property and Services."
  - 2.1.2      Lee County Procurement Management Ordinance 22-06
  - 2.1.3      Change Order
  - 2.1.4      Agreement
  - 2.1.5      Addenda
  - 2.1.6      Special Conditions
  - 2.1.7      General Conditions, if any
  - 2.1.8      Specifications
  - 2.1.9      Supplemental Information
  - 2.1.10     Drawings/Plans, if any
  - 2.1.11     Figure Dimensions, if any
  - 2.1.12     Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)
  - 2.1.13     Terms and Conditions

**3**        **RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES**

- 3.1        It shall be the responsibility of the bidder to assure compliance with all other federal, state, or county codes, rules, regulations, or other requirements, as each may apply. Any involvement with the Lee County shall be in accordance with but not limited to:
  - 3.1.1      Lee County Procurement Management Ordinance 22-06

- 3.1.2 Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records. Sealed bids, proposals or replies received by the agency pursuant to a solicitation are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
- 3.1.3 FL § 215 regarding scrutinized companies and business operations.
- 3.1.4 FL § 218 Public Bid Disclosure Act.
- 3.1.5 Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, “Public Business”, Chapter 287 “Procurement of Personal Property and Services.”
- 3.1.6 FL § 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.
- 3.1.7 FL § Section 607.1501(1) states: A foreign corporation may not transact business in the State of Florida until it obtains a certificate of authority from the Department of State.
- 3.2 **Local Business Tax Account:** As applicable, anyone providing merchandise or services to the public within the jurisdiction of Lee County must obtain a Lee County business tax account to operate unless specifically exempted.
- 3.3 **License(s):** Bidder should provide, at the time of the opening of the bid, licenses required for this product and/or service.

#### 4 BID – PREPARATION OF SUBMITTAL

- 4.1 **Sealed Bid:** Submission must be in a sealed envelope/box, and the outside of the submission must be marked with the following information (Sealed Bid Label Form is attached for your use):
  - 4.1.1 Marked with the words “Sealed Bid”
  - 4.1.2 Bid Number
  - 4.1.3 Bid Title
  - 4.1.4 Bid Due Date
  - 4.1.5 Name of the firm submitting the bid
  - 4.1.6 Contact e-mail and telephone number
- 4.2 **Bid submission shall include:**
  - 4.2.1 Provide two (2) hard copies. Mark each: one “Original”, one “Copy”
  - 4.2.2 Provide one (1) electronic flash drive set of the entire submission documents.
  - 4.2.3 Electronic submission document is to be one single Adobe PDF file in the same order as the original hard copy.
  - 4.2.4 Limit the color and number of images to avoid unmanageable file sizes.
- 4.3 **Submission Format:**
  - 4.3.1 Required Forms: complete and return **all** required forms. If the form is not applicable, please return with “Not Applicable” or “N/A” in large letters across the form.
  - 4.3.2 Failure to submit required or requested information may result in the bidder being found non-responsive.
  - 4.3.3 Execution of Bid: All documents must be properly signed by corporate authorized representative, witnessed, and where applicable corporate and/or notary seals affixed. All Bids shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the bids shall be initialed.
  - 4.3.4 If a cost/bid schedule was provided in Microsoft Excel format, the returned completed schedule should be included as a Microsoft Excel File on the Flash drive.
  - 4.3.5 The submission should not contain links to other web pages.
  - 4.3.6 Include any information requested by the County necessary to analyze your bid, i.e., required submittals, literature, technical data, financial statements.
  - 4.3.7 Bid Security/Bond(s), as applicable (Construction projects)
- 4.4 **Preparation Cost:** The Bidder is solely responsible for any and all costs associated with responding to this solicitation. No reimbursement will be made for any costs associated with the preparation and submittal of any bid, or for any travel and per diem costs that are incurred by any Bidder.

#### 5 RESPONSES RECEIVED LATE

- 5.1 It shall be the Bidder's sole responsibility to deliver the bid submission to the Lee County Procurement Management Division prior to or on the time and date stated. All references to date and time herein reference Lee County, FL local time.
- 5.2 Any bids received after the stated time and date will not be considered. The bid shall not be opened at the public opening. Arrangements may be made for the unopened bid to be returned at the bidder's request and expense.
- 5.3 The Lee County Procurement Management Division shall not be responsible for delays caused by the method of delivery such as, but not limited to; internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.

## 6 BIDDER REQUIREMENTS (unless otherwise noted)

- 6.1 **Responsive and Responsible:** Only bids received from responsive and responsible bidders will be considered. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted, or investigation and evaluation indicates an inability for the bidder to perform.
  - 6.1.1 Additional sources may be utilized to determine credit worthiness and ability to perform.
  - 6.1.2 Any bidder or sub-contractor that will have access to County facilities or property may be required to be screened to a level that may include, but is not limited to fingerprints, statewide criminal. There may be fees associated with these procedures. These costs are the responsibility of the bidder or sub-contractor.
  - 6.1.3 Bidders are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Bidders shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Bidder who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Bidder and prime Bidder shall ensure compliance with Chapter 435 of such parties.
    - 6.1.3.1 Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.
- 6.2 **BID--Past Performance:** Bidders past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) may be reviewed. Poor or unacceptable past performance may result in bidder disqualification.
- 6.3 Submission packages, unless otherwise noted, will be considered only from bidders normally engaged in the provision of the services specified here in. The bidder shall have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to Lee County. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other action necessary to determine ability to perform satisfactorily and reserves the right to reject submission packages where evidence submitted, or investigation and evaluation indicated an inability of the bidder to perform.

## 7 PRE-BID CONFERENCE

- 7.1 A pre-bid conference will be held in the location, date, and time specified on the cover of this solicitation. The cover will also note if the pre-bid conference is Non-Mandatory or Mandatory. All questions and answers are considered informal. All prospective bidders are encouraged to obtain and review the solicitation documents prior to the pre-bid conference so they may be prepared to discuss any questions or concerns they have concerning this project. All questions must be submitted formally in writing to the procurement staff noted on the first page of the bid document. A formal response will be provided in the form of an addendum (see "County Interpretation/Addendums" for additional information.) A site visit may follow the pre-bid conference, as applicable.
- 7.2 **Non-Mandatory:** Pre-bid conferences are generally non-mandatory, but it is highly recommended that prospective bidders participate.
- 7.3 **Mandatory:** Failure to attend a mandatory pre-bid conference will result in the bid being considered **non-responsive**.

## 8 COUNTY INTERPRETATION/ADDENDUMS

- 8.1 Each Bidder shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the solicitation shall be **submitted in writing prior to 5:00 PM at least eight (8) calendar days prior to the date when the submission is due.**
- 8.2 Response(s) will be in the form of an Addendum posted on [www.leegov.com/procurement](http://www.leegov.com/procurement). It is solely the bidder's responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Division.
- 8.3 All Addenda shall become part of the Contract Documents.
- 8.4 The County shall not be responsible for oral interpretations given by any County employee, representative, or others. Interpretation of the meaning of the plans, specifications, or any other contract document, or for correction of any apparent ambiguity, inconsistency, or error there in, shall be in writing. Issuance of a written addendum by the County's Procurement Management Division is the only official method whereby interpretation, clarification or additional information can be given.

## 9 QUALITY GUARANTEE/WARRANTY (as applicable)

- 9.1 Bidder will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from the date of final completion.
- 9.2 Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.
- 9.3 Unless otherwise specifically provided in the specifications, the equipment must be warranted for twelve (12) months, shipping, parts, and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service at no additional charge to the County.
- 9.4 If any product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials, if in its judgment the item reflects unsatisfactory workmanship or manufacturing or shipping damage. The vendor shall refund, to the County, any money which has been paid for same.

## 10 SUBSTITUTION(S)/APPROVED ALTERNATE(S)

- 10.1 Unless otherwise specifically provided in the specifications, reference to any equipment, material, article or patented process, by trade name, brand name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. If a bidder wishes to make a substitution in the specifications, the bidder shall furnish to the County, **no later than ten (10) business days prior to the bid opening date**, the name of the manufacturer, the model number, and other identifying data and information necessary to aid the County in evaluating the substitution. Such information is submitted through the Procurement Management Division. Any such substitution shall be subject to County approval through the issuance of a written addendum by the County's Procurement Management Division. Substitutions shall be approved only if determined by the County to be an **Approved Alternate** to the prescribed specifications.
- 10.2 A bid containing a substitution is subject to disqualification if the substitution is not approved by the County. Items bid must be identified by brand name, number, manufacturer, and model, and shall include full descriptive information, brochures, and appropriate attachments. Brand names are used for descriptive purposes only. An **Approved Alternate** product or service may be used.

## 11 NEGOTIATED ITEMS

- 11.1 Any item not outlined in the Scope of Work/Specifications may be subject to negotiations between the County and the successful bidder.
- 11.2 After award of this bid the County reserves the right to add or delete items/services at prices to be negotiated at the time of addition or deletion.



- 11.3 At contract renewal time(s) or in the event of significant industry wide market changes, the County may negotiate justified adjustments such as price, terms, etc., if in its sole judgment, the County considers such adjustments to be in their best interest.
- 12 ERRORS, OMISSIONS, CALCULATION ERRORS (as applicable)
- 12.1 **Calculation Errors:** In the event of multiplication/addition error(s), the unit price shall prevail. Written prices shall prevail over figures where applicable. All bids will be reviewed mathematically and corrected, if necessary, using these standards, prior to further evaluation.
- 13 CONFIDENTIALITY
- 13.1 Bidders should be aware that all submissions provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 FL §.
- 13.2 If information is submitted with a bid that is deemed “Confidential” the bidder must stamp those pages of the submission that are considered confidential. The bidder must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, “Public Records,” exemptions.
- 13.3 Lee County ***will not reveal engineering estimates or budget amounts for a project*** unless required by grant funding or unless it is in the best interest of the County. According to FL § 337.168: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.
- 14 BID -- CONFLICT OF INTEREST
- 14.1 **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All bidders must disclose with their submission the name of any officer, director or agent who is also an employee of the Lee County or any of its agencies. Further, all bidders must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the bidder’s firm or any of its branches.
- 15 ANTI-LOBBYING CLAUSE (Cone of Silence)
- 15.1 Following FL § Section 287.057(23), Upon the issuance of the solicitation, prospective proposers/bidders or any agent, representative or person acting at the request of such proposer/bidder shall not have any contact, communicate with or discuss any matter relating in any way to the solicitation with any Commissioner, Evaluation Review Committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any solicitation and ends upon execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Bidder/Proposer may be declared non-responsible.**
- 16 ANTITRUST VIOLATION
- 16.1 A person or an affiliate who has been placed on the antitrust violator vendor list, available at [Antitrust Violator Vendor List / Vendor Registration and Vendor Lists / State Agency Resources / State Purchasing / Business Operations / Florida Department of Management Services - DMS \(myflorida.com\)](#), following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to Lee County; may not submit a bid, proposal, or reply for a new contract with Lee County for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to Lee County; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with Lee County; and may not transact new business with Lee County.
- 17 DRUG FREE WORKPLACE
- 17.1 Lee County Board of County Commissioners encourages Drug Free Workplace programs.
- 18 FLORIDA CERTIFIED ENTERPRISES
- 18.1 The County encourages the use of Florida Certified Enterprises such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.

- 18.2 Bidder/Proposer is requested to indicate whether the Firm and/or any proposed sub-consultants are a Florida Certified Enterprise. Lee County encourages the utilization and participation of DBE, MBE, WBE, VBE or similar in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex, or national origin. Interested Florida Certified Enterprises such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms and similar are encouraged to submit.

**19 ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

- 19.1 The bidder agrees to comply, in accordance with FL § 287.134, 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA) that furnishing goods or services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 19.2 The bidder will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability, or marital status. The bidder will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability, or marital status.
- 19.3 The bidder will include the provisions of this section in every sub-contract under this contract to ensure its provisions will be binding upon each sub-contractor. The bidder will take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.
- 19.4 An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

**20 SUB-CONTRACTOR**

- 20.1 The use of sub-contractors under this solicitation requires prior written authorization from the County representative.

**21 BID - PROJECT GUIDELINES (as applicable)**

- 21.1 The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the bidder(s) in conforming to the provision of goods and/or services to be provided pursuant to this Agreement/Contract:
- 21.1.1 No amount of work is guaranteed upon the execution of an Agreement/Contract.
- 21.1.2 Rates and all other negotiated expenses will remain in effect throughout the duration of the Agreement/Contract period.
- 21.1.3 This contract does not entitle any bidder to exclusive rights to County Agreement/Contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.
- 21.1.4 In reference to vehicle travel, mileage and man-hours spent in travel time, is considered incidental to the work and not an extra compensable expense.
- 21.1.5 Lee County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement/Contract.
- 21.1.6 Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

**22 BID – TIEBREAKER**

- 22.1 Whenever two or more Bids, which are equal with respect to price, quality, and service, are received for procurement of commodities or contractual services, from Responsive and Responsible Bidders, the following steps shall be taken to establish the Award to the lowest Bidder. This method shall be used for all ties.



- 22.1.1 Step 1 - Local Bidder: Between a Local Bidder, and a non-Local Bidder, a Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Local Bidder. **If local preference is prohibited by the funding source, then step 2 will replace step 1.**
- 22.1.2 Step 2 - Drug Free Workplace: At the conclusion of step 1, if all is equal, the Bidder with a Drug Free Workplace program shall be given preference over a Bidder with no Drug Free Workplace program. The Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Bidder with the Drug Free Workplace program.
- 22.1.3 Step 3 - Coin Flip: At the conclusion of Step 1 and Step 2, if all is equal, the Contract Award, or the first opportunity to negotiate, as applicable, the final outcome shall be determined by the flip of a coin.
- 22.2 When the tie has been broken pursuant to the above procedures, the Contract Award, or the first opportunity to negotiate, as applicable, shall be furnished to the prevailing Bidder.
- 22.3 If an Award or negotiation is unsuccessful with the initial Bidder, Award or negotiations may commence with the next highest Bidder, utilizing the tiebreaker steps above to make the determination of next lowest Bidder, if necessary.
- 23 WITHDRAWAL OF BID**
  - 23.1 No bid may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A bid may be withdrawn prior to the solicitation opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
  - 23.2 A bidder may withdraw a submission any time prior to the opening of the solicitation.
  - 23.3 After submissions are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a bid because of the mistake of the bidder in the preparation of the submission document. In such circumstance, the decision of the Procurement Management Director to allow the submission withdrawal, although discretionary, shall be based upon a finding that the bidder, by clear and convincing evidence, has met each of the following four tests:
    - 23.3.1 The bidder acted in good faith in submitting the bid,
    - 23.3.2 The mistake in bid preparation that was of such magnitude that to enforce compliance by the bidder would cause a severe hardship on the bidder,
    - 23.3.3 The mistake was not the result of gross negligence or willful inattention by the bidder; and
    - 23.3.4 The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the Agreement/Contract.
- 24 PROTEST RIGHTS**
  - 24.1 Any Bidder that has submitted a formal Response to Lee County, and who is adversely affected by an intended decision with respect to the Award, has the right to protest an intended decision posted by the County as part of the Solicitation process.
  - 24.2 Notice of Intended Decision is posted on the Lee County Department of Procurement Management website ([www.leegov.com/procurement](http://www.leegov.com/procurement)). Bidders are solely responsible to check for information regarding the Solicitation.
  - 24.3 Refer to the "Procurement Protest" section of the Lee County Procurement Ordinance 22-06 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
  - 24.4 In order to preserve the right to protest, a written **"Notice of Intent to File a Protest"** must be filed with the **Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision.**
  - 24.5 The notice shall clearly indicate all grounds being claimed for the protest.
  - 24.6 The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
  - 24.7 Following receipt of the Notice of Intent to File a Protest, a **"Protest Bond"** and **"Formal Written Protest"** must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
  - 24.8 **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 22-06 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

**25 AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES**

- 25.1 This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the Agreement/Contract of the vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Lee County Board of County Commissioners will not be financially responsible for the purchases of other entities from this solicitation.

**26 CONTRACT ADMINISTRATION**

**26.1 Designated Contact:**

- 26.1.1 The awarded bidder shall appoint a person(s) to act as a primary contact for all County departments. This person or back-up shall be readily available during normal working hours by phone or in person and shall be knowledgeable of the terms and procedures involved.
- 26.1.2 Lee County requires the awarded bidder to provide the name of a contact person(s) and phone number(s) which will afford Lee County access 24 hours per day, 365 days per year, of this service in the event of major breakdowns or natural disasters.

**26.2 BID – Term: (unless otherwise stated in the Scope of Work or Detailed Specifications)**

- 26.2.1 Unless otherwise stated in the scope of work, specifications, or special conditions the default **contract term shall be for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.**
- 26.2.2 The County reserves the right to renew this Agreement/Contract (or any portion thereof) and to negotiate pricing as a condition for each.
- 26.2.3 The County's performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.

**26.3 BID – Basis of Award:**

- 26.3.1 The bid is awarded under a system of sealed, competitive bidding to the lowest responsive and responsible bidder.
- 26.3.2 In the event the lowest responsive and responsive bid for a project exceeds the available funds the County may negotiate an adjustment of the bid price with the lowest responsive and responsive bidder, in order to bring the total cost of the project within the amount of available funds.
- 26.3.3 The County reserves the right to make award(s) by individual item, group of items, all or none, or a combination thereof. The County reserves the right to reject any and all bids or to waive any minor irregularity or technicality in the bids received. Award will be made to the lowest responsive and responsive bidder(s) within the category chosen for basis of award.
- 26.3.4 The County reserves the right to award to one or multiple bidders at the discretion of the requesting authority and approval of the Procurement Management Director.

**26.4 Agreement/Contracts:**

- 26.4.1 The awarded bidder will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://www.leegov.com/procurement/forms>.

**26.5 Records:**

- 26.5.1 Retention: The bidder shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules, and regulations. Unless otherwise stated in the specifications, the bidder shall retain these records for a period of five years after final payment, or until they are audited by Lee County, whichever event occurs first.
- 26.5.2 Right to Audit/Disclosure: These records shall be made available during the term of the contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder/Proposer(s) are hereby informed of their requirement to comply with FL §119 specifically to:
- 26.5.2.1 Keep and maintain public records required by the County to perform the service.
- 26.5.2.2 Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.

26.5.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

26.5.2.4 Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the County upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

26.5.3 Public Record: **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, Email at [PRRCustodian@leegov.com](mailto:PRRCustodian@leegov.com) or Visit <http://www.leegov.com/publicrecords>.**

26.5.4 Ownership: It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications, and all data prepared or obtained by the successful bidder in connection with its services hereunder, include any documents bearing the professional seal of the successful bidder, and shall be delivered to and become the property of Lee County, prior to final payment to the successful bidder or the termination of the Agreement/Contract. This includes any electronic versions, such as CAD or other computer aided drafting programs.

## 26.6 Termination:

26.6.1 Any Agreement/Contract as a result of this solicitation may be terminated by either party giving **thirty (30) calendar days advance written notice**. The County reserves the right to accept or not accept a termination notice submitted by the vendor, and no such termination notice submitted by the vendor shall become effective unless and until the vendor is notified in writing by the County of its acceptance.

26.6.2 The Procurement Management Director may immediately terminate any Agreement/Contract as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 22-06.

26.6.3 Any bidder who has voluntarily withdrawn from a solicitation without the County's mutual consent during the contract period shall be barred from further County procurement for a **period of 180 days**. The vendor may apply to the Board for a waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by the Procurement Management Department.

