

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20020344

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve award of Formal Quotation #Q-020168, Annual Purchase of Remanufactured Engines, for the Transit Division, to the low quoter meeting specifications, Jimmy Diesel; for the prices as listed on the attached Lee County Tabulation Sheet. The requesting division will be responsible for monitoring its individual expenditures. The initial award is for two (2) years; authority is requested to renew this quotation for three (3) additional one (1) year periods, under the same terms and conditions, if in the best interest of Lee County, at the expiration of the original term.

**WHY ACTION IS NECESSARY:** According to Section 9.4.1 of the Lee County Purchasing & Payment Procedures Manual, approved by the Board on 3/21/00, purchases over \$50,000.00 must be approved by the Board.

**WHAT ACTION ACCOMPLISHES:** Allows the Transit Division to purchase remanufactured engines, as needed, for its fleet.

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

*C6A*

**3. MEETING DATE:**

*04-23-2002*

**4. AGENDA:**

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

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

- STATUTE
- ORDINANCE
- ADMIN. AC-4-1
- CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER \_\_\_\_\_
- B. DEPARTMENT \_\_\_\_\_
- C. DIVISION Transit

BY: Steven L. Myers, Director

**7. BACKGROUND:**

--BACKGROUND BEGINS ON PAGE ONE--

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>Steven L. Myers 4/3/02</i>	<i>Janet Sheehan 4-1-02</i>	<i>N/A</i>		<i>S. Powell 4/9/02</i>	<i>4/11/02</i>	<i>4/11/02</i>	<i>4/11</i>	<i>4/10-02</i>	<i>BL</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *4/9/02*  
Time: *1100 AM*  
Forwarded To:

RECEIVED BY  
COUNTY ADMIN.  
*4/9/02*  
*3:05pm*  
COUNTY ADMIN.  
FORWARDED TO:  
*4/11 4:10*

--BACKGROUND CONTINUED FROM PAGE ONE--

On January 16, 2002, the Division of Purchasing received a request from the Transit Division to quote the Annual Purchase of Remanufactured Engines. The anticipated cost required the use of the formal sealed quotation procedure.

Sealed quotations were received by the Division of Purchasing on February 26, 2002. On that date, two (2) responses were received. The quotations have been thoroughly reviewed and a recommendation is being made to award the quotation to the low quoter meeting specification requirements, Jimmy Diesel, for the prices as listed on the attached Lee County Tabulation Sheet.

The following points should be noted regarding the processing/evaluation of this quotation:

\*The apparent low quoter, Florida Detroit Diesel – Allison, could not be considered due to the fact that it did not comply with all of the warranty requirements; specifically, page 19/Section C/Item 3. The vendor has stated in writing that he does not comply with this item – please see Attachment #5.

\*The expenditures under this quotation will be 100% federally funded by the Federal Transit Administration. Therefore, due to Federal rules and regulations that prohibit the use of “Geographic Preferences”; the Lee County “Local Vendor Preference” language was not included in this quote package. (Please see Attachment #6 for confirmation of this fact from the County Attorney’s Office.)

Funding will be available in account # KI5440148640.504670 (Transit Division, Capital Fund, Fixed Route, Repair Parts)

Please See Attachments:

- (1) Tabulation Sheet
- (2) Division’s Request for Quotations
- (3) Specifications
- (4) Jimmy Diesel’s Quotation
- (5) Florida Detroit Diesel – Allison’s Statement of Non-Compliance
- (6) County Attorney Confirmation on the use of Geographic Preferences in Federally Funded Projects
- (7) Division’s Recommendation

FORMAL QUOTATION #Q-020168		LEE COUNTY, FLORIDA TABULATION SHEET	
OPENING DATE: 2/26/02		FOR	
BUYER: BOB FRANCESCHINI		REMANUFACTURED ENGINES FOR LEE TRAN	
<b>VENDORS</b>	FLORIDA DIESEL - ALLISON, INC.	JIMMY DIESEL	
REMAN RELIABLE T SERIES 40E/280HP OR EQUIVALENT EACH (COMMODITY CODE #55730)	NO BID	NO BID	
COST EACH FOR PROGRAMMING THE ECM	NO BID	NO BID	
REMAN RELIABLE T 50/275 HP 890 FTL OR EQUIVALENT EACH (COMMODITY CODE #55728)	\$13,474.77	\$13,690.00	
COST EACH FOR PROGRAMMING THE ECM	N/A	\$200.00	
GRAND TOTAL	\$13,474.77	\$13,890.00	
OPTION A EXT. WARRANTY 40E/280HP	NO BID	NO BID	
OPTION B EXT. WARRANTY 50/275 HP	\$1,800.00	\$3,800.00	
TO BE STARTED WITHIN CALENDAR DAYS OF AWARD	20	7	
WILL DELIVER WITH OWN VEHICLE?	YES	NO	
FIRM LOCATED IN LEE COUNTY?	YES	NO	
MODIFICATIONS	NO	NO	
QUOTE SIGNED	YES	YES	
MEETS SPECS	NO*	YES	
ADDENDUM #1 ACKNOWLEDGED?	YES	YES	
*VENDOR DID NOT COMPLY WITH THE WARRANTY REQUIREMENTS - PAGE 19/SECTION C/ITEM 3.			
<b>NO BIDS</b>			

# MEMORANDUM

# ATTACHMENT #2

from the  
TRANSIT DIVISION

DATE: January 16, 2002

Bob Franceschini  
Purchasing

FROM: Steven L. Myers  
Steven L. Myers, Director

**RE: New Quote for Remanufactured Engines**

LeeTran does not wish to renew Q-990615, with Jimmy Diesel, for remanufactured engines because of changes in our fleet. Please proceed with solicitation for new quotes. The changes needed are noted on the attached specification.

Page 9 - Please delete the reference to local preference, number 22, as we cannot exercise this option.

Page 10- 1) 6V71 engine needs to be deleted and replaced with a Remanufactured Detroit Diesel Reliablilt Series 40 E / 280HP Engine or equivalent for use in a 2001 29' Gillig Low Floor Bus. We estimate a quantity of 10.

2) Change estimated quantity from 8 to 12.

Page 13 - Change the term of the quote to a 2 year with an option for 3 one year renewals.

Page 14 - A) 6V71 engine needs to be deleted and replaced with a Remanufactured Detroit Diesel Reliablilt Series 40 E / 280HP Engine or equivalent for use in a 2001 29' Gillig Low Floor Bus. The Series 50 remains the same.

B) Delete B

D) Remove 6v71 and replace with Series 40.

I) Remove 6v71 and replace with Series 40.

Page 15 - P) Remove 6v71 and replace with Series 40.

R) Delete R

S) O.K. as is.

Page 16 - I) Remove 6v71 and replace with Series 40.

Please include Grant Procurement Package number 2 in the quote. Funds have been budgeted in KI5440148640.504670 (Transit Division, Fixed Route, Transit Capital, Vehicle Repair Parts) This quote will require Board approval as the annual expenditure may exceed \$50,000.

If you have any questions, please do not hesitate to contact me.

Cc: Susan Riley, Fiscal Officer  
Larry Ralston, Maintenance Manager  
Mike Paschal, Parts Supervisor

Attachment

SPR

S:\WPDOCS\MEMOS\QuoteEngine.wpd



**LEE COUNTY**  
SOUTHWEST FLORIDA

PROJECT NO.: Q-020168

OPEN DATE: FEBRUARY 19, 2002

AND TIME: 2:30 P.M.

PRE-BID DATE: NONE

AND TIME: N/A

LOCATION: N/A

# REQUEST FOR QUOTATIONS

## TITLE:

REMANUFACTURED ENGINES FOR LEE TRAN

REQUESTER: LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
DIVISION OF PURCHASING  
3434 HANCOCK BRIDGE PKWY, 3<sup>RD</sup> FLOOR  
P.O. BOX 398  
FORT MYERS, FL 33902-0398

BUYER: BOB FRANCESCHINI, C.P.M., CPPB  
PURCHASING AGENT  
PHONE NO.: (941) 689-7385



LEE COUNTY  
SOUTH WEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: \_\_\_\_\_

Bob Janes  
District One

Douglas R. St. Cerny February 8, 2002  
District Two

Ray Judah Formal Quote No.: Q-020168  
District Three

Andrew W. Coy  
District Four

John E. Albion  
District Five

Donald D. Stillwell  
County Manager

James G. Yaeger  
County Attorney

Diana M. Parker  
County Hearing  
Examiner

LEE COUNTY ADDENDUM NUMBER ONE  
TO THE SPECIFICATIONS FOR  
REMANUFACTURED ENGINES FOR LEE TRAN

QUOTERS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE PROPOSAL QUOTE FORM  
(PAGE 13).

**NOTE: THE OPENING DATE AND TIME FOR THIS PROPOSAL HAS BEEN CHANGED TO  
FEBRUARY 26, 2002 @ 2:30 P.M.**

The original specifications and other contract documents are amended as noted below:

It has come to Lee County's attention that the remanufactured Detroit Diesel Reliabilt Series 40E/280 HP is an engine that cannot be realistically quoted at this time. Therefore, Quoters are directed to do the following:

\*Page 13 of the quote package: Please "No Bid" Items 1. and 1a.

\*Page 14 of the quote package: Please "No Bid" Option A.

\*Remaining pages of the quote package: Please ignore all references to the "remanufactured Detroit Diesel Reliabilt Series 40E/280 HP" engine.

\*The basis of award will remain the overall low quoter from the grand total on page 13 meeting specifications; however, the grand total will now be based on items 2. and 2a.

If there are any questions regarding this addendum, please contact Bob Franceschini at (941) 689-7385.

DIVISION OF PURCHASING SERVICES

Robert D. Franceschini, C.P.M., CPPB  
Purchasing Agent

cc: Steven Myers/Lee Tran  
Susan Riley/Lee Tran  
Larry Ralston/Lee Tran  
Lisa Pierce/Clerk's Office Minutes

**GENERAL CONDITIONS**

Sealed Quotations will be received by the DIVISION OF PURCHASING, until 2:30pm on the date specified on the cover sheet of this "Request for Quotations", and opened immediately thereafter by the Purchasing Director or designee.

Any question regarding this solicitation should be directed to the Buyer listed on the cover page of this solicitation, or by calling the Division of Purchasing at (941) 689-7385.

**1. SUBMISSION OF QUOTE:**

- a. Quotations shall be sealed in an envelope, and the outside of the envelope should be marked with the following information:
  - 1. Marked with the words "Sealed Quote"
  - 2. Name of the firm submitting the quotation
  - 3. Title of the quotation
  - 4. Quotation number
  
- b. The Quotation shall be submitted in triplicate as follows:
  - 1. The original consisting of the Lee County quotes forms completed and signed.
  - 2. A copy of the original quote forms for the Purchasing Director.
  - 3. A second copy of the original quote forms for use by the requesting department.
  
- c. The following should be submitted along with the quotation in a separate envelope. This envelope should be marked as described above, but instead of marking the envelope as "Sealed Quote", please indicate the contents; i.e., literature, drawings, submittals, etc. This information should be submitted in duplicate.
  - 1. Any information (either required or in addition to that asked for by the specifications) necessary to analyze your quotation; i.e., required submittals, literature, technical data, financial statements.
  - 2. Warranties and guarantees against defective materials and workmanship.
  
- d. **ALTERNATE QUOTE:** If the vendor elects to submit more than one quote, then the quotes should be submitted in separate envelopes and marked as indicated above. The second, or alternate quote should be marked as "Alternate".

- e. **QUOTES RECEIVED LATE:** It is the quoter's responsibility to ensure that his quote is received by the Division of Purchasing Services prior to the opening date and time specified. Any quote received after the opening date and time will be promptly returned to the quoter unopened. Lee County will not be responsible for quotes received late because of delays by a third party delivery service; i.e., U.S. Mail, UPS, Federal Express, etc.
  - f. **QUOTE CALCULATION ERRORS:** In the event there is a discrepancy between the total quoted amount or the extended amounts and the unit prices quoted, the unit prices will prevail and the corrected sum will be considered the quoted price.
  - g. **PAST PERFORMANCE:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.).
  - h. **WITHDRAWAL OF QUOTE:** No quote may be withdrawn for a period of 90 days after the scheduled time for receiving quotes. A quote may be withdrawn prior to the quote-opening date and time. Such a request to withdraw should be made in writing to the Purchasing Director, who will approve or disapprove of the request.
  - i. **COUNTY RESERVES THE RIGHT:** The County reserves the right to waive minor informalities in any quote; to reject any or all quotes with or without cause; and/or to accept the quote that in its judgment will be in the best interest of the County of Lee.
  - j. **EXECUTION OF QUOTE:** All quotes shall contain the signature of an authorized representative of the quoter in the space provided on the quote proposal form. All quotes shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the quote shall be initialed.
2. **ACCEPTANCE**

The materials and/or services delivered under the quote shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted to the County and is to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. In the event the materials and/or services supplied to the County are found to be defective or do not conform to specifications, the County reserves the right to cancel the order upon written notice to the seller and return such product to the seller at the seller's expense.



