

REQUEST FOR QUALIFICATIONS (RFQ)
FOR
PROBED GPS/MOBILE SPATIAL
AND
TEMPORAL DATA ACQUISITION

RFQ No. 21-01



Commissioner Frank C. Ortis, Chair

Gregory Stuart, Executive Director
Broward Metropolitan Planning Organization
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309

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INSTRUCTIONS FOR SUBMITTING AN OFFER IN RESPONSE TO A FORMAL REQUEST FOR QUALIFICATIONS

Each Offer submitted to the Broward Metropolitan Planning Organization (hereinafter the "BMPO") will have the following information clearly marked on the face of the envelope:

- a) Offeror's name, return address and telephone number;
- b) Solicitation number;
- c) The Solicitation Closing Date & Time; and
- d) Title of the Solicitation.

Failure to include this information may result in your Offer being deemed "Non-Responsive."

All Offers must be submitted on 8 1/2" by 11" paper, neatly typed, with normal margins and spacing. Foldout pages may be used, where appropriate, but should be folded to the standard size (8 1/2" X 11) when submitted.

All Offer documents must be bound. **Submit a total of six (6) bound hard copies, and six (6) electronic version on flash drives**, of the complete Offer, which must be received by the deadline for receipt of Offers as specified in Section 2-2, the Solicitation Timetable.

The Offer documents, must be submitted in a sealed envelope or container. Stating on the outside of the sealed envelope or container the Offeror's name, return address, telephone number, the solicitation number, the solicitation closing date & time and the title of the solicitation, to:

**LYDIA WARING, PROCUREMENT OFFICER
BROWARD METROPOLITAN PLANNING ORGANIZATION
TRADE CENTRE SOUTH
100 WEST CYPRESS CREEK ROAD, SUITE 650
FORT LAUDERDALE, FL 33309
TELEPHONE: 954-876-0049**

THE RESPONSIBILITY FOR OBTAINING AND SUBMITTING AN OFFER TO THE PROCUREMENT OFFICER ON OR BEFORE THE STATED TIME AND DATE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE OFFEROR. THE BMPO IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE. ANY OFFER RECEIVED AFTER THE DATE AND TIME STATED IN THIS REQUEST FOR QUALIFICATIONS WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. TELEGRAPHIC OR FACSIMILE OFFERS SHALL NOT BE CONSIDERED.

Hand-carried Offers may be delivered to the Broward MPO office (above address) on the date and hours specified in Section 2-2, the Solicitation Timetable. Offerors must follow instructions for hand-carried delivery date and hours to submit offers as specified in Section 2-2, the Solicitation Timetable.

Offerors are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required information appears on the outer wrapper or envelope used by such service.

The Offer must be signed, either manually or digitally, by an authorized officer of the Offeror who is legally authorized to enter into a contractual relationship in the name of the Offeror. The submittal of an Offer by an Offeror will be considered by the BMPO as constituting an Offer by the Offeror to perform the required services, and/or provide the required goods, pursuant to the terms stated in the Offer and this Request For Qualifications.

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SECTION 1: GENERAL TERMS AND CONDITIONS

1-1 DEFINITIONS

The term "BMPO" shall refer to The Broward Metropolitan Planning Organization.

The term "Contract" shall refer to the Contract that may result from this Request for Qualifications, and may include any resulting work authorizations, notices to proceed, and/or purchase orders.

The terms "Goods" shall refer to all materials and commodities that will be required to be provided by the Successful Offeror in accordance with the Scope of Services, and the Terms and Conditions of this Solicitation.

The term "Offer" shall refer to any Offer(s) submitted in response to this Request for Qualifications.

The term "Offeror" shall refer to anyone submitting an Offer in response to this Request for Qualifications.

The term "Procurement Officer" shall refer to the BMPO staff member designated as the Procurement Officer.

The terms "Provider" or "Successful Offeror" shall refer to the Offeror receiving an award as a result of this Request for Qualifications.