26.6.4 The County reserves the right to terminate award or contract following any of the below for goods or services over \$1,000,000:

26.6.4.1 Contractor is found to have submitted a false certification as provided under FL § 287.135 (5);

26.6.4.2 Contractor has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (FL §215.473);

26.6.4.3 Contractor has engaged in business operations in Cuba or Syria (FL § 215.471);

26.6.4.4 Contractor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. (FL § 215.4725);

26.6.4.5 The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to advantageous to the County.

- 27 WAIVER OF CLAIMS
- 27.1 Once this contract expires, or final payment has been requested and made, the awarded bidder shall have waived any claims against the County concerning this contract. After that period, the County will consider the bidder to have waived any right to claims against the County concerning this Agreement/Contract.
- 28 LEE COUNTY PAYMENT PROCEDURES
- 28.1 Unless otherwise noted, all vendors are requested to mail an original invoice to:  
**Lee County Finance Department**  
**Post Office Box 2238**  
**Fort Myers, FL 33902-2238**
- 28.2 All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specifications for this project.
- 28.3 Lee County will not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, proposer, or bidder for the preparation of these specifications.
- 28.4 Lee County is generally a tax-exempt entity subject to the provisions of the 1987 legislation regarding sales tax on services. Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All bidders should include in their bids, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.
- 29 SAFETY DATA SHEETS (SDS) (as applicable)
- 29.1 In accordance with Chapter 443 of the FL §, it is the vendor's responsibility to provide Lee County with Safety Data Sheets on bid materials, as may apply to this procurement.
- 30 DEBRIS DISPOSAL (as applicable)
- 30.1 Unless otherwise stated, the bidder shall be fully responsible for the lawful removal and disposal of any materials, debris, garbage, vehicles, or other such items which would interfere with the undertaking and completion of the project. There shall not be an increase in time or price associated with such removal.
- 31 SHIPPING (as applicable)
- 31.1 Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the bidder unless otherwise agreed upon in writing prior to service. It shall be the bidder's responsibility to make appropriate arrangements, and to coordinate with authorized personnel at the site, for proper acceptance, handling, protection, and storage (if available) of equipment and material delivered. All pricing to be F.O.B. destination.
- 31.2 The materials and/or services delivered under the bid shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.
- 32 BOND/SURETY (CONSTRUCTION)
- 32.1 Bonding/Surety is required in accordance with the Lee County Procurement Ordinance 22-06.
- 32.2 Bid Bond/Security: The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement. Each Bidder shall submit not less than five percent (5%) of the proposed dollar amount (including applicable Alternates) as Bid Bond/Security. One ORIGINAL Bid Bond/Security shall be submitted to the County with each Bid submission. The Bid Bond/Security of the Bidder will be retained until the Bidder and the County have entered into the Contract, whereupon the Bid Bond/Security may be returned. The Bid Bond/Security of a Bidder whom the County believes to have a reasonable chance of receiving the Award may be retained by the County until the effective date of the Contract, whereupon any Bid Bonds/Securities furnished by a Bidder may be returned. The following types of Bid Security shall be accepted:
- 32.2.1 **A Certified Check or a Cashier's Check** in the stated dollar amount of not less than 5% of proposed dollar amount. Any Certified Check or Cashier Check submitted in lieu of a Bid Bond Shall be drawn on a solvent bank or trust company, made payable to Lee County Board of County Commissioners and shall have all necessary documentary revenue stamps attached (if required by law); or
- 32.2.2 **A Bid Bond** may be submitted on a Lee County paper Bid Bond Form. Must be signed by all required parties, of not less than 5% of proposed dollar amount (including Alternate(s) as applicable) shall

accompany each submission. The Bid Bond shall be issued by a duly authorized surety authorized to do business and in good standing with the Florida Department of state.

- 32.3 **Payment and Performance Bond:** In accordance with F.S. 255.05 and Lee County Ordinance 22-06, a Public Payment and Performance Bond is to be issued in a sum equal to one hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida shall be required from the successful bidder/vendor. This shall insure the faithful performance of the obligations imposed by the resulting contract and protect the County from lawsuits for non-payment of debts incurred during the successful bidder/vendor performance under such Contract.

32.3.1 A public Payment and Performance bond must be properly executed, by the Surety Company and successful bidder/vendor, and recorded with the Lee County Clerk of Court, within **seven calendar days** after notification by Lee County of the approval to award the Contract.

32.3.2 A **Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.

32.4 Only Lee County form(s) may be accepted. Forms are available at <https://www.leegov.com/procurement/forms>.

32.5 **Personal Checks are not acceptable to Lee County as a Bid Security.**

32.6 **Surety:** In order to be acceptable to the County, a Surety Company issuing Evidence of Bond ability, Bid Guaranty Bonds or 100% Public Payment and Performance Bonds or Letters of Credit called for herein shall meet and comply with the minimum standards set forth in as part of the Contract Documents.

The surety company shall be authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by an agent with satisfactory evidence of its authority to execute the bond being submitted.

### 33 LOCAL VENDOR PREFERENCE

33.1 The Procurement Management Department will adhere to the Lee County Ordinance No. 22-06 and as may be amended from time to time (the County's "Local Vendor Preference"). It shall be at the discretion of the County Manager or Designee whether to apply Local Vendor Preference to any particular Solicitation.

33.2 The County's Local Vendor Preference, as it relates to Bidding preferences for local Vendors, is not applicable to Solicitations or Contracts when Commodities and/or Services may be provided in the event of an Emergency.

33.3 The County's Local Vendor Preference shall not apply in any procurement for Commodities or Services if the use of the Local Vendor Preference is prohibited by the terms of a grant or funding agreement or other prevailing law or policy.

### 34 INSURANCE (AS APPLICABLE)

34.1 Insurance shall be provided by the awarded bidder/vendor. Prior to execution of the Agreement/Contract a certificate of insurance (COI) complying with the bid documents shall be provided by the bidder/vendor.

34.2 Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of "B or better."

End of Terms and Conditions Section



## INSURANCE GUIDE



### Lee County Insurance Requirements

**Minimum Insurance Requirements:** *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:
  - \$1,000,000 per occurrence
  - \$2,000,000 general aggregate
  - \$1,000,000 products and completed operations
  - \$1,000,000 personal and advertising injury
- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:
  - \$1,000,000 combined single limit (CSL); or
  - \$500,000 bodily injury per person
  - \$1,000,000 bodily injury per accident
  - \$500,000 property damage per accident
- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:
  - \$500,000 per accident
  - \$500,000 disease limit
  - \$500,000 disease – policy limit

***\*The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***



## Lee County Insurance Requirements

### **Verification of Coverage:**

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. Under the Description of Operations, the following must read as listed:

*"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials are automatic additional insureds and includes an automatic waiver of subrogation with regard to general liability. The certificate holder is an additional insured on a primary and noncontributory basis with regards to general liability."*

- b. The certificate holder must read as follows:

Lee County, a political subdivision and Charter County of the State of Florida  
P.O. Box 398  
Fort Myers, Florida 33902

### **Special Requirements:**

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.

Revised 12/02/2022 – Page 2 of 2

End of Insurance Guide Section

## **SPECIAL CONDITIONS**

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

### **1. TERM**

From the Notice to Proceed or the Purchase Order date, whichever applies: **300** calendar days to substantial completion, **65** calendar days from substantial completion to final completion (**total days 365**)

### **2. LIQUIDATED DAMAGES (CONSTRUCTION)**

In accordance with the terms set forth in the Agreement, for each consecutive calendar day of delay in achieving Substantial Completion as set forth herein, the Contractor shall be liable to the County for liquidated damages in the amount of **\$2,400** per calendar day.

### **3. BASIS OF AWARD**

3.1 The basis of award shall be determined by the lowest bid price based on the available funds to cover the following order of alternative combination precedence:

- 3.1.1 Combination 1 – Base Bid + Alternates 1, 2 & 3
- 3.1.2 Combination 2 – Base Bid + Alternates 1 & 2
- 3.1.3 Combination 3 – Base Bid + Alternates 1 & 3
- 3.1.4 Combination 5 - Base Bid + Alternate 1
- 3.1.5 Combination 4 - Base Bid + Alternates 2 & 3
- 3.1.6 Combination 6 - Base Bid + Alternate 2
- 3.1.7 Combination 7 - Base Bid + Alternate 3
- 3.1.8 Combination 8 - Base Bid

3.2 LeeTran has an established budget of \$4.5 million for this project.

3.3 The COUNTY reserves the right to award to the CONTRACTOR whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the COUNTY. Additionally, the COUNTY reserves the right to reject any and all bids at any time, unconditionally, and without cause.

3.4 The COUNTY reserves the right to reject any bids or portion of the bid with just cause, which shall include, but not be limited to an "unbalanced bid", to the detriment of the COUNTY. An "unbalanced bid" shall include" excessive unit pricing, other unfair pricing for materials or labor, or a disproportionate allocation of cost to the COUNTY for the actual construction performed.

3.5 CONTRACTOR must bid all line items to be eligible for award. Failure to bid all line items shall deem CONTRACTOR non-responsive and therefore ineligible for award.

3.6 Upon issuance of Substantial Completion the warranties and service agreements held by the General Contractor shall be transferred to LeeTran for the following equipment, including but not limited to a Ticket Vending Machine, Electronic Interactive Kiosk, Electronic Bus Route Kiosk, Electronic Wayside signs and related equipment.

### **4. PROJECT FUNDING NOTICE**

4.1 As notice to all Contractors, this project is funded in whole or in part with Federal Funds through the Federal Transit Administration (FTA). The selected Contractor agrees to abide by and comply with all Federal terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation

package. It shall be further understood that these provisions and terms shall be incorporated into any related Agreements/Contracts executed between the Contractor and Subcontractors.

When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the County or “pass-through” from another entity, the County is required to and will follow the Federal procurement standards in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 C.F.R. Part 200, Sections 200.317 through 200.327. Contractor shall work with the County to assure that it will comply with 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II.

## **5. LOCAL VENDOR PREFERENCE EXCLUSION**

5.1 The Lee County Local Vendor Preference Ordinance has been waived for this solicitation and all references contained herein and non-applicable to this solicitation and subsequent Agreement and/or Purchase Order(s).

## **6. CONDUCT**

6.1 Vendor agrees that all of its officers, employees and representatives shall conduct themselves in a professional manner and shall communicate with County employees and members of the public in a civil manner whenever conducting County business. All aspects of Vendor’s performance, including complaints received from the public, may impact the County’s decision to renew or terminate this Agreement in accordance with the provision contained here. Vendor shall remove or suspend, or further investigate, their employees for any act of violence, sexual harassment, substance abuse, or act of bigotry/prejudice.

## **7. DBE GOAL**

7.1 Pursuant to Title 49 CFR Part 26, LeeTran set forth its Triennial DBE Goal for the three-year Federal Fiscal Year (FFY) goal period of 2023 - 2025 (October 1, 2023, through September 30, 2025).

7.2 LeeTran’s overall goal for FY2023 through FY2025 is 1.10 percent (1.10%) for FTA-assisted contracts (exclusive of FTA funds to be used for the purchase of transit vehicles). The DBE goal will be reviewed annually and updated every three years in accordance with FTA regulations. It is estimated that the DBE goal will remain at 1.10 percent (1.10%) based on preliminary work to anticipated for the FY2023 through FY2025 DBE goal period.

## **8. ARTICLE REVISIONS**

8.1 Article 21.1.1 of the Terms and Conditions shall be considered revised as follow for this solicitation and associated agreement.

### **21 BID – TIEBREAKER**

21.1 Whenever two or more Bids, which are equal with respect to price, quality and service, are received for procurement of commodities or contractual services, from Responsive and Responsible Bidders, the following steps shall be taken to establish the Award to the lowest Bidder. This method shall be used for all ties.

~~21.1.1 Step 1 – Local Bidder: Between a Local Bidder, and a non-Local Bidder, a Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Local Bidder. If local preference is prohibited by the funding source then step 2 will replace step 1.~~  
INTENTIONALLY LEFT BLANK

~~21.1.2 Step 2 – Drug Free Workplace: At the conclusion of step 1, if all is equal, the Bidder with a Drug Free Workplace program shall be given preference over a Bidder with no Drug Free Workplace program. The Contract Award, or the first opportunity to negotiate, as applicable, shall be made to the Bidder with the Drug Free Workplace program.~~  
INTENTIONALLY LEFT BLANK

21.1.3 Step 3 - Coin Flip: At the conclusion of Step 1 and Step 2, if all is equal, the Contract Award, or the first opportunity to negotiate, as applicable, the final outcome shall be determined by the flip of a coin.

21.2 When the tie has been broken pursuant to the above procedures, the Contract Award, or the first opportunity to negotiate, as applicable, shall be furnished to the prevailing Bidder.

21.3 If an Award or negotiation is unsuccessful with the initial Bidder, Award or negotiations may commence with the next highest Bidder, utilizing the tiebreaker steps above to make the determination of next lowest Bidder, if necessary.

**9. MINIMUM QUALIFICATIONS**

- 9.1 Contractor shall meet the minimum qualification criterion as specified in Form 9 – Minimum Qualification Requirements provided within this solicitation package to qualify for consideration of award. Form 9 - Minimum Qualification Requirements should be completed and returned with proposal submittal along with any supporting documentation requested and/or indicated herein.
- 9.2 The determination shall be based upon the examination of Form 9 – Minimum Qualification Requirements and associated supportive documentation (if any requested). Failure to meet the minimum qualifications as listed, at the sole discretion of the County, may result in Contractor being deemed Non-Responsive.
- 9.3 The only minimum requirements associated with this solicitation are contained on Form 9. Any reference to minimum qualifications/requirements contained within the solicitation/attachments shall be superseded by Form 9.

**10. DAVIS BACON**

- 10.1 Davis Bacon Wage Rates shall apply to this project.

**End of Special Conditions Section**



## **SUPPLEMENTAL CONDITIONS AND CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

### **1. ALTERNATE FUNDING**

- 1.1 As stated herein, purchases under this agreement is funded in whole or in part with Federal and State Funds through the Federal Transit Administration (FTA).
- 1.2 The CONSULTANT/CONTRACTOR/VENDOR agrees to abide by and comply with all Federal terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package and further agrees to incorporate all such clauses, provisions, and regulations into any sub-contracted agreements or relationships of the CONSULTANT/CONTRACTOR/VENDOR'S.
- 1.3 In the event of a conflict between the Contract Document terms, Federal Guidelines, State, Local, or other applicable requirements associated with this project that is unable to be resolved through the Order of Precedence as defined herein, the CONSULTANT/CONTRACTOR/VENDOR should provide a written description of such conflict to the County Project Manager in order to receive final guidance on proceeding with conflicted items.

### **2. ADDITIONAL FUNDING PROVISIONS**

#### **2.1 INSPECTOR GENERAL**

- 2.1.1 Pursuant to Florida Statute 20.055(5), CONSULTANT/CONTRACTOR/VENDOR shall cooperate and comply with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to Florida Statute 20.055.
- 2.1.2 By participating in this solicitation the CONSULTANT/CONTRACTOR/VENDOR shall permit the State of Florida Department of Transportation authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

#### **2.2 RESTRICTIONS, PROHIBITS, CONTROLS, AND LABOR PROVISIONS.**

- 2.2.1 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a CONSULTANT/CONTRACTOR/VENDOR, or under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 2.2.2 In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a CONSULTANT/CONTRACTOR/VENDOR, supplier, SUBCONSULTANT/CONTRACTOR/VENDOR, or consultant under a contract with any public entity, and may not transact business with any public entity.
- 2.2.3 An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible CONSULTANT/CONTRACTOR/VENDOR may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- 2.2.4 Neither the Agency nor any of its CONSULTANT/CONTRACTOR/VENDOR or their SUBCONSULTANT/CONTRACTOR/VENDOR shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any

member, officer, or employee of the Agency or the locality during tenure or for two (2) years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require CONSULTANT/CONTRACTOR/VENDOR to insert in each of their subcontracts, the following provision: "No member, officer or employee of the County, Proposer, or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

- 2.2.5 The provisions of this paragraph shall not be applicable to any agreement between the COUNTY and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

### **2.3 EMPLOYMENT ELIGIBILITY (USING E-VERIFY).**

- 2.3.1 Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the Agreement; and
- 2.3.2 Shall expressly require any CONSULTANT/CONTRACTOR/VENDOR S/consultants and SUB-CONSULTANT/CONTRACTOR/VENDOR performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CONSULTANT/CONTRACTOR/VENDOR /consultant and SUB-CONSULTANT/CONTRACTOR/VENDOR during the Agreement term.
- 2.3.3 Participating CONSULTANT/CONTRACTOR/VENDOR are required to enroll in the E-Verify program and the County requests CONSULTANT/CONTRACTOR/VENDOR provide acceptable evidence of their enrollment. 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.
- 2.3.4 Additionally, CONSULTANT/CONTRACTOR/VENDOR shall require all SUB-CONSULTANT/CONTRACTOR/VENDOR to use the E-Verify system. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <https://www.dhs.gov/E-Verify>. It shall be the CONSULTANT/CONTRACTOR/VENDOR's responsibility to familiarize themselves with all rules and regulations governing this program.

### **2.4 AMERICANS WITH DISABILITIES ACT**

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

### **2.5 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- 2.5.1 CONSULTANT/CONTRACTOR/VENDOR acknowledge and agree that, notwithstanding any concurrence by the State of Florida Department of Transportation in, or approval of the solicitation or award of the underlying Contract, absent the express written consent of the State of Florida Department of Transportation, the State of Florida Department of Transportation is not a party to the Contract and shall not be subject to any obligations or liabilities to the CONSULTANT/CONTRACTOR/VENDOR or any other party pertaining to any matter resulting from the underlying Contract.
- 2.5.2 The CONSULTANT/CONTRACTOR/VENDOR agrees to include the above clause in each subcontract financed in whole or in part with State assistance provided by State of Florida Department of Transportation. It is further agreed that the clause shall not be modified, except to identify the SUB-CONSULTANT/CONTRACTOR/VENDOR who will be subject to its provisions.

## **2.6 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

2.6.1 The CONSULTANT/CONTRACTOR/VENDOR and/or SUB-CONSULTANT/CONTRACTOR/VENDOR shall not discriminate on the basis of race, color, national origin, or sex in the award and the performance of this contract.

2.6.2 The CONSULTANT/CONTRACTOR/VENDOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT/CONTRACTOR/VENDOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the CONSULTANT/CONTRACTOR/VENDOR from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- FDOT link to DBE Directory:  
<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>

## **2.7 EQUAL EMPLOYMENT OPPORTUNITY**

2.7.1 The CONSULTANT/CONTRACTOR/VENDOR and/or SUB-CONSULTANT/CONTRACTOR/VENDOR shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The CONSULTANT/CONTRACTOR/VENDOR and/or SUB-CONSULTANT/CONTRACTOR/VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.7.2 The CONSULTANT/CONTRACTOR/VENDOR agrees to include the above clause in each subcontract financed in whole or in part with State assistance provided by State of Florida Department of Transportation. It is further agreed that the clause shall not be modified, except to identify the SUB-CONSULTANT/CONTRACTOR/VENDOR who will be subject to its provisions.

## **2.8 LOBBYING**

2.8.1 No funds received pursuant to this solicitation and Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

## **2.9 CONE OF SILENCE**

2.9.1 Per Florida Statute 287.057 (23): “Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.”

## **2.10 INDEMNIFICATION & INSURANCE**

2.10.1 “To the extent provided by law, CONSULTANT/CONTRACTOR/VENDOR shall indemnify, defend, and hold harmless the COUNTY and the State of Florida, Department of Transportation, including the Department’s officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of CONSULTANT/CONTRACTOR/VENDOR, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by

CONSULTANT/CONTRACTOR/VENDOR hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

2.10.2 The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by CONSULTANT/CONTRACTOR/VENDOR to indemnify COUNTY for the negligent acts or omissions of COUNTY, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by CONSULTANT/CONTRACTOR/VENDOR to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.”

**3. FEDERAL TRANSIT PROVISIONS**

3.1 Provided with this solicitation is the *Lee County Transit Grant-Funded Procurement General Provisions*. The CONSULTANT/CONTRACTOR/VENDOR shall be required to abide by and comply with all terms, conditions, provisions, and equivalent as found therein and associated with the *Procurement Type – CONSTRUCTION* as found on page 31 of the referenced document. All such referenced terms and clauses shall be passed down from Prime CONSULTANT/CONTRACTOR/VENDOR to all sub-contractors/consultants as described herein.

3.2 It shall be noted that Davis Bacon applies to this project. See aforementioned Grant Provisions package for full regulation details and attached Wage Report(s).

3.3 **Veterans Preference.** Contractors working on a construction project shall give a hiring preference, to the extent practicable, to qualified veterans (except over equally qualified minorities or members of other protected classes).

**4. DHS SEAL, LOGO, AND FLAGS**

4.1 The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval. The CONSULTANT/CONTRACTOR/VENDOR shall include this provision in any subcontracts.

**5. CONFLICT OF INTEREST**

5.1 No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

**6. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)**

6.1 As appropriate and to the greatest extent consistent with law, the CONSULTANT/CONTRACTOR/VENDOR should, to the greatest extent practicable, 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. 2 C.F.R. § 200.322 also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.

6.1.1 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.

6.1.2 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.