3. **SUBSTITUTIONS**

Whenever in these specifications a brand name or make is mentioned, it is the intention of the County only to establish a grade or quality of materials and not to rule out other brands or makes of equality. However, if a product other than that specified is quote, it is the vendor's responsibility to name such product with his quote and to prove to the County that said product is equal to the product specified. Lee County **shall** be the sole judge as to whether a product being offered by the quoter is actually equivalent to the one being specified by the detailed specifications. (Note: This paragraph does not apply when it is determined that the technical requirements of this solicitation require only a specific product as stated in the detailed specifications.

4. **RULES, REGULATIONS, LAWS, ORDINANCES & LICENSES**

The awarded vendor shall observe and obey all laws, ordinances, rules, and regulations, of the federal, state, and local government, which may be applicable to the supply of this product or service.

- a. Occupational License – Vendor shall submit within 10 calendar days after request.
- b. Specialty License(s) – Vendor shall possess at the time of the opening of the quote all necessary permits and/or license required for the sale of this product and/or service and upon the request of the County provide copies of licenses and/or permits within 10 calendar days after request.

5. **RECYCLED PRODUCTS**

It is the Lee County Board of County Commissioners' stated policy objective to "Ensure all departments are aware of the availability of recycled products..." (Administrative Code #AC-10-4). In an effort to provide the utmost opportunity for the use of recycled products by Lee County, vendors should list on their letterhead, all necessary information regarding any applicable recycled products they have available. Recycled products should meet all other specifications listed and have a minimum of 50%-recycled content. Whenever fiscally feasible, available recycled products will be purchased.

6. **WARRANTY/GUARANTY** (unless otherwise specified)

All materials and/or services furnished under this quote shall be warranted by the vendor to be free from defects and fit for the intended use.

7. **PRE-BID CONFERENCE**

A pre-bid conference will be held at the location, date, and time specified on the cover of this solicitation. Pre-bid conferences are generally non-mandatory, but it is highly recommended that everyone planning to submit a quote attend.

In the event a pre-bid conference is classified as mandatory, it will be so specified on the cover of this solicitation and it will be the responsibility of the quoter to ensure that they are represented at the pre-bid. Only those quoters who attend the pre-bid conference will be allowed to quote on this project.

8. **BIDDERS LIST MAINTENANCE**

A bidder should respond to "Request for Quotations" in order to be kept on the Bidder's List. Failure to respond to three different "request for quotations" may result in the vendor being removed from the Bidder's List. A bidder may do one of the following, in order to respond properly to the request:

- a. Submission of a quotation prior to the quote receipt deadline.
- b. Submission of a "no bid" notice prior to the quote receipt deadline.

9. **LEE COUNTY PAYMENT PROCEDURES**

All vendors are requested to mail one original invoice and one invoice copy to:

Lee County Finance Department  
Post Office Box 2238  
Fort Myers, FL 33902-2238

All invoices will be paid as directed by the Lee County payment procedure unless otherwise differently stated in the detailed specification portion of this quote.

Lee county will not be liable for request of payment deriving from aid, assistance, or help by any individual, vendor, quoter, or bidder for the preparation of these specifications.

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 contractors or quoters should include in their quote all sales or use taxes, which they will pay when making purchases of material or subcontractor's services.

10. **LEE COUNTY BID PROTEST PROCEDURE**

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

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

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

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

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

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

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

The Formal Written Protest shall contain the following:

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

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

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

evaluate the facts and merits of the Protest: and (3) to make a determination whether to accept or reject the Protest.

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

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

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

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

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

11. **PUBLIC ENTITY CRIME**

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the County; may not be awarded or perform works as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$15,000.00 for a period of 36 months from the date of being placed on the convicted vendor list.

12. **QUALIFICATION OF QUOTERS** (unless otherwise noted)

Quotes will be considered only from firms normally engaged in the sale and distribution or provision of the services as specified herein. Quoters 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 is satisfactory, and reserves the right to reject quotes where evidence submitted or investigation and evaluation indicates an inability of the quoter to perform.

13. **MATERIAL SAFETY DATA SHEETS**

In accordance with Chapter 443 of the Florida Statutes, it is the vendor's responsibility to provide Lee County with Materials Safety Data Sheets on quoted materials, as may apply to this procurement.

14. **MISCELLANEOUS**

If a conflict exists between the General Conditions and the detailed specifications, then the detailed specifications shall prevail.

15. **WAIVER OF CLAIMS**

Once this contract expires, or final payment has been requested and made, the awarded contractor shall have no more than 30 days to present or file any claims against the County concerning this contract. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this agreement.

16. **AUTHORITY TO PIGGYBACK**

It is hereby made a precondition of any quote and a part of these specifications that the submission of any quote in response to this request constitutes a quote made under the same conditions, for the same price, and for the same effective period as this quote, to any other governmental entity.

17. **COUNTY RESERVES THE RIGHT**

a) **State Contract**

If applicable, the County reserves the right to purchase any of the items in this quote from State Contract Vendors if the prices are deemed lower on State Contract than the prices we receive in this quotation.

b) **Any Single Large Project**

The County, in its sole discretion, reserves the right to separately quote any project that is outside the scope of this quote, whether through size, complexity, or dollar value.

c) **Disadvantaged Business Enterprises**

The County, in its sole discretion, reserves the right to purchase any of the items in this quote from Disadvantage Business Enterprise vendor if the prices are determined to be in the best interest of the County, to assist the County in the fulfillment of any of the County's grant commitments to federal or state agencies.

The County further reserves the right to purchase any of the items in this quote from DBE's to fulfill the County's state policy toward DBE's as outlined in County Ordinance 88-45 and 90-04, as amended.

d) **Anti-Discrimination**

The vendor for itself, its successors in interest, and assignees, as part of the consideration there of covenant and agree that:

In the furnishing of services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

The vendor will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The vendor will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Vendor agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

Vendor will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the vendor shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to

ascertain compliance. The vendor shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the vendor is in the exclusive possession of another who fails or refuses to furnish this information, the vendor shall so certify to the County its effort made toward obtaining said information. The vendor shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this contract.

In the event of breach of any of the above anti-discrimination covenants, the County shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the vendor or canceling, terminating, or suspending this contract, in whole or in part.

Additionally, the vendor may be declared ineligible for further County contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.

The vendor will send to each union, or representative of workers with which the vendor has a collective bargaining agreement or other contract of understanding, a notice informing the labor union of worker's representative of the vendor's commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

The vendor will include the provisions of this section in every subcontract under this contract to insure its provisions will be binding upon each subcontractor. The vendor will take such actions with respect to any subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

18. **AUDITABLE RECORDS**

The awarded vendor shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and Lee County reserves the right to determine the record-keeping method required in the event of non-conformity. These records shall be maintained for two years after completion of the project and shall be readily available to County personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.



19. **DRUG FREE WORKPLACE**

Whenever two or more quotes/proposals, which are equal with respect to price, quality and service, are received for the procurement of commodities or contractual services, a quote/proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall comply with the requirements of Florida Statutes 287.087.

20. **REQUIRED SUBMITTALS**

Any submittals requested should be returned with the quote response. This information may be accepted after opening, but no later than 10 calendar days after request.

21. **TERMINATION**

Any agreement as a result of this quote 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.

The Purchasing Director may immediately terminate any agreement as a result of this quote for emergency purposes, as defined by the Lee County Purchasing and Payment Procedure Manual.

Any vendor who has voluntarily withdrawn from a formal quote/proposal 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 of Lee County Commissioners for waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by Purchasing.

22. **CONFIDENTIALITY**

Vendors should be aware that all submittals (including financial statements) provided with a quote/proposal are subject to public disclosure and will **not** be afforded confidentiality.

23. **ANTI-LOBBYING CLAUSE**

All firms are hereby placed on formal notice that neither the County Commissioners nor candidates for County Commission, nor any employees from the Lee County Government, Lee County staff members, nor any members of the Qualification/Evaluation Review Committee are to be lobbied, either individually

or collectively, concerning this project. Firms and their agents who intend to submit qualifications, or have submitted qualifications, for this project are hereby placed on *formal notice* that they are *not* to contact County personnel for such purposes as holding meetings of introduction, meals, or meetings relating to the selection process outside of those specifically scheduled by the County for negotiations. Any such lobbying activities may cause immediate disqualification for this project.

24. INSURANCE (AS APPLICABLE)

Insurance shall be provided, per the attached insurance guide. Upon request, an insurance certificate complying with the attached guide may be required prior to award.

LEE COUNTY, FLORIDA  
PROPOSAL QUOTE FORM  
FOR REMANUFACTURED ENGINES FOR LEE TRAN

DATE SUBMITTED: \_\_\_\_\_

VENDOR NAME: \_\_\_\_\_

TO: The Board of County Commissioners  
Lee County  
Fort Myers, Florida

Having carefully examined the "General Conditions", and the "Detailed Specifications", all of which are contained herein, the Undersigned proposes to furnish the following which meet these specifications:

The undersigned acknowledges receipt of Addenda numbers: \_\_\_\_\_

**FACTORY REMANUFACTURED ENGINE ONLY – NO SUBSTITUTE**

**NOTE: THE REMANUFACTURED ENGINES SPECIFIED SHALL BE PURCHASED WITH A CORE EXCHANGE ON A ONE FOR ONE BASIS. DO NOT INCLUDE ANY CORE CHARGES IN YOUR QUOTED PRICES.**

1.) REMANUFACTURED DETROIT DIESEL \$ \_\_\_\_\_ EACH  
RELIABILT SERIES 40E/280 HP ENGINE  
OR EQUIVALENT FOR USE IN 2001 29'  
GILLIG LOW FLOOR BUSES  
ESTIMATED QUANTITY – 10  
(LEE COUNTY COMMODITY CODE #55730)

1a.) COST PER ENGINE LISTED IN ITEM #1 \$ \_\_\_\_\_ EACH  
(ABOVE) FOR PROGRAMMING THE  
ELECTRONIC CONTROL MODULE

2.) REMANUFACTURED DETROIT DIESEL \$ \_\_\_\_\_ EACH  
RELIABILT 50/275 HP 890FTL, OR EQUIVALENT  
FOR USE IN NEW FLYER BUSES  
ESTIMATED QUANTITY – 12  
(LEE COUNTY COMMODITY CODE #55728)

2a.) COST PER ENGINE LISTED IN ITEM #2 \$ \_\_\_\_\_ EACH  
(ABOVE) FOR PROGRAMMING THE  
ELECTRONIC CONTROL MODULE

**GRAND TOTAL:** \$ \_\_\_\_\_

**NOTE: QUANTITIES GIVEN ARE ESTIMATES ONLY. NO GUARANTEES ARE EXPRESSED OR IMPLIED.**

**OPTION A:**

EXTENDED WARRANTY FOR ITEM #1 ABOVE \$ \_\_\_\_\_  
100% OF ALL PARTS AND LABOR FOR  
FIVE (5) YEARS OR 300,000 MILES – WHICH  
EVER COMES FIRST

**OPTION B:**

EXTENDED WARRANTY FOR ITEM #2 ABOVE \$ \_\_\_\_\_  
100% OF ALL PARTS AND LABOR FOR  
FIVE (5) YEARS OR 300,000 MILES – WHICH  
EVER COMES FIRST

ALL PRICING SHALL INCLUDE PICKUP AND DELIVERY

TO BE STARTED WITHIN \_\_\_\_\_ CALENDAR DAYS AFTER RECEIPT OF  
AWARD AND PURCHASE ORDER.

WILL YOU DELIVER WITH YOUR OWN VEHICLES AS OPPOSED TO COMMON  
CARRIER?

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

Does your firm have a location/office/facility in Lee County? YES \_\_\_\_\_  
NO \_\_\_\_\_

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

Quoters should carefully read all the terms and conditions of the specifications. Any  
representation of deviation or modification to the quote may be grounds to reject the quote.

Are there any modifications to the quote or specifications:

Yes \_\_\_\_\_ No \_\_\_\_\_

Failure to clearly identify any modifications in the space below or on a separate page may be  
grounds for the quoter being declared nonresponsive or to have the award of the quote rescinded  
by the County.

**MODIFICATIONS:**

Quoter shall submit his/her quote on the County's Proposal Quote Form, including the firm name and authorized signature. Any blank spaces on the Proposal Quote Form, qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the Quoter/Quote being declared non-responsive by the County.

