

**AGREEMENT FOR
EQUIPMENT RENTAL - COUNTYWIDE**

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and EQUIPMENTSHARE.COM., INC., a Delaware corporation authorized to do business in the State of Florida, whose address is 5710 BULL RUN DRIVE, COLUMBIA, MO 65201, and whose federal tax identification number is 47-2405753, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase the RENTAL OF POWER AND NON-POWER EQUIPMENT from the Vendor in connection with "EQUIPMENT RENTAL - COUNTYWIDE" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B220065LLP on January 4, 2022 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services; and,

WHEREAS, the County posted a Notice of Intended Decision on March 14, 2022; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase in accordance with the project Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Vendor shall comply strictly with all of the terms and conditions of the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement to the extent that it does not conflict with the remainder of the Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately and shall continue for a three (3) year period. There may be an option to extend this Agreement upon the written agreement of both the County and the Vendor at the time of

extension or renewal for up to one (1) additional three (3) year period. The effective date shall be the date the Lee County Board of County Commissioners awarded the Solicitation to the Vendor.

- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation No. B220065LLP, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.

- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
 - 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;
 - 2) upon request from the County, 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 in Chapter 119, Florida Statutes, or as otherwise provided by law;

- 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
- 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.

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, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

- A. This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.
- B. Additionally, Vendor shall provide such services in compliance with all applicable state and federal laws, rules and regulations, including, but not necessarily limited to, the Federal laws and regulations set for at 2 CFR part 200 and 24 CFR part 570, Project Funding terms, conditions, provisions, certifications, affidavits, and alike, as set forth in attached EXHIBIT E, entitled "PROJECT FUNDING PACKAGE", which shall be inclusive of original solicitation package with Vendor executed documents, grant funding provisions, and addenda.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.

- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, 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. In such case, the Vendor shall refund to the County any money which has been paid for same.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed

to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
- I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

<u>Vendor's Representative</u>	<u>County's Representative</u>
Name: <u>Michael Cabrera</u>	Names: <u>Roger Desjarlais</u> <u>Mary Tucker</u>
Title: <u>Government Specialist</u>	Titles: <u>County Manager</u> <u>Procurement Management Director</u>
Address: <u>5710 Bull Run Drive</u> <u>Columbia, MO 65201</u>	Address: <u>P.O. Box 398</u> <u>Fort Myers, FL 33902</u>
Telephone: <u>786/774-3284</u>	Telephone: <u>(239) 533-2221</u> <u>(239) 533-8881</u>
Facsimile: <u>305/821-8822</u>	Facsimile: <u>(239) 485-2262</u> <u>(239) 485-8383</u>
Email: <u>Michael.cabrera@equipmentshare.com</u>	Email: <u>rdesjarlais@leegov.com</u> <u>mtucker@leegov.com</u>

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Agreement
 - 2. County's Purchase Order
 - 3. Solicitation
 - 4. Vendor's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Signed By: *GL*

Print Name: Graham Lloyd

EquipmentShare.com, Inc.

Signed By: *WS*

Print Name: William Schlacks IV

Title: President

Date: 5/9/22



LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *[Signature]*
CHAIR

DATE: 5/9/22

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: *[Signature]*
DEPUTY CLERK

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: *[Signature]*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS

VER 08-18-2021

SCOPE OF WORK AND SPECIFICATIONS

1. SCOPE OF WORK

- 1.1 Lee County (County) is requesting bids for Equipment Rental, without operator, on an as-needed basis. The intent of this contract is to have available multiple sources for renting equipment with guaranteed pricing. Therefore, this contract will be awarded to multiple suppliers. The rental supplier shall own the equipment rented.
- 1.2 Pricing is requested for the most commonly rented items; however, other items may be rented under this contract on an as-needed basis.
- 1.3 Bid price shall be inclusive of all costs associated with rental of equipment with the exception of a delivery/pickup flat fees (see Delivery/Pickup paragraph below). The County shall furnish the necessary fuel and daily lubricants necessary to keep equipment in peak operating condition. The County will return equipment to supplier with a full fuel tank. No additional fees (i.e. environmental recovery or fuel surcharge) shall be allowed. Pricing is requested for the following terms:
 - 1.3.1 Daily (8 hours)
 - 1.3.2 Weekly (40 hours)
 - 1.3.3 Monthly (176 hours)
- 1.4 Equipment rented over the agreed upon term shall be prorated based on the submitted term pricing with this bid.
- 1.5 The obligations of the County under this rental shall commence on the day equipment is delivered and accepted by the County departments. The term of the rental shall be specified in the body of the purchase order. Such rental term shall not exceed one (1) calendar year. The County has the right to terminate a rental under this agreement at any time if the equipment fails to perform as intended, or in the event of non-appropriation of funds.

2. SAFETY

- 2.1 All equipment rented to Lee County shall be maintained in safe operating condition at all times, free from defects or wear, which may in any way constitute a hazard to any person or property. All electrical equipment will be properly grounded.
- 2.2 As applicable, the equipment shall meet all commercial and OSHA safety standards, and include, but not limited to, the following safety features:
 - 2.2.1 Protection from pinch and crush points
 - 2.2.2 Labeling of all controls
 - 2.2.3 Non-skid surface(s) for operator areas
 - 2.2.4 Protective guards over all moving parts
 - 2.2.5 Handles and guards where necessary
 - 2.2.6 Alarms
 - 2.2.7 Seatbelts
- 2.3 Warning and instruction labels shall be conspicuously placed and easily readable (i.e., not covered with dirt or grease) on all equipment where applicable.
- 2.4 Vendor shall have up-to-date, professional quality equipment.

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS

VER. 08-18-2021

3. TRAINING

3.1 Vendor shall provide equipment operation training and documentation of such training to County employees on specialized equipment. This training will include as a minimum, starting, shutdown, emergency procedures, refueling procedures (if required), safety features and guards, and inspection procedures. A copy of the training contents and qualification of the trainer along with the name of the individual(s) and signature, department name, and date of training. This sign-off will be provided to the County department renting the equipment and a copy will be maintained by the Vendor.

4. RIGHT TO REFUSAL

4.1 The County reserves the right to inspect equipment prior to acceptance. Inspections may occur at the Vendor's facility, or upon delivery. The County may refuse equipment at the time of proposed rental if equipment is not in good operating condition. The County will not be responsible for any delivery or return charges, or rental fees.

5. ESTIMATED QUANTITIES

5.1 Any quantities indicated herein are only estimated and the County reserves the option to increase/and or decrease quantities, or delete items as required.

5.2 The County reserves the option to add item(s) within the scope of the bid by obtaining such items via the County's regular Procurement Procedures.

6. SERVICING OF EQUIPMENT

6.1 All servicing of equipment, during and at the end of the rental period, shall be the Vendor's responsibility at no additional cost to the County.

7. VENDOR / COUNTY RESPONSIBILITIES

7.1 Vendor shall be responsible for providing, and paying for, all preventative maintenance to keep equipment in good repair and operating condition during the term of the contract. Vendor shall provide a maintenance schedule to the County for long-term rentals so that the County may adjust work schedules as necessary.

7.2 The County shall not incur any expenses for necessary repairs, maintenance or replacements including, but not limited to, labor, material and parts having to do with normal wear and tear of the equipment rented. County agrees to use the equipment in the manner intended.

7.3 The County shall furnish the necessary fuel and daily lubricants necessary to keep equipment in peak operating condition. The County will return equipment to supplier with a full tank of fuel.

7.4 County departments at various locations throughout Lee County will use the equipment. Vendor's representative may inspect rental equipment, on location, at any reasonable time and may remove equipment from service, if required, for repair or maintenance, providing that the replacement equipment be of equal or greater quality and capability, and is available to the County at no additional charge while the original equipment is being serviced or repaired.