**7. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)**

7.1 The Contractor shall comply with 2 C.F.R. § 200.216, Prohibition on Contracting for Covered Telecommunications Equipment or Services:

- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) Prohibitions.
  - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.
- (c) Exceptions.
  - (1) This clause does not prohibit contractors from providing—
    - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
    - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
  - (2) By necessary implication and regulation, the prohibitions also do not apply to:
    - (i) Covered telecommunications equipment or services that:
      - i. Are not used as a substantial or essential component of any system; and
      - ii. Are not used as critical technology of any system.
    - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
  - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or



wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

## **8. TIME & MATERIAL, TIME & EQUIPMENT, FIRM FIXED PRICE LUMP SUM CONTRACTS.**

8.1 The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For firm fixed price, lump sum, Time & Material (T&M) and/or Time & Equipment (T&E) procurements, a Purchase Order represents a CONSULTANT/CONTRACTOR/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 CONSULTANT/CONTRACTOR/VENDOR anticipates exceeding either of these NTE values, they should contact the Lee County Procurement Department for a change order. If a CONSULTANT/CONTRACTOR/VENDOR exceeds a Line Item or Total Order NTE value, it does so at its own risk.

**End of Supplemental Conditions**

## GENERAL CONDITIONS

### 1. Administration

The Consultant is the initial interpreter of the Contract Documents but is not the Judge between the COUNTY and the CONTRACTOR. The COUNTY reserves the right to make final decisions considering the Consultant's recommendations or interpretations of the Contract Documents. The Consultant does not have authority to obligate or commit the COUNTY to fund additional expenditures or approve extensions of time over the approved Contract time or price. However, the CONSULTANT'S interpretation as to the intent of his design shall be final and not subject to interpretation by the COUNTY'S staff.

#### 1.1. Copies of Documents

The COUNTY shall furnish to the CONTRACTOR the number of copies specified in the Supplemental Information of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction which shall be paid by the CONTRACTOR.

#### 1.2. Before Starting Construction

Before undertaking each phase of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the CONTRACTOR may discover, or other information known to the CONTRACTOR and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the OWNER'S REPRESENTATIVE, the CONTRACTOR shall assume responsibility for such performance and shall share in costs associated with correction; however, the CONTRACTOR shall not be liable to the COUNTY for failure to report any conflict, error or discrepancy in the Contract Documents, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

1.2.1. Within ten calendar days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), the CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE for review:

- 1.2.1.1. An estimated progress schedule indicating the starting and completion dates of the various stages of the Work:
- 1.2.1.2. Long lead item(s) shall be identified and scheduled accordingly.
- 1.2.1.3. A preliminary schedule of Shop Drawing submission; and
- 1.2.1.4. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction on form No. CMO:013. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission; and specify times for Application for Payment.
- 1.2.1.5. A plan of work for maintenance of traffic, when the Contract Documents require maintenance of traffic.
- 1.2.1.6. For informational purposes, a proposed listing of sub-contractors to be used for the project.

#### 1.2.2. Pre-Construction Conference

Within fifteen calendar days after the Effective Date of the Agreement, but before the CONTRACTOR starts the Work at the site, a conference attended by the CONTRACTOR, the OWNER'S REPRESENTATIVE, the COUNTY, and Others as appropriate, will be held to discuss the items, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to the Work.

#### 1.2.3 **Finalizing Schedules**

At least ten calendar days before submission of the first Application for payment, a conference attended by the CONTRACTOR, the OWNER'S REPRESENTATIVE, the COUNTY, and Others as appropriate, will be held to finalize the schedules submitted. The finalized progress schedule will be acceptable to the OWNER'S REPRESENTATIVE and the COUNTY as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on the OWNER'S REPRESENTATIVE or the COUNTY responsibility for the progress or scheduling of the Work nor relieve the CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the OWNER'S REPRESENTATIVE as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the OWNER'S REPRESENTATIVE and the COUNTY as to form and substance.

### **Definitions**

The following definition of terms associated with this Contract is provided to establish a common understanding between both parties to this Contract as to the intended usage, application and interpretation of such terms pertaining to this Contract.

*ADDENDUM* means any additional Contract provisions in writing signed and sealed by the CONSULTANT, if applicable, issued by the COUNTY prior to the receipt of Bid which clarify, correct, change or interpret the Bidding Documents or the Contract Documents.

*AGREEMENT* means the written agreement between the COUNTY and the CONTRACTOR covering the Work to be performed; the Agreement is a part of the Contract Documents.

*BIDDER* is any individual, firm, partnership, joint venture, or corporation submitting a bid for this project, acting directly or through an authorized representative.

*BID* is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.

*BID BOND* is a security in the form and amount required by the COUNTY pledging that the BIDDER will enter into a Contract with the COUNTY on the terms stated in his Bid.

*BID DOCUMENTS* are the Invitation to Bid, the Notice to Bidders, the Invitation to Bid Terms and Conditions, sample forms, the Bid Proposal Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

*CHANGE ORDERS* are written order to the CONTRACTOR signed by the COUNTY, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract price or the Contract Time. The Contract Price and the Contract Time may be changed only by a Change Order. A Change Order signed by the CONTRACTOR indicates his agreement therewith, including the adjustment in the Contract Price or the Contract Time.

*COMPLETION (FINAL)* means acceptance of the Project by the COUNTY as evidenced by its signature upon a final payment Certification and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the COUNTY has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.

*COMPLETION (SUBSTANTIAL)* shall mean an acceptance of the Work by the COUNTY when construction is sufficiently complete in accordance with the Contract Documents so the COUNTY can occupy or utilize the Work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.

*CONSTRUCTION* is the erection, fabrication, assembly, remodeling, renovation, addition, modification, repair or demolition of any building or structure, or any appurtenances connected or attached to such buildings or structures. The term applies but is not limited to the repair, replacement modification or construction of roads, bridges, sidewalks, traffic devices, parking lots, drainage, underground and overhead utilities.

*CONSULTANT* is the person lawfully licensed to practice Architecture or Engineering and registered in the State of Florida, or an entity lawfully practicing Architecture or Engineering, identified as such in the Construction Contract, and is referred to throughout the Contract Documents as if singular in number and masculine in genre. The term CONSULTANT means the Architect or Engineer or his authorized representative.

*CONTRACT DOCUMENTS* consist of the Invitation to Bid, Agreement, General and Special Conditions of the Contract, Specifications, the Plans, Supplemental Information, Addenda issued prior to execution of the Contract, all written modifications issued after execution of the Contract, all provisions required by law to be inserted in this Contract whether actually inserted or not, and a Contract Number issued by the COUNTY.

*A MODIFICATION* is:

- (1) A written Amendment to the Contract.
- (2) A Change Order.
- (3) A written interpretation necessary for the proper execution or progress of the Work issued by the OWNER'S Representative.
- (4) A Field Change Order.
- (5) A Field Directive Change.

*CONTRACT PRICE* means the total monies payable to the CONTRACTOR under the Contract Documents.

*CONTRACT TIME* means the number of Calendar days stated in the Agreement for the purpose of establishing Substantial Completion and Final Completion dates.

*CONTRACTOR* is the person, firm, joint venture, or corporation with whom the COUNTY has contracted and who has the primary responsibility for performance of the work.

*COUNTY* means the Board of County Commissioners of Lee County, Florida, a political subdivision of the State of Florida, its successors, and assigns. Also hereinafter referred to as OWNER.

*DAYS* - The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. A calendar day constitutes twenty-four hours measured from midnight to the next midnight.

*DEFECTIVE* - An adjective which when modifying the word “Work” refers to Work that is unsatisfactory, faulty, or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the OWNER’S REPRESENTATIVE recommendation of final payment.

*EFFECTIVE DATE OF THE AGREEMENT* means the date on which the agreement is signed and delivered by the latter of the two parties.

*ENGINEER* shall mean the Director of the Lee County Department of Transportation or his designated County Project Manager.

*FIELD CHANGE ORDER* is a written change order requested by the OWNER’S Representative, accepted by the CONTRACTOR, and approved by the PROJECT MANAGER for minor changes in the Work, not involving adjustments in the Contract Sum or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

*FIELD DIRECTIVE CHANGE* - A written directive to the CONTRACT, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as defined elsewhere in these documents. A Field Directive Change may not change the Contract Price or the Contract Time but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or the Contract Time.

*FINAL ACCEPTANCE* means acceptance of the Work by the COUNTY upon the expiration of the warranty period as stated in the Contract Documents.

*MATERIALS* - Anything used in the process of, but not limited to, constructing, demolishing, renovating or remodeling of any building, structure, road, bridge, recreational facility, transportation element and utility or any addition thereto utilized for this project.

*NOTICE* means written notice. Notice shall be served upon the CONTRACTOR either personally or by leaving the said Notice at his residence or with his agency in charge of the Work or addressed to the CONTRACTOR at the residence or place of business stated in the Bid Proposal and deposited in a postpaid wrapper in any United States Mailbox.

*NOTICE TO PROCEED* is a written instrument issued by the COUNTY to the CONTRACTOR, authorizing the CONTRACTOR to commence Work on the Project. The NOTICE TO PROCEED shall include the effective date of Commencement.

*NOTICE OF AWARD* means the written Notice given by the COUNTY to the successful Bidder.

*NOTICE OF TERMINATION* is a written instrument issued in accordance with the Contract Documents by the COUNTY to the CONTRACTOR or by the CONTRACTOR to the COUNTY notifying the receiving party that the Contract is being terminated. The NOTICE shall clearly identify the effective date the Contract is to be terminated.



*OWNER'S REPRESENTATIVE* is the CONSULTANT contracted by the COUNTY for Professional Services during the construction phase of this project or a qualified person authorized as his official representative, or in the absence of such a contract, the project Manager will be considered the OWNER'S REPRESENTATIVE for the purpose of this Contract Document. The OWNER'S REPRESENTATIVE is not authorized to issue change orders to the contract sum, contract time or scope of work without express approval of the Board of County Commissioners.

*PLANS AND/OR DRAWINGS* are a graphic representation of the arrangement of the materials or parts of the construction of the project and are a portion of the Contract Documents.

*PROCUREMENT MANAGEMENT* shall mean the Director of Lee County's Procurement Management Department or designee.

*PROJECT* shall mean the entire improvement of which this contract forms a part.

*PROJECT MANAGER* is an employee of the Department or the COUNTY which requested the Contract and is a designee authorized by or for that Department who is the representative of the Board of County Commissioners in matters concerning the contractor of this project. The project manager will act as the OWNER'S REPRESENTATIVE in the absence of a contract with a CONSULTANT. The PROJECT MANAGER is not authorized to issue changes to the Contract Sum, Contract Time, or Scope of Work without express approval by the Department Director, County Manager, or Board of County Commissioners.

The PROJECT MANAGER, within the authority conferred by the Board of County Commissioners, acting as the COUNTY'S designated representative shall initiate written Change Orders, and notification to the CONTRACTOR of any and all changes approved by the COUNTY in the CONTRACTOR'S (1) compensation (2) time and/or schedule of service delivery; (3) any Amendment (s) or other change(s) relative to the WORK and ADDITIONAL SERVICES pursuant to this Contract, or AMENDMENTS, or CHANGE ORDERS pertaining thereto. Following COUNTY approval, the Project Manager shall coordinate assurance of any such documents. The PROJECT MANAGER or his designee shall be responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Contract, or any AMENDMENT(S), or CHANGE ORDER(S) issued there under.

*SPECIFICATIONS* are written documents organized into divisions, sections, and articles which provide detailed instructions to the CONTRACTOR pertaining, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade, and operational data of all components to be provided by the CONTRACTOR and incorporated into the Project.

*SUB-CONTRACTOR* is a person, firm, partnership, corporation, or entity who has a direct contract with the CONTRACTOR to perform any of the Work at the site. The term Sub-contractor does not include those whose sole purpose is that of a supplier of materials. A supplier of materials shall be classified as a Sub-contractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Sub-contractor means a Sub-contractor or its authorized representative.

*SUPPLIER* - A manufacturer, fabricator, distributor, materialmen, or vendor.

*SURETY* is the surety company or individual that is bound by Contract bond with and for the CONTRACTOR who is primarily liable and is responsible for CONTRACTOR'S acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

*UNDERGROUND FACILITIES* - All pipeline, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

*WORK* is the construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

## **2. Starting the Work**

Written Notice to Proceed is contingent upon and will be done subsequent to the CONTRACTOR fully satisfying the COUNTY'S stated insurance and Bond submittal requirements. Until the CONTRACTOR receives the COUNTY'S written Notice to Proceed, the CONTRACTOR is advised that the COUNTY will not be liable for any expenses which the CONTRACTOR may incur relative to this Contract before the written Notice to Proceed is issued.

- 2.1. The Contract time shall commence to run from the date specified in the "Notice to Proceed".
- 2.2. The CONTRACTOR is required, before commencing the Work, to deliver to the COUNTY the Public Payment and Performance Bond issued by a surety insurer authorized to do business in the State of Florida as Surety. The Bond must state the name and principal business address of both the principal and the Surety and must contain a description of the project sufficient to identify it and post in conspicuous place at the project site.
- 2.3. The COUNTY will forward to the CONTRACTOR a Notice of Commencement along with a copy of the recorded Public Payment and Performance Bond with instructions to post in a conspicuous spot on the project site.

## **3. Interpretation Intent, Amending and Reuse of Contract Documents**

It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

- 3.1 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall immediately call it to the attention of the OWNER'S REPRESENTATIVE in writing before proceeding with the Work affected thereby.
- 3.2 Any Work that may be reasonably inferred from the specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for.
- 3.3 Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.
- 3.4 In resolving conflicts, errors, and discrepancies, the order of precedence of the Contract Document is as follows:

- (1) Change Order
- (2) Agreement
- (3) Addenda
- (4) Special Conditions
- (5) General Conditions
- (6) Specifications
- (7) Supplemental Information
- (8) Drawings
- (9) Figure Dimensions
- (10) Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)
- (11) Terms and Conditions

### 3.5 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1 A formal Written Amendment,
- 3.5.2 A Change Order.
- 3.5.3 A Field Directive Change.

The Contract Price and the Contract Time may only be changed by a Change Order or Written Amendment.

### 3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations of the Work may be authorized, in one or more of the following ways:

- 3.6.1 A Field Change Order,
- 3.6.2 The OWNER'S REPRESENTATIVE approval of a Shop Drawing or sample, or
- 3.6.3 The OWNER'S REPRESENTATIVE written interpretation or clarification.

### 3.7 Reuse of Documents

Neither the CONTRACTOR nor any SUB-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the COUNTY shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the COUNTY or their CONSULTANT and the specific written verification or adaptation by the CONSULTANT.

## 4 Availability of Lands

The COUNTY will furnish, as indicated in the Contract Documents and not later than the date when needed by the CONTRACTOR, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained by the COUNTY unless otherwise specified in the Contract Documents. If the CONTRACTOR believes that any delay in the COUNTY'S furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim, therefore. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise. The OWNER'S REPRESENTATIVE will, upon request, furnish to the CONTRACTOR copies of all available boundary and topographic surveys as required and sub-surface tests. The CONTRACTOR shall be responsible for staging and storing equipment or materials. All parcels utilized for staging shall be secured. All parcels utilized for staging will be kept in a neat and orderly fashion and then restored to the landowner's satisfaction upon terminating the use of the staging

area or improved as noted in the plans. The CONTRACTOR shall maintain on the job site written proof of authorization for the use of any private land. The COUNTY does not condone trespass on private property and will hold the CONTRACTOR liable for any such trespass. Right-of-way maps, if available, of the lands upon which the improvements will be made shall be provided upon request from the OWNER'S REPRESENTATIVE. The CONTRACTOR may use these lands for work associated with this contract only. The CONTRACTOR shall verify the availability of these lands with the Lee County D.O.T. project manager prior to the issuance of the notice to proceed.

4.1 Physical Conditions

Explorations and Reports: Reference is made to the Supplemental Information for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CONSULTANT and/or the COUNTY in preparation of the Contract Documents. These reports are not part of the contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports but not upon the non-technical data, interpretations or opinions contained therein for the completeness or accuracy thereof for the CONTRACTOR'S purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence, the CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site. The technical data which will be made available only at the CONTRACTOR'S request may not be sufficient for construction purposes. Additional investigations may be necessary for the purposes of carrying out the construction project.

4.2 Existing Structures: Reference is made to the Supplemental Information for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by the CONSULTANT and/or the COUNTY in preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings but not for the completeness thereof for the purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence, the CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.3 Unless otherwise stated, the CONTRACTOR shall be fully responsible for the removal of any materials, debris, garbage, vehicles, or other such items which would interfere with the undertaking and completion of the project. By submission of a bid, the CONTRACTOR assumes full responsibility for the expenses associated with such removal. There shall not be an increase in time or price associated with such removal.

4.4 Report of Differing Conditions: If the CONTRACTOR believes that:

4.4.1.1 Any technical data on which the CONTRACTOR is entitled to is inaccurate, or

4.4.1.2 Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected, or referred to in the Contract Documents.

4.4.1.3 The CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted) notify the OWNER'S REPRESENTATIVE in writing about the inaccuracy or difference.

4.5 OWNER'S REPRESENTATIVE Review: The OWNER'S REPRESENTATIVE will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the COUNTY in writing (with a copy to the CONTRACTOR) of the OWNER'S REPRESENTATIVE'S findings and conclusions.

4.6 Possible Document Change: If the OWNER'S REPRESENTATIVE and the COUNTY conclude that there is a material error in the Contract Documents and a change in the Contract Documents is required, a Field Directive Change, a Field Change or a Change Order will be issued as to reflect and document the consequences of the inaccuracy or difference.

4.7 Possible Price and Time Adjustments: In each case of a material error in the Contract Documents,

an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

#### 4.8 Physical Conditions - Underground Facilities

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the COUNTY or the CONSULTANT by the owners of such Underground facilities or by others. Unless it is otherwise expressly provided in the Supplemental Information:

4.8.1 The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price. The CONSULTANT and COUNTY shall not be responsible for the accuracy or completeness of any such information or data.

4.9 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted) identify the owner of such Underground Facility and give written notice thereof to that owner and to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and with the COUNTY'S approval, the Contract Documents will be amended or supplemented to the extent necessary. During such time, the CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. The CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of. Locations of existing underground utilities are not field confirmed. In the case of a conflict between this or any other utility and proposed improvements, it shall be the CONTRACTOR'S duty to coordinate with all utility company relocation activities whether shown or not shown in the plans. Coordination is to include efforts by the CONTRACTOR to minimize time lost due to unexpected utility relocation or modifications.

#### 4.10 Reference Points

The COUNTY shall provide engineering surveys to establish reference points, as specified in the Supplemental Information, for construction which in the judgment of the COUNTY and the CONSULTANT are necessary to enable CONTRACTOR to proceed with the Work. The CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect, and preserve the established reference points and shall make no changes or relocations without the prior written approval of the COUNTY. The CONTRACTOR shall report to the OWNER'S REPRESENTATIVE whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## 5 Bonds and Insurance

### 5.1 Public Payment and Performance Bond



The CONTRACTOR will execute the Public Payment and Performance Bonds included herein as security for the faithful performance and payment of all his obligations under the Contract Documents.

- 5.2 This Bond shall be in amounts at least equal to the Contract Price and in such form and with such securities as are acceptable to the COUNTY. Prior to execution of the Contract Documents, the COUNTY may require the CONTRACTOR to furnish such other bonds, in such form and with such sureties as it may require. If such bonds are required by written instructions given prior to opening of Bids, the Premiums shall be paid by the CONTRACTOR. If the Contract is increased by a Change Order, it shall be the CONTRACTOR'S responsibility to ensure that the Public Payment and Performance Bond be amended accordingly, and a copy of the amendment forwarded to PROCUREMENT MANAGEMENT.
- 5.3 If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the CONTRACTOR shall within five calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to the COUNTY.
- 5.4 If the CONTRACTOR cannot obtain another bond and surety within five calendar days the COUNTY will accept and the CONTRACTOR shall submit an irrevocable letter of credit drawn on a Lee County, Florida bank until the bond and surety can be obtained.

