

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

Blue Sheet No. 20040298

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the award of formal quotation Q-040256, for the purchase of container lubricants to the lowest vendor meeting specification requirements, Evans Oil, as the primary and Palmdale Oil, as the secondary for the prices as listed on the attached tabulation sheet. Estimated annual expenditure: approximately \$50,000. Also request authority to renew this quotation for four additional one-year periods, under the same terms and conditions, if in the best interest of the County at the expiration of the original term.

WHY ACTION IS NECESSARY: Purchases over \$50,000 must be board approved.

WHAT ACTION ACCOMPLISHES: Allows Fleet Management and Lee Tran to continue to buy container lubricants for County equipment. Estimated savings to taxpayers approximately \$2,000 annually.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #

C6B

3. MEETING DATE:

04-13-2004

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

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

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT FLEET MANAGEMENT AND LEE TRAN
 - C. DIVISION
- BY: MARILYN RAWLINGS/STEVE MYERS

7. BACKGROUND: Quotes were received on March 2, 2004. On that date, six responses were received, of which one was a no bid. Evans Oil as primary and Palmdale Oil as secondary are recommended for award of this quote. Lee Tran funding of approximately \$30,000 is available from account string KI5440148600.505210.11. Lee County Fleet funding of approximately \$20,000 is available from account string JB5191059400.505210. Departments will monitor their own expenditures.

Please see attachments:

- (1) Tabulation Sheet
- (2) Specifications
- (3) Evans Oil Quotation
- (4) Palmdale Quotation
- (5) Division's Recommendation of Award

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
<i>Rawlings 3/12/04 Stevens 3/16/04</i>	<i>Joint Spec 3-11-04 PA 3-11-04</i>			<i>[Signature]</i> 3/15/04	<i>OA</i> 3/17/04	<i>OM</i> 3/18/04	<i>Risk</i> 3/18/04	<i>GC</i> 3/18/04	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *3-17-04*
Time: *3:00*
Forwarded To:
Admin 3/17

RECEIVED BY
COUNTY ADMIN: *[Signature]*
3/17/04
3:28 pm
COUNTY ADMIN
FORWARDED TO:
[Signature]
3/18/04

BH

MEMORANDUM
FROM
THE DIVISION OF PURCHASING

2004 MAR 17 PM 12:09
RECEIVED BY
LEE CO. ATTORNEY

DATE: MARCH 11, 2004

TO: MARILYN RAWLINGS
FLEET MANAGER

Janet Sheehan
FROM: JANET SHEEHAN, CPPB
PURCHASING DIRECTOR

RE: BLUE SHEET # 20040298

PROJECT: PURCHASE OF CONTAINER LUBRICANTS

TYPE: Formal Quotation

AWARDED TO: Evans Oil as primary and Palmdale Oil as secondary.

Attn. Ms. Rawlings – When you have finished your review of this package, please forward it to Steve Myers, Lee Tran.

Attn. Mr. Myers – When you have finished your review of this package, please forward it to Kristie Kroslack in the County Attorney's Office.

Please note this needs to be through the channel and to Lee Cares by April 1st to insure we have this approved before the old quote expires. If there are any questions or concerns with this package, please contact Patti Armbruster at 344-5450.

MAR 16 2004

MAR 12 2004

FORMAL QUOTATION #Q-040256	LEE COUNTY, FLORIDA TABULATION SHEET					
OPENING DATE: MARCH 2, 2004	FOR					
BUYER: PATTI ARMBRUSTER	CONTAINER LUBRICANTS					
VENDORS	EVANS OIL COMPANY	PALMDALE OIL COMP	FLAMINGO OIL CORP.	J.H. WILLIAMS OIL CO.	NCH CORPORATION	
					CHEMSEACH DIV	
9. TWO CYCLE ENGINE OIL TC/W3						
A. QUART PRICE	\$ 1.50	\$ 1.72	\$ 1.56	\$ 1.75	N/A	
10. AUTOMATIC TRANSMISSION FLUID						
A. MERCON V, QUART PRICE	\$ 1.80	\$ 2.20	\$ 1.89	\$ 1.54	N/A	
B. MERCON V, 55 GAL DRUM	\$ 6.50	\$ 7.40	\$ 7.06	\$ 5.38	N/A	
TOTAL COST OF UNIT PRICES	\$ 57.17	\$ 59.82	\$ 60.71	\$ 60.94	N/A	
OPTION A: PRICE PER QUART	N/A	\$ 10.86/ CS	\$.70/ QT	\$ 1.20 QT ON 30W ONLY	N/A	
OPTION B: OTHER PRODUCTS LISTED	YES	YES	YES	YES	YES	
TO BE STARTED IN ___ DAYS	1	1	4	2	7	
DELIVER WITH OWN VEHICLE	YES	YES	YES	YES	NO	
MODIFICATIONS	NO	NO	NO	NO	NO	
QUOTE SIGNED	YES	YES	YES	YES	YES	
NO BIDS						
FLEETWING CORP						
POSTING TIME/DATE						
FROM: /						
UNTIL: /						
BY:						



LEE COUNTY
SOUTHWEST FLORIDA

PROJECT NO.: Q-040256

PREBID: . NONE

OPEN DATE: MARCH 2, 2004

AND TIME: 2:30 P.M.