ANTI-COLLUSION STATEMENT

**THE BELOW SIGNED QUOTER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS QUOTE WITH OTHER QUOTERS AND HAS NOT COLLUDED WITH ANY OTHER QUOTER OR PARTIES TO A QUOTE WHATSOEVER. NOTE: NO PREMIUMS, REBATES OR GRATUITIES TO ANY EMPLOYEE OR AGENT ARE PERMITTED EITHER WITH, PRIOR TO, OR AFTER ANY DELIVERY OF MATERIALS. ANY SUCH VIOLATION WILL RESULT IN THE CANCELLATION AND/OR RETURN OF MATERIAL (AS APPLICABLE) AND THE REMOVAL FROM THE MASTER BIDDERS LIST.**

FIRM NAME  
\_\_\_\_\_

BY (Printed):  
\_\_\_\_\_

BY (Signature):  
\_\_\_\_\_

TITLE:  
\_\_\_\_\_

FEDERAL ID # OR  
S.S.# \_\_\_\_\_

ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_

PHONE NO.: \_\_\_\_\_

FAX NO.: \_\_\_\_\_

CELLULAR PHONE/PAGER NO.: \_\_\_\_\_

LEE COUNTY OCCUPATIONAL LICENSE NUMBER: \_\_\_\_\_

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

REVISED: 7/28/00

Revised: 11/20/01

**LEE COUNTY, FLORIDA  
DETAILED SPECIFICATIONS FOR  
REMANUFACTURED ENGINES FOR LEE TRAN**

SCOPE

The purpose of this quote is to obtain services for factory remanufacturing, as applicable, of Detroit diesel engines for Lee County Transit (Lee Tran).

The factory remanufacturing will be handled on a one for one exchange basis (The remanufactured engines specified shall be purchased with a core exchange on a one for one basis. Do not include any core charges in your quoted prices. Lee County Transit will return to the awarded vendor engine cores with no holes in the block and no damage to external pieces. The engine cores will not be disassembled and have no visible damage. There will be no visible broken pieces or have any holes in the block. The engine core furnished to the vendor will be the same series of engine as purchased less any specialized bus accessories).

**NOTE: In the space provided on Attachment #1, please furnish the name and address of the local warranty provider.**

The quantities in this quote are estimated. The amount is based on the best information available, but no minimum is guaranteed.

TERM OF QUOTE

This quote shall be in effect for two (2) years, or until new quotes are taken and awarded. This quote or any portion thereof, has the option of being renewed for three (3) additional one (1) year periods, upon mutual agreement of both parties, under the same terms and conditions.

FEDERAL CLAUSES

The attached Appendix A, Special Conditions - Federal Transit Administration Mandatory Contract Clauses #2, is a part of this specification and shall take precedence over the Detailed Specifications.

REQUEST FOR APPROVED EQUALS

Contractors may submit approved equals for any of the specifications contained herein. Any equals or substitutions must be detailed on Attachment #2 and submitted to Lee County Purchasing for review and approval. A form must be completed for each specification substitution.

Requests for approved equals should be submitted to Lee County Purchasing as soon as possible; however all requests for approved equals must be received by Lee County Purchasing no later than February 8, 2002 at 12:00 noon est.

DESIGNATED CONTACT

The awarded vendor shall appoint a person or persons to act as a primary contact with Lee County. This person or back up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.

BASIS OF AWARD

The basis of award for this quote will be overall low quoter from the grand total on Page 13 meeting specifications.

Lee County reserves the right to reject unbalanced quotes.

CONTACT PERSONS

The contact person for the awarded contractor throughout the term of the quote will be Larry Ralston, Transit Manager, (941)277-5008, or his authorized representative.

GENERAL REQUIREMENTS

- A) This specification is for the purchase of remanufactured Detroit Diesel Reliablilt Series 40E/280 hp, or equivalent, and Detroit Diesel Reliablilt Series 50 engines, or equivalent. The Series 40E/280 hp will be placed in the 2001 29' Gillig Low Floor Bus. The Series 50 will be placed in 1995 and 1997 model New Flyer 35' and 40' buses.
- B) The core engine shall be complete with all components this specification requires of the remanufactured engine. If a component is missing from the core engine, the contractor shall notify Lee Tran in writing, and it may be shipped to the contractor within five working days after notification. This shall not affect the required delivery time.
- C) The remanufactured engine(s)'s price shall include all parts normally replaced, dynamometer testing, cleaning, repairing and/or remanufacturing, labor, and other incidentals associated with remanufacturing a Series 40, or Series 50.
- D) There shall be no extra charges or cost escalations throughout the Contract.
- E) The contractor shall furnish Lee Tran with an analysis as to the cause of engine failure. This analysis shall be sent to:  
  

**Lee County Transit**  
**10715 East Airport Road**  
**Fort Myers, Florida 33907**  
**ATTN.: Larry Ralston**  
**(941) 277-5008**
- F) The contractor shall pick up and deliver engine assemblies as a part of the Contract
- G) Lee Tran reserves the right to inspect the shop and facilities of a potential contractor to determine whether or not they are proper and conducive to good work.
- H) The contractor shall have sufficient plant capacity, machine tools, skilled labor, and shop equipment to remanufacture Detroit Diesel Series 40, and Series 50 engines to Manufacturer's specifications.

- I) The procedures followed to remanufacture engines shall be those as recommended by Detroit Diesel. Deviations from the procedures shall not be permitted.
- J) The contractor shall be held responsible for remanufacturing and repairing all items in a workmanlike and professional manner. All parts must fit and function properly when installed in Lee Tran coaches. Malfunction shall be the responsibility of the contractor.
- K) All engine parts that are defective or require replacement shall be as supplied by Detroit Diesel or OEM remanufactured.
- L) All accessories mounted on the engine other than those accessories specifically mentioned in this specification for replacement/remanufacture shall be assumed to be in working condition and shall be remounted on the remanufactured engine. Contractor shall tag all defective accessories, for return to Lee Tran with engine. Lee Tran shall be informed in writing of the defective accessory.
- M) Lee Tran may supply parts as indicated in the prepriced list at Lee Tran's discretion.
- N) The contractor shall insure the engine protection system functions properly on coaches and/or engines shipped to the contractor for engine exchange.
- O) The contractor will be held responsible for maintaining an up-to-date file of bulletins and manuals issued by Detroit Diesel regarding the Series 40, and Series 50 engines. These files shall be readily accessible to Lee Tran Inspector and contractor personnel.
- P) All engines shall be remanufactured incorporating the latest product improvements and service updates and rate as a certified engine according to EPA Standards.
- Q) Lee County reserves the right to furnish repair parts to the awarded contractor at its sole discretion.

**TECHNICAL REQUIREMENTS**

**A) IDENTIFICATION:**

- 1) Each remanufactured engine shall be identified with the remanufacturer's production number, release number, and a four-digit (month/year) date of remanufacture. Remanufacturer is to identify not only the block but also the cylinder heads, and the blower (five tags in all).
- 2) Identification tags must be permanent in nature and not be affected by grease, oil, heat, steam, or cleaning solvents.
- 3) The placement of the I.D. tags must not in any way interfere with the installation or operation of the engine and be easily visible when the engine is installed in a bus.



- 4) The original equipment serial number is not to be obliterated. If a new block is used, the serial number of the defective block is to be stamped onto the new block followed with a dash "1" to identify the assembly as having a new block. In case the defective block already has a serial number with a dash "1," the new block is to be stamped with a dash "2," and so on.
- 5) Engines shall be painted with a suitable heat-resistant engine paint. Color of paint to be used shall be Detroit Diesel Green.

**B) DYNAMOMETER TESTING:**

- 1) All engines must be run-in on a dynamometer. Each engine shall be "hot tuned." All necessary corrections or repairs must be completed before release. Series 40, and Series 50 engines shall be hot-tuned in accordance with Detroit Diesel specifications.
- 2) All performance specifications as outlined by the engine manufacturer must be met or exceeded.
- 3) Detroit Diesel dyno sheets shall be used and followed in their entirety.
- 4) Results of dynamometer run-in and testing shall be submitted for approval to LeeTran.
- 5) After testing, run-in, and tuning, the oil pan shall be dropped and cleaned. The oil pickup screen shall be cleaned. New oil shall be added.

**C) WARRANTY:**

- 1) Each remanufactured engine shall be guaranteed to be free from defects in workmanship and material under Lee Tran's normal use and service. The warranty shall be extended to progressive damage associated with poor workmanship and/or failed parts. The warranty shall commence from the time the remanufactured engine is placed in the coach and the coach is placed in service by Lee Tran and shall continue for twelve (12) months (unlimited miles). Engine warranty will cover 100% of all parts and labor. Lee Tran shall provide the contractor the initial service date upon request.
- 2) The warranty shall include shipping to and from Lee Tran's respective garage; the cost to remove the engine from a bus; time (Lee Tran's actual labor) and material to remanufacture the engine; and the cost to reinstall the engine in a bus, regardless of whether or not the contractor originally removed and replaced the engine in a bus.
- 3) The service time on a remanufactured engine under warranty shall cease when the contractor is informed of an engine related failure. Service shall commence again when the coach is put back in service.
- 4) The contractor shall be responsible for the entire assembly even if part or all of the engine assembly has been subcontracted. The contractor shall be

responsible for ALL warranty claims filed by Lee Tran. The contractor shall act as an agent for the part manufacturer and shall agree to reimburse for claims promptly prior to its reimbursement from the manufacturer, if necessary.

- 5) Lee Tran personnel may replace components under warranty with the mutual agreement of the contractor. Lee Tran shall be reimbursed at the rate of \$35.00 per hour. The reimbursement check shall be sent to: Lee Tran, 10715 East Airport Road, Fort Myers, Florida, 33907. Checks shall be due within thirty (30) days after receipt of claim. The check transmittal letter shall reference the warranty claim, date of claim, coach number, if applicable, and engine serial number.
- 6) In the event Lee Tran has two or more buses out of service due to warrantable defects and the contractor does not respond within 24 hours, Lee Tran may perform this repair and bill the contractor as described in above paragraph. The contractor shall be responsible for reimbursement to Lee Tran for all troubleshooting by Lee Tran or another vendor and repairs of defective items.

**D) TEST AND INSPECTION:**

- 1) All engines shall be tested and inspected by the contractor to assure they comply with this specification.
- 2) Authorized representatives of Lee Tran shall have the right and be at liberty to inspect, with the contractor's cooperation, all materials and workmanship under this specification.
- 3) Inspection during the remanufacture, acceptance of delivery, or the placing of units in operation shall not release the contractor from liability and expenses of repair or replacement due to faulty workmanship, or faulty materials appearing after delivery.
- 4) Lee Tran reserves the right and from time to time will perform mechanical audits on units remanufactured by the contractor that are found to be defective. The contractor shall be notified in sufficient time to have a representative on location during this audit, if they so wish.
- 5) Defective units which are disassembled and are found to be non-compliant with this specification shall be returned to the contractor for remanufacturing to specification at no cost to Lee Tran. Any information collected during these audits shall be used as an aid for resolution of warranty or other contractual items.
- 6) Authorized representatives of Lee Tran shall have access at all times to those parts of the contractor's facility(ies) concerned with supplying materials or parts for these engines for the purpose of inspecting materials and workmanship during the progress of the work and/or testing.

# APPENDIX A

**ATTACHMENT #1**

Please furnish the name and address of local warranty provider as follows:

Company name: \_\_\_\_\_

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

City/State: \_\_\_\_\_

Zip Code \_\_\_\_\_

Name of Contact person: \_\_\_\_\_

Telephone Number: (     ) \_\_\_\_\_

**ATTACHMENT #2 – REQUEST FOR APPROVED EQUAL**

**LEE TRAN – LEE COUNTY, FL**

PERSON SUBMITTING REQUEST \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

COMPANY \_\_\_\_\_

PAGE NUMBER \_\_\_\_\_

PARAGRAPH \_\_\_\_\_

PARAGRAPH TITLE \_\_\_\_\_

**REQUEST FOR APPROVED EQUAL (PROVIDE DETAILED EXPLANATION)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED \_\_\_\_\_  
(VENDOR)

**LEE COUNTY TRANSIT**

APPROVED \_\_\_\_\_

DENIED \_\_\_\_\_

SIGNED \_\_\_\_\_  
(LEE TRAN)

**GUIDE "F"**

**INSURANCE REQUIREMENTS FOR SERVICE**

**Your certificate of insurance must meet the following requirements**

**Requirement #1:** The Lee County Board of County Commissioners shall be added as an additional insured on the comprehensive general liability policy.