## **6 Qualifications of Surety Companies**

In order to be acceptable to the COUNTY, a surety company issuing Bid Guaranty Bonds or 100% Public Payment and Performance Bonds, called for in these specifications, shall meet and comply with the following minimum standards:

- 6.1 General  
All Sureties for Lee County projects must be authorized to do business in the State of Florida and shall comply with the provisions of Florida Statute 255.05.
- 6.2 Attorneys-in-Fact who sign bid bonds or Public Payment and Performance Bonds for Lee County projects must file with such bond a certified copy of their Power of Attorney to sign such bond.
- 6.3 Agents of surety companies must list their name, address, and telephone number on all bonds.
- 6.4 The life of all bonds provided to Lee County shall extend twelve months beyond the date of final payment and shall contain a waiver of alteration to the terms of the Contract, extensions of time and/or forbearance on the part of the COUNTY.
- 6.5 To be acceptable to the OWNER on projects not in excess of \$500,000.00, Surety shall comply with these minimum provisions of State Statute 287.0935 as follows:
  - 6.5.1 Surety must have twice the minimum surplus and capital required by Florida Insurance Code at the time of bid solicitation.
  - 6.5.2 Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9404-9308.
  - 6.5.3 Sureties on projects in excess of \$500,000.00 shall comply with the above minimum provisions as well as being rated thru A.M. Best Company and shall comply with the following provisions:
    - 6.5.4 The Surety shall be rated as "B" or better as to General Policy holders Rating and Class VII or better as to financial category by the most current Best's Key Rating Guide, published by A.M. Best Company.
    - 6.5.5 Surety must have fulfilled all of its obligations on all other bonds previously given to the COUNTY.
    - 6.5.6 Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

6.6 Letter of Credit

At any time during the life of the letter of credit, should the rating of financial institution fall below both of the minimum ratings as indicated in the Contract Documents, or should the financial institution become insolvent, the CONTRACTOR must, within five calendar days after notification by the COUNTY:

- 6.6.1 Replace the existing letter of credit with a replacement letter of credit from a financial institution with either of the minimum ratings as specified in the Contract Documents, or
- 6.6.2 Have the existing letter of credit confirmed by a financial institution with either of the minimum ratings as specified in the Contract Documents.
- 6.6.3 At the COUNTY'S option, the letter of credit may be replaced by a Public Payment and Performance Bond in accordance with the COUNTY'S existing bond policies.

6.7 Failure to comply with this provision may result in any or all of the following actions by the COUNTY:

- 6.7.1 Suspension of the CONTRACTOR'S right to pull building permits and schedule inspections;
- 6.7.2 A stop work order; and/or Revocation of the Land Development Permit.

6.8 Financial Institutions/Letters of Credit

In order to be acceptable to the COUNTY, a financial institution issuing 100% Letters of Credit, called for in these specifications, shall meet and comply with the following minimum standards:

6.8.1 General

The face of the letter of credit must be in a format utilizing Lee County Standard Form and indicate the following:

- 6.8.1.1 The letter of credit is "clean" and "irrevocable";
- 6.8.1.2 An exact expiration date. The life of all letters of credit provided to Lee County shall extend twelve months beyond the date of final payment;
- 6.8.1.3 Statement of the purpose or project for which the letter of credit is issued;
- 6.8.1.4 A specific amount of the letter of credit, in U.S. dollars;
- 6.8.1.5 The method of disbursement of draws against the letter of credit;
- 6.8.1.6 The street address where draws against the letter of credit may be made; and
- 6.8.1.7 Venue in Lee County.
- 6.8.1.8 Verification of the status or certification of any financial institution may be made with:

Department of Insurance and Treasurer  
Bureau of Collateral Securities  
200 East Gaines Street  
Tallahassee, FL 32377-0345  
Phone (850) 922-3167

Or

Lee County Procurement Management  
2115 Second Street, 1st Floor,  
Fort Myers, FL 33901  
Phone (239) 533-8881

Or

Lee County Risk Management  
1500 Monroe Street, 4<sup>th</sup> Floor

- 6.8.1.9 At the time of issuance of the letter of credit, the financial institution must have a minimum “peer group” rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.
- 6.8.1.10 Letters of Credit from financial institutions which do not meet either of the minimum ratings indicated above must be confirmed by a financial institution with either of the minimum ratings indicated above.
- 6.8.1.11 All financial institutions which issue or confirm any Letter of Credit must be authorized by the Secretary of State to do business in the State of Florida, shall show proof of same upon request by COUNTY staff, and agree to venue in Lee County.
- 6.8.1.12 In addition to the institutions meeting the aforementioned requirements, the Federal Home Loan Bank of Atlanta is authorized to issue and confirm letters of credit which are in accordance with the provisions above and all subsequent sub-paragraphs.
- 6.8.1.13 These actions shall be in effect until a satisfactory replacement bond or letter of credit is accepted by the COUNTY. The CONTRACTOR agreement shall so provide for replacement or confirmation in accordance with this policy.

## **7 Contractor’s Liability Insurance**

- 7.1 The CONTRACTOR will purchase and maintain such insurance as will protect him from claims under Worker’s Compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees including claims insured by usual personal injury, sickness and disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property including loss of use resulting there from any or all of which may arise out of or result from the CONTRACTOR’S operations under the Contract Documents, whether such operations be by himself or any Sub-contractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified in the Contract Documents or required by law, whichever is greater, and shall include contractual liability insurance. As a prerequisite to the COUNTY signing the Contract, the CONTRACTOR will file with the COUNTY certificates of such insurance, acceptable to the COUNTY; these certificates shall contain a provision for cancellation.

### **7.2 Insurance Requirements**

- 7.2.1 Before final execution of the Agreement and until acceptance of the Work by the COUNTY, the CONTRACTOR shall procure and maintain insurance of the types and the limits specified by the Insurance Guide included in the Solicitation.
- 7.2.2 All CONTRACTOR’S Certificates of Insurance must be approved by the Lee County Risk Manager (or designee) before the final execution of the agreement by the COUNTY.
- 7.2.3 An Insurance Certificate shall be required from the successful BIDDER. Such form must be properly executed and submitted by an authorized representative of the insurance company and successful BIDDER within seven calendar days after notification by Lee County of the Board of County Commissioners’ approval to award

the contract. Such certificate of insurance state that the coverage is primary and shall be in the types and amounts stated in the Contract Documents. Certificate should include producers' phone number and reference the name of the project.

## **8 Contractor's Responsibilities**

### **8.2 Supervision and Superintendence**

8.1.1 The CONTRACTOR will supervise and direct the Work efficiently. He will be solely responsible for the means, methods, techniques, sequences, safety, and procedure of construction, unless otherwise specified. The CONTRACTOR will be responsible to see that the finished Work complies with the Contract Documents.

8.1.2 The CONTRACTOR will keep on the site at all times when work is being performed, a competent, resident superintendent who shall not be replaced without prior written notice to the OWNER'S REPRESENTATIVE. The superintendent will be the CONTRACTOR'S representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be binding as if given to the CONTRACTOR.

## **9 Labor Material and Equipment**

9.1 The CONTRACTOR will provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order at the site.

9.2 The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, heat, light, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation, and completion of the Work unless otherwise specified. All materials and equipment such as concrete pipe, inlets, manhole covers, etc., furnished by the CONTRACTOR shall be made by the same manufacturer, e.g., all pipe by one company, all inlets by one company, etc.

9.3 All materials and equipment will be new except as otherwise provided in the Contract Documents. If required by the OWNER'S REPRESENTATIVE, the CONTRACTOR will furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

9.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturers, fabricator, or processors except as otherwise provided in the Contract Documents.

9.5 In instances where the act is applicable due to the nature of the bid matter with which this bid package is concerned, all material, equipment, etc., as proposed and offered by CONTRACTOR must meet and conform to all O.S.H.A. requirements; the CONTRACTOR'S signature upon the bid proposal form being by this reference considered a certification of such fact.

## **10 Adjusting the Progress Schedule**

10.1 The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE for acceptance of adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto. The COUNTY reserves the right to reject the progress schedule from the CONTRACTOR which in its judgment does not appear to devote sufficient resources of manpower to enable the timely completion of the project. If the COUNTY requests the progress schedule to be adjusted, the CONTRACTOR shall do so and perform the work according to the adjusted schedule at no additional cost to the COUNTY.

## **11 Substitute Materials or Equipment**

11.1 If it is indicated in the specifications that the CONTRACTOR may furnish or use a substitute that is equal to any material or equipment specified, and if the CONTRACTOR wishes to furnish or

use a proposed substitute, he will, within thirty calendar days after the award of the Contract, make written application to the OWNER'S REPRESENTATIVE for approval of such a substitute, certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the COUNTY who shall be the judge of quality. Whether or not the COUNTY accepts a proposed substitute, the CONTRACTOR shall reimburse the COUNTY for any charges or cost for evaluating any proposed substitute.

## **12 Concerning Sub-contractors**

- 12.1 The CONTRACTOR will be fully responsible for all acts and omissions of his SUB-CONTRACTORS and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the Contract Documents shall create any contractual relationship between any SUB-CONTRACTOR and the COUNTY. The COUNTY may, upon request, furnish to any SUB-CONTRACTOR, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done.
- 12.2 The divisions and sections of the specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among SUB-CONTRACTORS or delineating the Work to be performed by any specific trade.
- 12.3 The CONTRACTOR agrees to bind specifically every SUB-CONTRACTOR to the applicable terms and conditions of these Contract Documents for the benefit of the COUNTY.
- 12.4 All Work performed for the CONTRACTOR by a SUB-CONTRACTOR shall be pursuant to an appropriate agreement between the CONTRACTOR and the SUB-CONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the COUNTY as trustee.

## **13 Patent Fees and Royalties**

- 13.1 The costs involved in fees, royalties, or claims for any patented invention, article, process or method that may be used upon, or in a manner connected with the work under this contract, shall be paid by the CONTRACTOR. The CONTRACTOR and his sureties, together with his officers, agents, and employees, shall protect and hold the COUNTY harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent. Before final payment is made on the account of this Contract, the CONTRACTOR shall, if requested by the COUNTY, furnish acceptable proof of a proper release from all such fees or claims.
- 13.2 Should the CONTRACTOR, his agent, employee, or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under this contract, the CONTRACTOR shall promptly pay such royalties and secure the requisite licenses; or, subject to acceptance by the COUNTY, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the contract. Descriptive information of these substitutions shall be submitted to the OWNER'S REPRESENTATIVE for determination of general conformance to the design concept and the construction contract. Should the COUNTY elect to use the substitution, the CONTRACTOR agrees to pay such royalties and secure such valid licenses as may be requisite for the COUNTY, his officers, agents, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.



## **14 Permits**

14.1 Unless otherwise specified herein, the CONTRACTOR will secure and pay for all permits, impact fees, and licenses and will pay all governmental charges and inspections' fees necessary for the prosecution of the Work which are applicable at the time of his bid. The CONTRACTOR will also pay all public utility charges and connection fees except as provided for in the Contract Documents. Permits and licenses of regulatory agencies which are necessary to be maintained after completion of the guarantee period shall be secured and paid for by the COUNTY.

14.2 Pursuant to the requirements of F.S. 218.80, the following County permits and fees are required to be obtained and paid for by the CONTRACTOR.

**14.2.1 \*Permits as required shall be responsibility of Contractor unless otherwise stated herein. County permit and associated fees are available at**

**[http://www.leegov.com/permits\\*](http://www.leegov.com/permits*)**

14.2.2 The OWNER will obtain the following permits:

- (a) SFWMD ERP Modification
- (b) Lee County Development Order
- (c) Florida Governmental Utility Authority Approval
- (d) FDEP Wastewater Permit
- (e) LCDOH Watermain Extension Permit
- (f) NPDES Permit
- (g) SFWMD Water Use (Dewatering) Permit

The Contractor shall be responsible to secure all other necessary local, county, state and federal permits, as applicable.

14.3 This is a disclosure of permits and fees, required by Lee County, for this project and does not relieve the contractor of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.

14.4 The CONTRACTOR will give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at a variance therewith, he will give the OWNER'S REPRESENTATIVE prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the OWNER'S REPRESENTATIVE, he will bear all cost arising therefrom; however, it shall not be his primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

## **15 Licenses**

15.1 The CONTRACTOR must be properly licensed, within the jurisdiction where the project is to be constructed, to perform the work specified in the Scope of Work at the time of bid submittal.

## **16 Use of Premises**

16.1 The CONTRACTOR will confine his equipment, the storage of materials and equipment, and the operations of his workmen to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

## **17 Record Drawings**

17.1 The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order, and annotated to show all changes made during the construction process or addition and exact location of underground or otherwise concealed components such as, but not limited to, plumbing, air conditioning, electric, culverts, drainage structures, water main, force mains, service lines, wiring, traffic loops, pond or ditch bottoms and banks, signal poles, signs, and conduit which were not installed exactly as shown on the contract drawings. These shall be available to the OWNER'S REPRESENTATIVE and shall be verified by the OWNER'S REPRESENTATIVE at 30%, 60%, and 100% completion of the

- Project. The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE one complete set of all recorded changes made during Construction entitled "As-Built" and dated. Submittals shall be made in accordance with the above and shall be submitted at the time of substantial completion.
- 17.2 The sum of \$5,000.00 shall be withheld from the final payment until written acceptance or all of the Record Drawings by the OWNER'S REPRESENTATIVE has occurred.
- 17.3 Certified "as-built" information, which the CONTRACTOR must show on marked-up copies of the design drawings, prints, and other materials as specified above shall include both authorized and unauthorized changes to horizontal pavement dimensions, finish pavement grades, finish dimensions, elevations and alignment of the items noted in Article 17.1, and any modifications to material types from that specified in the bid plans and specifications. As a prerequisite to any payments, the CONTRACTOR shall make available to the Engineer all "as-built" information pertinent to the design drawings each month prior to his submission of a monthly application for payment. The CONTRACTOR shall also obtain "as-built" cross-sections of the roadway, ditches, channels, and other drainage ways as shown in the Contract Documents at intervals not to exceed 100 ft. The CONTRACTOR shall set benchmarks on or within 100 ft. of each control structure constructed as part of this project. A complete description including elevation and location of each control structure benchmark shall be provided to the Engineer as part of the "as-built" information. The elevation shall be clearly and permanently indicated on each benchmark.
- 17.4 "As-built" dimensions and elevations shall be obtained by a Professional Land Surveyor registered in the State of Florida pursuant to Chapter 472, Florida Statutes. The "as-built" drawings shall be signed and sealed by the CONTRACTOR'S Professional Land Surveyor in accordance with Section 472.025, Florida Statutes.
- 17.5 All pertinent surveyors' field survey notes containing the "as-built" data shall be sealed and submitted to the Engineer for review and acceptance prior to authorization of the final payment.
- 17.6 "As-built" data shall be secured, and the accuracy of measurements shall be 0.01 ft.
- 17.7 All sub-surface improvements considered part of the Work as shown in the Contract Documents shall be "as-built" by the CONTRACTOR prior to backfilling.
- 17.8 A final bench level circuit shall be secured indicating accuracy of vertical closure and a copy of these field notes shall be submitted to the Engineer before final acceptance of the project.
- 17.9 The CONTRACTOR shall annotate and show all "as-built" information on 11" x 17" prints of the bid plans during the course of the construction process. Upon completion of all contract work, but prior to authorization of the final payment by the Engineer, the CONTRACTOR shall deliver one (1) set of such annotated, in neat draftsman-like manner, "as-built" 11" x 17" prints to the Engineer for approval. Upon approval of such "as-built" plans, the CONTRACTOR shall forthwith provide two (2) sets of these drawings containing all "as-built" information, a flash drive of the "as-built" electronic files in AutoCAD or MicroStation format and data which have been sealed by a Professional Land Surveyor by the CONTRACTOR at the CONTRACTOR'S cost and forthwith become the property of the COUNTY.
- 17.10 The cost of preparing, maintaining, and providing "as-built" plans and documents as specified in this Article must be included in the Lump Sum payment for mobilization for each part of the Bid Schedule providing for Mobilization.
- 17.11 Shop drawing submittals processed by the Engineer shall not be construed as Change Orders; the purpose of a shop drawing is to demonstrate to the Engineer that the CONTRACTOR understands the design concept, and that his understanding is demonstrated by indicating the equipment and material to be furnished and installed. Corrections or changes indicated by the Engineer in the shop drawings do not constitute authorization to perform extra work.
- 17.12 The review of shop drawings and schedules shall be considered general and shall not be construed as permitting any departures from the contract requirements. The design drawings and contract specifications shall take precedence over the shop drawings in the event of deviations, discrepancy, or conflict.

## **18 Safety and Protection**

- 18.1 The CONTRACTOR will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury, or loss to:
- 18.1.1 All employees on the Project and other persons who may be affected thereby;
  - 18.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
  - 18.1.3 Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
  - 18.1.4 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection and, in addition, he will comply with all applicable recommendations of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc.; "Roadway and Traffic Design Standards" latest edition published by the Florida Department of Transportation, specifically Index 600-650; and Occupational Safety and Health Administration published by the United States Department of Labor. He will notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part by the CONTRACTOR, any SUB-CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable will be remedied by the CONTRACTOR; except any damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the COUNTY, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the CONTRACTOR.
  - 18.1.5 The CONTRACTOR will designate a member of his organization whose responsibility will be to plan for the prevention of accidents at the site. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE.

## **19 Emergencies**

- 19.1 In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY, is obligated to act at his discretion to prevent threatened damage, injury, or loss. He will give the OWNER'S REPRESENTATIVE prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the COUNTY and the OWNER'S REPRESENTATIVE determine that a change to the Contract Documents is required because of the action taken in response to an emergency, a Field Directive Change or Change Order shall thereupon be issued covering the changes and deviations involved.

## **20 Shop Drawings and Samples**

- 20.1 After checking and verifying all field measurements, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies (or at the option of the OWNER'S REPRESENTATIVE, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER'S REPRESENTATIVE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OWNER'S

REPRESENTATIVE to review the information as required.

- 20.2 The CONTRACTOR will also submit to the OWNER'S REPRESENTATIVE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent numbers, and the use for which intended.
- 20.3 At the time of each submission, the CONTRACTOR will in writing call the OWNER'S REPRESENTATIVE'S attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.
- 20.4 The OWNER'S REPRESENTATIVE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the OWNER'S REPRESENTATIVE and will return the required number of corrected copies of Shop Drawings and re-submit new samples until approved. All cost incurred by the COUNTY for the review of a shop drawing in excess of two reviews shall be the CONTRACTORS responsibility. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER'S REPRESENTATIVE that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.
- 20.5 No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the OWNER'S REPRESENTATIVE. Any related Work performed prior to review and approval by the COUNTY of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER'S REPRESENTATIVE.
- 20.6 The OWNER'S REPRESENTATIVE approval of Shop Drawings or samples shall not relieve the CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents, unless the CONTRACTOR has in writing called the OWNER'S REPRESENTATIVE attention to such deviation at the time of submission and the COUNTY and the OWNER'S REPRESENTATIVE have given written approval to the specific deviation; nor shall any approval by the OWNER'S REPRESENTATIVE relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.
  - 20.6.1 The CONTRACTOR shall, upon completion of the work, furnish to the Engineer two (2) complete sets of prints, neatly bound together, and in good condition, of all the CONTRACTOR'S, Subcontractors' and manufacturers' drawings as finally checked and reviewed by the Engineer with all modifications accepted by the Engineer subsequent thereto, showing the work as actually completed. Such "as-built" information for bridges, culverts, and similar structures shall also be provided by the CONTRACTOR.

## **21 Indemnification**

- 21.1 The CONTRACTOR shall indemnify, save harmless and defend the COUNTY and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the CONTRACTOR, his agent, consultants, employees, sub-contractors etc., in the execution of the work or in consequence of any negligence or carelessness in guarding the same and agrees to assume any related cost.



- 21.2 The CONTRACTOR shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CONTRACTOR agrees to repair, restore, or rebuild any damages he causes to any property of the COUNTY. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation, or order. The CONTRACTOR shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility, or private property in the course of this work.

## **22 Cleaning Up**

- 22.1 The CONTRACTOR will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work, he will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the COUNTY. The CONTRACTOR will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.
- 22.2 If the CONTRACTOR fails to clean up as provided in the Contract Documents, the COUNTY may do so and the cost thereof shall be deducted from the final retainage due the CONTRACTOR.

## **23 Continuing the Work**

- 23.1 The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the COUNTY. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted (The COUNTY May Stop Work) or as the CONTRACTOR and the COUNTY may otherwise agree in writing.