The terms "Request for Qualifications," "RFQ," or "Solicitation" shall mean this Request for Qualifications including all Exhibits and Attachments as approved by the BMPO, and amendments or change orders issued by the Procurement Office.

The term "Subcontractor" or "Subconsultant" shall refer to any person, firm, entity, or organization, other than the employees of the Successful Offeror, who contract with the Successful Offeror to furnish labor, or labor and materials, in connection with the Work or Services to the BMPO, whether directly or indirectly, on behalf of the Successful Offeror.

The terms "Work," "Services," "Program," "Project," or "Engagement" shall refer to all matters and things that will be required to be done by the Successful Offeror in accordance with the Scope of Services, and the Terms and Conditions of this Solicitation.

1-2 AVAILABILITY OF REQUEST FOR QUALIFICATIONS

The Solicitation package may be obtained on the BMPO's website: <http://www.browardmpo.org/index.php/solicitations/current-solicitations>. The Solicitation package may also be requested from the BMPO's Procurement Officer (see CONTACT INFORMATION below).

Offerors who obtain copies of this Solicitation from sources other than the BMPO's Procurement Office risk the potential of not receiving amendments, since their names will not be included on the list of firms participating in the process for this particular Solicitation. Such Offerors are solely responsible for those risks.

1-3 QUESTIONS REGARDING SOLICITATION

Any questions, explanations, requests for additional information, clarification, interpretation, or other requests desired by Offeror(s) regarding the Solicitation **must be emailed** to the BMPO's Procurement Officer (see contact information below). **To be considered, all requests must be received by the Procurement Officer no later than seven (7) working days prior to the Sealed Offer Due Date and Time (see Section 2-2, Solicitation Timetable).** Any request received after that time may not be reviewed for inclusion in this Solicitation. The request shall contain the requester's name, address, telephone number, and email address.

The Procurement Officer will issue a response to any inquiry, if deemed necessary, by written amendment to the Solicitation, issued prior to the Sealed Offer Due Date & Time. The Offeror shall not rely on any representation, statement or explanation other than those made in this Solicitation document or in any amendments issued. Where there appears to be a conflict between this Solicitation and any amendment issued, the last amendment issued shall prevail.

It is the Offeror's responsibility to ensure receipt of all amendments and substitute Offer Forms. It is the Offeror's further responsibility to verify with the Procurement Officer, prior to submitting an Offer, that all amendments have been received. The Offeror shall submit the Offer form entitled "**AMENDMENT ACKNOWLEDGMENT FORM,**" with their Offer.

All Offerors shall carefully examine the RFQ documents. Any ambiguities or inconsistencies shall be brought to the attention of the BMPO or its agent in writing **via email** prior to the deadline.

Submission of an Offer will serve as prima facie evidence that the Offeror has examined the RFQ documents and is fully aware of all conditions affecting the provision of Services.

No person is authorized to give oral interpretations of, or make oral changes to, the RFQ documents. Therefore, oral statements will not be binding and should not be relied upon. Any interpretation of, or changes to, the RFQ documents will be made in the form of a written addendum to the RFQ document and will be furnished by the BMPO to all Offerors who request the RFQ documents from the Procurement Office. Only those interpretations of, or changes to, the RFQ document that are made in writing and furnished to the Offerors by the BMPO may be relied upon.

Among other penalties, violation of these provisions by any particular Offeror shall render their Offer to be deemed non-responsive and any award to Offeror voidable, at the sole discretion of the BMPO.

The contact information and email address for the BMPO's Procurement Office is:

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, FL 33309
(954) 876-0049
WaringL@BrowardMPO.org

1-4 CONTENTS OF SOLICITATION

- a) General Conditions.
 - 1) It is the sole responsibility of the Offeror to become thoroughly familiar with the Solicitation requirements and all terms and conditions affecting the performance of this Solicitation. By the submission of an Offer to do the Work, the Offeror certifies that a careful review of the RFQ documents has taken place, and that the Offeror is fully informed and understands the requirements of the RFQ documents and the quality and quantity of service to be performed. Pleas of ignorance by the Offeror of conditions that exist, or that may exist, will not be accepted as a basis for varying the requirements of the BMPO or the compensation to be paid to the Provider.
 - 2) The Offeror is advised that this Solicitation is subject to all legal requirements and all other applicable City and County Ordinances and/or State and Federal Statutes, Rules, or Regulations.