**Requirement #2:** Certificate holder shall be listed as follows:

**Lee County Board of County Commissioners  
C/O Lee County Purchasing  
P.O. Box 398  
Fort Myers, FL 33902**

**Requirement #3:** Each policy shall provide a 30 day notification clause in the event of cancellation, non-renewal or adverse change.

This Standard Insurance Language is to be utilized for Contracts, or Agreements meeting these circumstances. Certain conditions and/or exposures may not relieve or limit the liability of the vendor. These requirements may not be sufficient or adequate to protect the vendor's interests or liabilities, but are merely minimums.

Circumstances

Project is for vendors providing a service such as but not limited to lawn maintenance, janitorial, painting, carpentry, moving, equipment service or repair.

Worker's Compensation

Does not apply.

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability and broad form property damage exposures with minimum limits of:

\$100,000 bodily injury per person (BI)  
\$300,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD) or  
\$300,000 combined single limit (CSL) of BI and PD

Business Automobile Liability

Coverage shall apply to owned vehicles and/or hired and non-owned vehicles and employee non-ownership use with minimum limits of:

\$100,000 bodily injury per person (BI)  
\$300,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD) or  
\$300,000 combined single limit (CSL) of BI and PD

Garagekeeper's Liability

Coverage shall apply to damage to property owned by Lee County in the care, custody, and control of the Quoter's facility, with the minimum amount of coverage equal to the actual cash value of the unit(s) left in the facility's care.

**Note: A "Garage Policy" may provide the General, Automobile, and Garagekeeper's Liability coverages in one policy.**

Certificate of Insurance

An original hand signed certificate shall be on file with and approved by the Lee County Risk Management Office prior to the commencement of any work activities.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be on file with Risk Management at least 15 days prior to the expiration date.

Revised 10/18/00

LEE COUNTY PURCHASING SERVICES - BIDDERS CHECK LIST

**IMPORTANT:** Please read carefully and return with your bid proposal.  
Please check off each of the following items as the necessary action is completed:

- 1. The Quote has been signed.
- 2. The Quote prices offered have been reviewed.
- 3. The price extensions and totals have been checked.
- 4. The original (must be manually signed) and 2 copies of the quote have been submitted.
- 5. Three (3) identical sets of descriptive literature, brochures and/or data (if required) have been submitted under separate cover.
- 6. All modifications have been acknowledged in the space provided.
- 7. All addendums issued, if any, have been acknowledged in the space provided.
- 8. Erasures or other changes made to the quote document have been initialed by the person signing the quote.
- 9. Bid Bond and/or certified Check, (if required) have been submitted with the quote in amounts indicated.
- 10. Any Delivery information required is included.
- 11. The mailing envelope has been addressed to:
 

Lee County Purchasing Services	or	Lee County Purchasing
P.O. Box 398		3434 Hancock Bridge Pkwy 3 <sup>rd</sup> FL
Ft. Myers, FL 33902-0398		N. Ft. Myers, FL 33903
- 12. The mailing envelope **MUST** be sealed and marked with:
  - Quote Number
  - Opening Date and/or Receiving Date
- 13. The quote will be mailed or delivered in time to be received no later than the specified opening date and time. (Otherwise quote cannot be considered or accepted.)
- 14. If submitting a "NO BID" please write quote number here \_\_\_\_\_ and check one of the following:
  - Do not offer this product  Insufficient time to respond.
  - Unable to meet specifications (why)
  - Unable to meet bond or insurance requirement.
  - Other: \_\_\_\_\_

Company Name and Address:

\_\_\_\_\_

\_\_\_\_\_



**LEE COUNTY TRANSIT**  
**FEDERAL TRANSIT ADMINISTRATION**  
**Grant Procurement Clause Package #2**  
**(Goods, Services and Construction)**  
Revised January 28, 2002

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## **1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. §5331**

**49 CFR Parts 653 and 654**

### **Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

### **Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Fly America Requirements** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients 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.

## **2. BUY AMERICA REQUIREMENTS**

**49 U.S.C. 5323(j)**

**49 CFR Part 661**

### **Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

### **Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient (Lee County Transit) the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**BUY AMERICA CERTIFICATION**

**(Required for contracts greater than \$100,000)**

**Certification requirement for procurement of steel, iron, or manufactured products.**

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### **3. CHARTER BUS REQUIREMENTS**

**49 U.S.C. 5323(d)**

**49 CFR Part 604**

#### **Applicability to Contracts**

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### **3. SCHOOL BUS REQUIREMENTS**

**49 U.S.C. 5323(F)**

**49 CFR Part 605**

#### **Applicability to Contracts**

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**School Bus Operations** - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

#### **4. CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. 1241  
46 CFR Part 381

##### **Applicability to Contracts**

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

##### **Flow Down**

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. 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. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **5. SEISMIC SAFETY REQUIREMENTS**

42 U.S.C. 7701 et seq. 49  
CFR Part 41

##### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

##### **Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this 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.

## **6. ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.  
49 CFR Part 18

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Energy Conservation** - The contractor agrees to comply with 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.

## **7. CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

### **Applicability to Contracts**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

### **Flow Down**

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Clean Water** - (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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.



**10. LOBBYING**  
**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

**Applicability to Contracts**

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Mandatory Clause/Language**

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.**

**APPENDIX A, 49 CFR PART 20—CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned \_\_\_\_\_ [Contractor] 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 making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## 11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17

### Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

<b>Contract Characteristics</b>	<b>Operational Service Contract</b>	<b>Turnkey</b>	<b>Construction</b>	<b>Architectural Engineering</b>	<b>Acquisition of Rolling Stock</b>	<b>Professional Services</b>
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None  Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None  None unless non-competitive award	None  None unless non-competitive award	None  None unless non-competitive award
b. Contracts above \$100,000/Capital Projects	None unless <sup>1</sup> non-competitive award					
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>  Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes  Yes	Yes  Yes	Yes  Yes	Yes  Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

## **12. FEDERAL CHANGES**

### **49 CFR Part 18**

#### **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

#### **Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** - 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 Agreement (Form FTA MA (7) dated October, 2000) 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.

## **13. BONDING REQUIREMENTS**

### **Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also

satisfy the requirement for a bond.

**Flow Down**

Bonding requirements flow down to the first tier contractors.

**Bid Bond Requirements (Construction )**

(a) Bid Security

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

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Lee County 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 Lee Coounty.

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 Lee County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Lee County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Lee County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense Lee County for the damages occasioned by default, then the undersigned bidder agrees to indemnify Lee County and pay over to Lee County the difference between the bid security and Lee County's total damages, so as to make Lee County whole.

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

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

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Lee County determines that a lesser amount would be adequate for the protection of the Lee County.
2. Lee County 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. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

**(b) Payment bonds**

1. 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 one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, Lee County may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

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

(a) The following situations may warrant a performance bond:

1. Lee County 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).

2. A contractor sells assets to or merges with another concern, and Lee County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Lee County determines that a lesser amount would be adequate for the protection of Lee County.

2. Lee County 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. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in Lee County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of 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 one half million if 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. Lee County shall determine the amount of the advance payment bond necessary to protect Lee County.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. Lee County shall determine the amount of the patent indemnity to protect the Lee County.

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to Lee County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Lee County, 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 Lee County 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 Lee County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Lee County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Lee County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).



## **14. CLEAN AIR**

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

### **Applicability to Contracts**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

### **Flow Down**

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

**Clean Air - (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 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **15. RECYCLED PRODUCTS**

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

### **Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

### **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

**Recovered Materials -** 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 CFR Part 247.

**16. DAVIS-BACON ACT**  
**40 USC § 167; 276a -276a-5 (1998)**  
**29 CFR § 5 (1999)**

**Applicability to Contract**

Construction contracts over \$2,000.00

**Flow Down**

Applies to third party contractors and subcontractors

**(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 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 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 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 CFR 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 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:

(1) 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.

(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, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 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)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Lee County Transit 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 this 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, Lee County Transit 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** - (i) 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Lee County Transit 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 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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 29 CFR 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 CFR 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 (a)(3)(ii)(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 CFR 5.12.

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

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 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 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR 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 this 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 CFR 5.12(a)(1).

(ii) No part of this 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 CFR 5.12(a)(1).

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

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**40 U.S.C. §§ 327 -333 (1999)**

**29 C.F.R. § 5 (1999)**

**29 C.F.R. § 1926 (1998)**

### **Applicability to Contracts**

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. § 5.5(a).)

**Section 107** of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **Flow Down**

Applies to third party contractors and subcontractors.

### **Model Clauses/Language**

#### **Pursuant to Section 102 (Overtime):**

( These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)



**(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 (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 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** - The (write in the name of the grantee or recipient ) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**(4) Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

(Section 102 nonconstruction contracts should also have the following provision:)

**(5) Payrolls and basic records** - (i) 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 CFR 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.

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**Section 107 (OSHA):**

(This section is applicable to construction contracts only)

**Contract Work Hours and Safety Standards Act - (i)** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

**(ii)Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**18. COPELAND ANTI-KICKBACK ACT**

40 U.S.C. § 276c (1999)

29 C.F.R. § 3 (1999)

29 C.F.R. § 5 (1999)

**Applicability to Contracts**

All construction contracts in excess of \$2,000.

**Flow Down**

Applicable to all third party contractors and subcontractors.

**Compliance with Copeland Act requirements** - The contractor shall comply with the

requirements of 29 CFR part 3, which are incorporated by reference in this contract. Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

## **19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

Applicable to all contracts.

### **Flow Down**

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **No Obligation by the Federal Government.**

(1) The Purchaser and 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 by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) 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.

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

### **AND RELATED ACTS**

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

### **Applicability to Contracts**

These requirements are applicable to all contracts.

### **Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

### **Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and

accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in 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.

## **21. TERMINATION**

### **49 U.S.C. Part 18 FTA Circular 4220.1D**

#### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**a. Termination for Convenience (General Provision)** Lee County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. 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 Lee County to be paid the Contractor. If the Contractor has any property in its possession belonging to Lee County, the Contractor will account for the same, and dispose of it in the manner Lee County directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the

Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in 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 it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** Lee County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time, not less than ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Lee County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Lee County setting forth the nature of said breach or default, Lee County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Lee County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that Lee County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Lee County shall not limit Lee County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** Lee County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this 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 Lee County.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of

this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Lee County goods, the Contractor shall, upon direction of Lee County, protect and preserve the goods until surrendered to the Lee County or its agent. The Contractor and Lee County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 Lee County.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lee County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lee County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lee County in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Lee County, acts of another Contractor in the performance of a contract with the Lee County, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within ten (10) days from the beginning of any delay, notifies the Lee County in writing of the causes of delay. If in the judgment of Lee County, the delay is excusable, the time for completing the work shall be extended. The judgment of Lee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** Lee County may terminate this contract in whole or in part, for Lee County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer

all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of Lee County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Lee County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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 the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** Lee County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of Lee County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Lee County, or property supplied to the Contractor by Lee County. If the termination is for default, Lee County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lee County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lee County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Lee County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Lee County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29 Executive Order 12549**

#### **Applicability to Contracts**

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts

over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

### **Flow Down**

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

### **Instructions for Certification**

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



9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Lee County may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**23. PRIVACY ACT**

**5 U.S.C. 552**

**Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**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,

5 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.

## **24. CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

### **Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 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.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1D**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Lee County. 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 furnishes a written appeal to the Lee County Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Lee County Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by Lee County, the Contractor shall continue performance under this 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Lee County 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 the State of Florida, in which Lee County is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the

rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Lee County 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 thereunder, except as may be specifically agreed in writing.

## **26. PATENT AND RIGHTS IN DATA**

**37 CFR Part 401  
49 CFR Parts 18 and 19**

### **Applicability to Contracts**

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

### **Flow Down**

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) 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.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 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 (2)(b)1 and (2)(b)2 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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) 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, the Purchaser 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 (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser 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 the Purchaser 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 the Purchaser 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.

(e) 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.

(f) Data developed by the Purchaser 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 Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) 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.

(3) 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.), the Purchaser 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.

(4) 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.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) **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 Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes 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, individual), the Purchaser 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.

(3) 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.

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215

### **Applicability to Contracts**

The Transit Employee Protective Provisions apply to each contract for transit operations

performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

### **Flow Down**

These provisions are applicable to all contracts and subcontracts at every tier.

(a) **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 this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL 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. DOL to FTA applicable to the FTA Recipient'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. DOL letter. The requirements of this subsection (1), 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 (b) and (c) of this clause.

(b) **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 the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project 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. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) **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. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

The requirements of this section apply only when specified here or as prescribed within any other terms of the applicable contract documents.

## **29. STATE AND LOCAL LAW DISCLAIMER**

### **Applicability to Contracts**

This disclaimer applies to all contracts.