7.5 Vendor shall deliver all equipment in working condition. The County will inspect the equipment immediately upon delivery at the FOB location listed on each purchase order. If at any time, the rented

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS

VER. 08-18-2021

equipment becomes inoperable or appears to be non-working, the County will notify the Vendor, in writing, for repair or replacement. If another like unit is not available within 24-hours, the County reserves the right to rent replacement equipment from another source without further financial obligation on the non-working piece of equipment.

8. EQUIPMENT REPAIRS

8.1 The County shall be responsible for repairs to rented equipment only when repairs are necessary due to either obvious abuse or physical accident (where the County is found at fault).

8.2 Any charges (i.e., for repairs) in addition to the normal rental rate shall be documented and submitted to the County ordering department within five (5) working days following the return of the equipment.

9. EQUIPMENT PICK UP AND RETURN

9.1 Unless otherwise requested, the County departments shall pick up and return all rented equipment.

9.2 If delivery is needed, a flat rate deliver/pickup fee will be allowed, if necessary. Vendor shall list the flat rate fee to deliver and return pickup, per item, on the pricing sheets if a fee will be charged. If an item can be delivered with no fee, indicate with a \$0.00 in the appropriate column.

9.3 Vendor shall promptly pick up/accept any return for items incorrectly ordered or delivered in unsafe and/or damaged condition, at no cost to the County.

9.4 Delivery rate shall encompass all locations within Lee County.

10. EQUIPMENT FAILURE

10.1 Vendor agrees that, unless otherwise specified, all equipment rented to the County shall be in good, working condition. In the event rented equipment fails at the job site, it shall be the Vendors responsibility (at Vendors expense) to either perform on-site repairs or deliver to the site an equal replacement and remove the failed unit.

10.2 The length of the equipment downtime shall be deducted from the total rental charge for the unit. Downtime shall be measured in hours, and fractions thereof. For the purposes of this quote, downtime shall begin when the County notifies the Vendor of a problem with the equipment, and end when repairs are successfully completed or a replacement unit is in place at the job site.

10.3 Should the Vendor be unable to either repair or replace the failed equipment within two (2) hours after notification, the County reserves the right to cancel the order without penalty and rent the equipment elsewhere.

11. MAJOR BREAKDOWNS/NATURAL DISASTERS

11.1 The County requires that the awarded Vendor(s) provide the names of two contact personnel and phone numbers which will afford the County access 24-hours per day, 365-days per year, to provide rental equipment in the event of major breakdowns or natural disasters.

11.2 In cases of emergency or natural disasters, the County has the right to reserve equipment for a period of one (1) week from date of initial notification, at no charge to the County. The County will then decide if the equipment is needed and either cancel the equipment or proceed with the normal rental procedure.

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS

VER 08-16-2021

If equipment cannot be provided locally, the County would expect the awarded Vendor to exhaust every attempt to locate and furnish requested equipment. If Vendor is affiliated with a national company, the Vendor is expected to bring in equipment from one of the other locations to meet the needs of the County during the emergency or natural disaster.

End of Scope of Work and Specifications Section

EXHIBIT A

SCOPE OF WORK AND SPECIFICATIONS

VZK 01-18-2021

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. CONTRACT TERM

- 1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an as needed basis as well as during emergency situations/events 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.
- 1.2 Emergency events include, but are not limited to natural disasters such as hurricanes, tornadoes, windstorms, floods, and fires as well as man-made events such as civil unrest and terrorist attacks.

2. BASIS OF AWARD

- 2.1 Following the County's rights as described and reserved herein, multiple Vendors may be awarded contracts under this solicitation. When the County is in need of equipment, the lowest priced Vendor for the specified equipment item shall be contacted for rental purchase. The County further reserves the right to contact additional awarded Vendors when the lowest priced Vendor is unable to meet the needs of the requesting Department or as deemed in the best interest of the County or requesting Department.
- 2.2 Vendor shall bid Discount Rate for Non-listed Equipment as stated within the Bid Schedule. Failure to bid Discount Rate for Non-listed Equipment will deem vendor Non-Responsive and ineligible for award.

3. PRICING

- 3.1 This is an annual contract, which is not for any specific project. Work will be authorized, scheduled, funded, and accounted for by the issuance of a Purchase Order, by the requesting department(s) or other governmental entity.
- 3.2 Vendor shall provide actual price to County for the items specified on the Bid Proposal form included in this solicitation. Should Vendor be unable to quote items specified in the list, Vendor should write "N/A" or "NO- Bid" in the price column. The proposal includes daily, weekly, and monthly rates for all equipment.
- 3.3 County shall be eligible for any additional discounts, specials and/or promotions offered by the Vendor during the term of the contract should those discounts, specials and/or promotions offer a lower cost to the County.
- 3.4 All quoted rates for charges for rentals shall be by the day, week or month. The general practice of the industry shall apply basing rates on eight (8) hours use per day, 40-hours use per week, and on 176-hours of use per month. No other interpretation of time basis will be accepted.
- 3.5 One (1) day rentals will be returned 24-hours after pick up.
- 3.6 All equipment for this bid must have damage waiver/insurance purchased, included on the bid form, and signed for in a form acceptable to the County.

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS

VER 06-16-2021

- 3.7 No other agreements will be signed by the County or its employees for any rental under this annual bid. Only the terms and conditions of this bid and issued Purchase Order shall be binding.
- 3.8 All miscellaneous charges (i.e., Environmental Charge, Battery Disposal Fees, Delivery Fee, per mileage fee etc.) shall require prior written approval by County personnel and must be included with invoice.
- 3.9 All rates quoted shall be for equipment only, operators are not required. All equipment rented by the County shall be in good operating condition and ready to function: including a full tank of fuel. Units will be returned with a full tank of fuel. County will not be responsible for cleaning the equipment before it is returned to the Vendor.
- 3.10 Overtime rates shall be calculated as follows:
- 3.10.1. Daily Rentals: The rate for overtime shall be 1/8 of the daily rate for each hour in excess of eight (8), or weekly.
 - 3.10.2. Weekly Rentals: The rate for overtime shall be 1/40 of the weekly rate for each hour in excess of 40, or monthly.
 - 3.10.3. Monthly Rentals: The rate for overtime shall be 1/160 of the monthly rate for each hour in excess of 160 hours.
- 3.11 The quoted rates shall include all standard accessories necessary to make the equipment operable.
- 3.12 Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, material, and any other incidental costs required to perform and complete all work as specified in the Contract Documents. This contract is for normal Equipment Rental purchases as well as Federal Emergency Management Agency (FEMA), Florida Department of Transportation (FDOT) & Federal Transit Administration (FTA) funded purchases.
4. **PROJECT FUNDING NOTICE**
- 4.1 As notice to all Vendors, this project may be funded in whole or in part with Federal and State Funds through the Federal Emergency Management Agency (FEMA), Florida Department of Transportation (FDOT) & Federal Transit Administration (FTA). The 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 Vendor creates to support Vendor's servicing to County under this Agreement..
5. **DISCOUNT RATE – NON-LISTED EQUIPMENT**
- 5.1 Vendor is not required to bid on all items listed, but must provide for a discount percentage rate on non-listed equipment. Discount percentage rate shall serve to capture any product not separately listed within the Bid/Proposal Form.
6. **ANNUAL PRICE ADJUSTMENTS**
- 6.1 Price adjustments, if agreed to by the County, (whether an increase or decrease) will be based on the change in the Consumer Price index for the preceding 12-months as calculated and published by the United States Department of Labor.

EXHIBIT A

SCOPE OF WORK AND SPECIFICATIONS

VER 05-18-2021

7. **LOCAL VENDOR PREFERENCE EXCLUSION**

7.1 Local Vendor Preference Ordinance has been waived for this solicitation and any and all references contained herein are non-applicable to this solicitation and subsequent contract and/or purchase order(s).