- b) Conflicts in this Solicitation.

Where there appears to be a conflict between the General Terms and Conditions, the Special Conditions, the Specifications or Scope of Services, the Sample Contract, or any amendment issued, the order of precedence shall be: the last amendment issued, the Specifications or Scope of Services, the Special Conditions, and then the General Terms and Conditions.

1-5 PREPARATION AND SUBMISSION OF AN OFFER

- a) Preparation/Submission.

- 1) The Offer Forms and affidavits set forth in this RFQ shall be used when submitting an Offer. Use of any other forms shall result in the rejection of the Offeror's Offer. All forms submitted shall be completed and signed only by the Offeror.
- 2) The Offer will either be typed or completed legibly in ink. The Offeror's authorized agent will sign the Offer Forms in ink or digitally, and all corrections made by the Offeror shall be initialed in ink by the authorized agent. The use of pencil or erasable ink or failure to comply with any of the foregoing may result in the rejection of the Offer.

The BMPO is exempt from federal excise taxes. Upon request, the BMPO will provide a tax exemption certificate, if applicable.

Any special tax requirements will be specified either in the Special Conditions or in the Specifications, if applicable.

- 3) Any telegraphic or facsimile Offer shall not be considered.
- 4) The apparent silence of the specifications and any amendment regarding any details or the omission from the specifications of a detailed description concerning any materials or services requested, shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials and workmanship of first quality are to be used. All interpretations of the specifications and Scope of Services shall be made upon the basis of this Solicitation.

b) Criminal Conviction Disclosure.

Any individual who has been convicted of a felony during the past ten (10) years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten (10) years shall disclose this information prior to entering into a Contract with and/or receiving funding from the BMPO.

c) Sworn Statement on Public Entity Crimes.

A person or affiliate, as defined in Section 287.133, Florida Statutes, who or which has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime, may not submit an Offer on an Agreement to provide any goods or services to the BMPO and may not transact business with the BMPO in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

By submitting a response to this RFQ, Offeror certifies that it is qualified under Section 287.133, Florida Statutes, to provide the Services set forth in this Solicitation.

Each Offeror shall notify the BMPO within 30 days after a conviction of a contract crime applicable to it or any officers, directors, executive, shareholders active in management, employees, or agents of its affiliates. Under Section 337.164, F.S., the privilege of conducting business with BMPO shall be denied to applicants so convicted until such applicant is properly reinstated pursuant to Section 337.165, F.S., and Rule 14-75, F.A.C.

d) Anti-Kickback Affidavit/No Contingency Fee.

All Offerors shall submit the duly signed and notarized form entitled, "**ANTI-KICKBACK AFFIDAVIT.**" Offeror warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Offeror, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Offeror, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

e) Non-Collusion Declaration.

All Offerors shall submit the duly signed form entitled "**NON-COLLUSION AFFIDAVIT.**"

f) Antitrust Laws.

By acceptance of a Contract, the Successful Offeror acknowledges compliance with all antitrust laws of the United States and the State of Florida, in order to protect the public from restraint of trade, which illegally increases prices.

g) Conflicts of Interest.

The award of the Contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. On the form provided in Section 12 of this RFQ (“**Independence Affidavit**”), the Offeror shall list, and describe any relationships – professional, financial or otherwise – that it may have with the BMPO, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past two (2) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the services sought in this RFQ. Additionally, the Offeror shall give the BMPO written notice of any other relationships – professional, financial or otherwise – that it enters into with the BMPO, its elected or appointed officials, its employees or agents or any of its agencies or component units during the Solicitation period and during the term of the Agreement.

1-6 MODIFICATION OR WITHDRAWAL OF AN OFFER

a) Modification of an Offer.