LOCATION:
COUNTY/CITY ANNEX BLDG
LEE COUNTY PURCHASING
1825 HENDRY ST 3RD FLOOR
FORT MYERS, FL 33901

REQUEST FOR QUOTATIONS

TITLE:

CONTAINER LUBRICANTS

REQUESTER: LEE COUNTY BOARD OF COUNTY COMMISSIONERS
DIVISION OF PURCHASING

MAILING ADDRESS
P.O. BOX 398
FORT MYERS, FL 33902-0398

PHYSICAL ADDRESS
1825 Hendry St 3rd Floor
FORT MYERS, FL 33901

BUYER: PATTI ARMBRUSTER
PHONE NO.: (239) 344-5451



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: _____

Bob Janes
District One

February 18, 2004

Douglas R. St. Cerny
District Two

Quotation No.: Q-040256

Ray Judah
District Three

Andrew W. Coy
District Four

**LEE COUNTY ADDENDUM NUMBER ONE
TO THE SPECIFICATIONS FOR
CONTAINER LUBRICANTS**

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

**QUOTERS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE
PROPOSAL QUOTE FORM (PAGE 10).**

Diana M. Parker
County Hearing
Examiner

Please note the following changes in your specification:

Page 17, Section 1. Please add the language, which should read as follows:

All three products: the SAE 20 single grade, the SAE 30 single grade and the SAE 40 single grade motor oils must meet or exceed API Service Categories CF-2 and CF/SJ as applicable, and meet all major car and diesel engine manufacturer requirements including Caterpillar, Cummins, Allison and Mack Truck as applicable.

If there are any questions regarding this addendum, please contact Patti Armbruster at 239-344-5451.

DIVISION OF PURCHASING

Patti Armbruster., CPPB
Buyer

cc: Bill Wolter/Fleet
Larry Ralston/Lee Tran
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 (239) 344-5450.

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 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 by 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 \$25,000.00 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 PRICE FORM
FOR
CONTAINER LUBRICANTS**

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:

THE BELOW SIGNED QUOTER IS THE:

_____ MANUFACTURER
_____ RE-PACKAGER
_____ MFG. DEALER/AGENT

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>MANUFACTURER</u>
1.	<u>Engine Oil SAE 20</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	_____ quart	_____
	b. 55 gal. drum	_____ gal.	_____
	<u>Engine Oil SAE 30.....</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	_____ quart	_____
	b. 55 gal. drum	_____ gal.	_____
	<u>Engine Oil SAE 40.....</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	_____ quart	_____
	b. 55 gal. drum	_____ gal.	_____
2.	<u>Engine Oil SAE 15W40</u>(Lee County Commodity Code 40539)		
	a. Quart (plastic)	_____ quart	_____
	b. 5 gal. pail	_____ gal.	_____
	c. 55 gal. drum	_____ ga	_____
3.	<u>Automatic Transmission Fluid.....</u> (Lee County Commodity Code 0600317 & 0600320)		
	a. Dexron III, quart (plastic)	_____ quart	_____

- b. Dexron III, 55 gal. drum _____ gal. _____
- 4. Chassis Grease.....(Lee County Commodity Code 40524)
 - a. 14-1/2 oz tube _____ tube _____
 - b. 120 lb. drum _____ pound _____
 - c. 400 lb. drum _____ pound _____
- 5. Gear Lubricant – SAE 85W-140.....(Lee County Commodity Code 40549)
 - a. Quart (plastic) _____ quart _____
 - b. 120 lb. drum _____ pound _____
- 6. Tractor Hydraulic Fluid.....(Lee County Commodity Code 40551)
 - a. 5 gal. pail _____ gal _____
 - b. 55 gal. drum _____ gal. _____
- 7. Hydraulic Oil – AW – ISO 68 (Lee County Commodity Code 40551)
 - a. 5 gal. pail _____ gal. _____
 - b. 55 gal. drum _____ gal. _____
- 8. Wheel Bearing Grease (Lee County Commodity Code 40524)
 - 35 lb. pail _____ pound _____
- 9. Two Cycle Engine Oil – TC/W3 (Lee County Commodity Code 40539)
 - a. Quart (plastic) _____ quart _____
- 10. Automatic Transmission Fluid (Lee County Commodity Code 40536)
 - a. Mercon V, quart (plastic) _____ quart _____
 - b. Mercon V, 55 gal. drum _____ gal. _____