## **24 Anti-Discrimination**

- 24.1 The CONTRACTOR for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:
- 24.2 In the furnishing of services to the COUNTY hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap, or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 24.3 The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap, or marital status. The CONTRACTOR will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.
- 24.4 CONTRACTOR agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.
- 24.5 CONTRACTOR will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the CONTRACTOR shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY to be pertinent to ascertain compliance. The CONTRACTOR shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.
- 24.6 Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the COUNTY its efforts made toward obtaining said information. The CONTRACTOR shall remain



obligated under this paragraph until the expiration of three years after the termination of this CONTRACT.

- 24.7 In the event of breach of any of the above anti-discrimination covenants, the COUNTY shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the CONTRACTOR or canceling, terminating or suspending this CONTRACT, in whole or in part.
- 24.8 Additionally, the CONTRACTOR may be declared ineligible for further COUNTY contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.
- 24.9 The CONTRACTOR will send to each labor union, or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the CONTRACTOR'S commitments under this assurance and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.
- 24.10 The CONTRACTOR will include the provisions in every sub-contract under this contract to ensure its provisions will be binding upon each Sub-contractor. The CONTRACTOR will take such action with respect to any Sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

## **25 Work by Others**

- 25.1 The COUNTY may perform additional Work related to the Project by itself, or it may let other direct contracts which shall contain General Conditions similar to these.
- 25.2 The CONTRACTOR will afford the other Contractors who are parties to such direct contracts (or the COUNTY, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the CONTRACTOR will coordinate and cooperate with the applicable entity responsible for this portion of the Work.
- 25.3 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners at their expense, unless otherwise provided in the Contract. It is understood and agreed that the CONTRACTOR has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconveniences, or damage sustained to him due to any interference from the said utility appurtenances or the operation of moving them. If any part of the CONTRACTOR'S work depends (for proper execution) upon the Work of any such other Contractor (or the COUNTY), the CONTRACTOR will inspect and promptly report to the OWNER'S REPRESENTATIVE in writing, any defects, deficiencies, or delays in such Work that render it unsuitable for such proper execution and results. His failure to report shall constitute an acceptance of the Work, except as to defects, deficiencies and delays which may appear in the other Work after the execution of his Work.
- 25.4 The CONTRACTOR will do all cutting, fitting, and patching of his Work, which is consistent with the Contract Documents that may be required to make its several parts come together properly and fit it to receive or be received by such other Work. The CONTRACTOR will not endanger any Work of others by cutting, excavating, or otherwise altering such other Work and will only cut or alter such other work with the written consent of the OWNER'S REPRESENTATIVE.
- 25.5 If the performance of additional Work by other Contractors or the COUNTY is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional Work.

- 25.6 The CONTRACTOR shall be responsible for coordination with all activities with adjacent projects.

## **26 Owner's Representative Status During Construction**

- 26.1 County's Representatives
- 26.1.1 The COUNTY shall issue all communications to the CONTRACTOR through the OWNER'S REPRESENTATIVE.
- 26.2 Clarifications and Interpretations
- 26.2.1 The OWNER'S REPRESENTATIVE will issue with reasonable promptness, through the COUNTY, such written clarifications, or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the COUNTY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, the CONTRACTOR may make a claim.
- 26.3 Authorized Variations in Work
- 26.3.1 The OWNER'S REPRESENTATIVE may authorize, with prior approval from the COUNTY minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order and the CONTRACTOR shall perform the Work involved promptly. If the CONTRACTOR believes that a Field Change Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim.

## **27 Changes in Work**

- 27.1 Without invalidating the Agreement, the COUNTY may unilaterally and at any time or from time-to-time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order or Field Directive Change, the CONTRACTOR will proceed with the Work involved.
- 27.2 All such Work shall be executed under the applicable conditions of the Contract Documents.
- 27.3 If any Change Order or Field Directive Change causes an increase or decrease in the Contract Price or any extension or shortening of the Contract Time, an equitable adjustment will be made.
- 27.4 Additional Work performed by the CONTRACTOR without written authorization of a change in the form of an approved Change Order will not entitle him to an increase in the Contract Price or any extension of the Contract Time, except in the case of an emergency.
- 27.5 It is the CONTRACTOR'S responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the OWNER'S REPRESENTATIVE, by the CONTRACTOR, within ten calendar days of the initiation of the change.

## **28 Change of Contract Price**

- 28.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price.
- 28.2 The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be in writing and delivered to the OWNER'S

REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty calendar days after such occurrence (unless COUNTY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance. All claims for adjustment in the Contract Price shall be reviewed by the OWNER'S REPRESENTATIVE. Any change in the Contract Price shall be incorporated in a Change Order and approved by the COUNTY. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- 28.3 Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.
- 28.4 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- 28.5 By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.
- 28.6 If none of the above methods is agreed upon, the value shall be determined by the COUNTY on the basis of cost of the Work and a percentage for overhead and profit. Cost shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved.
- 28.7 In such cases the CONTRACTOR will submit in the form prescribed by the COUNTY an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CONTRACTOR to the COUNTY for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the COUNTY. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net decrease, if any.

## **29 Cash Allowance**

- 29.1 It is understood that the CONTRACTOR has included in the Contract Price any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or SUB-CONTRACTORS and for such sums within the limit of the allowances as the COUNTY may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. The CONTRACTOR agrees that the original Contract Price includes such sums as he deems proper for cost and profit on account of cash allowances. No demand for an additional sum for overhead or profit in connection therewith will be allowed.
- 29.2 Unit Price Work
  - 29.2.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.
  - 29.2.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR'S overhead and profit for each separately identified item.
  - 29.2.3 The unit price of an item of Unit Price Work shall be subject to revaluation and adjustment under the following conditions:

- 29.2.3.1 If the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the CONTRACTOR differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and,
- 29.2.3.2 If there is no corresponding adjustment with respect to any other item of Work; and
- 29.2.3.3 If the CONTRACTOR believes that it has incurred additional expense as a result thereof; or
- 29.2.3.4 If the COUNTY believes that the quantity variation entitles it to an adjustment in the unit price, either the COUNTY or the CONTRACTOR may make a claim for an adjustment in the Contract Price if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

### **30 Change of Contract Time**

- 30.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty calendar days after such occurrence (unless the OWNER'S REPRESENTATIVE allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR'S written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CONTRACTOR under this provision shall be allowed unless the CONTRACTOR has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time shall be determined by the OWNER'S REPRESENTATIVE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 30.2 The COUNTY shall not be responsible for any delay in the completion of the project where the delay is beyond the control or without fault or negligence on behalf of the COUNTY. The COUNTY shall not be held accountable for extra compensation or an extension of time due to default by the CONTRACTOR, SUB-CONTRACTORS, or suppliers in the furnishing of labor or materials for the project or having to replace defective materials.
- 30.3 The CONTRACTOR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the COUNTY, provided the CONTRACTOR gives notice to the OWNER'S REPRESENTATIVE within fifteen calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CONTRACTOR'S sole remedy shall be an extension of Contract Time.
- 30.4 No extension of Contract Time or increases in Contract Price shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the COUNTY in its sole discretion or (4) for any delay which is caused by the CONTRACTOR having to replace defective material or equipment or (5) delays

- attributable to the lack of performance by Sub-contractors regardless of the reasons.
- 30.5 All time limits stated in the Contract Documents are of the essence of the Agreement. Shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court cost) for delay by either party.

### **31 Warranty and Guarantee: Acceptance of Defective Work**

#### **31.1 Warranty and Guarantee**

31.1.1 The CONTRACTOR warrants and guarantees to the COUNTY that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents and any inspections, test or approvals referred to in this Article. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents, or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided herein. Contractor is to assign any and all warranties or guarantees on equipment, materials, etc. to the COUNTY.

#### **31.2 Tests and Inspections**

- 31.2.1 If the Contract Documents, laws, ordinances, rules, regulations, or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the OWNER'S REPRESENTATIVE forty-eight (48) hours' notice of readiness, therefore. The CONTRACTOR will furnish the OWNER'S REPRESENTATIVE with the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, or such other applicable organizations as may be required by law or the Contract Documents. If any such Work required to be inspected, tested, or approved is covered without written approval of the OWNER'S REPRESENTATIVE, it shall, if requested by the OWNER'S REPRESENTATIVE, be uncovered for observation at the CONTRACTOR'S expense. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided.
- 31.2.2 Project field testing of materials required by the specifications or the OWNER'S REPRESENTATIVE shall be provided by and at the expense of the COUNTY. The CONTRACTOR shall coordinate and schedule the required testing. The Contractor shall pay for all retests when the initial test result reveals that the materials failed to meet the requirements of the specifications. The CONTRACTOR shall notify the OWNER'S REPRESENTATIVE twenty-four (24) hours prior to conducting any test so the OWNER's REPRESENTATIVE may be present.
- 31.2.3 The OWNER'S REPRESENTATIVE shall have the right to require all materials to be submitted to tests prior to incorporation in the Work. In some instances, it may be expedient to perform these tests at the source of supply, and for this reason, it is required that the CONTRACTOR furnish the OWNER'S REPRESENTATIVE with the information concerning the location of his source before incorporating material into the Work. This does not in any way obligate the OWNER'S REPRESENTATIVE to perform tests for acceptance of material and does not relieve the CONTRACTOR of his responsibility to furnish satisfactory material. The CONTRACTOR shall furnish manufacturer's certificates of compliance with these specifications covering manufactured items incorporated in the Work.
- 31.2.4 Neither observations by the OWNER'S REPRESENTATIVE, nor inspections, tests, or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from his obligations to perform the Work in accordance with the



requirements of the Contract Documents.

- 31.2.5 Testing/Permits: The CONTRACTOR shall be responsible for performing any testing and the cost for all items that may be required as part of the NPDES, FDEP, USACOE and SFWMD permits.

## **32 Close Out Procedure**

### **32.1 General Operating/Maintenance Instructions & Manuals**

32.1.1 The CONTRACTOR shall organize maintenance operating manual information into four suitable sets of manageable size and bind into individual binders properly identified and indexed (thumb-tabbed). Emergency instructions, spare parts listing, warranties, wiring diagrams, recommended "turn around" cycles, inspection procedures, shop drawings, product data, and similar acceptable information shall be included. The CONTRACTOR shall bind each manual of each set in a heavy duty, 3-ring vinyl covered binder, and include pocket folders for folded sheet information. Mark identification on both front and spine of each binder.

32.1.2 Arrange for each installer of work requiring continuing maintenance (by the OWNER) or operation, to meet with the OWNER'S personnel, at the project site, to provide basic instructions needed for proper operation and maintenance of the entire work. Include instructions by manufacturer's representatives where installers are not expert in the required procedures. Review maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuels, identification system, control sequences, hazards, cleaning and similar procedures and facilities. For operational equipment, demonstrate start-up, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and similar operations. Review maintenance and operations in relation with applicable guaranties, warranties, agreements to maintain, bonds, and similar continuing commitments.

## **33 Access to the Work**

- 33.1 The COUNTY and the OWNER'S REPRESENTATIVE shall at all times have access to the Work. The CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

## **34 Uncovering the Work**

- 34.1 If any work has been covered which the OWNER'S REPRESENTATIVE has not specifically requested to observe prior to its being covered, or if the OWNER'S REPRESENTATIVE considers it necessary or advisable that covered Work be inspected or tested by others, the CONTRACTOR, at the OWNER'S REPRESENTATIVE'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER'S REPRESENTATIVE may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CONTRACTOR will bear all the expense of such uncovering, exposure, observation, inspection, and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if he makes a claim, therefore.

## **35 County May Stop Work**

- 35.1 If the Work is defective, if the CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, or if the CONTRACTOR fails to make prompt payments to SUB-CONTRACTORS for labor, materials or equipment: the COUNTY may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has

been eliminated; however, this right of the COUNTY to stop the work shall not give rise to any duty on the part of the COUNTY to exercise this right for the benefit of the CONTRACTOR or any other party.

35.2 Notwithstanding Paragraph 35.1, the COUNTY may also issue a Stop Work Order for the following reasons:

35.2.1 Insufficient Maintenance of Traffic practices.

35.2.2 Failure to comply with permits regarding pollution control.

35.2.3 Insufficient construction materials or methods.

35.2.4 Failure to provide a safe working environment in accordance with the US Department of Labor Occupational Safety and Health Administration (OSHA).

35.3 Upon notice of the Stop Work Order, the CONTRACTOR shall cease all contracted work except for the activities required to correct the problem and as directed by the COUNTY.

35.4 If the CONTRACTOR fails to correct the problem causing the Stop Work Order and there is immediate threat to the public's health, safety, or environmental protection, the COUNTY may perform any remedial activities necessary to protect the public and environment. Any costs incurred by the County in the performance of this work shall be deducted from monies due the Contractor or paid by the Contractor to the County.

35.5 No increase in the Contract Price or extension of the Contract Time will be granted for any delays or loss of time due to a Stop Work Order.

### **36 Correction or Removal of Defective Work**

36.1 If required by the OWNER'S REPRESENTATIVE prior to approval of final payment, the CONTRACTOR will, promptly, without cost to the COUNTY and as specified by the OWNER'S REPRESENTATIVE, either correct any defective Work whether or not fabricated, installed, or completed or, if the Work has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If the CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within ten calendar days, all as specified in a written notice from the OWNER'S REPRESENTATIVE, the OWNER'S REPRESENTATIVE may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement shall be paid by the CONTRACTOR. The CONTRACTOR will also bear the expense of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

### **37 One Year Correction Period**

37.1 If, after the approval of the final payment and prior to the expiration of one year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the CONTRACTOR will promptly, without cost to the COUNTY, and in accordance with the OWNER'S REPRESENTATIVE'S written instructions, either correct such defective Work or, if it has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If, within seven calendar days, the CONTRACTOR does not comply with the terms of such instructions, the Bonding Company shall be notified of default and requested to make repairs or replacement, the COUNTY may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CONTRACTOR.

### **38 Acceptance of Defective Work**

38.1 If, instead of requiring correction or removal and replacement of defective Work, the COUNTY prefers to accept it, the COUNTY may do so. In such case, if acceptance occurs

prior to approval of final payment, a Change Order shall be issued incorporating the appropriate revisions to the Contract Documents including an appropriate reduction in the Contract Price. If the acceptance occurs after approval of the final payment, an appropriate amount shall be paid by the CONTRACTOR to the COUNTY.

### **39 Neglected Work By Contractor**

- 39.1 If the CONTRACTOR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the COUNTY may, after three calendar days written notice to the CONTRACTOR and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the CONTRACTOR. A Change Order shall be issued incorporating the appropriate revision to the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the COUNTY.

### **40 Payment and Completion**

#### **40.1 Schedule of Values**

- 40.1.1 Within ten (10) calendar days after the effective date of the Agreement, the CONTRACTOR must submit a schedule of values of the Work including quantities and unit prices totaling to the Contract Price. This schedule shall be satisfactory in form and substance to the COUNTY and shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedule of values by the OWNER'S REPRESENTATIVE, it shall be incorporated into the Estimate and Requisition for Payment prescribed by the COUNTY. Unit Price Contracts shall have the bid proposal prices incorporated into the Estimate and Requisition for Payment.

#### **40.2 Application for Progress Payment**

- 40.2.1 Bid proposal units and unit prices shall serve as the basis for progress payments during construction. The bid proposal process shall be incorporated into the Estimate and Requisition for Payment Form No. CSD:505(4) prescribed by the COUNTY.
- 40.2.2 Not more often than once a month, nor less often than specified in the approved payment schedule, and on a date established at the Project Pre-Construction Conference, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for review the Estimate and Requisition for Payment form filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and supported by such data as the OWNER'S REPRESENTATIVE may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER'S REPRESENTATIVE, as will establish the COUNTY'S title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage specified in the Contract Documents. Such retainage shall be paid and will be issued in the final payment after acceptance by the COUNTY of the Work.

### **41 Contractor's Warranty of Title**

- 41.1 The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the COUNTY prior to the next making of application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work,

materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

## **42 Approval of Payments**

- 42.1 The OWNER'S REPRESENTATIVE will, within ten calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the COUNTY or return the Application to the CONTRACTOR indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and re-submit the Application. The COUNTY will, within five calendar days after receipt of each approved application for payment, either indicate their approval of payment, and within fifteen calendar days pay the CONTRACTOR the amount approved or return the application to the CONTRACTOR thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.
- 42.2 The OWNER'S REPRESENTATIVE'S approval of any payment requested in an Application for Payment shall constitute a representation by him to the COUNTY, based on the OWNER'S REPRESENTATIVE'S on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CONTRACTOR is entitled to payment of the amount approved.
- 42.3 The OWNER'S REPRESENTATIVE'S approval of final payment shall constitute an additional representation by him to the COUNTY that the conditions precedent to the CONTRACTOR'S being entitled to final payment as set forth have been fulfilled.
- 42.4 The OWNER'S REPRESENTATIVE may refuse to approve the whole or any part of any payment if in his opinion; he is unable to make such representations to the COUNTY. He may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the COUNTY from loss because:
  - 42.4.1 The Work is defective;
  - 42.4.2 A portion of such payment is the subject of a dispute or claim that has been filed;
  - 42.4.3 The Contract Price has been reduced because of Modifications;
  - 42.4.4 The COUNTY has been required to correct defective Work or complete the Work, or of unsatisfactory prosecution of the Work, including failure to clean up as required.

## **43 Substantial Completion**

- 43.1 Prior to final payment, the CONTRACTOR shall, in writing to the OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within fourteen calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of the Project to determine the status of completion. If the COUNTY does not consider the Project substantially complete, it will notify the CONTRACTOR in writing giving the reasons, therefore. If the COUNTY considers the Project substantially complete, a Certificate of Substantial Completion will be issued. This certificate shall fix the date of Substantial Completion and the responsibilities between the COUNTY and the CONTRACTOR for maintenance, heat, and utilities. The Certificate of Substantial Completion will also include a punch list of items to be completed or corrected, said time to be within the Contract Time, and the estimated cost to complete each item on the list. The list of items shall be prepared by the COUNTY following the inspection and provided

to the CONTRACTOR within 30 days of the date of the inspection. The CONTRACTOR shall then provide the estimated cost to complete each item on the list back to the COUNTY within 30 days. Within 20 business days after the list is created, COUNTY must pay the contractor the remaining contract balance that includes all retainage previously withheld by the COUNTY less an amount equal to 150 percent of the estimated cost to complete the items on the list. The COUNTY shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion, but the COUNTY will allow the CONTRACTOR reasonable access to complete items on the punch list.

#### **44 Partial Utilization**

44.1 Prior to final payment, the OWNER'S REPRESENTATIVE may request the CONTRACTOR to permit the use of a specified part of the Project which the COUNTY believes it may use without significant interference with construction of the other parts of the Project. If the CONTRACTOR agrees, he will certify to the OWNER'S REPRESENTATIVE that said part of the Project is substantially complete and request the OWNER'S REPRESENTATIVE to issue a Certificate of Substantial Completion for that part of the Project. Within fourteen calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of that part of the Project to determine its status of completion. If the COUNTY considers that part of the Project to be substantially complete, the OWNER'S REPRESENTATIVE will deliver to the CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment, the estimated cost to complete each item on the list and fixing the responsibility between the COUNTY and the CONTRACTOR for maintenance, heat, and utilities as to that part of the Project. This list shall be prepared by the COUNTY following the inspection and provided to the CONTRACTOR within 30 days of the date of the inspection. The CONTRACTOR shall then provide the estimated cost to complete each item on the list back to the COUNTY within 30 days. The COUNTY shall have the right to exclude the CONTRACTOR from any part of the Project, which is so certified to be substantially complete, but the COUNTY will allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

44.2 If the COUNTY fails to provide the punch list to the CONTRACTOR within the timeframe specified in Paragraph 44.1, the CONTRACTOR may submit a payment request to the COUNTY for the remaining balance of the contract, including all remaining retainage withheld by the COUNTY. The COUNTY will then pay the CONTRACTOR within 20 business days after receipt of a proper invoice or payment request. If the COUNTY has provided written notice to the CONTRACTOR specifying the failure of the CONTRACTOR to meet contract requirements in the development of the list of items to be completed, the COUNTY must pay the CONTRACTOR the remaining balance of the contract, less an amount equal to 150 percent of the estimated cost to complete the items that the COUNTY intended to include on the list.