An Offer shall not be modified or corrected after it has been deposited with the BMPO. The modification or correction of an Offer after it has been deposited with the BMPO shall constitute a breach by the Offeror, and any such Offer shall not be considered by the BMPO.

b) Withdrawal of an Offer.

An Offer may be withdrawn only by written communication delivered to the Procurement Office prior to the Solicitation Closing Date & Time. An Offer may also be withdrawn after one-hundred and eighty (180) calendar days after the Solicitation Closing Date & Time, provided that it is withdrawn prior to the recommendation for award, by submitting a letter to the Procurement Office at the address identified in this Solicitation. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Offeror.

1-7 LATE OFFERS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

Offers received after the Solicitation Closing Date & Time shall be deemed unresponsive, and shall not be opened or considered. Modifications of Offers received after the Solicitation Closing Date & Time shall also not be considered. Withdrawals of Offers received after the Solicitation Closing Date & Time or prior to the expiration of one-hundred and eighty (180) calendar days after the Solicitation Closing Date & Time shall not be considered.

1-8 SOLICITATION POSTPONEMENT OR CANCELLATION

The BMPO may, at its sole and absolute discretion, reject any and all, or parts of any and all Offers, re-advertise this Solicitation, postpone or cancel, at any time, this Solicitation process, or waive any irregularities in this Solicitation, or in the Offers received as a result of this Solicitation.

1-9 COST OF OFFERS

All expenses involved with the preparation and submission of Offers to the BMPO, and any work performed in connection therewith, shall be borne by the Offeror(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Offeror(s) prior to commencement of Work as defined by a contract duly approved by the Executive Board of the BMPO.

1-10 ORAL PRESENTATIONS

The BMPO may require Offerors to perform an oral presentation in support of their Offers or to exhibit or otherwise demonstrate the information contained therein. This presentation or demonstration may be performed before the Evaluation and Selection Committee or the Executive Board of the BMPO. If required, Offerors will be notified in writing prior to the date of such a presentation.

1-11 EXCEPTIONS TO THE SOLICITATION

Offerors may take exception to any of the terms of this Solicitation unless the Solicitation specifically states where exceptions may not be taken. All exceptions taken must be specified in the Offeror's cover letter, and shall be referenced by utilizing the corresponding Section, paragraph, and page number in this Solicitation.

Where exceptions are taken, the BMPO, in its sole discretion, shall determine whether to consider the exception, and/or the acceptability of the proposed exceptions. The BMPO, after completing the evaluation of the exception, may accept the Offer with the exception, reject the entire Offer due to the exception taken, or deem the Offer non-responsive. **OFFERORS TAKING EXCEPTION ARE SOLELY RESPONSIBLE FOR THIS RISK.**

The BMPO is under no obligation to accept or consider any exceptions, or accept any Offer with an exception. Offerors are reminded that they may submit one Offer without exceptions and an alternate Offer with exceptions.

1-12 PROPRIETARY/CONFIDENTIAL INFORMATION

Offerors are hereby notified that all information submitted as part of, or in support of Offers, will be available for public inspection after opening of the Offers, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law." Offers must claim the applicable exemptions to disclosure provided by law in their response to the RFQ by identifying materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary and legal. The BMPO reserves the right to make all final determination(s) of the applicability of the Florida Public Records Law.

All Offers submitted in response to this solicitation become the property of the BMPO. Unless the information submitted is proprietary, copy written, trademarked, or patented, the BMPO reserves the right to utilize any or all information, ideas, conceptions, or portions of any Offer, in its best interest. Acceptance or rejection of any Offer shall not nullify the BMPO's rights hereunder.

1-13 EVALUATION OF OFFERS

- a) Rejection of Offer.
 - 1) The BMPO may reject any Offeror's Offer;
or
The BMPO may reject and re-advertise for all or any part of this Solicitation, whenever it is deemed in the best interest of the BMPO. The BMPO shall be the sole judge of what is in its "best interest."
 - 2) The BMPO may reject any Offer if the Offeror does not accept, or attempts to modify the terms and conditions of this Solicitation.
- b) Waiver of Informalities.