TOTAL COST OF UNIT PRICES (1-10): \$ _____

OPTION A:

Engine Oil - SAE 10, SAE 20 & SAE 30 NON-DETERGENT: \$ _____/quarts or case lots (plastic)

(Please specify)

OPTION B:

Vendor can provide other product lines for Lee County to utilize on an as needed, when needed basis.

YES _____

NO _____

QUOTE SUBMITTALS ARE REQUIRED, SEE PAGE 16.

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

NO _____ YES _____

TO BE DELIVERED WITHIN _____ CALENDAR DAYS AFTER RECEIPT OF AWARD AND PURCHASE ORDER.

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

Are there any modifications to the proposal or specifications?

Yes _____ No _____

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

MODIFICATIONS:

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

ANTI-COLLUSION STATEMENT

THE BELOW SIGNED PROPOSER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS PROPOSAL WITH OTHER PROPOSERS AND HAS NOT COLLUDED WITH ANY OTHER PROPOSER OR PARTIES TO A PROPOSAL 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: _____

REV: 7/28/00

**LEE COUNTY, FLORIDA
DETAILED SPECIFICATIONS
FOR
CONTAINER LUBRICANTS**

SCOPE

The purpose of this quote is to establish a source for the annual purchase of container lubricants such as motor oils, fluids, and greases for Lee County.

TERM OF QUOTE

This quote shall be in effect for one year. This quote, in its entirety, has the option of being renewed for four additional one-year periods, upon mutual agreement of both parties, under the same terms and conditions.

MAJOR BREAKDOWNS/NATURAL DISASTERS

In the event of major breakdowns or natural disasters, Lee County requires that the awarded vendor provide the name of a contact person and phone number which will afford Lee County access twenty-four hours per day, 365 days per year.

BASIS OF AWARD

Vendors must quote all items to be considered for award.

Quotation will be awarded to a primary and secondary vendor meeting specifications, offering Lee County the lowest overall price, respectively, in the total cost of unit prices (1-10) on the Price Proposal Form.

In the event the primary vendor cannot deliver the quoted products in a timely manner, Lee County reserves the right to obtain the required products from the secondary vendor.

Lee County reserves the right, at the Purchasing Director's discretion, not to award certain items on the proposal quote form.

Lee County reserves the right to reject unbalanced quotes (a quote where a normally low cost item is priced well out of the normal range).

OPTION A - B

As an option, Lee County is requesting vendors provide pricing for other lubricant products. These options will be awarded at Lee County's sole discretion and will not be included in the basis of evaluation for award. If awarded, the prices quoted for these options shall be firm for one year from date of award, and may be renewed under the same terms and conditions of this quote.

DESIGNATED CONTACT

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

VENDOR DELIVERY REQUIREMENTS

It is understood and agreed that the primary vendor shall be responsible for stocking sufficient container lubricants so that deliveries will be made using the following guidelines:

- a) The next working day, if notified before noon. Delivery period may be extended at the County's discretion.
- b) The second working day, if notified after noon. Delivery period may be extended at the County's discretion.

If the primary vendor is unable to comply with the above, the County reserves the right to call the secondary vendor for the required products. If both the primary and the secondary vendors are unable to comply with the above delivery requirements, the County reserves the right to call other vendors outside the awarded contract.

All items shall be delivered F.O.B. destination:

Lee County Fleet Management Facility, 2955 Van Buren Street, Ft Myers, Florida 33916. Monday through Friday 7:00 A.M. to 12:00 P.M. and 12:30 P.M. to 5:30 P.M.

Lee County Transit Maintenance, 6035 Landing View Road, Fort Myers, FL 33907 Monday through Friday 8:00 A.M. to 4:00 P.M.

ACCEPTANCE

The material delivered under this quote shall remain the property of the seller until physical inspection and actual usage of this material is accepted to the satisfaction of the County. The materials are to be in compliance with the terms and specifications herein, and be of the highest quality. In the event the materials 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 products to the seller at the seller's expense.

PACKAGING REQUIREMENTS

Quoter must submit details of containers and/or packaging. All packaging must be new, factory sealed containers. Labeling must include manufacturer's name, brand, and product number.

SUBSTITUTION

All products quoted do not have to be manufactured by one company. Products quoted shall not be substituted without the prior written consent of Lee County.