### **Flow Down**

The Disclaimer has unlimited flow down.

**State and Local Law Disclaimer** - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

## **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1D**

### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (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 4220.1D, dated April 15, 1996, 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 Lee County requests which would cause Lee County Transit to be in violation of the FTA terms and conditions.

## **31. DRUG AND ALCOHOL TESTING**

### **49 U.S.C. §5331**

### **49 CFR Parts 653 and 654**

### **Applicability to Contracts**

The Drug and Alcohol testing provisions apply to Operational Service Contracts.



### **Flow Down Requirements**

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

### **Introduction**

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

### **Drug and Alcohol Testing**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Lee County Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 1st and to submit annually the Management Information System (MIS) reports before March 1st to:

**Transit Director  
Lee County Transit  
10715 E. Airport Road  
Ft. Myers, FL 33907**

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. The Contractor agrees further to (a) submit before 14 days prior to service start up a copy of the Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: the possible selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.



**LEE COUNTY**  
SOUTHWEST FLORIDA

PROJECT NO.: Q-020168

OPEN DATE: FEBRUARY 19, 2002

AND TIME: 2:30 P.M.

PRE-BID DATE: NONE

AND TIME: N/A

LOCATION: N/A

"JIMMY" DIESEL

R FEB 1 2002 RECEIVE D

# REQUEST FOR QUOTATIONS

## TITLE:

REMANUFACTURED ENGINES FOR LEE TRAN

REQUESTER: LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
DIVISION OF PURCHASING  
3434 HANCOCK BRIDGE PKWY, 3<sup>RD</sup> FLOOR  
P.O. BOX 398  
FORT MYERS, FL 33902-0398

BUYER: BOB FRANCESCHINI, C.P.M., CPPB  
PURCHASING AGENT  
PHONE NO.: (941) 689-7385



LEE COUNTY  
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: \_\_\_\_\_

Bob Janes  
District One

February 8, 2002

Douglas R. St. Cerny  
District Two

Formal Quote No.: Q-020168

Ray Judah  
District Three

Andrew W. Coy  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

James G. Yaeger  
County Attorney

Diana M. Parker  
County Hearing  
Examiner

LEE COUNTY ADDENDUM NUMBER ONE  
TO THE SPECIFICATIONS FOR  
REMANUFACTURED ENGINES FOR LEE TRAN

QUOTERS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE PROPOSAL QUOTE FORM  
(PAGE 13).

NOTE: THE OPENING DATE AND TIME FOR THIS PROPOSAL HAS BEEN CHANGED TO  
FEBRUARY 26, 2002 @ 2:30 P.M.

The original specifications and other contract documents are amended as noted below:

It has come to Lee County's attention that the remanufactured Detroit Diesel Reliabl Series 40E/280 HP is an engine that cannot be realistically quoted at this time. Therefore, Quoters are directed to do the following:

\*Page 13 of the quote package: Please "No Bid" Items 1. and 1a.


\*Page 14 of the quote package: Please "No Bid" Option A.

\*Remaining pages of the quote package: Please ignore all references to the "remanufactured Detroit Diesel Reliabl Series 40E/280 HP" engine.

\*The basis of award will remain the overall low quoter from the grand total on page 13 meeting specifications; however, the grand total will now be based on items 2. and 2a.

If there are any questions regarding this addendum, please contact Bob Franceschini at (941) 689-7385.

DIVISION OF PURCHASING SERVICES

  
Robert D. Franceschini, C.P.M., CPPB  
Purchasing Agent

cc: Steven Myers/Lee Tran  
Susan Riley/Lee Tran  
Larry Ralston/Lee Tran  
Lisa Pierce/Clerk's Office Minutes

"JIMMY" DIESEL

R FEB 14 2002  
RECEIVED

WPG / RH / TE / JW

**GENERAL CONDITIONS**

Sealed Quotations will be received by the DIVISION OF PURCHASING, until 2:30pm on the date specified on the cover sheet of this "Request for Quotations", and opened immediately thereafter by the Purchasing Director or designee.

Any question regarding this solicitation should be directed to the Buyer listed on the cover page of this solicitation, or by calling the Division of Purchasing at (941) 689-7385.

1. **SUBMISSION OF QUOTE:**

- a. Quotations shall be sealed in an envelope, and the outside of the envelope should be marked with the following information:
  1. Marked with the words "Sealed Quote"
  2. Name of the firm submitting the quotation
  3. Title of the quotation
  4. Quotation number
  
- b. The Quotation shall be submitted in triplicate as follows:
  1. The original consisting of the Lee County quotes forms completed and signed.
  2. A copy of the original quote forms for the Purchasing Director.
  3. A second copy of the original quote forms for use by the requesting department.
  
- c. The following should be submitted along with the quotation in a separate envelope. This envelope should be marked as described above, but instead of marking the envelope as "Sealed Quote", please indicate the contents; i.e., literature, drawings, submittals, etc. This information should be submitted in duplicate.
  1. Any information (either required or in addition to that asked for by the specifications) necessary to analyze your quotation; i.e., required submittals, literature, technical data, financial statements.
  2. Warranties and guarantees against defective materials and workmanship.
  
- d. **ALTERNATE QUOTE:** If the vendor elects to submit more than one quote, then the quotes should be submitted in separate envelopes and marked as indicated above. The second, or alternate quote should be marked as "Alternate".

- e. **QUOTES RECEIVED LATE:** It is the quoter's responsibility to ensure that his quote is received by the Division of Purchasing Services prior to the opening date and time specified. Any quote received after the opening date and time will be promptly returned to the quoter unopened. Lee County will not be responsible for quotes received late because of delays by a third party delivery service; i.e., U.S. Mail, UPS, Federal Express, etc.
- f. **QUOTE CALCULATION ERRORS:** In the event there is a discrepancy between the total quoted amount or the extended amounts and the unit prices quoted, the unit prices will prevail and the corrected sum will be considered the quoted price.
- g. **PAST PERFORMANCE:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.).
- h. **WITHDRAWAL OF QUOTE:** No quote may be withdrawn for a period of 90 days after the scheduled time for receiving quotes. A quote may be withdrawn prior to the quote-opening date and time. Such a request to withdraw should be made in writing to the Purchasing Director, who will approve or disapprove of the request.
- i. **COUNTY RESERVES THE RIGHT:** The County reserves the right to waive minor informalities in any quote; to reject any or all quotes with or without cause; and/or to accept the quote that in its judgment will be in the best interest of the County of Lee.
- j. **EXECUTION OF QUOTE:** All quotes shall contain the signature of an authorized representative of the quoter in the space provided on the quote proposal form. All quotes shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the quote shall be initialed.

2. **ACCEPTANCE**

The materials and/or services delivered under the quote **shall** remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted to the County and is to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. In the event the materials and/or services supplied to the County are found to be defective or do not conform to specifications, the County reserves the right to cancel the order upon written notice to the seller and return such product to the seller at the seller's expense.

3. **SUBSTITUTIONS**

Whenever in these specifications a brand name or make is mentioned, it is the intention of the County only to establish a grade or quality of materials and not to rule out other brands or makes of equality. However, if a product other than that specified is quote, it is the vendor's responsibility to name such product with his quote and to prove to the County that said product is equal to the product specified. Lee County shall be the sole judge as to whether a product being offered by the quoter is actually equivalent to the one being specified by the detailed specifications. (Note: This paragraph does not apply when it is determined that the technical requirements of this solicitation require only a specific product as stated in the detailed specifications.

4. **RULES, REGULATIONS, LAWS, ORDINANCES & LICENSES**

The awarded vendor shall observe and obey all laws, ordinances, rules, and regulations, of the federal, state, and local government, which may be applicable to the supply of this product or service.

- a. Occupational License – Vendor shall submit within 10 calendar days after request.
- b. Specialty License(s) – Vendor shall possess at the time of the opening of the quote all necessary permits and/or license required for the sale of this product and/or service and upon the request of the County provide copies of licenses and/or permits within 10 calendar days after request.

5. **RECYCLED PRODUCTS**

It is the Lee County Board of County Commissioners' stated policy objective to "Ensure all departments are aware of the availability of recycled products..." (Administrative Code #AC-10-4). In an effort to provide the utmost opportunity for the use of recycled products by Lee County, vendors should list on their letterhead, all necessary information regarding any applicable recycled products they have available. Recycled products should meet all other specifications listed and have a minimum of 50%-recycled content. Whenever fiscally feasible, available recycled products will be purchased.

6. **WARRANTY/GUARANTY** (unless otherwise specified)

All materials and/or services furnished under this quote shall be warranted by the vendor to be free from defects and fit for the intended use.

7. **PRE-BID CONFERENCE**

A pre-bid conference will be held at the location, date, and time specified on the cover of this solicitation. Pre-bid conferences are generally non-mandatory, but it is highly recommended that everyone planning to submit a quote attend.

In the event a pre-bid conference is classified as mandatory, it will be so specified on the cover of this solicitation and it will be the responsibility of the quoter to ensure that they are represented at the pre-bid. Only those quoters who attend the pre-bid conference will be allowed to quote on this project.

8. **BIDDERS LIST MAINTENANCE**

A bidder should respond to "Request for Quotations" in order to be kept on the Bidder's List. Failure to respond to three different "request for quotations" may result in the vendor being removed from the Bidder's List. A bidder may do one of the following, in order to respond properly to the request:

- a. Submission of a quotation prior to the quote receipt deadline.
- b. Submission of a "no bid" notice prior to the quote receipt deadline.

9. **LEE COUNTY PAYMENT PROCEDURES**

All vendors are requested to mail one original invoice and one invoice copy to:

Lee County Finance Department  
Post Office Box 2238  
Fort Myers, FL 33902-2238

All invoices will be paid as directed by the Lee County payment procedure unless otherwise differently stated in the detailed specification portion of this quote.

Lee county will not be liable for request of payment deriving from aid, assistance, or help by any individual, vendor, quoter, or bidder for the preparation of these specifications.

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 contractors or quoters should include in their quote all sales or use taxes, which they will pay when making purchases of material or subcontractor's services.

10. LEE COUNTY BID PROTEST PROCEDURE

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

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

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

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

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

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

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



The Formal Written Protest shall contain the following:

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

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

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

evaluate the facts and merits of the Protest; and (3) to make a determination whether to accept or reject the Protest.

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

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

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

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

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

11. **PUBLIC ENTITY CRIME**

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the County; may not be awarded or perform works as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$15,000.00 for a period of 36 months from the date of being placed on the convicted vendor list.

12. QUALIFICATION OF QUOTERS (unless otherwise noted)

Quotes will be considered only from firms normally engaged in the sale and distribution or provision of the services as specified herein. Quoters 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 is satisfactory, and reserves the right to reject quotes where evidence submitted or investigation and evaluation indicates an inability of the quoter to perform.

13. MATERIAL SAFETY DATA SHEETS

In accordance with Chapter 443 of the Florida Statutes, it is the vendor's responsibility to provide Lee County with Materials Safety Data Sheets on quoted materials, as may apply to this procurement.

14. MISCELLANEOUS

If a conflict exists between the General Conditions and the detailed specifications, then the detailed specifications shall prevail.

15. WAIVER OF CLAIMS

Once this contract expires, or final payment has been requested and made, the awarded contractor shall have no more than 30 days to present or file any claims against the County concerning this contract. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this agreement.

16. AUTHORITY TO PIGGYBACK

It is hereby made a precondition of any quote and a part of these specifications that the submission of any quote in response to this request constitutes a quote made under the same conditions, for the same price, and for the same effective period as this quote, to any other governmental entity.

17. COUNTY RESERVES THE RIGHT

a) State Contract

If applicable, the County reserves the right to purchase any of the items in this quote from State Contract Vendors if the prices are deemed lower on State Contract than the prices we receive in this quotation.

b) **Any Single Large Project**

The County, in its sole discretion, reserves the right to separately quote any project that is outside the scope of this quote, whether through size, complexity, or dollar value.

c) **Disadvantaged Business Enterprises**

The County, in its sole discretion, reserves the right to purchase any of the items in this quote from Disadvantage Business Enterprise vendor if the prices are determined to be in the best interest of the County, to assist the County in the fulfillment of any of the County's grant commitments to federal or state agencies.

The County further reserves the right to purchase any of the items in this quote from DBE's to fulfill the County's state policy toward DBE's as outlined in County Ordinance 88-45 and 90-04, as amended.

d) **Anti-Discrimination**

The vendor for itself, its successors in interest, and assignees, as part of the consideration there of covenant and agree that:

In the furnishing of services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

The vendor will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The vendor will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Vendor agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

Vendor will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the vendor shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to

ascertain compliance. The vendor shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the vendor is in the exclusive possession of another who fails or refuses to furnish this information, the vendor shall so certify to the County its effort made toward obtaining said information. The vendor shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this contract.