The BMPO reserves the right to waive any informalities or irregularities in this Solicitation.
- c) Demonstration of Competency.
 - 1) An Offer will only be considered from a firm that is regularly engaged in the business of providing the goods and/or services required by this Solicitation. The Offeror must be able to demonstrate a good record of performance and have sufficient financial resources, equipment and organization to ensure that they can satisfactorily provide the goods and/or services if awarded the Contract as a result of this Solicitation.

- 2) The BMPO may conduct a pre-award inspection of the Offeror's site or hold a pre-award qualification hearing to determine if the Offeror possesses the requirement(s) as outlined in the above paragraph, and is capable of performing the requirement of this Solicitation. The BMPO may consider any evidence available regarding the financial, technical or other qualifications and abilities of the Offeror, including past performance (experience) with the BMPO or any other governmental entity in making the award of any Contract.
- 3) The BMPO may require the Offeror to show evidence that it has been designated as an authorized representative of a manufacturer, supplier and/or distributor if required by this Solicitation.
- 4) The BMPO reserves the right to audit all records pertaining to and resulting from any award as a result of this Solicitation, financial or otherwise.

1-14 NEGOTIATIONS

The BMPO may award a Contract on the basis of initial Offers received, without discussions. Therefore, each initial Offer should contain the Offeror's best efforts.

Pursuant to Section 287.055, Florida Statutes, the BMPO, at its sole discretion, reserves the right to enter into Contract negotiations with the qualified responsive, responsible Offeror for the project. If the BMPO and said Offeror cannot negotiate a successful Contract, the BMPO may terminate said negotiations and begin negotiations with the next qualified responsive, responsible Offeror. This process will continue until a Contract acceptable to the BMPO has been executed or all Offers are rejected. No Offeror shall have any rights against the BMPO arising from such negotiations or termination thereof.

1-15 AWARD OF A CONTRACT

- a) Contract.

This Solicitation contains a sample of the Contract entitled "**SAMPLE CONTRACT.**" After award, the attached Contract, inclusive of all attachments and any modifications that the BMPO, in its sole discretion may make, will constitute the entire Contract between the parties. The BMPO may award independent contracts to multiple Offers, in its sole discretion, to secure the goods and/or services required by this Solicitation. After award, the Contract, including all attachments and any modifications that the BMPO, in its sole discretion may make, will constitute the entire Contract between the parties. No rights shall inure to the benefit of any Offeror pursuant to this Solicitation until the Contract has been executed by both parties thereto.

b) Additional Information.

The award of a Contract may be preconditioned on the subsequent submission of other documents, as specified in the Special Conditions or Specifications. The Successful Offeror(s) shall be deemed “Non-Responsive” if such documents are not submitted in a timely manner and in the form required by the BMPO. Where the Successful Offeror(s) is deemed “Non-Responsive” as a result of such failure to provide the required documents, the BMPO, may award any Contract for a specific project to another of the qualified responsive, responsible Offeror(s).

c) Independent Contractor.

The Successful Offeror shall be a contractor operating independently from the BMPO. All employees and contractors to the Successful Offeror shall be considered to be, at all times, the sole employees or contractors of the Successful Offeror under its sole discretion and not an employee, Contractor, or agent of the BMPO. Nor shall employees and contractors to the Successful Offeror enjoy any privity of contract with the BMPO. Neither the Successful Offeror nor any of its employees shall receive any BMPO benefits available to employees of the BMPO. The Successful Offeror shall supply competent and capable employees and contractors. The BMPO may require the Successful Offeror to remove any employee or contractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the BMPO.

d) Contract Extension.

The BMPO reserves the right to automatically extend any Contract for up to ninety (90) calendar days beyond the stated Contract term, under the same terms and conditions of said Contract. The BMPO shall notify the Successful Offeror in writing of such extensions. Additional extensions beyond the first ninety (90) day extension may occur, if, the BMPO and the Successful Offeror are in mutual agreement of such extensions.

e) Limited Contract Extension.