FEDERAL CLAUSES

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

NOTE: The Appendix letter and title of special conditions will vary according to the specifications being written.

REQUIRED SUBMITTALS

The following submittals should be returned under separate cover with the quote response. This information may be accepted after opening, but no later than 10 calendar days after request.

1. **Detailed specification sheet from the manufacturer for each product quoted.**
2. **Complete MSDS sheets on each product quoted are required to be submitted for items 1-10, listed on Price Proposal Form.**
3. **If vendor is quoting Option B, Page 20, fill in pricing, or attach your product line sheet with pricing information to your bid response.**
4. **For products quoted under Option B, Lee County will request on MSDS sheet prior to purchase.**
5. **Appendix A, Federal Mandatory Contract Clauses, must be completed in accordance with the instructions listed herein.**

PRICE INCREASES

If the awarded vendor(s) experiences a major price increase from suppliers for items in this quotation, the vendor may submit a written request to increase pricing. All information necessary to review and analyze the request must be submitted to Lee County Purchasing Lee County shall have the right to grant the price increase, or re-quote, at the County's sole discretion.

**LEE COUNTY, FLORIDA
TECHNICAL SPECIFICATIONS
CONTAINER LUBRICANTS**

REMINDER: All pricing shall be annotated on the Price Proposal Form, beginning on page 10.

1. Engine Oil - SAE 20, SAE 30, & SAE 40

Product shall be delivered to the ordering agency in resealable plastic quart containers.

All three products: the SAE 20 single grade, the SAE 30 single grade and the SAE 40 single grade motor oils must meet or exceed API Service Categories CF-2 and CF/SJ, and meet all major car and diesel engine manufacturer requirements including Caterpillar, Cummins, Allison and Mack Truck.

- a. Quarts/case lots (plastic) (estimated usage – 250 quarts)

2. Engine Oil - SAE 15W40

Product shall be delivered to the ordering agency in resealable plastic quart containers, 5-gallon pails, or 55-gallon drums.

The SAE 15W40 multi-grade motor oil must meet or exceed API Service Categories CI-4 and CF/SL, and meet all major car and diesel engine manufacturer requirements including Caterpillar, Cummins, Allison and Mack Truck.

- a. Quarts/case lots (plastic) (estimated usage – 1500 quarts)
- b. 5-gallon pails (estimated usage – 50 gallons)
- c. 55-gallon drums (estimated usage – 6600 gallons)

3. Automatic Transmission Fluid - DEXRON III / MERCON

Product shall be delivered to the ordering agency in resealable plastic quart containers or 55-gallon drums.

The DEXRON-III/MERCON automatic transmission fluid must meet or exceed General Motors Corporation specifications for DEXRON, DEXRON-II, DEXRON-III, and DEXRON-III, Ford Motor Company specifications for MERCON, and Allison Transmission Division C-4.

- a. Quarts/case lots (plastic) (estimated usage – 520 quarts)
- b. 55-gallon drums (estimated usage – 1863 gallons)

4. Chassis Grease - Premium Lithium EP NLGI #2 – High Temperature Blue Grease

Product shall be delivered to the ordering agency in case lots of 14-1/2 oz. tubes, 120 lb. drums, or 400 lb. drums.

Premium Lithium EP Grease NLGI #2 must be premium quality, high temperature lithium grease with extreme pressure properties rated NLGI Grade 2 and should display NLGI Certification Mark for Chassis Lubricant.

- a. 14-1/2 oz. tubes/case lots (estimated usage – 1328 tubes)
- b. 120 lb. drums (estimated usage – 520 pounds)
- c. 400 lb. drums (estimated usage – 1,200 pounds)

5. Gear Lubricant – SAE 85W-140

Product shall be delivered to the ordering agency in resealable plastic quart containers or 120 or 400 lb. drums.

The SAE 85W-140 multigrade gear lubricants must meet or exceed API Service Classifications GL-5 and MT-1, and U.S. Military Specifications MIL-L-2105D and MIL-PRF-2105E.

- a. Quarts/case lots (plastic) (estimated usage 80 quarts)
- b. 120 lb. drums (estimated usage – 600 pounds)
- c. 400 lb drums (estimated usage – 1600 pounds)

6. Tractor Hydraulic Fluid

Product shall be delivered to the ordering agency in 5-gallon pails or 55-gallon drums.

Must be a multifunctional tractor hydraulic fluid for use in transmissions, final drives, wet brakes, and hydraulic systems. Must meet or exceed all major manufacturers warranty requirements and must have anti-wear, extreme pressure, anti-oxidant, friction control, corrosion inhibitor, and foam suppressant additives.