#### **45 Final Inspection**

45.1 Upon written notice from the CONTRACTOR that the Project is complete, the OWNER'S REPRESENTATIVE will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of any particulars which this inspection reveals that the Work is defective. The CONTRACTOR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

#### **46 Final Inspection for Payment**

46.1 After the CONTRACTOR has completed any such corrections to the satisfaction of the OWNER'S REPRESENTATIVE and delivered all maintenance and operating instructions,



schedules, guarantees, bonds, Certificates of Inspection, and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CONTRACTOR and all SUB-CONTRACTORS which performed services for the CONTRACTOR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

#### **47 Approval of Final Payment**

- 47.1 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, it will, within ten calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the COUNTY. Otherwise, it will return the Application to the CONTRACTOR, indicating in writing its reason for refusing to approve final payment, in which case the CONTRACTOR will make the necessary corrections and re-submit the Application. The COUNTY will, within fifteen calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment and within fifteen calendar days pay the CONTRACTOR the amount approved by the COUNTY and issue a Certificate of Final Completion or return the application thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.
- 47.2 If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CONTRACTOR, and the OWNER'S REPRESENTATIVE so confirms, the COUNTY shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER'S REPRESENTATIVE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 47.3 If liquidated damages are to be deducted from the final payment, the COUNTY shall so notify the CONTRACTOR in writing at least seven calendar days prior to the COUNTY'S submittal to Finance.
- 47.4 The Contractor will be required to submit with his final payment documents a DBE Participation Certification, indicating all DBE sub-contractor(s) and amount(s) utilized for the project.
- 47.5 If the CONTRACTOR did not utilize the DBE firm(s) listed on the Bid Proposal, a letter of justification, as to why shall be submitted along with the DBE Participation Certification.
- 47.6 At the final completion of the construction project if the county project manager experienced problems with the CONTRACTOR the project manager will prepare a Contractor Performance Evaluation, and forward to the Contractor for review, comment, and signature.
- 47.7 Upon receipt of the Contractor Performance Evaluation the CONTRACTOR will have seven calendar days, from the date received, to review, comment, sign and return back to the project manager. If the evaluation has not been received back from the CONTRACTOR within the seven calendar days, the COUNTY will assume the CONTRACTOR fully agrees with and has no comments to the evaluation. The evaluation will then be placed on file with Lee County Procurement Management.

#### **48 Contractor's Continuing Obligation**

- 48.1 The CONTRACTOR'S obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the COUNTY, the issuance of the Certificates of Completion, any payment by the COUNTY to the CONTRACTOR under the Contract Documents, any use or occupancy of the Project or any part thereof by the COUNTY, any act of acceptance by the COUNTY, any failure to do so, nor any correction of defective Work by the COUNTY shall constitute an acceptance of Work not in accordance with the Contract Documents.

#### **49 Waiver of Claims**

- 49.1 The making and acceptance of final payment shall constitute:
- 49.1.1 A waiver of all claims by the COUNTY against the CONTRACTOR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any special guarantees specified therein, and,
- 49.1.2 A waiver of all claims by the CONTRACTOR against the COUNTY other than those previously made in writing and still unsettled.

#### **50 Suspension of Work and Termination**

- 50.1 County May Suspend Work
- 50.1.1 The COUNTY may at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety calendar days by notice in writing to the CONTRACTOR. The COUNTY shall fix the date on which Work shall be resumed and the CONTRACTOR will resume the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price, an extension of the Contract Time or both, if such increases are justified and directly attributable to any COUNTY suspension and if he makes a claim thereof.

#### **51 County May Terminate**

- 51.1 If the CONTRACTOR is adjudged bankrupt or insolvent, if he makes a general assignment for the benefit of his creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, if he files a petition to take advantage of any debtor's act or reorganizes under the bankruptcy or similar laws, if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, if he repeatedly fails to make prompt payments to SUB-CONTRACTORS for labor, materials or equipment, if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, if he disregards the authority of the OWNER'S REPRESENTATIVE, or if he otherwise substantially violates any provisions of the Contract Documents, then the COUNTY may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety seven (7) calendar days' written notice, terminate the services of the CONTRACTOR and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the Work by whatever method the COUNTY may deem expedient or arrange with the Surety to complete the project. The CONTRACTOR, if notified by the COUNTY to do so, shall promptly remove any part of his equipment, and supplies from the property of the COUNTY; failing, the COUNTY shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.
- 51.2 In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such cost exceeds such unpaid balance,

the CONTRACTOR will pay the difference to the COUNTY. Such cost incurred by the COUNTY will be determined by the COUNTY and incorporated in a Change Order.

- 51.3 Where the CONTRACTOR'S services have been so terminated by the COUNTY, said termination shall not affect any rights of the COUNTY against the CONTRACTOR then existing or which may thereafter accrue.
- 51.4 If so terminated, any retention or payment of monies by the COUNTY due the CONTRACTOR will not release the CONTRACTOR from liability accruing under this Contract.
- 51.5 If after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.
- 51.6 Upon thirty (30) calendar days' written notice to the CONTRACTOR, the COUNTY may without cause and without prejudice to any other right or remedy elect to abandon the Project and terminate the Agreement. In such case the CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

## **52 Contractor May Stop Work or Terminate the Contract**

- 52.1 If through no fault of the CONTRACTOR, or a Sub-contractor, or their agents or employees or any other persons performing portions of the Work under Contract with the CONTRACTOR, the WORK is suspended for a period of more than ninety calendar days by the COUNTY or under an order of court or other public authority, or the OWNER'S REPRESENTATIVE has not issued a certificate for payment and has not notified the CONTRACTOR of the reason for withholding certification or because the COUNTY has not made payment on a certificate for payment within the time stated in the Contract Documents, then the CONTRACTOR may, upon seven calendar days written notice to the COUNTY and the OWNER'S REPRESENTATIVE, terminate the Agreement and recover from the COUNTY payment for all Work executed and proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.
- 52.2 In addition, and in lieu of terminating the Agreement, if the OWNER'S REPRESENTATIVE has failed to act on an application for payment or the COUNTY has failed to make any payment as aforesaid, the CONTRACTOR may upon seven calendar days written notice to the COUNTY and the OWNER'S REPRESENTATIVE stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligation to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the COUNTY.

## **53 Miscellaneous**

### **53.1 General**

- 53.1.1 All Specifications, Drawings and copies thereof furnished by the COUNTY, to the CONTRACTOR, shall remain the COUNTY'S property. They shall not be used on another Project.
- 53.1.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warrants, guarantees and obligations imposed upon the CONTRACTOR and the rights and remedies available to the COUNTY thereunder shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.
- 53.1.3 Should the COUNTY or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission, or act of the other or any of his employees, agents, or others for whose acts he is legally liable, claim should be made in writing to the other party within seven calendar days of the first observance of such injury or

damage.

- 53.1.4 The Contract Documents shall be governed by the laws of the State of Florida, the County of Lee, and the municipality in which the project is being done.
- 53.2 Right-of-Way Station Boards: The CONTRACTOR must establish and maintain throughout construction the right-of-way station boards at every even station within ten (10) days after the Notice to Proceed to assist and expedite construction and utility coordination. No additional compensation or separate pay item will be made for this work.
- 53.3 Abbreviations: Reference in the technical specifications to the specifications or requirements of technical societies, associated organization, or bodies shall mean their most current specifications. These groups are identified in the technical specifications.
- 53.4 Use of Public Streets: The use of public streets and roads shall be such as to minimize any inconvenience to the public and to other traffic. Any earth or other excavation materials spilled from trucks shall be removed by the CONTRACTOR and the streets and roads shall be cleaned by the CONTRACTOR to the satisfaction of the COUNTY.
- 53.5 Damage to Existing Property, Structures and Utilities: The CONTRACTOR shall be held responsible for and shall repair all damage to pavement beyond the limits of the contract or outside the right-of-way. Also, the CONTRACTOR shall repair if damaged buildings, telephone or other cables, poles, signs, mailboxes, irrigation piping, water pipes, sanitary pipes, or other structures which may be encountered, whether or not they are shown on the Drawings. Information shown on the Drawings as to the location of existing utilities has been prepared from the most reliable data available to the Engineer. However, this information is not guaranteed, and it shall be the CONTRACTOR'S responsibility to determine the location, character, and depth of any existing utilities. The CONTRACTOR shall assist the utility companies, by every means possible, to determine said locations. The CONTRACTOR shall exercise extreme caution to eliminate any possibility of any damage to utilities resulting from his activities.
- 53.5.1 At least two (2) business days prior to excavating any section of the Work, the CONTRACTOR shall call the utility companies noted on the plans and inform them that Work on the specific section is about to commence and request that they field locate their underground utilities.
- 53.5.2 When proceeding with the Work, the CONTRACTOR shall exercise due caution to protect all underground and overhead utilities and existing structures from damage. In keeping with the Trench Safety Act, the CONTRACTOR shall provide all sheeting, shoring, and bracing that may be required to properly protect adjacent property, structures, and people. The CONTRACTOR shall repair, to the satisfaction of the OWNER, any surface or subsurface Improvement damaged during the course of the Work (unless such improvement is shown to be abandoned or removed) whether or not such improvement is shown on the Drawing. Should any utilities be encountered that are not shown on the Drawing, the CONTRACTOR shall immediately notify the OWNER'S REPRESENTATIVE and shall take all due caution necessary to protect the utility.
- 53.6 Adjustment of Grades: Adjustments of grades shown on Drawings may be necessary to conform to actual field conditions or to maintain cover under proposed future grades. Such adjustments shall be considered part of the job conditions and no extra compensation will be allowed for such changes, except where specifically otherwise noted in the plans or specifications. Such adjustments must be approved by the OWNER'S REPRESENTATIVE prior to being made.
- 53.7 Existing Drainage: Existing drainage shall be maintained at all times and drainage under construction shall be left open so as not to cause flooding due to blockage. Any damage to construction caused by this requirement shall be the responsibility of the CONTRACTOR.
- 53.8 Reference to Other Specifications

- 53.8.1 Reference to FDOT Specifications shall mean the State of Florida Department of Transportation Standard Specifications for Road and Bridge Construction dated July 2016 and supplements thereto unless specifically stated otherwise in the Contract Documents. Where an FDOT Specification section cites or contains references to other sections, they shall also be included as though cited herein. Where FDOT Specifications refer to the “Engineer”, “Engineer of Test” or “Division of Test”, it shall be understood to mean the OWNER’S REPRESENTATIVE or his designee. Where FDOT Specifications refer to the “Department”, it shall mean the Department of Transportation of Lee County, Florida.
- 53.8.2 In case of conflict between the referenced FDOT Specifications and the Contract Documents, the Contract Documents shall govern.
- 53.8.3 Reference to AASHTO and ASTM are to the latest editions of published text of the American Association of Highway and Transportation Officials and the American Society for Testing and Materials, respectively.
- 53.9 Shoring
  - 53.9.1 Unless trench banks are cut back on a stable slope, sheet and brace trenches shall be used as necessary to prevent caving or sliding, to provide protection for workmen and the pipe, and to protect adjacent structures and facilities. The CONTRACTOR shall not brace sheeting against the pipe but shall brace it so that no concentrated loads of horizontal thrust are transmitted to the pipe. If portable metal box is used for bracing the slopes, the CONTRACTOR shall take care not to disturb the pipe when the box is removed.
  - 53.9.2 The CONTRACTOR must comply with the Trench Safety Act, Florida Statutes Sections 553.60 – 553.64. Cost of compliance is not a separate pay item. Costs shall be included in the cost of pipe placement.
- 53.10 Dewatering: Dewatering of excavations, trenches, structures, and utilities may be required. The CONTRACTOR shall be responsible for obtaining water use permits for dewatering operations, as necessary, from the South Florida Water Management District. No separate payment will be made for dewatering operations or procurement of dewatering permits. Costs shall be included in the cost of items as included in the Bid Form.
- 53.11 Excess Excavated Material: Unless otherwise specified, all excavated material in excess of the needs for backfill and area fill shall become the property of the CONTRACTOR, and the CONTRACTOR shall remove same from the project.
- 53.12 Asphalt Paving Conference: A pre-paving conference shall be held prior to any asphalt placement. The conference is intended to closely coordinate the CONTRACTOR’S plant and site personnel with the COUNTY’S plant and field inspectors and establish expected quality assurance procedures. The CONTRACTOR shall not perform any paving prior to this conference.
- 53.13 Rock Excavation: All excavations for the installation of pipes, structures, foundations, or other contract items shall be unclassified and no additional or separate payment for rock excavation shall be provided nor shall additional or separate payment be made for backfill required to compensate for excavated rock material that cannot be reused as backfill.
- 53.14 Permits
  - 53.14.1 Copies of permits for this project other than for dewatering or NPDES will be provided by the COUNTY.
  - 53.14.2 The CONTRACTOR shall abide by all conditions, statutes, and regulations issued by the jurisdiction authorities, boards and agencies of the COUNTY, State and Federal Governments. The CONTRACTOR shall be fully responsible for the execution and adherence to all directives, instructions, conditions, issuance of notices, special conditions, and limiting conditions contained in permits specifically issued for this project and which pertain to or affect the construction phase of this project. Except as



may be provided elsewhere in these documents, the cost of materials, supplies, labor testing, permit fees and other direct or indirect expenses required to abide by or execute conditions of the permits shall be paid for by the CONTRACTOR. There is no direct or specific payment item in the bid for cost due to compliance with said permits. The CONTRACTOR'S reimbursement for said costs shall be distributed within the various items of work and materials associated with the construction of the project.

- 53.15 Field Office: CONTRACTOR is not required to provide a field office within the project limits as long as CONTRACTOR has a field office within Lee, Collier or Charlotte County prior to bidding. If CONTRACTOR does not have an established office within Lee, Collier or Charlotte County, then the CONTRACTOR shall provide and staff a field office within the project limits for the entire project duration, per FDOT requirements. This item shall be compensated under the mobilization item and no separate payment will be made. The CONTRACTOR shall coordinate the location of this field office with the Lee County Project Manager prior to the issuance of the Notice to Proceed.

#### **54 Computation of Time**

- 54.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### **55 Maintenance of Records**

- 55.1 The CONTRACTOR shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CONTRACTOR for a minimum of five years from the date of termination of this Contract. The COUNTY and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the COUNTY deems necessary during the period of this Contract and during the period of five years thereafter; provided, however, such activity shall be conducted only during normal business hours. The COUNTY, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of, and otherwise inspect, any audit made at the direction of the CONTRACTOR as concerns the aforesaid records and documentation.
- 55.2 Vendor specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:
- 55.2.1 keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
  - 55.2.2 provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - 55.2.3 ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
  - 55.2.4 meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.
- 55.3 **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

## **56 Federal Requirements**

- 56.1 In the event this Contract is paid in whole or in part from any Federal Governmental agency or source, the specific terms, regulations, and requirements governing the disbursement of these funds are incorporated by reference and made a part of this Contract as if attached hereto and become a part of this clause.

**End of General Conditions Section**

## **SCOPE OF WORK AND SPECIFICATIONS**

### **1. GENERAL SCOPE OF WORK**

- 1.1. Lee County Board of County Commissioners seeks to contract with a qualified CONTRACTOR to provide all labor, materials, permits, inspections and re-inspection fees, tools, equipment, transportation, insurance, supervision and incidental items essential for the construction of the LeeTran Lehigh Acres Park and Ride/ Transfer Station. The project is located at 1121 Village Lakes Blvd. Lehigh Acres, FL. 33972.
- 1.2. The scope of work is further defined and detailed within the plans and specifications associated with this project. CONTRACTOR is responsible for reviewing all documentation associated with this project.
- 1.3. CONTRACTOR shall be required to attend the groundbreaking ceremony coordinated by the County.

**End of Scope of Work and Specifications Section**

## **SUPPLEMENTAL INFORMATION**

### **2. ATTACHMENTS**

- 2.1. Specs Volume I – LeeTran Lehigh Acres Park and Ride
- 2.2. Specs Volume II – LeeTran Lehigh Acres Park and Ride
- 2.3. Architectural – LeeTran Lehigh Acres Park and Ride
- 2.4. Civil Plans – LeeTran Lehigh Acres Park and Ride
- 2.5. Dumpster Enclosure – LeeTran Lehigh Acres Park and Ride
- 2.6. Electrical – LeeTran Lehigh Acres Park and Ride
- 2.7. Fire Alarm – LeeTran Lehigh Acres Park and Ride
- 2.8. Landscape Plans – LeeTran Lehigh Acres Park and Ride
- 2.9. Mechanical – LeeTran Lehigh Acres Park and Ride
- 2.10. Monument Sign – LeeTran Lehigh Acres Park and Ride
- 2.11. Plumbing – LeeTran Lehigh Acres Park and Ride
- 2.12. Structural – LeeTran Lehigh Acres Park and Ride
- 2.13. Technology – LeeTran Lehigh Acres Park and Ride

End of Supplemental Information Section

## LEE COUNTY DOCUMENT MANAGEMENT FORM

**For**

**B230375SML – LeeTran Lehigh Acres Park and Ride**

These forms are required as indicated below and all required forms should be submitted with all submissions. If it is determined that forms in this selection are not applicable to your company or solicitation they should be marked “N/A or Not Applicable” across the form in large letters and returned with your submission package.

<b>FORM #</b>	<b>TITLE / DESCRIPTION</b>	<b>STATUS (Required, Not Required, If Applicable)</b>	<b>VENDOR CHECK OFF</b>
1	Solicitation Response Form	Required	
N/A	Business Relationship Disclosure Requirement	If Applicable	
2	Affidavit Certification Immigration Laws	Required	
3	Reference Survey	Required	
4	Negligence or Breach of Contract Disclosure Form	Required	
5	Sub-Contractor List	If Applicable	
6	Public Entity Crime Form	Required	
7	Trench Safety	Required	
8	Bid Bond	Required	
9	Minimum Qualifications	Required	
<b>FTA CERTIFICATIONS / GRANT FUND – REQUIRED DOCUMENTS</b>			
10	DBE - Demonstration of Good Faith Efforts Form	Required	
11	Buy America Requirements	Required	
12	Certification of Lobbying Activities	Required	
12a	Disclosure of Lobbying Activities	If Applicable	
13	Immigration Law Affidavit Certification (E-Verify) (Provide evidence of E-Verify account)	Required	
14	Debarment, Suspension, Ineligibility And Voluntary Exclusion	Required	
*	Proposal Label	Required	
*	Inclusion of any licenses or certifications requested.	If Applicable	

It is the Proposer’s responsibility to review the submittal request in its entirety and ensure that all submittal requirements are included within your submission package.



This table provides a brief list, description, and instructions regarding the standard requested forms that should be submitted with all bids or proposals. This is not intended to be an all-inclusive list of forms required for your submission, but rather a guide to assist in completion of the County's standard forms

<b>Form #</b>	<b>Title/Description</b>
<b>1</b>	<p><b><i>Solicitation Response Form</i></b></p> <p>All signatures must be by a corporate authorized representative, witnessed, and corporate and/or notary seal (as applicable.) The corporate or mailing address must match the company information as it is listed with the Florida Department of State Division of Corporations. Attach a copy of the webpage(s) from <a href="http://www.sunbiz.org">http://www.sunbiz.org</a> as certification of this required information. Sample attached for your reference.</p> <p>Verify that all Addenda and tax identification number have been provided.</p>
<b>1a</b>	<p><b><i>Bid/Proposal Form</i></b></p> <p>This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County.</p>
<b>*</b>	<p><b><i>Business Relationship Disclosure Requirement</i></b></p> <p>Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this <b>disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS"</b> (Required by § 112.313(12)(b), F.S.) to be completed and <b>returned with the Solicitation Response. It is the Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.</b></p> <p>NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.</p>
<b>2</b>	<p><b><i>Affidavit Certification Immigration Laws</i></b></p> <p>Submission of this form constitutes acknowledgement that the Bidder is in compliance in regard to all applicable immigration laws.</p>
<b>3</b>	<p><b><i>Reference Survey</i></b></p> <p>Provide this form to reference respondents. <b><u>For Bids, this form will be requested from the apparent low Bidder prior to the award. (Not required to submit with bid)</u></b></p> <ol style="list-style-type: none"> <li><b>Section 1:</b> Bidder/Proposer to complete with <u>reference respondent's</u> information prior to providing to them for their response. (This is <b>not</b> the Bidder/Proposer's information.)</li> <li><b>Section 2:</b> Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response.</li> <li>The <u>reference respondent</u> should complete <b>"Section 3."</b></li> <li><b>Section 4:</b> The reference respondent to print and sign name</li> <li><b>Three (3) Reference responses</b> are to be provided upon request.</li> <li>Failure to obtain reference surveys may make your company non-responsive.</li> </ol>

**4**      ***Negligence or Breach of Contract Disclosure Form***

The form may be used to disclose negligence or breach of contract litigation that your company may have been a part of over the past ten (10) years. You may need to duplicate this form to list all history. If the Bidder has more than ten (10) lawsuits, you may narrow them to litigation of the company or subsidiary submitting the Solicitation Response. Include, at a minimum, litigation for similar projects completed in the State of Florida. Final outcome should include in whose favor the litigation was settled and whether a monetary amount was awarded. The settlement amount may remain anonymous.