8. **MASTER CONTRACT NOTICE**

8.1 This is a "Master"/"Annual" contract, which is not for any specific project. Work to be performed under this contract will be authorized, scheduled, funded, and accounted for by the issuance of County Purchase Order (PO), by the requesting department. The requesting County department reserves the right to provide additional project clarification details with the issuance of and within or attached to each PO. Such items shall be minor in nature such as providing for service completion dates, delivery locations, delivery and working hours, number of units, etc.

8.2 The Purchase Order will list any alternate funding source such as FEMA, FDOT or FTA. The Vendor shall comply with all associated funding terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package and associated agreement under Supplemental Information and/or where referenced and attached as it applies to each funding type.

End of Special Conditions Section

**EXHIBIT B
FEE SCHEDULE**

EQUIPMENTSHARE.COM LLC FEE SCHEDULE – EQUIPMENT RENTAL – COUNTYWIDE						
<i>Equipment Description/Specifications</i>	<i>Min HP</i>	<i>Daily Rental Rate</i>	<i>Weekly Rental Rate</i>	<i>Monthly Rental Rate</i>	<i>Delivery Fee</i>	<i>Pick-up Fee</i>
Rubber Tire Skid Steer	25HP	\$230.00	\$561.00	\$1,326.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: MT100 or equivalent						
Rubber Tire Skid Steer	45-75HP	\$188.00	\$514.00	\$1,256.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE SV185 or equivalent						
Skid Steer Attachment: Hydraulic	-	\$189.00	\$404.00	\$987.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: Various (except Planers)						
Skid Steer Attachment: Non-Hydraulic	-	\$51.00	\$110.00	\$269.00	\$50.00	\$50.00
MFG / Model # / or Equivalent quoted: Forks						
Compact Track Loader	74HP	\$368.00	\$955.00	\$2,100.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE TR310 or equivalent						
Compact Track Loader	78HP	\$460.00	\$1,175.00	\$2,600.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE TV370 or equivalent						
Compact Loader Attachments	-	\$189.00	\$404.00	\$987.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: Various (except Planers)						
Front End Wheel Loader w/ up to 7-Cubic Yard Bucket	-	\$882.00	\$2,601.00	\$5,508.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE (up to 4cuyd) or equal						
Mini Excavator - Minimum 2 TON	-	\$214.00	\$639.00	\$1,300.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE CX26 or equivalent						
Mini Excavator - Minimum 3.5 TON	-	\$255.00	\$730.00	\$1,600.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE CX37 or equivalent						
Mini Excavator - Minimum 5-6 TON	-	\$383.00	\$1,010.00	\$1,995.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE CX57 or equivalent						
Compact Excavator - 8-9 TON (14'-15')	-	\$460.00	\$1,281.00	\$2,800.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: CASE CX80 or equivalent						
Mini Excavator - 12000 13999 lbs DSL ROPS	-	\$383.00	\$1,010.00	\$1,995.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE CX57 or equivalent						

**EXHIBIT B
FEE SCHEDULE**

EQUIPMENTSHARE.COM LLC FEE SCHEDULE – EQUIPMENT RENTAL – COUNTYWIDE						
<i>Equipment Description/Specifications</i>	<i>Min HP</i>	<i>Daily Rental Rate</i>	<i>Weekly Rental Rate</i>	<i>Monthly Rental Rate</i>	<i>Delivery Fee</i>	<i>Pick-up Fee</i>
Mini Excavator - 14000 - 19000 lbs DSL CAB	-	\$460.00	\$1,281.00	\$2,800.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: CASE CX80 or equivalent						
Mini Excavator Attachments	-	\$184.00	\$404.00	\$987.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: Breakers or Mini's						
Excavator - Steel Track - Minimum 14 TON	-	\$678.00	\$1,836.00	\$3,995.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE CX145SR or equivalent						
Excavator - Steel Track - Minimum 25 TON	-	\$995.00	\$2,570.00	\$5,400.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE CX250 or equivalent						
Excavator - Steel Track - Minimum 30 TON	-	\$1,122.00	\$2,791.00	\$6,400.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: CASE CX300 or equivalent						
Excavator - Steel Track - Minimum 35 TON	-	\$1,321.00	\$3,121.00	\$8,078.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: CASE CX350 or equivalent						
Backhoe		\$301.00	\$734.00	\$1,695.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: 580/SN STD or Ext; or equivalent						
Backhoe Attachments		\$281.00	\$673.00	\$1,481.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: Breakers or Backhoe						
Dozer	80HP	\$587.00	\$1,862.00	\$4,075.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE 750/JD550 or equivalent						
Dozer	99HP	\$742.00	\$2,193.00	\$4,300.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE 850/JD 650 or equivalent						
Dozer	115HP	\$969.00	\$2,616.00	\$5,700.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: CASE 1150 or equivalent						
Single Drum Vibratory Roller, 54" Drum Width	-	\$340.00	\$1,122.00	\$2,100.00	\$150.00	\$150.00
MFG / Model # / or Equivalent quoted: Bomag BW145 or equivalent						
Single Drum Vibratory Roller, 66" Drum Width	-	\$398.00	\$1,183.00	\$2,500.00	\$150.00	\$150.00
MFG / Model # / or Equivalent quoted: CASE SV208 or equivalent						

**EXHIBIT B
FEE SCHEDULE**

EQUIPMENTSHARE.COM LLC FEE SCHEDULE – EQUIPMENT RENTAL – COUNTYWIDE						
Equipment Description/Specifications	Min HP	Daily Rental Rate	Weekly Rental Rate	Monthly Rental Rate	Delivery Fee	Pick-up Fee
Double Drum Vibratory Roller, 36"	-	\$179.00	\$490.00	\$1,050.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: AR90/BW900 or equivalent						
Double Drum Vibratory Roller, 48"	-	\$199.00	\$592.00	\$1,275.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: CASE DV26 or equivalent						
Trencher (Walk Behind) - 24"	-	\$230.00	\$485.00	\$1,100.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: RTX130 or equivalent						
Grader Nubunyn 10' Blade	-	\$634.00	\$1,744.00	\$4,050.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE 836 or equivalent						
Grader Minimum 14' Blade	-	\$1,148.00	\$2,917.00	\$6,500.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: CASE 865 or equivalent						
Sweeper, Minimum 8' Sweeping Surface (Mechanical)	-	\$266.00	\$822.00	\$1,400.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: Leymor Master300 or equivalent						
Rough Terrain Forklift (4-wheel drive), 8000 lbs lift capacity, mast height range 10' - 21'	-	\$434.00	\$1,224.00	\$2,300.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: CASE 588H or equivalent						
Shooting Boom Forklift - 5500 lbs, 19'	-	\$311.00	\$719.00	\$1,450.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: Genie 5519 or equivalent						
Shooting Boom Forklift - 10000 lbs, 55'	-	\$561.00	\$1,474.00	\$3,100.00	\$150.00	\$150.00
MFG / Model # / or Equivalent quoted: CASE 10054 or equivalent						
On-Road Water Truck w/ Cannon Sprayer, 2000 gal minimum - Equipped w/ arrow board, 4-corner strobe lights	-	\$469.00	\$1,224.00	\$2,400.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: F550						