- a. 5 gallon pails (estimated usage – 500 gallons)
- b. 55-gallon drums (estimated usage – 850 gallons)

7. Hydraulic Oil AW – ISO 68

Product shall be delivered to the ordering agency in 5-gallon pails or 55-gallon drums.

Hydraulic Oil AW ISO 68 must meet or exceed all major pump manufacturer specifications including AGMA specification 2, Cincinnati Milacron specification P-69, and Denison HF-0 and HF-2.

- a. 5 gallon pails (estimated usage – 300 gallons)

b. 55-gallon drums (estimated usage – 650 gallons)

8. Wheel Bearing Grease

Product shall be delivered to the ordering agency in 35 lb. pails.

Must be lithium complex, NLGI grade #2

a. 35 lb. pail (estimated usage – 10 gallons)

9. Two Cycle Engine Oil – TC/W3

Product shall be delivered to the ordering agency in resealable plastic quart containers.

2-Cycle Engine Oil TC-W3 must meet or exceed the requirements of ISO-L-EGB (JASO FB), NMMA TC-W3, API TC-W and APITC-W11.

a. Quarts/case lots (plastic) (estimated usage – 168 quarts)

10. Automatic Transmission Fluid – MERCON V

Product shall be delivered to the ordering agency in resealable plastic quart containers.

The MERCON V automatic transmission fluid must meet or exceed General Motors Corporation specifications for DEXRON-III; Ford Motor Company specifications for MERCON and MERCON V, and Allison Transmission Division C-4.

a. Quarts/case lots (plastic) (estimated usage – 510 quarts)

b. 55 gallon drums (estimated usage – 500 gals.)

OPTION A:

Engine Oil - SAE 10, SAE 20 & SAE 30 NON-DETERGENT

Product shall be delivered to the ordering agency in resealable plastic quart containers.

All three products: the SAE 10 single grade non-detergent, the SAE 20 single grade non-detergent, and the SAE 30 single grade non-detergent motor oils must meet or exceed API Service Classification SA.

OPTION B:

SPECIFY ALL OTHER CONTAINER PRODUCT LINES NORMALLY CARRIED AND CORRESPONDING PRICE PER UNIT BELOW. (ATTACH ADDITIONAL SHEET IF NECESSARY)

Product shall be delivered to the ordering agency in the appropriate container.

- a. _____ \$ _____ / _____
- b. _____ \$ _____ / _____
- c. _____ \$ _____ / _____
- d. _____ \$ _____ / _____
- e. _____ \$ _____ / _____
- f. _____ \$ _____ / _____
- g. _____ \$ _____ / _____
- h. _____ \$ _____ / _____
- i. _____ \$ _____ / _____
- j. _____ \$ _____ / _____

APPENDIX A

**LEE COUNTY TRANSIT
FEDERAL TRANSIT ADMINISTRATION**

Grant Procurement Clause Package #2
(Goods, Services and Construction)
Revised January 28, 2002

TABLE OF CONTENTS

A.1 - Federally Required and Other Model Contract Clauses

1. Fly America Requirements
2. Buy America Requirements *(Certification required for contracts > \$100,000)
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements (Construction contracts)
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing (N/A)
9. Pre-Award and Post Delivery Audit Requirements (N/A)
10. Lobbying *(Certification required for contracts > \$100,000)
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon Act (Construction contracts >\$2,000)
17. Contract Work Hours and Safety Standards Act
18. Copeland Anti-Kickback Act
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act Requirements

24. Civil Rights Requirements
25. Breaches of Contract and Dispute Resolution
26. Patent and Rights in Data, and Copyrights
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. State and Local Law Disclaimer
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

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 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 _____ [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

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<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 ² 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 ¹ non-competitive award					
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 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 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.

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 or 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
6035 Landing View 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.

INSURANCE REQUIREMENTS

STANDARD CONTRACT - Contracts that will not exceed three hundred and sixty five (365) calendar days; or where costs will not exceed \$500,000; and/or there are no unusual hazards present.

1. **Insurance Requirements:** *These are minimum requirements, which are subject to modification in response to operations involving a higher level of loss exposure.*

a. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease limit per employee

b. **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:

\$500,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$500,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

c. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$500,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$100,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

**The required limit of liability shown in Standard Contract: 1.a; 1.b; 1.c; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

2. Verification of Coverage:

a. Ten (10) days prior to the commencement of any work under this contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials@ will be named as an “Additional Insured” on the General Liability policy.***
2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).