In the event of breach of any of the above anti-discrimination covenants, the County shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the vendor or canceling, terminating, or suspending this contract, in whole or in part.

Additionally, the vendor may be declared ineligible for further County contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.

The vendor will send to each union, or representative of workers with which the vendor has a collective bargaining agreement or other contract of understanding, a notice informing the labor union of worker's representative of the vendor's commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

The vendor will include the provisions of this section in every subcontract under this contract to insure its provisions will be binding upon each subcontractor. The vendor will take such actions with respect to any subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

18. **AUDITABLE RECORDS**

The awarded vendor shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and Lee County reserves the right to determine the record-keeping method required in the event of non-conformity. These records shall be maintained for two years after completion of the project and shall be readily available to County personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

19. **DRUG FREE WORKPLACE**

Whenever two or more quotes/proposals, which are equal with respect to price, quality and service, are received for the procurement of commodities or contractual services, a quote/proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall comply with the requirements of Florida Statutes 287.087.

20. **REQUIRED SUBMITTALS**

Any submittals requested should be returned with the quote response. This information may be accepted after opening, but no later than 10 calendar days after request.

21. **TERMINATION**

Any agreement as a result of this quote 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.

The Purchasing Director may immediately terminate any agreement as a result of this quote for emergency purposes, as defined by the Lee County Purchasing and Payment Procedure Manual.

Any vendor who has voluntarily withdrawn from a formal quote/proposal 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 of Lee County Commissioners for waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by Purchasing.

22. **CONFIDENTIALITY**

Vendors should be aware that all submittals (including financial statements) provided with a quote/proposal are subject to public disclosure and will not be afforded confidentiality.

23. **ANTI-LOBBYING CLAUSE**

All firms are hereby placed on formal notice that neither the County Commissioners nor candidates for County Commission, nor any employees from the Lee County Government, Lee County staff members, nor any members of the Qualification/Evaluation Review Committee are to be lobbied, either individually

or collectively, concerning this project. Firms and their agents who intend to submit qualifications, or have submitted qualifications, for this project are hereby placed on *formal notice* that they are *not* to contact County personnel for such purposes as holding meetings of introduction, meals, or meetings relating to the selection process outside of those specifically scheduled by the County for negotiations. Any such lobbying activities may cause immediate disqualification for this project.

24. INSURANCE (AS APPLICABLE)

Insurance shall be provided, per the attached insurance guide. Upon request, an insurance certificate complying with the attached guide may be required prior to award.

LEE COUNTY, FLORIDA  
PROPOSAL QUOTE FORM  
FOR REMANUFACTURED ENGINES FOR LEE TRAN

DATE SUBMITTED: 02-15-02

VENDOR NAME: Jimmy Diesel

TO: The Board of County Commissioners  
Lee County  
Fort Myers, Florida

Having carefully examined the "General Conditions", and the "Detailed Specifications", all of which are contained herein, the Undersigned proposes to furnish the following which meet these specifications:

The undersigned acknowledges receipt of Addenda numbers: 1 (one)

**FACTORY REMANUFACTURED ENGINE ONLY - NO SUBSTITUTE**

**NOTE: THE REMANUFACTURED ENGINES SPECIFIED SHALL BE PURCHASED WITH A CORE EXCHANGE ON A ONE FOR ONE BASIS. DO NOT INCLUDE ANY CORE CHARGES IN YOUR QUOTED PRICES.**

1.) REMANUFACTURED DETROIT DIESEL  
RELIABILT SERIES 40E/280 HP ENGINE  
OR EQUIVALENT FOR USE IN 2001 29'  
GILLIG LOW FLOOR BUSES  
ESTIMATED QUANTITY - 10  
(LEE COUNTY COMMODITY CODE #55730) \$ NO BID EACH

1a.) COST PER ENGINE LISTED IN ITEM #1  
(ABOVE) FOR PROGRAMMING THE  
ELECTRONIC CONTROL MODULE \$ NO BID EACH

2.) REMANUFACTURED DETROIT DIESEL  
RELIABILT 50/275 HP 890FTL, OR EQUIVALENT  
FOR USE IN NEW FLYER BUSES  
ESTIMATED QUANTITY - 12  
(LEE COUNTY COMMODITY CODE #55728) \$ 13,690.00 EACH

2a.) COST PER ENGINE LISTED IN ITEM #2  
(ABOVE) FOR PROGRAMMING THE  
ELECTRONIC CONTROL MODULE \$ 200.00 EACH

GRAND TOTAL: \$ 13,890.00



NOTE: QUANTITIES GIVEN ARE ESTIMATES ONLY. NO GUARANTEES ARE EXPRESSED OR IMPLIED.

OPTION A:

EXTENDED WARRANTY FOR ITEM #1 ABOVE  
100% OF ALL PARTS AND LABOR FOR  
FIVE (5) YEARS OR 300,000 MILES - WHICH  
EVER COMES FIRST

\$ NO BID

OPTION B:

EXTENDED WARRANTY FOR ITEM #2 ABOVE  
100% OF ALL PARTS AND LABOR FOR  
FIVE (5) YEARS OR 300,000 MILES - WHICH  
EVER COMES FIRST

\$ 3,800.00

ALL PRICING SHALL INCLUDE PICKUP AND DELIVERY

TO BE STARTED WITHIN 7 (seven) CALENDAR DAYS AFTER RECEIPT OF  
AWARD AND PURCHASE ORDER.

WILL YOU DELIVER WITH YOUR OWN VEHICLES AS OPPOSED TO COMMON  
CARRIER?

YES \_\_\_\_\_ NO x \_\_\_\_\_

Does your firm have a location/office/facility in Lee County? YES \_\_\_\_\_  
NO x \_\_\_\_\_

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

Quoters should carefully read all the terms and conditions of the specifications. Any  
representation of deviation or modification to the quote may be grounds to reject the quote.

Are there any modifications to the quote or specifications:  
Yes \_\_\_\_\_ No x \_\_\_\_\_

Failure to clearly identify any modifications in the space below or on a separate page may be  
grounds for the quoter being declared nonresponsive or to have the award of the quote rescinded  
by the County.

MODIFICATIONS:

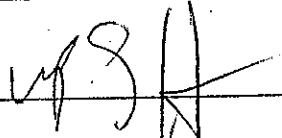
Quoter shall submit his/her quote on the County's Proposal Quote Form, including the firm name and authorized signature. Any blank spaces on the Proposal Quote Form, qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the Quoter/Quote being declared non-responsive by the County.

ANTI-COLLUSION STATEMENT

THE BELOW SIGNED QUOTER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS QUOTE WITH OTHER QUOTERS AND HAS NOT COLLUDED WITH ANY OTHER QUOTER OR PARTIES TO A QUOTE WHATSOEVER. NOTE: NO PREMIUMS, REBATES OR GRATUITIES TO ANY EMPLOYEE OR AGENT ARE PERMITTED EITHER WITH, PRIOR TO, OR AFTER ANY DELIVERY OF MATERIALS. ANY SUCH VIOLATION WILL RESULT IN THE CANCELLATION AND/OR RETURN OF MATERIAL (AS APPLICABLE) AND THE REMOVAL FROM THE MASTER BIDDERS LIST.

FIRM NAME  
Jimmy Diesel

BY (Printed):  
W.P. Griffin

BY (Signature):  


TITLE:  
Sales Manager

FEDERAL ID # OR  
S.S.# 36-3797731

ADDRESS:  
550 South East Avenue  
LaGrange, IL. 60525

PHONE NO.: 708-482-4500

FAX NO.: 708-482-4511

CELLULAR PHONE/PAGER NO.:

LEE COUNTY OCCUPATIONAL LICENSE NUMBER:

E-MAIL ADDRESS: .jdiesel@flash.net

REVISED: 7/28/00

Revised: 11/20/01

LEE COUNTY, FLORIDA  
DETAILED SPECIFICATIONS FOR  
REMANUFACTURED ENGINES FOR LEETRAN

SCOPE

The purpose of this quote is to obtain services for factory remanufacturing, as applicable, of Detroit diesel engines for Lee County Transit (Lee Tran).

The factory remanufacturing will be handled on a one for one exchange basis (The remanufactured engines specified shall be purchased with a core exchange on a one for one basis. Do not include any core charges in your quoted prices. Lee County Transit will return to the awarded vendor engine cores with no holes in the block and no damage to external pieces. The engine cores will not be disassembled and have no visible damage. There will be no visible broken pieces or have any holes in the block. The engine core furnished to the vendor will be the same series of engine as purchased less any specialized bus accessories).

**NOTE: In the space provided on Attachment #1, please furnish the name and address of the local warranty provider.**

The quantities in this quote are estimated. The amount is based on the best information available, but no minimum is guaranteed.

TERM OF QUOTE

This quote shall be in effect for two (2) years, or until new quotes are taken and awarded. This quote or any portion thereof, has the option of being renewed for three (3) additional one (1) year periods, upon mutual agreement of both parties, under the same terms and conditions.

FEDERAL CLAUSES

The attached Appendix A, Special Conditions - Federal Transit Administration Mandatory Contract Clauses #2, is a part of this specification and shall take precedence over the Detailed Specifications.

REQUEST FOR APPROVED EQUALS

Contractors may submit approved equals for any of the specifications contained herein. Any equals or substitutions must be detailed on Attachment #2 and submitted to Lee County Purchasing for review and approval. A form must be completed for each specification substitution.

Requests for approved equals should be submitted to Lee County Purchasing as soon as possible; however all requests for approved equals must be received by Lee County Purchasing no later than February 8, 2002 at 12:00 noon est.

DESIGNATED CONTACT

The awarded vendor shall appoint a person or persons to act as a primary contact with Lee County. This person or back up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.

BASIS OF AWARD

The basis of award for this quote will be overall low quoter from the grand total on Page 13 meeting specifications.

Lee County reserves the right to reject unbalanced quotes.

CONTACT PERSONS

The contact person for the awarded contractor throughout the term of the quote will be Larry Ralston, Transit Manager, (941)277-5008, or his authorized representative.

GENERAL REQUIREMENTS

- A) This specification is for the purchase of remanufactured Detroit Diesel Reliabil Series 40E/280 hp, or equivalent, and Detroit Diesel Reliabil Series 50 engines, or equivalent. The Series 40E/280 hp will be placed in the 2001 29' Gillig Low Floor Bus. The Series 50 will be placed in 1995 and 1997 model New Flyer 35' and 40' buses.
- B) The core engine shall be complete with all components this specification requires of the remanufactured engine. If a component is missing from the core engine, the contractor shall notify Lee Tran in writing, and it may be shipped to the contractor within five working days after notification. This shall not affect the required delivery time.
- C) The remanufactured engine(s)'s price shall include all parts normally replaced, dynamometer testing, cleaning, repairing and/or remanufacturing, labor, and other incidentals associated with remanufacturing a Series 40, or Series 50.
- D) There shall be no extra charges or cost escalations throughout the Contract.
- E) The contractor shall furnish Lee Tran with an analysis as to the cause of engine failure. This analysis shall be sent to:  

**Lee County Transit**  
**10715 East Airport Road**  
**Fort Myers, Florida 33907**  
**ATTN.: Larry Ralston**  
**(941) 277-5008**
- F) The contractor shall pick up and deliver engine assemblies as a part of the Contract
- G) Lee Tran reserves the right to inspect the shop and facilities of a potential contractor to determine whether or not they are proper and conducive to good work.
- H) The contractor shall have sufficient plant capacity, machine tools, skilled labor, and shop equipment to remanufacture Detroit Diesel Series 40, and Series 50 engines to Manufacturer's specifications.

- D) The procedures followed to remanufacture engines shall be those as recommended by Detroit Diesel. Deviations from the procedures shall not be permitted.
- J) The contractor shall be held responsible for remanufacturing and repairing all items in a workmanlike and professional manner. All parts must fit and function properly when installed in Lee Tran coaches. Malfunction shall be the responsibility of the contractor.
- K) All engine parts that are defective or require replacement shall be as supplied by Detroit Diesel or OEM remanufactured.
- L) All accessories mounted on the engine other than those accessories specifically mentioned in this specification for replacement/remanufacture shall be assumed to be in working condition and shall be remounted on the remanufactured engine. Contractor shall tag all defective accessories, for return to Lee Tran with engine. Lee Tran shall be informed in writing of the defective accessory.
- M) Lee Tran may supply parts as indicated in the prepriced list at Lee Tran's discretion.
- N) The contractor shall insure the engine protection system functions properly on coaches and/or engines shipped to the contractor for engine exchange.
- O) The contractor will be held responsible for maintaining an up-to-date file of bulletins and manuals issued by Detroit Diesel regarding the Series 40, and Series 50 engines. These files shall be readily accessible to Lee Tran Inspector and contractor personnel.
- P) All engines shall be remanufactured incorporating the latest product improvements and service updates and rate as a certified engine according to EPA Standards.
- Q) Lee County reserves the right to furnish repair parts to the awarded contractor at its sole discretion.