**EXHIBIT B
FEE SCHEDULE**

EQUIPMENTSHARE.COM LLC FEE SCHEDULE – EQUIPMENT RENTAL – COUNTYWIDE						
<i>Equipment Description/Specifications</i>	<i>Min HP</i>	<i>Daily Rental Rate</i>	<i>Weekly Rental Rate</i>	<i>Monthly Rental Rate</i>	<i>Delivery Fee</i>	<i>Pick-up Fee</i>
On-Road Water Truck with cannon sprayer, 4000 gal minimum - Equipped with Arrow Board, 4 Corner Strobe Lights	-	\$816.00	\$2,040.00	\$4,200.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: F9000						
Portable Generator Sets, 480/208 voltage, minimum 140 gal fuel capacity	60kW	\$395.00	\$725.00	\$1,480.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: 56Kw (Single shift hrs)						
Boom Lift - 40'	-	\$325.00	\$750.00	\$1,475.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 450 or equivalent						
Boom Lift - 60'	-	\$435.00	\$925.00	\$1,995.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 600 or equivalent						
Articulating Boom Lift - 40'	-	\$325.00	\$750.00	\$1,475.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 450 or equivalent						
Articulating Boom Lift - 60'	-	\$435.00	\$925.00	\$1,995.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 600 or equivalent						
Articulating Boom Lift - 80'	-	\$675.00	\$1,548.00	\$3,200.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: JLG 800 or equivalent						
Articulating Boom Lift - 120'	-	\$1,295.00	\$3,495.00	\$6,200.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: JLG 1250 or equivalent						
Articulating Man Lift with Jib - 45'	-	\$325.00	\$750.00	\$1,475.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 450 or equivalent						
Articulating Man Lift with Jib - 80'	-	\$675.00	\$1,548.00	\$3,200.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: JLG 800 or equivalent						
Straight Man Lift with Jib - 60'	-	\$435.00	\$925.00	\$1,995.00	\$200.00	\$200.00
MFG / Model # / or Equivalent quoted: JLG 600s or equivalent						
Straight Man Lift with Jib - 80'	-	\$675.00	\$1,548.00	\$3,200.00	\$250.00	\$250.00
MFG / Model # / or Equivalent quoted: JLG 800s or equivalent						

**EXHIBIT B
FEE SCHEDULE**

EQUIPMENTSHARE.COM LLC FEE SCHEDULE – EQUIPMENT RENTAL – COUNTYWIDE						
<i>Equipment Description/Specifications</i>	<i>Min HP</i>	<i>Daily Rental Rate</i>	<i>Weekly Rental Rate</i>	<i>Monthly Rental Rate</i>	<i>Delivery Fee</i>	<i>Pick-up Fee</i>
Straight Man Lift with Jib - 120'	-	\$1,125.00	\$2,925.00	\$6,100.00	\$300.00	\$300.00
MFG / Model # / or Equivalent quoted: JLG 1200SP or equivalent						
Straight Man Lift with Jib - 150'	-	\$1,995.00	\$5,275.00	\$15,000.00	\$350.00	\$350.00
MFG / Model # / or Equivalent quoted: JLG 1500SJ or equivalent						
Forklift Lull	-	\$311.00	\$719.00	\$1,450.00	\$125.00	\$125.00
MFG / Model # / or Equivalent quoted: Genie 5519 or equivalent						
Scissor Lift - 19'	-	\$125.00	\$250.00	\$350.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: JIG ES1932 or equivalent						
Scissor Lift - 26'	-	\$155.00	\$295.00	\$525.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: JLG ES2532 or equivalent						
Scissor Lift - 30'-33'	-	\$195.00	\$425.00	\$695.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: JLG ES3246 or equivalent						
Pallet Jack	-	\$65.00	\$125.00	\$275.00	\$50.00	\$50.00
MFG / Model # / or Equivalent quoted: 5.500lbs Manual						
2" Trash Pump	-	\$150.00	\$315.00	\$635.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: 3" Trash Pump 40'/50'h's						
4" Trash Pump	-	\$255.00	\$625.00	\$1,480.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: 4' Trash Pump 40'/50'h's						
6" Trash Pump	-	\$333.00	\$825.00	\$2,035.00	\$100.00	\$100.00
MFG / Model # / or Equivalent quoted: 6" Trash Pump 40'/50'h's						
Compressor - 185 CFM	-	\$155.00	\$585.00	\$630.00	\$50.00	\$50.00
MFG / Model # / or Equivalent quoted: 185CFM 50'hose						
Welder - Minimum 300AMP	-	\$85.00	\$200.00	\$400.00	\$50.00	\$50.00
MFG / Model # / or Equivalent quoted: Miller 260 Gas 50'/50' or equivalent						
Discount Rate - Non Listed Equipment		Daily	Weekly	Monthly	Delivery Fee	Pick-up Fee
		0%	0%	0%	\$0.00	\$0.00

EXHIBIT C INSURANCE REQUIREMENTS

VFR 08-18-2021



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*

3. **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

4. **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

5. **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."*

Revised 03/19/2018 – Page 1 of 2

13 B220065LLP EQUIPMENT RENTAL - ANNUAL

EXHIBIT C INSURANCE REQUIREMENTS

YFR 08-18-2021



Verification of Coverage:

- 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. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
 - b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”* will be named as an “Additional Insured” on the General Liability policy, including Products and Completed Operations coverage.

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 insure that all subcontractors comply with all insurance requirements.

Revised 03/19/2018 – Page 2 of 2

End of Insurance Guide Section

**EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT**



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor 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.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. 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.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 5/9/2022

[Signature]
Signature

STATE OF Missouri
COUNTY OF Boone

William Schlacks IV President
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 9 day of May, 2022, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following as identification: _____

[Stamp/seal required]



[Signature]
Signature, Notary Public

EXHIBIT E
PROJECT FUNDING PACKAGE

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021



Lee County
Southwest Florida

Advertise Date: Tuesday, January 04, 2022

Lee County Board of County Commissioners
DIVISION OF PROCUREMENT MANAGEMENT

INVITATION TO BID (B)

Solicitation No.: B220065LLP
Solicitation Name: Equipment Rental - Annual
Open Date/Time: Tuesday, February 08, 2022 Time: 2:30 PM
Location: Lee County Procurement Management
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Procurement
Contact: Laura Purks Procurement Analyst
Phone: (239) 533-8830 Email: lpurks@leegov.com
Requesting Dept. COUNTY WIDE

Pre-Bid Conference:
Type: No meeting scheduled at this time
Date/Time: Click or tap to enter a date.
Location: N/A

All solicitation documents are available for download at
www.leegov.com/procurement

FUNDED IN PART OR IN WHOLE BY:

Federal Emergency Management Agency (FEMA) - Florida Department of Transportation (FDOT)

Federal Transit Administration (FTA)

Notice to Bidder

Invitation to Bid (B)

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

B220065LLP, Equipment Rental - Annual

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 Tuesday, February 8, 2022

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. Bidders who obtain Scope of Work/Specifications from sources other than 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. It is the bidder's responsibility to check for posted information. The County may not accept incomplete Bids.

There will be no Pre-Bid Conference for this solicitation.

It has been determined that the specifications and scope of work within this solicitation are adequate to describe the product or services being requested. A pre-bid conference and site visit has not been scheduled for this solicitation. 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.

Laura L. Purks lpurks@leegov.com

Sincerely,



Adam Brooke, CPPB
Procurement Analyst Supervisor

*WWW.leegov.Com/Procurement is the County's official posting site

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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

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 18-22
 - 2.1.3. Change Order
 - 2.1.4. Agreement
 - 2.1.5. Addenda
 - 2.1.6. Special Conditions
 - 2.1.7. Detailed Scope of Work/Specifications
 - 2.1.8. Supplemental Information, if any
 - 2.1.9. 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 18-22
 - 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

EXHIBIT E
PROJECT FUNDING PACKAGE

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.
 - 4.2.5. Do not lock files.
 - 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.

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 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

PROJECT FUNDING PACKAGE

VER 08-18-2021

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.lee.gov/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.

~~CONFIDENTIAL~~
PROJECT FUNDING PACKAGE

VER 08-18-2021

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. DRUG FREE WORKPLACE

- 16.1. Lee County Board of County Commissioners encourages Drug Free Workplace programs.

17. FLORIDA CERTIFIED ENTERPRISES

- 17.1. The County encourages the use of Florida Certified Enterprises such as such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.
- 17.2. 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.

18. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

- 18.1. 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.

PROJECT FUNDING PACKAGE

VER 08-18-2021

- 18.2. 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.
- 18.3. 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.
- 18.4. 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.

19. SUB-CONTRACTOR

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

20. BID - PROJECT GUIDELINES (as applicable)

- 20.1. 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:
 - 20.1.1. No amount of work is guaranteed upon the execution of an Agreement/Contract.
 - 20.1.2. Rates and all other negotiated expenses will remain in effect throughout the duration of the Agreement/Contract period.
 - 20.1.3. 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.
 - 20.1.4. 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.
 - 20.1.5. Lee County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement/Contract.
 - 20.1.6. 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.

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.**
 - 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.
 - 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.

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 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.

22. WITHDRAWAL OF BID

- 22.1. 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.
- 22.2. A bidder may withdraw a submission any time prior to the opening of the solicitation.
- 22.3. 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:
- 22.3.1. The bidder acted in good faith in submitting the bid,
- 22.3.2. 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,
- 22.3.3. The mistake was not the result of gross negligence or willful inattention by the bidder; and
- 22.3.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the Agreement/Contract.

23. PROTEST RIGHTS

- 23.1. 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.
- 23.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website (www.leegov.com/procurement). Bidders are solely responsible to check for information regarding the Solicitation.
- 23.3. Refer to the "Procurement Protest" section of the Lee County Procurement Ordinance 18-22 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.
- 23.4. 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.
- 23.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
- 23.4.2. 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.
- 23.5. 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.
- 23.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 18-22 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

24. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

- 24.1. 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.

25. CONTRACT ADMINISTRATION

- 25.1. **Designated Contact:**

EXHIBIT A
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 25.1.1. 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.
 - 25.1.2. 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.
- 25.2. **BID – Term:** (unless otherwise stated in the Scope of Work or Detailed Specifications)
- 25.2.1. 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.
 - 25.2.2. The County reserves the right to renew this Agreement/Contract (or any portion thereof) and to negotiate pricing as a condition for each.
 - 25.2.3. The County’s performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.
- 25.3. **BID – Basis of Award:**
- 25.3.1. The bid is awarded under a system of sealed, competitive bidding to the lowest responsive and responsible bidder.
 - 25.3.2. In the event the lowest responsible and responsive bid for a project exceeds the available funds the County may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder, in order to bring the total cost of the project within the amount of available funds.
 - 25.3.3. 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.
 - 25.3.4. 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.
- 25.4. **Agreement/Contracts:**
- 25.4.1. 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>.
- 25.5. **Records:**
- 25.5.1. **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.
 - 25.5.2. **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:
 - 25.5.2.1. Keep and maintain public records required by the County to perform the service.
 - 25.5.2.2. 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.
 - 25.5.2.3. 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.

SUMMARY
PROJECT FUNDING PACKAGE

VER 08-18-2021

25.5.2.4. 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.

25.5.3. 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 or Visit <http://www.leegov.com/publicrecords>.**

25.5.4. 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.

25.6. Termination:

25.6.1. 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.

25.6.2. 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 18-22.

25.6.3. 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.

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

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

25.6.4.2. 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);

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

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

25.6.4.5. 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.

26. WAIVER OF CLAIMS

26.1. 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.

27. LEE COUNTY PAYMENT PROCEDURES

EXHIBIT C
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 27.1. 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
 - 27.2. All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specifications for this project.
 - 27.3. 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.
 - 27.4. 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.
28. SAFETY DATA SHEETS (SDS) (as applicable)
- 28.1. It is the vendor's responsibility to provide Lee County with Safety Data Sheets on bid materials, as may apply to this procurement.
29. DEBRIS DISPOSAL (as applicable)
- 29.1. 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.
30. SHIPPING (as applicable)
- 30.1. 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 bidders 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.
 - 30.2. 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.
31. LOCAL VENDOR PREFERENCE
- 31.1. The Procurement Management Department will adhere to the Lee County Ordinance No. 00-10, as amended by Ordinance Nos. 08-26 and 17-16, 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.
 - 31.2. 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.
 - 31.3. 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.
32. INSURANCE (AS APPLICABLE)
- 32.1. 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.

End of Terms and Conditions Section

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*

3. **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

4. **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

5. **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
SOUTHWEST FLORIDA

Verification of Coverage:

- 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. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
 - b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”* will be named as an **“Additional Insured”** on the General Liability policy, including Products and Completed Operations coverage.

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 insure that all subcontractors comply with all insurance requirements.

Revised 03/19/2018 – Page 2 of 2

End of Insurance Guide Section

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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. CONTRACT TERM

1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an as needed basis as well as during emergency situations/events 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.

1.2 Emergency events include, but are not limited to natural disasters such as hurricanes, tornadoes, windstorms, floods, and fires as well as man-made events such as civil unrest and terrorist attacks.

2. BASIS OF AWARD

2.1 Following the County's rights as described and reserved herein, multiple Vendors may be awarded contracts under this solicitation. When the County is in need of equipment, the lowest priced Vendor for the specified equipment item shall be contacted for rental purchase. The County further reserves the right to contact additional awarded Vendors when the lowest priced Vendor is unable to meet the needs of the requesting Department or as deemed in the best interest of the County or requesting Department.

2.2 Vendor shall bid Discount Rate for Non-listed Equipment as stated within the Bid Schedule. Failure to bid Discount Rate for Non-listed Equipment will deem vendor Non-Responsive and ineligible for award.

3. PRICING

3.1 This is an annual contract, which is not for any specific project. Work will be authorized, scheduled, funded, and accounted for by the issuance of a Purchase Order, by the requesting department(s) or other governmental entity.

3.2 Vendor shall provide actual price to County for the items specified on the Bid Proposal form included in this solicitation. Should Vendor be unable to quote items specified in the list, Vendor should write "N/A" or "NO- Bid" in the price column. The proposal includes daily, weekly, and monthly rates for all equipment.

3.3 County shall be eligible for any additional discounts, specials and/or promotions offered by the Vendor during the term of the contract should those discounts, specials and/or promotions offer a lower cost to the County.

3.4 All quoted rates for charges for rentals shall be by the day, week or month. The general practice of the industry shall apply basing rates on eight (8) hours use per day, 40-hours use per week, and on 176-hours of use per month. No other interpretation of time basis will be accepted.

3.5 One (1) day rentals will be returned 24-hours after pick up.

3.6 All equipment for this bid must have damage waiver/insurance purchased, included on the bid form, and signed for in a form acceptable to the County.

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 3.7 No other agreements will be signed by the County or its employees for any rental under this annual bid. Only the terms and conditions of this bid and issued Purchase Order shall be binding.
- 3.8 All miscellaneous charges (i.e., Environmental Charge, Battery Disposal Fees, Delivery Fee, per mileage fee etc.) shall require prior written approval by County personnel and must be included with invoice.
- 3.9 All rates quoted shall be for equipment only, operators are not required. All equipment rented by the County shall be in good operating condition and ready to function; including a full tank of fuel. Units will be returned with a full tank of fuel. County will not be responsible for cleaning the equipment before it is returned to the Vendor.
- 3.10 Overtime rates shall be calculated as follows:
- 3.10.1. Daily Rentals: The rate for overtime shall be 1/8 of the daily rate for each hour in excess of eight (8), or weekly.
- 3.10.2. Weekly Rentals: The rate for overtime shall be 1/40 of the weekly rate for each hour in excess of 40, or monthly.
- 3.10.3. Monthly Rentals: The rate for overtime shall be 1/160 of the monthly rate for each hour in excess of 160 hours.
- 3.11 The quoted rates shall include all standard accessories necessary to make the equipment operable.
- 3.12 Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, material, and any other incidental costs required to perform and complete all work as specified in the Contract Documents. This contract is for normal Equipment Rental purchases as well as Federal Emergency Management Agency (FEMA), Florida Department of Transportation (FDOT) & Federal Transit Administration (FTA) funded purchases.