3. Special Requirements:

- a. An appropriate “Indemnification” clause shall be made a provision of the contract.
- b. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

LEE COUNTY PURCHASING - 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:

MAILING ADDRESS

Lee County Purchasing
P.O. Box 398 or
Ft. Myers, FL 33902-0398

PHYSICAL ADDRESS

Lee County Purchasing
1825 Hendry St 3rd Floor
Ft. Myers, FL 33901

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, FLORIDA
PROPOSAL PRICE FORM
FOR
CONTAINER LUBRICANTS**

ATTACHMENT #3

COPY

DATE SUBMITTED: 2-19-04

VENDOR NAME: EVANS OIL CO, LLC

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

THE BELOW SIGNED QUOTER IS THE:

 MFG. DEALER/AGENT

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>MANUFACTURER</u>
1.	Engine Oil SAE 20 (Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.10</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>3.19</u> gal.	<u>FINA</u>
	Engine Oil SAE 30..... (Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.10</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>3.19</u> gal.	<u>FINA</u>
	Engine Oil SAE 40.....(Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.10</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>3.19</u> gal.	<u>FINA</u>
2.	Engine Oil SAE 15W40(Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.12</u> quart	<u>FINA</u>
	b. 5 gal. pail	<u>3.99</u> gal.	<u>FINA</u>
	c. 55 gal. drum	<u>3.79</u> ga	<u>FINA</u>
3.	Automatic Transmission Fluid.....(Lee County Commodity Code 0600317 & 0600320)		
	a. Dexron III, quart (plastic)	<u>1.15</u> quart	<u>FINA</u>

- b. Dexron III, 55 gal. drum 359 gal. CHEVRON
- 4. Chassis Grease.....(Lee County Commodity Code 40524)
 - a. 14-1/2 oz tube .90 tube FINA
 - b. 120 lb. drum .71 pound FINA
 - c. 400 lb. drum .67 pound FINA
- 5. Gear Lubricant - SAE 85W-140.....(Lee County Commodity Code 40549)
 - a. Quart (plastic) 2.99 quart CHEVRON
 - b. 120 lb. drum .62 pound FINA
- 6. Tractor Hydraulic Fluid.....(Lee County Commodity Code 40551)
 - a. 5 gal. pail 4.20 gal FINA
 - b. 55 gal. drum 3.75 gal. FINA
- 7. Hydraulic Oil - AW - ISO 68 (Lee County Commodity Code 40551)
 - a. 5 gal. pail 3.25 gal. FINA
 - b. 55 gal. drum 3.05 gal. FINA
- 8. Wheel Bearing Grease (Lee County Commodity Code 40524)
 - 35 lb. pail .72 pound FINA
- 9. Two Cycle Engine Oil - TC/W3 (Lee County Commodity Code 40539)
 - a. Quart (plastic) 1.50 quart FINA
- 10. Automatic Transmission Fluid (Lee County Commodity Code 40536)
 - a. Mercon V, quart (plastic) 1.80 quart FINA
 - b. Mercon V, 55 gal. drum 6.50 gal. FINA

TOTAL COST OF UNIT PRICES (1-10): \$ 57.17 ✓

OPTION A:

Engine Oil - SAE 10, SAE 20 & SAE 30 NON-DETERGENT: \$ 0 /quarts or case
lots (plastic)

(Please specify) N/A

OPTION B:

Vendor can provide other product lines for Lee County to utilize on an as needed, when needed basis.

YES

NO

QUOTE SUBMITTALS ARE REQUIRED, SEE PAGE 16.

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

NO

YES

TO BE DELIVERED WITHIN 1 CALENDAR DAYS AFTER RECEIPT OF AWARD AND PURCHASE ORDER.

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

Are there any modifications to the proposal or specifications?

Yes

No

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

MODIFICATIONS:

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

ANTI-COLLUSION STATEMENT

THE BELOW SIGNED PROPOSER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS PROPOSAL WITH OTHER PROPOSERS AND HAS NOT COLLUDED WITH ANY OTHER PROPOSER OR PARTIES TO A PROPOSAL 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 EVANS OIL CO, LLC

BY (Printed): PETER M. JOHNSON

BY (Signature): *Peter M. Johnson*

TITLE: G.M.