#### TECHNICAL REQUIREMENTS

##### A) IDENTIFICATION:

- 1) Each remanufactured engine shall be identified with the remanufacturer's production number, release number, and a four-digit (month/year) date of remanufacture. Remanufacturer is to identify not only the block but also the cylinder heads, and the blower (five tags in all).
- 2) Identification tags must be permanent in nature and not be affected by grease, oil, heat, steam, or cleaning solvents.
- 3) The placement of the I.D. tags must not in any way interfere with the installation or operation of the engine and be easily visible when the engine is installed in a bus.

- 4) The original equipment serial number is not to be obliterated. If a new block is used, the serial number of the defective block is to be stamped onto the new block followed with a dash "1" to identify the assembly as having a new block. In case the defective block already has a serial number with a dash "1," the new block is to be stamped with a dash "2," and so on.
- 5) Engines shall be painted with a suitable heat-resistant engine paint. Color of paint to be used shall be Detroit Diesel Green.

**B) DYNAMOMETER TESTING:**

- 1) All engines must be run-in on a dynamometer. Each engine shall be "hot tuned." All necessary corrections or repairs must be completed before release. Series 40, and Series 50 engines shall be hot-tuned in accordance with Detroit Diesel specifications.
- 2) All performance specifications as outlined by the engine manufacturer must be met or exceeded.
- 3) Detroit Diesel dyno sheets shall be used and followed in their entirety.
- 4) Results of dynamometer run-in and testing shall be submitted for approval to LeeTran.
- 5) After testing, run-in, and tuning, the oil pan shall be dropped and cleaned. The oil pickup screen shall be cleaned. New oil shall be added.

**C) WARRANTY:**

- 1) Each remanufactured engine shall be guaranteed to be free from defects in workmanship and material under Lee Tran's normal use and service. The warranty shall be extended to progressive damage associated with poor workmanship and/or failed parts. The warranty shall commence from the time the remanufactured engine is placed in the coach and the coach is placed in service by Lee Tran and shall continue for twelve (12) months (unlimited miles). Engine warranty will cover 100% of all parts and labor. Lee Tran shall provide the contractor the initial service date upon request.
- 2) The warranty shall include shipping to and from Lee Tran's respective garage; the cost to remove the engine from a bus; time (Lee Tran's actual labor) and material to remanufacture the engine; and the cost to reinstall the engine in a bus, regardless of whether or not the contractor originally removed and replaced the engine in a bus.
- 3) The service time on a remanufactured engine under warranty shall cease when the contractor is informed of an engine related failure. Service shall commence again when the coach is put back in service.
- 4) The contractor shall be responsible for the entire assembly even if part or all of the engine assembly has been subcontracted. The contractor shall be

responsible for ALL warranty claims filed by Lee Tran. The contractor shall act as an agent for the part manufacturer and shall agree to reimburse for claims promptly prior to its reimbursement from the manufacturer, if necessary.

- 5) Lee Tran personnel may replace components under warranty with the mutual agreement of the contractor. Lee Tran shall be reimbursed at the rate of \$35.00 per hour. The reimbursement check shall be sent to: Lee Tran, 10715 East Airport Road, Fort Myers, Florida, 33907. Checks shall be due within thirty (30) days after receipt of claim. The check transmittal letter shall reference the warranty claim, date of claim, coach number, if applicable, and engine serial number.
- 6) In the event Lee Tran has two or more buses out of service due to warrantable defects and the contractor does not respond within 24 hours, Lee Tran may perform this repair and bill the contractor as described in above paragraph. The contractor shall be responsible for reimbursement to Lee Tran for all troubleshooting by Lee Tran or another vendor and repairs of defective items.

**D) TEST AND INSPECTION:**

- 1) All engines shall be tested and inspected by the contractor to assure they comply with this specification.
- 2) Authorized representatives of Lee Tran shall have the right and be at liberty to inspect, with the contractor's cooperation, all materials and workmanship under this specification.
- 3) Inspection during the remanufacture, acceptance of delivery, or the placing of units in operation shall not release the contractor from liability and expenses of repair or replacement due to faulty workmanship, or faulty materials appearing after delivery.
- 4) Lee Tran reserves the right and from time to time will perform mechanical audits on units remanufactured by the contractor that are found to be defective. The contractor shall be notified in sufficient time to have a representative on location during this audit, if they so wish.
- 5) Defective units which are disassembled and are found to be non-compliant with this specification shall be returned to the contractor for remanufacturing to specification at no cost to Lee Tran. Any information collected during these audits shall be used as an aid for resolution of warranty or other contractual items.
- 6) Authorized representatives of Lee Tran shall have access at all times to those parts of the contractor's facility(ies) concerned with supplying materials or parts for these engines for the purpose of inspecting materials and workmanship during the progress of the work and/or testing.

# APPENDIX A



ATTACHMENT #1

Please furnish the name and address of local warranty provider as follows:

Company name: Jimmy Diesel

Address: 550 South East Avenue

City/State: La Grange, Il.

Zip Code 60525

Name of Contact person: W. P. Griffin

Telephone Number: ( 708) 482-4500

NOTE-

Jimmy Diesel will provide field service for any warranty requirements or warranty service can be performed at any Authorized Detroit Diesel Service Facility.

ATTACHMENT #2 - REQUEST FOR APPROVED EQUAL

LEE TRAN - LEE COUNTY, FL

PERSON SUBMITTING REQUEST W. P. Griffin

PHONE NUMBER 708-482-4500

DATE 2-20-02

COMPANY Jimmy Diesel

PAGE NUMBER 17

PARAGRAPH A

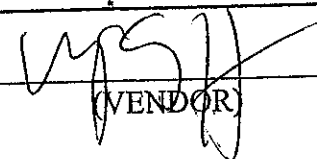
PARAGRAPH TITLE General Requirements

REQUEST FOR APPROVED EQUAL (PROVIDE DETAILED EXPLANATION)

"Jimmy" Diesel is bidding an Engine Rebuilt by "Jimmy" Diesel,  
not branded Reliabilt.

Engine will be remanufactured to all Detroit Diesel Service Manual  
Specifications.

"Jimmy" Diesel has successfully rebuilt engines for Lee County for over  
Fifteen Years.

SIGNED   
(VENDOR)

LEE COUNTY TRANSIT

APPROVED \_\_\_\_\_

DENIED \_\_\_\_\_

SIGNED \_\_\_\_\_  
(LEE TRAN)

GUIDE "F"

INSURANCE REQUIREMENTS FOR SERVICE

Your certificate of insurance must meet the following requirements

**Requirement #1:** The Lee County Board of County Commissioners shall be added as an additional insured on the comprehensive general liability policy.

**Requirement #2:** Certificate holder shall be listed as follows:

Lee County Board of County Commissioners  
C/O Lee County Purchasing  
P.O. Box 398  
Fort Myers, FL 33902

**Requirement #3:** Each policy shall provide a 30 day notification clause in the event of cancellation, non-renewal or adverse change.

This Standard Insurance Language is to be utilized for Contracts, or Agreements meeting these circumstances. Certain conditions and/or exposures may not relieve or limit the liability of the vendor. These requirements may not be sufficient or adequate to protect the vendor's interests or liabilities, but are merely minimums.

Circumstances

Project is for vendors providing a service such as but not limited to lawn maintenance, janitorial, painting, carpentry, moving, equipment service or repair.

Worker's Compensation

Does not apply.

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability and broad form property damage exposures with minimum limits of:

- \$100,000 bodily injury per person (BI)
- \$300,000 bodily injury per occurrence (BI)
- \$100,000 property damage (PD) or
- \$300,000 combined single limit (CSL) of BI and PD

Business Automobile Liability

Coverage shall apply to owned vehicles and/or hired and non-owned vehicles and employee non-ownership use with minimum limits of:

- \$100,000 bodily injury per person (BI)
- \$300,000 bodily injury per occurrence (BI)
- \$100,000 property damage (PD) or
- \$300,000 combined single limit (CSL) of BI and PD

Garagekeeper's Liability

Coverage shall apply to damage to property owned by Lee County in the care, custody, and control of the Quoter's facility, with the minimum amount of coverage equal to the actual cash value of the unit(s) left in the facility's care.

**Note: A "Garage Policy" may provide the General, Automobile, and Garagekeeper's Liability coverages in one policy.**

Certificate of Insurance

An original hand signed certificate shall be on file with and approved by the Lee County Risk Management Office prior to the commencement of any work activities.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be on file with Risk Management at least 15 days prior to the expiration date.

Revised 10/18/00

LEE COUNTY PURCHASING SERVICES - BIDDERS CHECK LIST

**IMPORTANT:** Please read carefully and return with your bid proposal.  
Please check off each of the following items as the necessary action is completed:

- 1. The Quote has been signed.
- 2. The Quote prices offered have been reviewed.
- 3. The price extensions and totals have been checked.
- 4. The original (must be manually signed) and 2 copies of the quote have been submitted.
- 5. Three (3) identical sets of descriptive literature, brochures and/or data (if required) have been submitted under separate cover.
- 6. All modifications have been acknowledged in the space provided.
- 7. All addendums issued, if any, have been acknowledged in the space provided.
- 8. Erasures or other changes made to the quote document have been initialed by the person signing the quote.
- 9. Bid Bond and/or certified Check, (if required) have been submitted with the quote in amounts indicated.
- 10. Any Delivery information required is included.
- 11. The mailing envelope has been addressed to:  

Lee County Purchasing Services	Lee County Purchasing
P.O. Box 398	3434 Hancock Bridge Pkwy 3 <sup>rd</sup> FL
Ft. Myers, FL 33902-0398	N. Ft. Myers, FL 33903
- 12. The mailing envelope **MUST** be sealed and marked with:  
Quote Number \_\_\_\_\_  
Opening Date and/or Receiving Date \_\_\_\_\_
- 13. The quote will be mailed or delivered in time to be received no later than the specified opening date and time. (Otherwise quote cannot be considered or accepted.)
- 14. If submitting a "NO BID" please write quote number here \_\_\_\_\_ and check one of the following:  
 Do not offer this product \_\_\_\_\_ Insufficient time to respond.  
 Unable to meet specifications (why) \_\_\_\_\_  
 Unable to meet bond or insurance requirement.  
Other: \_\_\_\_\_

Company Name and Address:  
Jimmy Diesel  
550 East Ave  
La Grange IL 60525

**LEE COUNTY TRANSIT  
FEDERAL TRANSIT ADMINISTRATION**  
**Grant Procurement Clause Package #2**  
**(Goods, Services and Construction)**  
Revised January 28, 2002

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## **1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. §5331**  
**49 CFR Parts 653 and 654**

### **Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

### **Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Fly America Requirements** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients 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.



## 2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)  
49 CFR Part 661

### Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

### Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient (Lee County Transit) the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

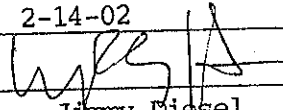
**BUY AMERICA CERTIFICATION**

**(Required for contracts greater than \$100,000)**

**Certification requirement for procurement of steel, iron, or manufactured products.**

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date 2-14-02  
Signature   
Company Name Jimmy Diesel  
Title Sales Manager

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

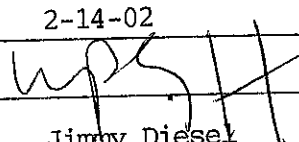
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date 2-14-02  
Signature   
Company Name Jimmy Diesel  
Title Sales manager

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Title \_\_\_\_\_

### **3. CHARTER BUS REQUIREMENTS**

49 U.S.C. 5323(d)  
49 CFR Part 604

#### **Applicability to Contracts**

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### **3. SCHOOL BUS REQUIREMENTS**

49 U.S.C. 5323(F)  
49 CFR Part 605

#### **Applicability to Contracts**

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**School Bus Operations** - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

#### **4. CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. 1241  
46 CFR Part 381

##### **Applicability to Contracts**

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

##### **Flow Down**

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. 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. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **5. SEISMIC SAFETY REQUIREMENTS**

42 U.S.C. 7701 et seq. 49  
CFR Part 41

##### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

##### **Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this 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.

## **6. ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.  
49 CFR Part 18

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Energy Conservation** - The contractor agrees to comply with 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.