4. PROJECT FUNDING NOTICE

- 4.1 As notice to all Vendors, this project may be funded in whole or in part with Federal and State Funds through the Federal Emergency Management Agency (FEMA), Florida Department of Transportation (FDOT) & Federal Transit Administration (FTA). The 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 Vendor creates to support Vendor's servicing to County under this Agreement..

5. DISCOUNT RATE – NON-LISTED EQUIPMENT

- 5.1 Vendor is not required to bid on all items listed, but must provide for a discount percentage rate on non-listed equipment. Discount percentage rate shall serve to capture any product not separately listed within the Bid/Proposal Form.

6. ANNUAL PRICE ADJUSTMENTS

- 6.1 Price adjustments, if agreed to by the County, (whether an increase or decrease) will be based on the change in the Consumer Price index for the preceding 12-months as calculated and published by the United States Department of Labor.

~~FOUO~~
PROJECT FUNDING PACKAGE

VER 08-18-2021

7. LOCAL VENDOR PREFERENCE EXCLUSION

7.1 Local Vendor Preference Ordinance has been waived for this solicitation and any and all references contained herein are non-applicable to this solicitation and subsequent contract and/or purchase order(s).

8. MASTER CONTRACT NOTICE

8.1 This is a "Master"/"Annual" contract, which is not for any specific project. Work to be performed under this contract will be authorized, scheduled, funded, and accounted for by the issuance of County Purchase Order (PO), by the requesting department. The requesting County department reserves the right to provide additional project clarification details with the issuance of and within or attached to each PO. Such items shall be minor in nature such as providing for service completion dates, delivery locations, delivery and working hours, number of units, etc.

8.2 The Purchase Order will list any alternate funding source such as FEMA, FDOT or FTA. The Vendor shall comply with all associated funding terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package and associated agreement under Supplemental Information and/or where referenced and attached as it applies to each funding type.

End of Special Conditions Section

**EXHIBIT E
PROJECT FUNDING PACKAGE**

SCOPE OF WORK AND SPECIFICATIONS

1. SCOPE OF WORK

- 1.1 Lee County (County) is requesting bids for Equipment Rental, without operator, on an as-needed basis. The intent of this contract is to have available multiple sources for renting equipment with guaranteed pricing. Therefore, this contract will be awarded to multiple suppliers. The rental supplier shall own the equipment rented.
- 1.2 Pricing is requested for the most commonly rented items; however, other items may be rented under this contract on an as-needed basis.
- 1.3 Bid price shall be inclusive of all costs associated with rental of equipment with the exception of a delivery/pickup flat fees (see Delivery/Pickup paragraph below). The County shall furnish the necessary fuel and daily lubricants necessary to keep equipment in peak operating condition. The County will return equipment to supplier with a full fuel tank. No additional fees (i.e. environmental recovery or fuel surcharge) shall be allowed. Pricing is requested for the following terms:
- 1.3.1 Daily (8 hours)
 - 1.3.2 Weekly (40 hours)
 - 1.3.3 Monthly (176 hours)
- 1.4 Equipment rented over the agreed upon term shall be prorated based on the submitted term pricing with this bid.
- 1.5 The obligations of the County under this rental shall commence on the day equipment is delivered and accepted by the County departments. The term of the rental shall be specified in the body of the purchase order. Such rental term shall not exceed one (1) calendar year. The County has the right to terminate a rental under this agreement at any time if the equipment fails to perform as intended, or in the event of non-appropriation of funds.

2. SAFETY

- 2.1 All equipment rented to Lee County shall be maintained in safe operating condition at all times, free from defects or wear, which may in any way constitute a hazard to any person or property. All electrical equipment will be properly grounded.
- 2.2 As applicable, the equipment shall meet all commercial and OSHA safety standards, and include, but not limited to, the following safety features:
- 2.2.1 Protection from pinch and crush points
 - 2.2.2 Labeling of all controls
 - 2.2.3 Non-skid surface(s) for operator areas
 - 2.2.4 Protective guards over all moving parts
 - 2.2.5 Handles and guards where necessary
 - 2.2.6 Alarms
 - 2.2.7 Seatbelts
- 2.3 Warning and instruction labels shall be conspicuously placed and easily readable (i.e., not covered with dirt or grease) on all equipment where applicable.
- 2.4 Vendor shall have up-to-date, professional quality equipment.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

3. TRAINING

3.1 Vendor shall provide equipment operation training and documentation of such training to County employees on specialized equipment. This training will include as a minimum, starting, shutdown, emergency procedures, refueling procedures (if required), safety features and guards, and inspection procedures. A copy of the training contents and qualification of the trainer along with the name of the individual(s) and signature, department name, and date of training. This sign-off will be provided to the County department renting the equipment and a copy will be maintained by the Vendor.

4. RIGHT TO REFUSAL

4.1 The County reserves the right to inspect equipment prior to acceptance. Inspections may occur at the Vendor's facility, or upon delivery. The County may refuse equipment at the time of proposed rental if equipment is not in good operating condition. The County will not be responsible for any delivery or return charges, or rental fees.

5. ESTIMATED QUANTITIES

- 5.1 Any quantities indicated herein are only estimated and the County reserves the option to increase/and or decrease quantities, or delete items as required.
- 5.2 The County reserves the option to add item(s) within the scope of the bid by obtaining such items via the County's regular Procurement Procedures.

6. SERVICING OF EQUIPMENT

6.1 All servicing of equipment, during and at the end of the rental period, shall be the Vendor's responsibility at no additional cost to the County.

7. VENDOR / COUNTY RESPONSIBILITIES

- 7.1 Vendor shall be responsible for providing, and paying for, all preventative maintenance to keep equipment in good repair and operating condition during the term of the contract. Vendor shall provide a maintenance schedule to the County for long-term rentals so that the County may adjust work schedules as necessary.
- 7.2 The County shall not incur any expenses for necessary repairs, maintenance or replacements including, but not limited to, labor, material and parts having to do with normal wear and tear of the equipment rented. County agrees to use the equipment in the manner intended.
- 7.3 The County shall furnish the necessary fuel and daily lubricants necessary to keep equipment in peak operating condition. The County will return equipment to supplier with a full tank of fuel.
- 7.4 County departments at various locations throughout Lee County will use the equipment. Vendor's representative may inspect rental equipment, on location, at any reasonable time and may remove equipment from service, if required, for repair or maintenance, providing that the replacement equipment be of equal or greater quality and capability, and is available to the County at no additional charge while the original equipment is being serviced or repaired.
- 7.5 Vendor shall deliver all equipment in working condition. The County will inspect the equipment immediately upon delivery at the FOB location listed on each purchase order. If at any time, the rented

**EXHIBIT E
PROJECT FUNDING PACKAGE**

equipment becomes inoperable or appears to be non-working, the County will notify the Vendor, in writing, for repair or replacement. If another like unit is not available within 24-hours, the County reserves the right to rent replacement equipment from another source without further financial obligation on the non-working piece of equipment.

8. EQUIPMENT REPAIRS

- 8.1 The County shall be responsible for repairs to rented equipment only when repairs are necessary due to either obvious abuse or physical accident (where the County is found at fault).
- 8.2 Any charges (i.e., for repairs) in addition to the normal rental rate shall be documented and submitted to the County ordering department within five (5) working days following the return of the equipment.