FEDERAL ID # OR S.S.# 65-1069593

ADDRESS: P.O. BOX 856

NAPLES, FL. 34106

PHONE NO.: 239-262-4124

FAX NO.: 239-262-7861

CELLULAR PHONE/PAGER NO.: 239-860-8944

LEE COUNTY OCCUPATIONAL LICENSE NUMBER: 003199

E-MAIL ADDRESS: PETER@EVANSOIL.NET

REV: 7/28/00

COLLIER

Evans Oil Company
3170 So. Horseshoe Dr.
Naples, FL 34104

DRUG-FREE WORKPLACE FORM

I, the undersigned vendor, in accordance with Florida Statute 287.087

hereby certifies that EVANS OIL COMPANY does:
Name of Business

Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

1. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
2. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
3. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
4. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
5. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs 1 thru 5.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

Pete M. Johnson
Bidder's Signature

2-9-04
Date



LEE COUNTY

SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Bob Janes
District One

February 18, 2004

Douglas R. St. Cerny
District Two

Quotation No.: Q-040256

Ray Judah
District Three

Andrew W. Coy
District Four

LEE COUNTY ADDENDUM NUMBER ONE TO THE SPECIFICATIONS FOR CONTAINER LUBRICANTS

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

**QUOTERS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE
PROPOSAL QUOTE FORM (PAGE 10).**

Diana M. Parker
County Hearing
Examiner

Please note the following changes in your specification:

Page 17, Section 1. Please add the language, which should read as follows:

All three products: the SAE 20 single grade, the SAE 30 single grade and the SAE 40 single grade motor oils must meet or exceed API Service Categories CF-2 and CF/SJ as applicable, and meet all major car and diesel engine manufacturer requirements including Caterpillar, Cummins, Allison and Mack Truck as applicable.

If there are any questions regarding this addendum, please contact Patti Armbruster at 239-344-5451.

DIVISION OF PURCHASING

Patti Armbruster

Patti Armbruster, CPPB
Buyer

cc: Bill Wolter/Fleet
Larry Ralston/Lee Tran
Minutes

Post-It® Fax Note	7671	Date	2-18	# of pages	1
To	Evans Oil	From	Patti A		
Co./Dept.	Peter Johnson	Co.	Lee Co Purchasing		
Phone #	2	Phone #	239-344-5451		
Fax #	239-262-7861	Fax #			

LEE COUNTY PURCHASING - 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:

MAILING ADDRESS	or	PHYSICAL ADDRESS
Lee County Purchasing		Lee County Purchasing
P.O. Box 398		1825 Hendry St 3 rd Floor
Ft. Myers, FL 33902-0398		Ft. Myers, FL 33901
- 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:

**Evans Oil Company
3170 So. Horseshoe Dr.
Naples, Fl 34104**

ATTACHMENT 4

FORMAL QUOTE NO.: Q-040256

LEE COUNTY, FLORIDA
PROPOSAL PRICE FORM
FOR
CONTAINER LUBRICANTS

 **COPY**

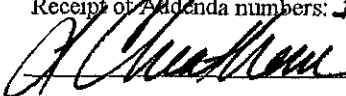
DATE SUBMITTED: 3/2/04

VENDOR NAME: PALMDALE OIL COMPANY INC.

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 Agenda numbers: 1



THE BELOW SIGNED QUOTER IS THE:
PRESIDENT

FINA MANUFACTURER
PALMDALE RE-PACKAGER
PALMDALE MFG. DEALER/AGENT

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>MANUFACTURER</u>
1.	<u>Engine Oil SAE 20</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.17</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>4.33</u> gal.	<u>FINA</u>
	<u>Engine Oil SAE 30.....</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.17</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>3.52</u> gal.	<u>FINA</u>
	<u>Engine Oil SAE 40.....</u> (Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.17</u> quart	<u>FINA</u>
	b. 55 gal. drum	<u>3.53</u> gal.	<u>FINA</u>
2.	<u>Engine Oil SAE 15W40</u>(Lee County Commodity Code 40539)		
	a. Quart (plastic)	<u>1.17</u> quart	<u>FINA</u>
	b. 5 gal. pail	<u>4.05</u> gal.	<u>FINA</u>
	c. 55 gal. drum	<u>3.58</u> ga	<u>FINA</u>
3.	<u>Automatic Transmission Fluid.....</u> (Lee County Commodity Code 0600317 & 0600320)		
	a. Dexron III, quart (plastic)	<u>1.23</u> quart	<u>FINA</u>