If you have **no litigation**, enter **“None”** in the first **“type of incident”** block of the form. Please do not write N/A on this form.

**5**      ***Sub-Contractor/Consultant List***

To be completed and returned when sub-contractor/consultants are to be utilized and are known at the time of the submission.

**6**      ***Public Entity Crime Form***

Any person or affiliate, as defined by statute, who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a Bid on a Contract to provide any goods or services to the County; may not submit a Bid on a contract with the County for the construction or repair of a public building or a public work; may not submit Bids or leases of real property to the County; may not be Awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**7**      ***Trench Safety***

Typically required in construction projects where trench excavations are in excess of 5 feet deep per Florida Trench Safety Act (90-96, Laws of Florida)

**8**      ***Bid Bond***

Guarantee to County that Bidder/Proposer will take on job if selected.

**9**      ***Minimum Qualifications Requirements***

States the minimum qualifications the Bidder/Proposer is required to meet in order to be considered for award or evaluation.

**10**      ***DBE/Demonstration of Good Faith Efforts (Required)***

**11**      ***Buy America Requirements (Required)***

States 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.

**12**      ***Certification Regarding Lobbying (Required)***

**13**      ***E-Verify Affidavit (Required)***

**14**      ***Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Required)***

\* ***Bid/Proposal Label***

Self-explanatory. Please affix to the outside of the sealed submission documents.

\* ***Include any licenses or certifications requested***

Local Business Tax Account (as applicable) issued by City and/or County entity. This is necessary for all Florida vendors.

\* ***Lee County Transit Policies and Procedures – Grant Funded Procurements***

It is the Bidder's responsibility to ensure the Solicitation Response is mailed or delivered in time to be received no later than the specified opening date and time. (If Solicitation is not received prior to the deadline, it cannot be considered or accepted)



## LEE COUNTY PROCUREMENT MANAGEMENT SOLICITATION RESPONSE FORM

Date Submitted: \_\_\_\_\_ Bid Due Date: 8/16/2023

SOLICITATION IDENTIFICATION: B230375SML

SOLICITATION NAME: LeeTran Lehigh Acres Park and Ride

COMPANY NAME: \_\_\_\_\_

NAME & TITLE: (TYPED OR PRINTED) \_\_\_\_\_

BUSINESS ADDRESS: (PHYSICAL) \_\_\_\_\_

CORPORATE OR MAILING ADDRESS: \_\_\_\_\_

☐ SAME AS PHYSICAL \_\_\_\_\_

**ADDRESS MUST MATCH SUNBIZ.ORG** \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX \_\_\_\_\_

**NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE BIDDER/PROPOSER TO CHECK LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE BUT WILL NOT NOTIFY.**

By responding to this sealed solicitation, the Bidder/Proposer makes all representations required by the instructions and further warrants and represents that: Bidder/Proposer has examined copies of all the solicitation documents and of the following addenda:

No. _____ Dated: _____	No. _____ Dated: _____	No. _____ Dated: _____
No. _____ Dated: _____	No. _____ Dated: _____	No. _____ Dated: _____

Tax Payer Identification Number: \_\_\_\_\_

(1) Employer Identification Number -Or- (2) Social Security Number:

**\*\* Lee County collects your social security number for tax reporting purposes only**

Please submit a copy of your registration from the website [www.sunbiz.org](http://www.sunbiz.org) establishing your firm as authorized (including authorized representatives) to conduct business in the State of Florida, as provided by the *Florida Department of State, Division of Corporations*. (a sample is attached for your reference)

1 **Collusion Statement:** Lee County, Florida The undersigned, as Bidder/Proposer, hereby declares that no person or other persons, other than the undersigned, are interested in this solicitation as Principal, and that this solicitation is submitted without collusion with others; and that we have carefully read and examined the specifications or scope of work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby bid/propose and agree to furnish this service according to the requirements set out in the solicitation documents, specifications or scope of work for said service for the prices as listed on the county provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is awarded.

2 **Scrutinized Companies Certification:**

Section 287.135, FL §, "Prohibition against contracting with scrutinized companies." Prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that Boycott Israel List, have been engaged in a boycott of Israel, or been engaged in business operations in Cuba or Syria. The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to advantageous to the County.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above is in compliance with Section 287.135, FL §. I understand that submission of a false certification may subject company to contract termination, civil penalties, attorney's fees, and/or costs.

**Form 1 – Solicitation Response Form, Page 2**

- 3 **Business Relationship Disclosure Requirement:** Sections 112.313(3) and 112.313(7), FL §, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, FL §, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), FL § (1983), provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.

**If this disclosure is applicable request form “INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS” (Required by 112.313(12)(b), FL § (1983)) to be completed and returned with solicitation response. It is the bidder/proposer’s responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

☐ **Business Relationship Applicable (request form)**

☐ **Business Relationship NOT Applicable**

- 4 Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE)  
Proposer? If yes, please attach a current certificate. Yes No

**ALL SUBMISSIONS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE BIDDER/PROPOSER. WITNESSED AND SEALED (AS APPLICABLE)**

\_\_\_\_\_  
Company Name (Name printed or typed)

\_\_\_\_\_  
Authorized Representative Name (printed or typed)

\_\_\_\_\_  
Authorized Representative’s Title (printed or typed)

\_\_\_\_\_  
Authorized Representative’s Signature



(Affix Corporate Seal, as applicable)

\_\_\_\_\_  
Witnessed/Attested by: (Witness/Secretary name and title printed or typed)

\_\_\_\_\_  
Witness/Secretary Signature

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County’s Form may result in the submission being declared non-responsive by the County.

Bidders may not adjust or modify County-authored data as provided within the Bid Schedule. Bids received with modified data may deem the Bidder as non-responsive and ineligible for award.



**Detail by Entity Name****Florida Profit Corporation**

Bill's Widget Corporation

**Filing Information**

Document Number 655555  
 FEI/EIN Number 5111111111  
 Date Filed 09/22/1980  
 State FL  
 Status ACTIVE  
 Last Event AMENDED AND RESTATED ARTICLES  
 Event Date Filed 07/25/2006  
 Event Effective Date NONE

**Principal Address**

555 N Main Street  
 Your Town, USA 99999

Changed 02/11/2012

**Verify either Principal or Mailing  
 address is on Form 1**

**Mailing Address**

555 N Main Street  
 MYour Town, USA 99999

Changed 02/11/2012

**Registered Agent Name & Address**

My Registered Agent  
 111 Registration Road  
 Registration, USA 99999

Name Changed: 12/14/2006

Address Changed: 12/14/2006

**Officer/Director Detail****Name & Address****Title P**

President, First  
 555 AVENUE  
 Anytown, USA 99999

**Title V**

President, Second  
 555 AVENUE  
 Anytown, USA 99999

**IMPORTANT:**

For corporations, ALL documents must be signed by the president of the company or an authorized individual. For any individual other than the president, we will need one of the following to confirm their authority to sign:

1. a corporate resolution by the Board of Directors, or
2. an extract of minutes, or
3. an extract of Vote by the Board of Directors

If the company's articles of incorporation identify additional positions that have the power to bind the corporation, we will accept the articles of incorporation with verification from the president that a certain individual serves in that role (e.g., the president confirms that John Doe is the CEO, and the articles of incorporation provide that the CEO has the power to bind the company).

With respect to an LLC, the authority to bind a limited liability company is controlled by Florida statutes. Managers or managing members have inherent authority to bind an LLC.

If the president of a corporation or a manager/managing member of an LLC delegates their authority, such delegation must be sent to us on company letterhead with the President's or manager's/managing member's original, wet signature.

v01/03/2018



## PROCUREMENT MANAGEMENT DEPARTMENT BID/ PRICE PROPOSAL FORM

COMPANY NAME: \_\_\_\_\_

SOLICITATION: B230375SML – LeeTran Lehigh Acres Park and Ride

This page serves as a header/placeholder only. Please refer to the Excel document provided with the solicitation for the complete schedule. The Excel document contains formulas for convenience; however, it is the Proposer's responsibility to verify all pricing and calculations are CORRECT. Lee County is not responsible for errors in formulas or calculations contained within Excel documents(s).

**REMINDER:** In the event there is a discrepancy between the total proposed amount, or the extended amounts and the unit prices proposed, the unit prices will prevail, and the corrected sum will be considered the quoted price.

The County will only accept proposals submitted on the proposal form provided by the County. Proposals submitted on other forms, other than those provided by the County, will deem Proposer as non-responsive and ineligible for award.

Proposers may not adjust or modify data provided within the Bid/Proposal Form. Proposals received with modified data may deem the Proposer as non-responsive and ineligible for award.

**PLEASE ENSURE** you have provided a printed copy of the Bid/Proposal Form with your hard copy submission packages and provided the excel version with your digital submission package.

### PRICING

Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, materials, and any other incidental costs required to perform and complete all work as specified herein.

**LUMP SUM PRICING:** The Contractor performing the work agrees to complete the project for a fixed amount – no more or less, as stated on the Bid/Price Proposal Form. The lump sum price shall be inclusive of all labor, equipment, supplies, overhead, profit, materials, and any other incidental costs required to perform and complete all work, as specified within the scope, technical specifications, and construction documents.



**AFFIDAVIT CERTIFICATION IMMIGRATION LAWS**

SOLICITATION NO.: **B230375SML** SOLICITATION NAME: **LeeTran Lehigh Acres Park and Ride**

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS 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 CONTRACTOR 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 CANCELLATION OF THE CONTRACT BY LEE COUNTY.** PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

BY REGISTERING AS A VENDOR, SUBMITTING A RESPONSE TO A SOLICITATION, OR ENTERING INTO A CONTRACT, YOU ARE OBLIGATED TO COMPLY WITH THE PROVISIONS OF SECTION 448.095, FLA. STAT., "EMPLOYMENT ELIGIBILITY." FURTHER, BY YOUR REGISTRATION AS A VENDOR, RESPONSE TO A SOLICITATION, ENTERING INTO A CONTRACT, YOU AFFIRM AND REPRESENT THAT YOU ARE REGISTERED WITH THE E-VERIFY SYSTEM AND ARE USING SAME, AND WILL CONTINUE TO USE SAME AS REQUIRED BY SECTION 448.095, F.S. COMPLIANCE WITH SECTION 448.095 INCLUDES, BUT IS NOT LIMITED TO, UTILIZATION OF THE E-VERIFY SYSTEM TO VERIFY THE WORK AUTHORIZATION STATUS OF ALL NEWLY HIRED EMPLOYEES, AND REQUIRING ALL SUBCONTRACTORS TO PROVIDE AN AFFIDAVIT ATTESTING THAT THE SUBCONTRACTOR DOES NOT EMPLOY, CONTRACT WITH, OR SUBCONTRACT WITH, AN UNAUTHORIZED ALIEN. FAILURE TO COMPLY WILL LEAD TO TERMINATION AS A VENDOR, DISQUALIFYING YOU FOR AWARD OF A SOLICITATION, DENIAL OF ENTERING INTO A CONTRACT AND/OR, CANCELLATION OF AN ACTIVE CONTRACT, OR IF YOUR SUBCONTRACTOR KNOWINGLY VIOLATES THE STATUTE, THE SUBCONTRACT MUST BE TERMINATED IMMEDIATELY. ANY CHALLENGE TO TERMINATION UNDER THIS PROVISION MUST BE FILED NO LATER THAN 20 CALENDAR DAYS AFTER THE DATE OF TERMINATION. IF TERMINATED FOR A VIOLATION OF THE STATUTE BY THE VENDOR, THE VENDOR MAY NOT BE ALLOWED TO DO BUSINESS WITH THE COUNTY OR BE AWARDED A SOLICITATION OR CONTRACT FOR A PERIOD OF 1 YEAR AFTER THE DATE OF TERMINATION. ALL COSTS INCURRED TO INITIATE AND SUSTAIN THE AFOREMENTIONED PROGRAMS SHALL BE THE RESPONSIBILITY OF THE VENDOR.

Company Name: \_\_\_\_\_

\_\_\_\_\_  
Signature Title 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 \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: \_\_\_\_\_

<b>Section 1</b>	Reference Respondent Information	<b>Please return completed form to:</b>	
<b>FROM:</b> _____		<b>Bidder/Proposer:</b>	
<b>COMPANY:</b> _____		<b>Due Date:</b>	
<b>PHONE #:</b> _____		<b>Total # Pages:</b> 1	
<b>FAX #:</b> _____		<b>Phone #:</b>	<b>Fax #:</b>
<b>EMAIL:</b> _____		<b>Bidder/Proposer E-Mail:</b>	

<b>Section 2</b>	Enter Bidder/Proposer Information , as applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
<b>Bidder/Proposer Name:</b> _____			
<b>Reference Project Name:</b> _____		<b>Project Address:</b> _____	<b>Project Cost:</b> _____
<b>Summarize Scope:</b> _____		_____	_____

**You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.**

<b>Section 3</b>		Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?		
2. Were any problems encountered with the company's work performance?		
3. Were any change orders or contract amendments issued, other than owner initiated?		
4. Was the job completed on time?		
5. Was the job completed within budget?		
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)		
7. If the opportunity were to present itself, would you rehire this company?		
8. Please provide any additional comments pertinent to this company and the work performed for you:		

**Section 4** Please submit non-Lee County employees as references

Reference Name (Print Name) \_\_\_\_\_

Reference Signature \_\_\_\_\_

Form 4 - Negligence or Breach of Contract Disclosure Form



ALLEGED NEGLIGENCE OR BREACH OF CONTRACT  
DISCLOSURE FORM

Please fill in the form below. Provide each incident in regard to alleged negligence or breach of contract that has occurred over the past 10 years.

Please complete in chronological order with the most recent incident on starting on page 1.

Company Name: \_\_\_\_\_

Type of Incident <i>Alleged Negligence or Breach of Contract</i>	Incident Date And Date Filed	Plaintiff <i>(Who took action against your company)</i>	Case Number	Court <i>County/State</i>	Project	Claim Reason <i>(initial circumstances)</i>	Final Outcome <i>(who prevailed)</i>

Make as many copies of this sheet as necessary in order to **provide a 10-year history** of the requested information. If there is no action pending or action taken in the last 10 years, complete the **company name** and write **“NONE”** in the first **“Type of Incident”** box of this page and return with your submission package. This form should also include the primary partners listed in your submission. Do not include litigation with your company as the plaintiff. Final outcome should include who prevailed and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous. **Please do not modify this form (expansion of spacing allowed) or submit your own variation.**

Page Number: \_\_\_\_\_ Of \_\_\_\_\_ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form.



*Form 5 - Sub-contractor/consultant List*



**SUB-CONTRACTOR/CONSULTANT LIST**

<b>Sub-Contractor/Consultant Company Name</b>	<b>Area Of Work</b>	<b>Point Of Contact Or Project Supervisor</b>	<b>Contact Info Phone or Email</b>	<b>Qualified DBE, MBE, WBE, VBE or Similar</b>	<b>Amount or Percentage of Total</b>

Please include sub-contractor/consultant name, area of work (i.e., mechanical, electrical, etc.) and a **valid** phone number and/or email. Also include the dollar value or percentage that the sub-contractor/consultant will be performing. If sub-contractor/consultant qualifies as a current certificate Florida Certified Business Enterprise such as MBE, WBE, DBE, VBE or similar please indicate such above and provide proof of

**Public Entity Crime Form**

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to \_\_\_\_\_  
(Print name of the public entity)

by \_\_\_\_\_  
(Print individual's name and title)

for \_\_\_\_\_  
(Print name of entity submitting sworn statement)

whose business address is \_\_\_\_\_

(If applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime:  
or:

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length Agreement/Contract, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies.)

\_\_\_\_\_ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.

(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

**Form 7 - Trench Safety (Required for Construction Projects Only)**

**TRENCH SAFETY**

Contractor/Vendor acknowledges that included in the appropriate solicitation items of the solicitation and in the Total solicitation price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The contractor/vendor further identifies the costs of such compliance to be summarized below:

Trench Safety Measure (Description)	Units of Measure (LF, SF)	Unit (Quantity)	Unit Cost	Extended Cost
.....				
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
TOTAL \$ _____				

If applicable, the contractor/vendor certifies that all trench excavation done within his control in excess of five (5') feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Sub-article 125-4.1 (TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL-TRENCH EXCAVATION).

Failure to complete the above may result in the solicitation being declared non-responsive.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Company Name)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

BID BOND

Complete EITHER Lee County Paper Bid Bond OR provide cashier's check

KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_ as Principal, and  
(BIDDER'S Name)

\_\_\_\_\_ a Corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto LEE COUNTY BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida,  
in the SUM OF \_\_\_\_\_

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

WHEREAS, said Principal is herewith submitting a Bid/Proposal for the construction of:

**B230375SML – LeeTran Lehigh Acres Park and Ride**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Bid/Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Payment & Performance Bond from a Surety acceptable to the COUNTY and provide other Insurance as may be required to the COUNTY within seven (7) calendar days after the written Notice of Award date, or within such extended period as the COUNTY may grant, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said COUNTY in money the difference between the amount of the Bid of said Principal and the amount for which said COUNTY may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said COUNTY if suit be brought here on, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon a finding from the Board of County Commissioners for Lee County that the bid protest was frivolous and/or lacked merit. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal:

\_\_\_\_\_  
(Principal) (SEAL)

(By)

\_\_\_\_\_  
Printed Name

Witness as to Surety:

\_\_\_\_\_  
(Surety's Name) (SEAL)

\_\_\_\_\_  
(By-As Attorney-in-Fact, Surety)

Affix Corporate Seals and attach proper Power of Attorney for Surety.





## **MINIMUM QUALIFICATION REQUIREMENTS**

### **FOR**

#### ***B230375SML – LeeTran Lehigh Acres Park and Ride***

Bidder(s)/Proposer(s) must meet the minimum qualification requirements as specified in the following form to qualify for consideration of award. This form must be completed and returned with the proposal submittal along with any supporting documentation where requested and/or indicated herein.

The County reserves the right, in their sole judgment, to determine to its satisfaction whether the Bidder(s)/Proposer(s) has met the minimum qualification requirements as specified herein. The determination shall be based upon the examination of the Minimum Qualification Requirements form and associated supportive documentation (if any requested).

An affirmative determination shall be a prerequisite for award of the contract to the Bidder(s)/Proposer(s). A negative determination shall result in disqualification of the proposal, in which event the County shall exclude the proposal from the evaluation or consideration process and therefore deeming the Bidder(s)/Proposer(s) ineligible for award.

**CRITERIA 1 – MINIMUM EXPERIENCE:** Proposer must have completed at least one (1) project similar in size and nature within the past five (5) years and the proposed key personnel team for this project must have worked together and completed at least one (1) project as a team.