9. EQUIPMENT PICK UP AND RETURN

- 9.1 Unless otherwise requested, the County departments shall pick up and return all rented equipment.
- 9.2 If delivery is needed, a flat rate deliver/pickup fee will be allowed, if necessary. Vendor shall list the flat rate fee to deliver and return pickup, per item, on the pricing sheets if a fee will be charged. If an item can be delivered with no fee, indicate with a \$0.00 in the appropriate column.
- 9.3 Vendor shall promptly pick up/accept any return for items incorrectly ordered or delivered in unsafe and/or damaged condition, at no cost to the County.
- 9.4 Delivery rate shall encompass all locations within Lee County.

10. EQUIPMENT FAILURE

- 10.1 Vendor agrees that, unless otherwise specified, all equipment rented to the County shall be in good, working condition. In the event rented equipment fails at the job site, it shall be the Vendors responsibility (at Vendors expense) to either perform on-site repairs or deliver to the site an equal replacement and remove the failed unit.
- 10.2 The length of the equipment downtime shall be deducted from the total rental charge for the unit. Downtime shall be measured in hours, and fractions thereof. For the purposes of this quote, downtime shall begin when the County notifies the Vendor of a problem with the equipment, and end when repairs are successfully completed or a replacement unit is in place at the job site.
- 10.3 Should the Vendor be unable to either repair or replace the failed equipment within two (2) hours after notification, the County reserves the right to cancel the order without penalty and rent the equipment elsewhere.

11. MAJOR BREAKDOWNS/NATURAL DISASTERS

- 11.1 The County requires that the awarded Vendor(s) provide the names of two contact personnel and phone numbers which will afford the County access 24-hours per day, 365-days per year, to provide rental equipment in the event of major breakdowns or natural disasters.
- 11.2 In cases of emergency or natural disasters, the County has the right to reserve equipment for a period of one (1) week from date of initial notification, at no charge to the County. The County will then decide if the equipment is needed and either cancel the equipment or proceed with the normal rental procedure.

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021

If equipment cannot be provided locally, the County would expect the awarded Vendor to exhaust every attempt to locate and furnish requested equipment. If Vendor is affiliated with a national company, the Vendor is expected to bring in equipment from one of the other locations to meet the needs of the County during the emergency or natural disaster.

End of Scope of Work and Specifications Section

EXHIBIT E
PROJECT FUNDING PACKAGE
SUPPLEMENTAL INFORMATION

1. ALTERNATE FUNDING

- 1.1 As stated herein, purchases under this agreement may be funded in whole or in part with Federal and/or State Funds through the Federal Emergency Management Agency (FEMA), Florida Department of Transportation (FDOT) and/or the Federal Transit Administration (FTA).
- 1.2 The 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 Vendor creates to support Vendor's servicing to County under this Agreement
- 1.3 The Purchase Order will list any alternate funding sources such as FEMA, FDOT or FTA should they apply to that particular Purchase Order.
- 1.4 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/Purchase Point of Contact in order to receive final guidance on proceeding with conflicted items.

2. STATE FUNDING (FDOT)

- 2.1 When a Purchase Order is issued for services that indicate State Funding usage, the following clauses shall apply in addition to all regular clauses and specification details stated herein.

2.2 INSPECTOR GENERAL

- 2.2.1 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.
- 2.2.2 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.

2.3 RESTRICTIONS, PROHIBITS, CONTROLS, AND LABOR PROVISIONS.

- 2.3.1 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.
- 2.3.2 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.

- 2.3.3 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.
- 2.3.4 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."
- 2.3.5 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.

2.4 EMPLOYMENT ELIGIBILITY (USING E-VERIFY).

- 2.4.1 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
- 2.4.2 Shall expressly require any CONSULTANT/CONTRACTOR/VENDOR S/consultants and SUBCONSULTANT/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 SUBCONSULTANT/CONTRACTOR/VENDOR during the Agreement term.
- 2.4.3 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.

PROJECT FUNDING PACKAGE

2.4.4 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.

2.5 AMERICANS WITH DISABILITY ACT

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

2.6 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

2.6.1 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.

2.6.2 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.

2.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

2.7.1 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.

2.7.2 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/>

2.8 EQUAL EMPLOYMENT OPPORTUNITY

2.8.1 The CONSULTANT/CONTRACTOR/VENDOR and/or SUB-CONSULTANT/CONTRACTOR/VENDOR shall not discriminate against any employee or

PROJECT FUNDING PACKAGE

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.

2.8.2 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.

2.9 LOBBYING

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

2.10 CONE OF SILENCE

2.10.1 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."

2.11 INDEMNIFICATION & INSURANCE

2.11.1 "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.

2.11.2 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."

EXHIBIT E
PROJECT FUNDING PACKAGE

3. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

- When a Purchase Order is issued for services that indicate Federal Emergency Management Agency (FEMA) Funding usage the following clauses apply in addition to all regular clauses and specification stated herein.
- 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. Sections 200.213 and 200.317 through 200.326.
- Federally funded Purchases are further subject to federal requirements including, but no limited to, those set forth in 2 C.F.R. Part 200, Appendix II and as otherwise may be listed below.
- Contract Cost and Price: For every procurement in excess of \$100,000, including contract modifications or change orders greater than \$100,000, the County shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the County shall consider the complexity of work, the risk to be borne by the contractor, the contractor’s investment, the amount of subcontracting necessary, the quality of the contractor’s record and past performance, and industry profit rates for the surrounding geographical area. “Cost Plus Percentage” methods for determining profit may not be used.

3.1 EQUAL EMPLOYMENT OPPORTUNITY:

3.1.1 During the performance of this contract, the contractor agrees as follows:

3.1.1.1 The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The 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, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

3.1.1.2 The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

EXHIBIT E
PROJECT FUNDING PACKAGE

3.1.1.3 The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.

3.1.1.4 The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3.1.1.5 The CONSULTANT/CONTRACTOR/VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

3.1.1.6 The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

3.1.1.7 In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

3.1.1.8 The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes

EXHIBIT E
PROJECT FUNDING PACKAGE

involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

3.2 MAINTENANCE OF RECORDS:

- 3.2.1 The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.
- 3.2.2 CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 3.2.3 CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3.2.4 CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- 3.2.5 CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.
- 3.2.6 The County and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the County.

3.3 DHS SEAL, LOGO, AND FLAGS

- 3.3.1 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.

3.4 LOCAL VENDOR PREFERENCE EXCLUSION

- 3.4.1 Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

3.5 COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS

EXHIBIT E
PROJECT FUNDING PACKAGE

VER 08-18-2021

- 3.5.1 This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

3.6 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- 3.6.1 The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

3.7 FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS

- 3.7.1 The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

3.8 SUBCONTRACTS

- 3.8.1 The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

3.9 CONFLICT OF INTEREST:

- 3.9.1 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.

3.10 EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY):

- 3.10.1 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.
- 3.10.2 Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.
- 3.10.3 It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

3.10.4 For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

3.11 ENERGY POLICY AND CONSERVATION ACT

3.11.1 CONSULTANT/CONTRACTOR/VENDOR must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

3.12 SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

3.12.1 Place qualified small and minority businesses and women's business enterprises on solicitation lists.

3.12.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

3.12.3 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

3.12.4 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

3.12.5 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

3.12.6 Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

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

3.13.1 As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a preference for the purchase 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.

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

3.14.1 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019

NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services- Interim Policy for additional information.

3.15 TERMINATION FOR CAUSE AND/OR CONVENIENCE:

3.15.1 The County, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (for convenience), in whole or in part, when the County determines in its sole discretion that it is in the County's best interest to do so. In the event of termination the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.