- | | | | |
|-----|--|-------------------|---------------|
| | b. Dexron III, 55 gal. drum | <u>3.81</u> gal. | <u>FINA</u> |
| 4. | <u>Chassis Grease.....</u> (Lee County Commodity Code 40524) | | |
| | a. 14-1/2 oz tube | <u>.94</u> tube | <u>FINA</u> |
| | b. 120 lb. drum | <u>.89</u> pound | <u>FINA</u> |
| | c. 400 lb. drum | <u>.85</u> pound | <u>FINA</u> |
| 5. | <u>Gear Lubricant – SAE 85W-140.....</u> (Lee County Commodity Code 40549) | | |
| | a. Quart (plastic) | <u>1.75</u> quart | <u>ROYAL</u> |
| | b. 120 lb. drum | <u>.73</u> pound | <u>FINA</u> |
| 6. | <u>Tractor Hydraulic Fluid.....</u> (Lee County Commodity Code 40551) | | |
| | a. 5 gal. pail | <u>4.08</u> gal | <u>FINA</u> |
| | b. 55 gal. drum | <u>3.61</u> gal. | <u>FINA</u> |
| 7. | <u>Hydraulic Oil – AW – ISO 68</u> (Lee County Commodity Code 40551) | | |
| | a. 5 gal. pail | <u>3.25</u> gal. | <u>FINA</u> |
| | b. 55 gal. drum | <u>2.78</u> gal. | <u>FINA</u> |
| 8. | <u>Wheel Bearing Grease</u> (Lee County Commodity Code 40524) | | |
| | 35 lb. pail | <u>.89</u> pound | <u>FINA</u> |
| 9. | <u>Two Cycle Engine Oil – TC/W3</u> (Lee County Commodity Code 40539) | | |
| | a. Quart (plastic) | <u>1.72</u> quart | <u>FINA</u> |
| 10. | <u>Automatic Transmission Fluid</u> (Lee County Commodity Code 40536) | | |
| | a. Mercon V, quart (plastic) | <u>2.20</u> quart | <u>AMALIE</u> |
| | b. Mercon V, 55 gal. drum | <u>7.40</u> gal. | <u>AMALIE</u> |

TOTAL COST OF UNIT PRICES (1-10): \$ 59.82 ✓

OPTION A:

Engine Oil - SAE 10, SAE 20 & SAE 30 NON-DETERGENT: \$ 10.86 /quarts or case
lots (plastic)

(Please specify)

CASE

OPTION B:

Vendor can provide other product lines for Lee County to utilize on an as needed, when needed basis.

YES

NO

QUOTE SUBMITTALS ARE REQUIRED, SEE PAGE 16.

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

NO

YES

TO BE DELIVERED WITHIN 1 CALENDAR DAYS AFTER RECEIPT OF AWARD AND PURCHASE ORDER.

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

Are there any modifications to the proposal or specifications?

Yes

No

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

MODIFICATIONS:

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

ANTI-COLLUSION STATEMENT

THE BELOW SIGNED PROPOSER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS PROPOSAL WITH OTHER PROPOSERS AND HAS NOT COLLUDED WITH ANY OTHER PROPOSER OR PARTIES TO A PROPOSAL 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 PALMDALE OIL COMPANY INC.

BY (Printed): LACH CHEATHAM

BY (Signature): *Lach Cheatham*

TITLE: PRESIDENT

FEDERAL ID # OR S.S.# 59235B666

ADDRESS: 911 N. 2ND STREET

FT. PIERCE, FL. 34950

PHONE NO.: 772-461-2300

FAX NO.: 772-595-0843

CELLULAR PHONE/PAGER NO.: 561-722-0402

LEE COUNTY OCCUPATIONAL LICENSE NUMBER: 010767

E-MAIL ADDRESS: lach@palmdaleoil.com

REV: 7/28/00

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 3/2/04

Signature [Handwritten Signature]

Company Name PALMORALE OIL COMPANY INC.

Title PRESIDENT

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 5/2/04

Signature [Handwritten Signature]

Company Name PALMORALE OIL COMPANY INC.

Title PRESIDENT

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 3/2/04

Signature [Handwritten Signature]

Company Name PALMORALE OIL COMPANY INC.

Title PRESIDENT

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 3/2/04

Signature [Handwritten Signature]

Company Name PALMORALE OIL COMPANY INC.

Title PRESIDENT

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 PALMDALE OIL COMPANY INC. [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, PALMDALE OIL COMPANY INC., 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] Signature of Contractor's Authorized Official
CACH CHEATNAM PRES. Name and Title of Contractor's Authorized Official
3/2/04 Date

MEMORANDUM

ATTACHMENT 5

from the
TRANSIT DIVISION

DATE: March 4, 2004

TO: Patti Armbruster
Purchasing Buyer

FROM: 

Steven L. Myers
Transit Director

RE: Oil and Lubricants Q-040256

The above referenced quote has been reviewed and an award is recommended to the low bidder meeting specifications, Evans Oil Company. Why: BOCC approval is needed to authorize annual expenditures that exceed \$50,000. What: This action will enable LeeTran to purchase oil and lubricants for the preventive maintenance of transit vehicles. Annual expenditure is estimated at \$30,000. Funds have been budgeted in K15440148600.505210.11. (Transit Division, Fixed Route, Operating Fund, Fuel and Lubricants, Operations).

Thank you for your assistance with this quotation.

cc: Susan Riley, Fiscal Manager
Larry Ralston, Maintenance Manager