## **7. CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

### **Applicability to Contracts**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

### **Flow Down**

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Clean Water** - (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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**10. LOBBYING**  
**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

**Applicability to Contracts**

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Mandatory Clause/Language**

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.**

APPENDIX A, 49 CFR PART 20—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned W.P. Griffin [Contractor] 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.

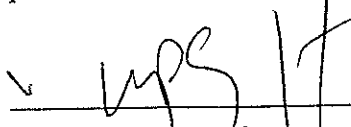
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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



Signature of Contractor's Authorized Official

W.P. Griffin

Name and Title of Contractor's Authorized Official

2-14-02

Date

## 11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17

### Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.



**Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I State Grantees</b>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
b. Contracts above \$100,000/Capital Projects	None unless <sup>1</sup> non-competitive award					
<b>II Non State Grantees</b>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup> Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

## 12. FEDERAL CHANGES

### 49 CFR Part 18

#### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

#### Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** - 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 Agreement (Form FTA MA (7) dated October, 2000) 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.

## 13. BONDING REQUIREMENTS

### Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also

satisfy the requirement for a bond.

**Flow Down**

Bonding requirements flow down to the first tier contractors.

**Bid Bond Requirements (Construction )**

**(a) Bid Security**

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

**(b) Rights Reserved**

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Lee County 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 Lee County.

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 Lee County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Lee County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Lee County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense Lee County for the damages occasioned by default, then the undersigned bidder agrees to indemnify Lee County and pay over to Lee County the difference between the bid security and Lee County's total damages, so as to make Lee County whole.

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

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

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

**(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Lee County determines that a lesser amount would be adequate for the protection of the Lee County.

2. Lee County 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. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. 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 one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, Lee County may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

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

(a) The following situations may warrant a performance bond:

1. Lee County 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).

2. A contractor sells assets to or merges with another concern, and Lee County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Lee County determines that a lesser amount would be adequate for the protection of Lee County.

2. Lee County 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. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in Lee County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of 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 one half million if 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. Lee County shall determine the amount of the advance payment bond necessary to protect Lee County.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. Lee County shall determine the amount of the patent indemnity to protect the Lee County.

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to Lee County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Lee County, 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 Lee County 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 Lee County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Lee County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Lee County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

## 14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

### Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

### Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

**Clean Air** - (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 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## 15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

### Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

### Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

**Recovered Materials** - 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 CFR Part 247.

**16. DAVIS-BACON ACT**  
**40 USC § 167; 276a -276a-5 (1998)**  
**29 CFR § 5 (1999)**

**Applicability to Contract**

Construction contracts over \$2,000.00

**Flow Down**

Applies to third party contractors and subcontractors

(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 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 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 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 CFR 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 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:



(1) 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.

(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, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Lee County Transit 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 this 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, Lee County Transit 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** - (i) 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Lee County Transit 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 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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 29 CFR 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 CFR 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 (a)(3)(ii)(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 CFR 5.12.

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

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 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 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR 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 this 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 CFR 5.12(a)(1).

(ii) No part of this 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 CFR 5.12(a)(1).

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

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

40 U.S.C. §§ 327 -333 (1999)

29 C.F.R. § 5 (1999)

29 C.F.R. § 1926 (1998)

### **Applicability to Contracts**

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. § 5.5(a).)

Section 107 of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **Flow Down**

Applies to third party contractors and subcontractors.

### **Model Clauses/Language**

**Pursuant to Section 102 (Overtime):**

( These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)

**(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 (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 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** - The (write in the name of the grantee or recipient ) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**(4) Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

(Section 102 nonconstruction contracts should also have the following provision:)

**(5) Payrolls and basic records** - (i) 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 CFR 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.

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### **Section 107 (OSHA):**

(This section is applicable to construction contracts only)

**Contract Work Hours and Safety Standards Act - (i)** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

**(ii)Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **18. COPELAND ANTI-KICKBACK ACT**

40 U.S.C. § 276c (1999)

29 C.F.R. § 3 (1999)

29 C.F.R. § 5 (1999)

#### **Applicability to Contracts**

All construction contracts in excess of \$2,000.

#### **Flow Down**

Applicable to all third party contractors and subcontractors.

**Compliance with Copeland Act requirements** - The contractor shall comply with the

requirements of 29 CFR part 3, which are incorporated by reference in this contract. Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

## **19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

Applicable to all contracts.

### **Flow Down**

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **No Obligation by the Federal Government.**

(1) The Purchaser and 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 by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) 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.

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

### **AND RELATED ACTS**

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

### **Applicability to Contracts**

These requirements are applicable to all contracts.

### **Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

### **Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and



accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in 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.

## 21. TERMINATION

### 49 U.S.C. Part 18 FTA Circular 4220.1D

#### Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**a. Termination for Convenience (General Provision)** Lee County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. 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 Lee County to be paid the Contractor. If the Contractor has any property in its possession belonging to Lee County, the Contractor will account for the same, and dispose of it in the manner Lee County directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the

Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in 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 it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** Lee County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time, not less than ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Lee County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Lee County setting forth the nature of said breach or default, Lee County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Lee County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that Lee County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Lee County shall not limit Lee County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** Lee County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this 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 Lee County.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of

this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Lee County goods, the Contractor shall, upon direction of Lee County, protect and preserve the goods until surrendered to the Lee County or its agent. The Contractor and Lee County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 Lee County.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lee County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lee County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lee County in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Lee County, acts of another Contractor in the performance of a contract with the Lee County, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within ten (10) days from the beginning of any delay, notifies the Lee County in writing of the causes of delay. If in the judgment of Lee County, the delay is excusable, the time for completing the work shall be extended. The judgment of Lee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** Lee County may terminate this contract in whole or in part, for Lee County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer

all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of Lee County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Lee County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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 the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** Lee County may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of Lee County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Lee County, or property supplied to the Contractor by Lee County. If the termination is for default, Lee County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lee County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lee County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Lee County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Lee County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29 Executive Order 12549**

#### **Applicability to Contracts**

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts

over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

### **Flow Down**

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

### **Instructions for Certification**

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

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Lee County may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**23. PRIVACY ACT**

**5 U.S.C. 552**

**Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**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,

5 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.

## 24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

### Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

### Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 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.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1D**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Lee County. 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 furnishes a written appeal to the Lee County Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Lee County Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by Lee County, the Contractor shall continue performance under this 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Lee County 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 the State of Florida, in which Lee County is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the



rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Lee County 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 thereunder, except as may be specifically agreed in writing.

## **26. PATENT AND RIGHTS IN DATA**

**37 CFR Part 401  
49 CFR Parts 18 and 19**

### **Applicability to Contracts**

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

### **Flow Down**

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) 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.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 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 (2)(b)1 and (2)(b)2 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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) 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, the Purchaser 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 (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser 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 the Purchaser 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 the Purchaser 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.

(e) 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.

(f) Data developed by the Purchaser 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 Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) 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.

(3) 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.), the Purchaser 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.

(4) 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.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) 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 Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes 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, individual), the Purchaser 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.

(3) 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.

## 27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215

### Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations

performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

### Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

(a) 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 this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL 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. DOL to FTA applicable to the FTA Recipient'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. DOL letter. The requirements of this subsection (1), 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 (b) and (c) of this clause.

(b) 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 the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project 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. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) 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. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**49 CFR Part 26**

The requirements of this section apply only when specified here or as prescribed within any other terms of the applicable contract documents.

**29. STATE AND LOCAL LAW DISCLAIMER**

**Applicability to Contracts**

This disclaimer applies to all contracts.

**Flow Down**

The Disclaimer has unlimited flow down.

**State and Local Law Disclaimer** - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

**30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1D**

**Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

**Flow Down**

The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (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 4220.1D, dated April 15, 1996, 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 Lee County requests which would cause Lee County Transit to be in violation of the FTA terms and conditions.

**31. DRUG AND ALCOHOL TESTING**

**49 U.S.C. §5331**

**49 CFR Parts 653 and 654**

**Applicability to Contracts**

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

### **Flow Down Requirements**

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

### **Introduction**

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

### **Drug and Alcohol Testing**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Lee County Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 1st and to submit annually the Management Information System (MIS) reports before March 1st to:

**Transit Director  
Lee County Transit  
10715 E. Airport Road  
Ft. Myers, FL 33907**

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. The Contractor agrees further to (a) submit before 14 days prior to service start up a copy of the Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: the possible selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.



**HEADQUARTERS**

5105 Bowden Road  
P.O. Box 16595  
Jacksonville, FL 32245-6595  
Tel: (904) 737-7330

**BRANCHES**

**FT. LAUDERDALE**  
4141 S.W. 30th Avenue  
Ft. Lauderdale, Florida 33312  
Tel: (954) 327-4440

**FT. MYERS**

2305 Rockfill Road  
Fort Myers, Florida 33916  
Tel: (941) 332-3100

**FT. PIERCE**

3885 Seivitz Road  
Ft. Pierce, Florida 34981  
Tel: (561) 464-6006

**JACKSONVILLE**

5040 University Blvd. West  
Jacksonville, Florida 32216  
Tel: (904) 737-7330

**MIAMI**

2277 N.W. 14th Street  
Miami, Florida 33125  
Tel: (305) 638-5300

**OCALA**

224 S.W. 52nd Avenue  
Ocala, Florida 34474  
Tel: (352) 237-7977

**ORLANDO**

6850 President's Drive  
Orlando, Florida 32809  
Tel: (407) 888-1700

**SANFORD**

1500 Dolgner Place  
Sanford, Florida 32771  
Tel: (407) 323-3510

**TAMPA**

8411 Adamo Drive  
Tampa, Florida 33619  
Tel: (813) 621-5651

Quote - Q-020168

**Modifications:**

Sec C Item 3 - The warranty runs standard - one year unlimited hours - Extended warranty runs 5 years 300,000 miles with no reimbursement for down time - See attached parchment

Sec C - Item 5 - Reimbursement for authorized repair by Lee Trans paid by Florida Detroit Diesel - Allison is 30 days

**Factory Remanufactured Engine**

Item 2 A - all programming cost are included in the price of the Remanufactured 50 series engine

# ATTACHMENT #6

**From:** Janet Sheehan  
**To:** Coover, Scott  
**Date:** 1/24/02 11:02AM  
**Subject:** Fwd: Re: Local Preference

Scott,  
Thanks so much for checking this out.

Janet  
>>> Scott Coover 01/24/02 10:56AM >>>  
Janet,

No local preference for transit contracts receiving grant from Federal Government. The attached relevant section states:

Prohibition Against Geographic Preferences. Grantees shall conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposal, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurement for architectural and engineering services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

If you have any further questions, please call. Thanks!!

Scott S. Coover  
Assistant County Attorney  
[coover@s@leegov.com](mailto:coover@s@leegov.com)  
Phone: 941- 335-2236  
FAX: 941-335-2606

Janet K. Sheehan, CPPB  
Purchasing Director  
Purchasing Division  
[jsheehan@leegov.com](mailto:jsheehan@leegov.com)  
Phone: 941-689-7385  
Fax: 941-689-7390

CC: Franceschini, Robert; Kroslack, Kristie



**MEMORANDUM ATTACHMENT #7**

from the  
**TRANSIT DIVISION**

DATE: March 25, 2002

Bob Franceschini

Purchasing

FROM:

  
Steven L. Myers, Director

RE: **Remanufactured Engines Q-020168**

The referenced quote has been reviewed and we recommend award to the low bidder meeting specifications, Jimmy Diesel. We will not award Option B, the extended warranty. Please proceed with a blue sheet for BOCC approval. This action is necessary because the annual expenditure will exceed \$50,000. Board approval will allow LeeTran to purchase rebuilt engines as needed for the transit fleet. Funds have been budgeted in K15440148640.504670 (Transit Division, Capital Fund, Fixed Route, Repair Parts). Please be advised this expenditure is 100% federally funded by the Federal Transit Administration.

Thank you for your assistance with this quote.

cc: Susan Riley, Fiscal Officer  
Larry Ralston, Maintenance Manager

SPR

S:\WPDOCS\MEMOS\ENG REBUILD AWARD.wpd

**MEMORANDUM  
FROM  
THE DIVISION OF PURCHASING**

02 APR -9 AM 10:59  
RECEIVED BY  
LEE CO. ATTORNEY

DATE: APRIL 1, 2002

TO: STEVEN MYERS  
LEE TRAN DIRECTOR

*Janet Sheehan*  
FROM: JANET SHEEHAN, CPPB  
PURCHASING DIRECTOR

RE: BLUE SHEET # 20020344

PROJECT: Remanufactured Engines

TYPE: Formal Quotation (Annual)

AWARDED TO: Jimmy Diesel

When you have finished your review of this package (and signed off), please forward it Kristie Kroslack in the County Attorney's Office.

If there are any questions or concerns with this package, please contact Bob Franceschini at 689-7385.

APR 3 2002