**Has your Firm completed at least one (1) project similar in size and nature within the past five (5) years and has the proposed Project Manager and Superintendent for this project worked together and completed at least one (1) project as a team?**

\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

If YES, provide details as requested below:

***CRITERIA 2 – PROJECT 1 – Similar in size and scope completed in past five (5) years***

PROJECT NAME:		
PROJECT START DATE:		PROJECT COMPLETION DATE:
CLIENT NAME:		
CLIENT CONTACT NUMBER:		CLIENT EMAIL:
AMOUNT OF AWARD:		
SCOPE OF WORK SUMMARY:		

***CRITERIA 2 – PROJECT 2 – Key personnel team project***

PROJECT NAME:		
PROJECT START DATE:		PROJECT COMPLETION DATE:
CLIENT NAME:		
CLIENT CONTACT NUMBER:		CLIENT EMAIL:
AMOUNT OF AWARD:		
KEY PERSONNEL ON PROJECT		
SCOPE OF WORK SUMMARY:		

\_\_\_\_\_  
Authorized Bidder/Proposer Signature

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Authorized Bidder/Proposer Name (Print or Type)

Lee County Transit | Disadvantaged Business Enterprise Program

## APPENDIX D | DEMONSTRATION OF GOOD FAITH EFFORTS

*(Forms 1 and 2 should be provided as part of the solicitation documents)*

### FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

- ☐ The bidder/offeror is committed to a minimum of 1.10% DBE utilization on this contract
- ☐ The bidder/offeror (if unable to meet the DBE goal of 1.10%) is committed to a minimum of 1.10% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of Prime Bidder's/Offeror's Firm: \_\_\_\_\_

State Registration No: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Please Print Name*

*Prime Signature*

*Title*

## Form 10 – DBE/Demonstration of Good Faith Efforts

Lee County Transit | Disadvantaged Business Enterprise Program

### FORM 2: DBE LETTER OF INTENT

Name of Bidder's/Offeror's Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

---

---

---

---

---

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated percentage of work to be completed \_\_\_\_%.

### ***Affirmation***

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

By: \_\_\_\_\_  
DBE Signature / Title

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

*(Please submit this page for each DBE subcontractor.)*

## **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 \_\_\_\_\_



## 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 into 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

<b>1. * Type of Federal Action:</b> <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	<b>2. * Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input checked="" type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. * Report Type:</b> <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
<b>4. Name and Address of Reporting Entity:</b> <input checked="" type="checkbox"/> Prime <input type="checkbox"/> SubAwardee * Name: <input style="width: 100%;" type="text"/> * Street 1: <input style="width: 45%;" type="text"/> Street 2: <input style="width: 45%;" type="text"/> * City: <input style="width: 25%;" type="text"/> State: <input style="width: 25%;" type="text"/> Zip: <input style="width: 15%;" type="text"/> Congressional District, if known: <input style="width: 40%;" type="text"/>		
<b>5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:</b> <div style="height: 80px; border: 1px solid black;"></div>		
<b>6. * Federal Department/Agency:</b> <input style="width: 100%;" type="text"/>	<b>7. * Federal Program Name/Description:</b> <input style="width: 100%;" type="text"/> CFDA Number, if applicable: <input style="width: 40%;" type="text"/>	
<b>8. Federal Action Number, if known:</b> <input style="width: 100%;" type="text"/>	<b>9. Award Amount, if known:</b> \$ <input style="width: 40%;" type="text"/>	
<b>10. a. Name and Address of Lobbying Registrant:</b> Prefix: <input style="width: 10%;" type="text"/> * First Name: <input style="width: 30%;" type="text"/> Middle Name: <input style="width: 30%;" type="text"/> * Last Name: <input style="width: 40%;" type="text"/> Suffix: <input style="width: 10%;" type="text"/> * Street 1: <input style="width: 45%;" type="text"/> Street 2: <input style="width: 45%;" type="text"/> * City: <input style="width: 25%;" type="text"/> State: <input style="width: 25%;" type="text"/> Zip: <input style="width: 15%;" type="text"/>		
<b>b. Individual Performing Services (including address if different from No. 10a)</b> Prefix: <input style="width: 10%;" type="text"/> * First Name: <input style="width: 30%;" type="text"/> Middle Name: <input style="width: 30%;" type="text"/> * Last Name: <input style="width: 40%;" type="text"/> Suffix: <input style="width: 10%;" type="text"/> * Street 1: <input style="width: 45%;" type="text"/> Street 2: <input style="width: 45%;" type="text"/> * City: <input style="width: 25%;" type="text"/> State: <input style="width: 25%;" type="text"/> Zip: <input style="width: 15%;" type="text"/>		
<b>11.</b> 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 style="width: 100%;" type="text"/> * Name: Prefix: <input style="width: 10%;" type="text"/> * First Name: <input style="width: 30%;" type="text"/> Middle Name: <input style="width: 30%;" type="text"/> * Last Name: <input style="width: 40%;" type="text"/> Suffix: <input style="width: 10%;" type="text"/> Title: <input style="width: 30%;" type="text"/> Telephone No.: <input style="width: 20%;" type="text"/> Date: <input style="width: 20%;" type="text"/>		
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-87)

*Form 13: E-Verify Affidavit*

**Attachment: 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

\_\_\_\_\_ who has produced \_\_\_\_\_ as identification.  
(Print or Type Name) (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.

**DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**  
**REQUIREMENTS for Contracts over \$25,000**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the 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.

The 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 into.

The bidder or proposer certifies as follows:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Lee County may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to Lee County if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Lee County for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Lee County.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Lee County may pursue available remedies including suspension and/or debarment.

*Form 14: Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Required)*

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

**(Contracts over \$25,000).**

The contractor certifies, that neither it nor its “principals” as defined in CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency.

Date \_\_\_\_\_

Print Name of Authorized Official \_\_\_\_\_

Title \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Company Name \_\_\_\_\_

Company Address \_\_\_\_\_



*Sealed Bid Label*

**Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a “Sealed Bid”.**

<b>SEALED BID DOCUMENTS • DO NOT OPEN</b>	
BID NO.:	<b>B230375SML</b>
BID TITLE:	<b>LeeTran Lehigh Acres Park and Ride</b>
DATE DUE:	<b>Wednesday, August 16, 2023</b>
TIME DUE:	<b>Prior to: 2:30 PM</b>
SUBMITTED BY:	
	(Name of Company)
e-mail address	Telephone
<b>DELIVER TO:</b>	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers, FL 33901



**\*Notice:** The Date Due/Bid Due Date/Opening Date as stated on this label and other forms contained herein may have been updated via issuance of Addenda against this project. It is the sole responsibility of the Contractor/Vendor to monitor the County project webpage for any updates to the Date Due/Bid Due Date/Opening Date via Addenda. This label nor other original forms may not be updated. Contractor/Vendor may strike through and update Date Due/Bid Due Date/Opening Date at their discretion to match any updates to this date that have been published via Addenda.

Submission received after the time and date of the Date Due/Bid Due Date/Opening Date will not be accepted at the sole discretion of the County.

**PLEASE PRINT CLEARLY**

**DAVIS BACON ACT  
WAGE DETERMINATION  
#FL20230211**

"General Decision Number: FL20230211 01/13/2023

Superseded General Decision Number: FL20220211

State: Florida

Construction Type: Building

County: Lee County in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	01/13/2023

## ASBE0067-003 01/01/2021

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 30.12	13.11

## ELEC0349-008 09/01/2021

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring).....	\$ 32.05	11.56

## \* ELEV0074-001 01/01/2023

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 47.51	37.335+a+b

## FOOTNOTE:

a. Employer contributions 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; Employer contributions 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

b. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; The Friday after Thanksgiving Day; and Christmas Day.

-----  
ENGI0487-021 07/01/2016

	Rates	Fringes
OPERATOR: Crane All Cranes 160 Ton Capacity and Over.....	\$ 33.05	9.20
All Cranes Over 15 Ton Capacity.....	\$ 32.05	9.20
OPERATOR: Forklift.....	\$ 23.25	9.20
OPERATOR: Mechanic.....	\$ 32.05	9.20
OPERATOR: Oiler.....	\$ 23.50	9.20

-----  
IRON0397-007 07/01/2022

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 32.60	16.97

-----  
IRON0402-001 10/01/2021

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 25.50	14.66

## \* SUFL2014-020 08/16/2016

	Rates	Fringes
CARPENTER.....	\$ 18.00	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 14.85 **	0.60

IRONWORKER, REINFORCING.....	\$ 26.37	12.65
LABORER: Common or General, Including Cement Mason Tending and Pipelaying.....		
	\$ 14.41 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....		
	\$ 22.07	8.80
OPERATOR: Bulldozer.....	\$ 15.40 **	1.90
OPERATOR: Grader/Blade.....	\$ 18.97	0.00
OPERATOR: Loader.....	\$ 14.00 **	1.40
OPERATOR: Roller.....	\$ 14.43 **	4.78
PAINTER: Brush, Roller and Spray.....		
	\$ 14.72 **	2.13
PIPEFITTER.....	\$ 21.36	7.93
PLUMBER.....	\$ 18.01	2.88
ROOFER.....	\$ 19.00	1.17
SHEET METAL WORKER, Includes HVAC Duct Installation.....		
	\$ 20.11	3.41
SPRINKLER FITTER (Fire Sprinklers).....		
	\$ 18.25	0.00
TILE SETTER.....	\$ 18.01	0.00
TRUCK DRIVER: Dump Truck.....	\$ 13.22 **	2.12
TRUCK DRIVER: Lowboy Truck.....	\$ 14.24 **	0.00

-----

WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$16.20) or 13658  
(\$12.15). Please see the Note at the top of the wage  
determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours  
they work, up to 56 hours of paid sick leave each year.  
Employees must be permitted to use paid sick leave for their  
own illness, injury or other health-related needs, including  
preventive care; to assist a family member (or person who is  
like family to the employee) who is ill, injured, or has other  
health-related needs, including preventive care; or for reasons  
resulting from, or to assist a family member (or person who is  
like family to the employee) who is a victim of, domestic  
violence, sexual assault, or stalking. Additional information

on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate



that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

# **LEE COUNTY TRANSIT POLICIES AND PROCEDURES**

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

**LEE COUNTY TRANSIT POLICIES  
AND  
PROCEDURES**

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



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

**Revision Date: December 30, 2019**



## TABLE OF CONTENTS

<b>I.</b>	<b>PROVISIONS APPLICABLE TO ALL CONTRACTS</b>	<b>1</b>
	A. Americans with Disabilities Act	1
	B. Application of Federal Laws Clause	1
	C. Access to Records and Reports	1
	D. Civil Rights Requirements	2
	E. Contracts Involving Federal Privacy Act Requirements	3
	F. Disadvantaged Business Enterprise (DBE)	3
	G. Energy Conservation	8
	H. False or Fraudulent Statements or Claims – Civil and Criminal Fraud	8
	I. Federal Assistance and Incorporation of FTA Terms	8
	J. Federal Changes	8
	K. Fly America Requirements	9
	L. No Government Obligation to the Third Parties	9
	M. Termination	9
	N. Conformance with Intelligence Transportation System (ITS) National Architecture	10
	O. Cargo Preference (Required for Transport of materials by Ocean Vessels)	10
	P. Recycled Products	11
	Q. Program Funding	11
	R. Immigration Law Affidavit Certification (E-Verify Requirement)	11
<b>II.</b>	<b>PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000)</b>	<b>11</b>
	A. Suspension and Debarment	11
<b>III.</b>	<b>PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS BY STATUTE (\$100,000)</b>	<b>12</b>
	A. Byrd Anti-Lobbying Amendment	12
	B. Contract Work Hours and Safety Standards	13
	C. Bonding Requirements (all construction or facility improvement contracts)	14
<b>IV.</b>	<b>PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD – ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)</b>	<b>16</b>



A. Buy America .....	16
B. Bonding Requirements (Non-Construction) .....	16
C. Resolution of Disputes, Breaches, or Other Litigation .....	17
D. Clean Air and Federal Water Pollution Control .....	17
<b>V. PROVISIONS APPLICABLE TO ROLLING STOCK PURCHASE CONTRACTS .....</b>	<b>18</b>
A. Bus Testing .....	18
B. Pre-award and Post Delivery Audit Requirements .....	18
<b>VI. PROVISIONS APPLICABLE TO CONSTRUCTION PROJECTS .....</b>	<b>19</b>
A. Davis-Bacon Act and Copeland Anti-Kickback Acts .....	19
B. Bonding Requirements for Construction Contracts Exceeding One Hundred Fifty Thousand (\$150,000) .....	24
C. Seismic Safety Requirements for the Construction of New Buildings or Addition to Existing Buildings .....	25
<b>VII. PROVISIONS APPLICABLE TO OPERATIONS/MANAGEMENT CONTRACTS .....</b>	<b>26</b>
A. Charter Service Operations .....	26
B. School Bus Requirements .....	26
C. Transit Employee Protective Agreements Provisions .....	27
D. Drug and Alcohol Testing .....	28
<b>VIII. PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT CONTRACTS .....</b>	<b>28</b>
1. Patent and Rights in Data .....	28
<b>Applicability of Third Party Contract Provisions .....</b>	<b>32</b>

# LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

## I. PROVISIONS APPLICABLE TO ALL CONTRACTS

### A. 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.

### B. Application of Federal Laws Clause

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

### C. Access to Records and Reports

(49 U.S.C. § 5325(g), 2 C.F.R. § 200.333, 49 C.F.R. part 633)

1. 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.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 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.
3. 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.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### Federal Changes (49 C.F.R. Part 18)

Contractor shall at all times 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.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

### D. Civil Rights Requirements

#### Civil Rights and Equal Opportunity

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination I Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

### **E. Contracts Involving Federal Privacy Act Requirements**

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

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

### **F. Disadvantaged Business Enterprise (DBE)**

(49 C.F.R. part 26)

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

The text of 49 CFR Part 26 can be found at the following link: <https://ecfr.io/Title-49/pt49.1.26>

FDOT's website DBE Directory is located at:

<https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx>

#### **Overview**

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement a

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirement as set forth herein. These requirements are in addition to all other equal opportunity employment Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder the requirements stated herein. In assessing compliance, the AGENCY may consider Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-comp on previous contracts with the AGENCY.

### Contract Assurance

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, c the performance of this Contract. The Contractor shall carry out applicable requirements of and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other r appropriate.

### DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the *[certifying agency or the Unified Certification Program (UCP)]*; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

### DBE Participation Goal

The DBE participation goal for this Contract is set at 4%. This goal represents those element performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less** price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

### Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

4. An original **DBE Affidavit** (See below) from each DBE stating that there has not been any change in its status since the date of its last certification.

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.



## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

### Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

### DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.  
\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

### DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM				
Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description of Work to be Performed	Race and Gender of Firm

### G. Energy Conservation

(42 U.S.C. 6321 et seq.; 49 C.F.R. 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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart C.

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

(49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; and 49 C.F.R. part 31)

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801-3812 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in which whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

### **I. Federal Assistance and Incorporation of FTA Terms**

The 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.

### **J. Federal Changes**

(49 C.F.R. part 18)

Contractor shall at all times 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.

### **K. Fly America Requirements**

(49 U.S.C. § 40118; 41 C.F.R. part 301-10; and 48 C.F.R. part 47.4)

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **L. No Government Obligation to the Third Parties**

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

### **M. Termination**

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

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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

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

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

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

### **O. Cargo Preference (Required for Transport of materials by Ocean Vessels)** (46 U.S.C. § 55305; 46 C.F.R. 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:**

- a. The Contractor agrees to use privately owned United States- Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels
- b. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration,

## **LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS**

Washington, DC 20590 and to LCBOCC (through the Contractor in the case of a subcontractor's bill-of-lading.)

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

### **P. Recycled Products**

(42 U.S.C. § 6962; 40 C.F.R. part 247; and 2 C.F.R. 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 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

### **Q. Program Funding**

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

### **R. Immigration Law Affidavit Certification (E-Verify Requirement)**

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

## **II. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000)**

### **A. Suspension and Debarment**

(2 C.F.R. part 180; 2 C.F.R. part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; and Executive Order 12689)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;

## **LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS**

- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

#### **A. Byrd Anti-Lobbying Amendment Lobbying Restrictions**

(31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); and 49 C.F.R. 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.
3. 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.



## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

\_\_\_\_\_ 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.

### **B. Contract Work Hours and Safety Standards**

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

The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of \$100,000, involving employment of laborers or mechanics, including watchmen and guards, provided, however, that these provisions shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

4. **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (3) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### C. **Bonding Requirements (all construction or facility improvement contracts)** (2 C.F.R. § 200.325; 31 C.F.R. part 223)

#### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to \$\$\$\$ or X% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense RECIPIENT for the damages occasioned by default, then the undersigned bidder agrees to indemnify RECIPIENT and pay over to RECIPIENT the difference between the bid guarantee and RECIPIENT'S total damages so as to make RECIPIENT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

#### **Performance Guarantee**

A Performance Guarantee in the amount of 100% of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RECIPIENT may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

### **Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

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

### **A. Buy America**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA - funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$150,000). Separate requirements for rolling stock are set out at U.S.C. 5323(j) (C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit to LCBOCC a Buy America

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

certification with respect to all FTA funded contracts, except those subject to a general waiver. This requirement does not apply to lower tier subcontractors.

### **B. Bonding Requirements (Non-Construction)**

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

1. The following situation may warrant a performance bond:
  - a. LCBOCC property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
  - b. Contractor sells assets to or merges with another concern, and LCBOCC, after recognizing the later concern as the successor in interest, desires assurance that it is financially capable.
  - c. Substantial progress payments are made before delivery of end items starts.
  - d. Contracts are for dismantling, demolition, or removal of improvements.
2. When determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  - a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless LCBOCC determines that a lesser amount would be adequate for the protection of LCBOCC.
  - b. LCBOCC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increased contract price. LCBOCC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when performance bond is required, and if the use of payment bond is in the interest of LCBOCC.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bond as follows:
  - a. The penal amount of the payment bonds shall equal:
    - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
    - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - iii. Two and half million if the contract price is more than \$5 million.

### **C. Resolution of Disputes, Breaches, or Other Litigation** (2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A))

**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.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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.

### **D. Clean Air and Federal Water Pollution Control**

(42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; and 2 C.F.R. part 200, Appendix II (G))

The Contractor agrees:

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

## **V. PROVISIONS APPLICABLE TO ROLLING STOCK PURCHASE CONTRACTS**

### **A. Bus Testing**

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

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to LCBOCC at a point in the procurement process specified by LCBOCC, which will be before LCBOCC's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. This must be provided to LCB OCC before LCB OCC, and A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
5. Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LCB OCC.

### **B. Pre-award and Post Delivery Audit Requirements**

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

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

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

## **VI. PROVISIONS APPLICABLE TO CONSTRUCTION PROJECTS**

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

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

1. **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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



## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

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

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

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

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

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

4. **Apprentices and trainees** – (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

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

5. **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.
6. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.
7. **Contract termination: debarment.** A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.
8. **Compliance with Davis - Bacon and Related Act requirements.** All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility** – (i) By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).  
  
(ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).  
  
(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

#### **Bid Bond Requirements (Construction)**

1. Bid security - A Bid Bond must be issued by a fully qualified surety company acceptable to LCBOCC and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

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

### **Performance and Payment Bonding Requirements (Construction)**

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

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

### **Advance Payment Bonding Requirements**

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

### **Warranty of the Work**

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

1. The Contractor warrants to LCBOCC, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by LCBOCC, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by LCBOCC and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to LCBOCC.

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

(42 U.S.C. 7701 et seq.; 49 C.F.R. 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 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **VII. PROVISIONS APPLICABLE TO OPERATIONS/MANAGEMENT CONTRACTS**

### **A. Charter Service Operations**

(49 U.S.C. 5323(d) and (r); and 49 C.F.R. part 604)

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. 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 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. 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;

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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.

### **B. School Bus Requirements**

(49 U.S.C. 5323(f); and 49 C.F.R. part 605)

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. 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 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. 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.

### **C. Transit Employee Protective Agreements Provisions**

(49 U.S.C. § 5333(b) ("13(c)"); and 29 C.F.R. 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 U.S.C. A 5333(b), and U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department of Labor to FTA applicable to LCBOCC's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department of Labor letter. The requirements of this subsection



## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

(a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this Section.

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

### **D. Drug and Alcohol Testing**

(49 U.S.C. § 5331; 49 C.F.R. part 655; and 49 C.F.R. part 40)

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

## **VIII. PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT CONTRACTS**

# LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

## A. Patent and Rights in Data

(2 C.F.R. part 200, Appendix II (F); 37 C.F.R. 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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

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

## LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

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

# LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

## Applicability of Third Party Contract Provisions

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

TYPE OF PROCUREMENT					
PROVISION	PROFESSIONAL SERVICES/A&E	OPERATIONS/MA NAGEMENT	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 if 49 CFR part 18 applies	>\$10,000 if 49 CFR part 18 applies	>\$10,000 if 49 CFR part 18 applies	>\$10,000 if 49 CFR part 18 applies	>\$10,000 if 49 CFR part 18 applies
Civil Rights (Title VI, ADA, EEO except Special DOL. EEO clause for construction projects)	All	All	All >\$10,000	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			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel
Davis-Bacon Act				>\$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries)	
Bonding				\$100,000	
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.
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