3.15.2 If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the County and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

3.16 SUSPENSION AND DEBARMENT

3.16.1 This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §180.935).

3.16.2 The CONSULTANT/CONTRACTOR/VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3.16.3 This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

3.16.4 The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C 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.

3.17 RECOVERED MATERIALS

3.17.1 In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:

EXHIBIT E
PROJECT FUNDING PACKAGE

- 3.17.1.1 Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 3.17.1.2 Meeting contract performance requirements; or
 - 3.17.1.3 At a reasonable price.
- 3.17.2 Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

3.18 REMEDIES

- 3.18.1 In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the County may, upon fifteen (15) calendar days written notice to the CONSULTANT/CONTRACTOR/VENDOR and upon the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
 - 3.18.2 Withhold or suspend payment of all or any part of a request for payment.
 - 3.18.3 Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the County any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
 - 3.18.4 Exercise any corrective or remedial actions, to include but not be limited to:
 - 3.18.5 Requesting additional information from the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;
 - 3.18.6 Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
 - 3.18.7 Advising the CONSULTANT/CONTRACTOR/VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or
 - 3.18.8 Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the County for the amount of costs incurred for any items determined to be ineligible.

3.19 OTHER REMEDIES AND RIGHTS:

- 3.19.1 Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the CONSULTANT/CONTRACTOR/VENDOR.

EXHIBIT E
PROJECT FUNDING PACKAGE

3.19.2 Unless otherwise provided by the Contract, all claims, counter-claims, disputes and other matters in question between the County and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

3.20 CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708):

- 3.20.1 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.
- 3.20.2 Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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.
- 3.20.3 Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management 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.
- 3.20.4 Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) 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.

3.21 CLEAN AIR ACT

- 3.21.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

EXHIBIT E
PROJECT FUNDING PACKAGE

3.21.2 The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3.21.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

3.22 FEDERAL WATER POLLUTION CONTROL ACT

3.22.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

3.22.2 The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3.22.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

3.23 BYRD ANTI-LOBBYING AMENDMENT

3.23.1 CONSULTANT/CONTRACTOR/VENDORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

4. FEDERAL TRANSIT AUTHORITY

4.1 When a Purchase Order is issued for services that indicate Federal Transit Authority (FTA) Funding usage the clauses of this section apply in addition to all regular clauses and specification stated herein.

4.1.1 Provided with this solicitation is the *Lee County Transit Grant-Funded Procurement General Provisions*. The 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 – MATERIALS & SUPPLIES* as found on page 31 of the referenced document. All such referenced terms and clauses shall be passed down from Prime Vendor to all sub-contractors/consultants as described herein.

4.1.2 By participating in this solicitation the Vendor shall comply with all federal, state, and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses, and registration requirements.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

VER 08-18-2021

- 4.1.3 No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- 4.1.4 This solicitation shall be governed by and construed in accordance with all applicable State and Federal laws, rules, and regulations, included those identified in the solicitation package. Any express reference in this solicitation and any related Agreements/Contracts executed between the prime Vendor and subcontractors/consultants to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.
- 4.1.5 The Vendor shall be bound by the terms as stated within this solicitation package, any and all associated Agreement(s), and by all applicable state and federal laws and regulations, and the Vendor shall hold the Federal Transit Authority and Lee County harmless against all claims of whatever nature arising out of the Vendor's performance of work under this solicitation, to the extent allowed and required by law.
- 4.1.6 The Vendor shall indicate whether the Vendor and/or sub-contractors/consultants are Disadvantaged Business Enterprises (DBE). The County encourages the utilization and participation of DBEs 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 certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-owned firms are encouraged to respond.

End of Supplemental Information Section

**EXHIBIT E
PROJECT FUNDING PACKAGE**

FORMS DESCRIPTION & INSTRUCTIONS

INVITATION TO BID

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.

<u>Form #</u>	<u>Title/Description</u>
1	<p><i>Solicitation Response Form</i> 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 web-page(s) from http://www.sunbiz.org as certification of this required information. Sample attached for your reference. Verify that all Addenda and tax identification number have been provided.</p>
1a	<p><i>Bid/Proposal Form</i> This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County.</p>
*	<p><i>Business Relationship Disclosure Requirement</i> 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 disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by § 112.313(12)(b), F.S.) to be completed and 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. 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>
2	<p><i>Affidavit Certification Immigration Laws</i> Submission of this form constitutes acknowledgement that the Bidder is in compliance in regard to all applicable immigration laws.</p>
3	<p><i>Reference Survey</i> Provide this form to reference respondents. <u>For Bids, this form will be requested from the apparent low Bidder prior to the award. (not required to submit with bid)</u></p> <ol style="list-style-type: none"> 1. Section 1: Bidder/Proposer to complete with <u>reference respondent's</u> information prior to providing to them for their response. (This is not the Bidder/Proposer's information.) 2. Section 2: Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response. 3. The <u>reference respondent</u> should complete "Section 3." 4. Section 4: The reference respondent to print and sign name 5. Three (3) Reference responses are to be provided upon request. 6. Failure to obtain reference surveys may make your company non-responsive.

EXHIBIT E PROJECT FUNDING PACKAGE

- 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 *Affidavit - Principal Place of Business*
Certifies Bidder’s location information.
- 6 *Sub-Contractor/Consultant List*
To be completed and returned when sub-contractors/consultants are to be utilized and are known at the time of the submission.
- 7 *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.
- 8 *Certification Regarding Lobbying*
Bidder’s Lobbying Disclosure and Certification, to be signed and returned.
- 9 *Certification Regarding Debarment & Suspension*
Bidder’s Certification regarding Debarment, Suspension, and other Responsible Matters, to be signed and returned.

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)

EXHIBIT E
PROJECT FUNDING PACKAGE

**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

EXHIBIT E
PROJECT FUNDING PACKAGE

**EXHIBIT E
PROJECT FUNDING PACKAGE**

TABLE OF CONTENTS

I.	PROVISIONS APPLICABLE TO ALL CONTRACTS	1
	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
II.	PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000)	11
	A. Suspension and Debarment	11
III.	PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS BY STATUTE (\$100,000)	12
	A. Byrd Anti-Lobbying Amendment	12
	B. Contract Work Hours and Safety Standards	13
	C. Bonding Requirements (all construction or facility improvement contracts)	14
IV.	PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD – ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)	16

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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
V. PROVISIONS APPLICABLE TO ROLLING STOCK PURCHASE CONTRACTS	18
A. Bus Testing	18
B. Pre-award and Post Delivery Audit Requirements	18
VI. PROVISIONS APPLICABLE TO CONSTRUCTION PROJECTS	19
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
VII. PROVISIONS APPLICABLE TO OPERATIONS/MANAGEMENT CONTRACTS	26
A. Charter Service Operations	26
B. School Bus Requirements	26
C. Transit Employee Protective Agreements Provisions	27
D. Drug and Alcohol Testing	28
VIII. PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT CONTRACTS	28
1. Patent and Rights in Data	28
Applicability of Third Party Contract Provisions	32

**EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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 offederally assisted contracts and procurement a

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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**.

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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

**EXHIBIT E
PROJECT FUNDING PACKAGE
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

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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)

EXHIBIT E
PROJECT FUNDING PACKAGE
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

EXHIBIT E
PROJECT FUNDING PACKAGE
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 extent required by 23 USC Section 517 (d) and 23 CFR Part 655 and 940.

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

EXHIBIT E
PROJECT FUNDING PACKAGE
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;

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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

EXHIBIT E
PROJECT FUNDING PACKAGE
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

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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 LCBOCC before LCBOCC, and A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
5. Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LCBOCC.

B. Pre-award and Post Delivery Audit Requirements

Contractor agrees to comply with 49 U.S.C. 5323(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

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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

EXHIBIT E
PROJECT FUNDING PACKAGE
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

EXHIBIT E
PROJECT FUNDING PACKAGE
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.

EXHIBIT E
PROJECT FUNDING PACKAGE
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 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

EXHIBIT E
PROJECT FUNDING PACKAGE
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;

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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 LCB OCC'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

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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**

EXHIBIT E
PROJECT FUNDING PACKAGE
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

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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.

**EXHIBIT E
PROJECT FUNDING PACKAGE**

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)

PROVISION	TYPE OF PROCUREMENT				
	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