Any specific work assignment that commences prior to the termination date of any Contract and that will extend beyond the termination date shall, unless terminated by mutual written agreement by both parties, continue until completion at the same prices, terms and conditions as set forth in any Contract.

f) Warranty.

Any implied warranty granted under the Uniform Commercial Code shall apply to all goods purchased under any Contract.

g) Estimated Quantities.

Estimated quantities or estimated dollars, if provided, are for Offeror's guidance only. No guarantee is expressed or implied as to quantities or dollars that will be used during the period of any Contract. The BMPO is not obligated to place any order for a given amount subsequent to the award of any Contract. Estimates are based upon the BMPO's actual needs and/or usage during a previous contract period. Said estimates may be used by the BMPO for purposes of determining the qualified responsive, responsible Offeror meeting specifications.

h) Non-Exclusive Contract.

Although the purpose of this Solicitation is to secure a Contract that can satisfy the total needs of the BMPO for the Project, it is hereby agreed and understood that any Contract does not constitute the exclusive rights of the Successful Offeror to receive all orders that may be generated by the BMPO in connection with the types of products and/or Services requested herein.

1-16 RIGHT OF APPEAL

Any Offeror may protest any recommendation for the award of a Contract or rejection of all Offers, in accordance with the BMPO's Protest Procedures. Complete copies of all procedures are available from the BMPO's Procurement Office.

After a notice of intent to award a contract is posted, any actual Offeror who is aggrieved in connection with the pending award of the contract or any element of the process leading to the award of the contract may submit a protest to the Broward Metropolitan Planning Organization, Procurement Officer, Trade Centre South, 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, Florida 33309.

A protest must be filed within five (5) business days after posting or any right to protest is forfeited. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the written protest and the required deposit are received by the Procurement Officer.

The Protest shall be accompanied by a required deposit from a protester to compensate the BMPO for the expenses of administering the protest. The deposit shall be in the form of cash or a cashier's check, and shall be the greater of one (1) percent of the amount of the pending award or five thousand dollars (\$5,000). If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the BMPO.

A protestor must exhaust all administrative remedies with the BMPO before pursuing a protest with the applicable Federal agency.

1-17 REQUIRED LISTING OF SUBCONTRACTORS AND SUPPLIERS

All Contracts with the BMPO for purchase of supplies, materials, or services, including professional services, shall require that the Offeror submits with its Offer a listing of all first-tier subcontractors or subconsultants who will perform any part of the Contract work and all suppliers who will supply materials for the Contract work direct to the Successful Offeror. In addition, the Successful Offeror shall not change or substitute subcontractors, subconsultants, or suppliers from those listed in the Offer except upon written approval of the BMPO. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Offer, a list of such subcontractors shall be provided to the Executive Director, subject to his approval.

All Offerors shall submit the completed Offer form entitled “**OFFEROR’S DISCLOSURE OF SUBCONTRACTORS, SUBCONSULTANTS, AND SUPPLIERS**” with their Offer. **FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER THE OFFER NON-RESPONSIVE.**

1-18 INTERPRETATIONS AND INQUIRIES

All Offerors shall carefully examine the RFQ documents. Any ambiguities or inconsistencies shall be brought to the attention of the BMPO or its agent in writing prior to the deadline.

Any questions concerning the intent, meaning and interpretation of the RFQ documents shall be requested in writing, and received by the BMPO prior to the date and time as specified in Section 2-2, the Solicitation Timetable.

Written inquiries shall be **SENT VIA EMAIL ONLY** to:

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Telephone: (954) 876-0049
WaringL@browardmpo.org

Submission of an Offer will serve as prima facie evidence that the Offeror has examined the RFQ documents and is fully aware of all conditions affecting the provision of Services.

No person is authorized to give oral interpretations of, or make oral changes to, the RFQ documents. Therefore, oral statements will not be binding and should not be relied upon. Any interpretation of, or changes to, the RFQ documents will be made in the form of a written addendum to the RFQ document and will be furnished by the BMPO to all Offerors who request the RFQ documents from the Procurement Office. Only those interpretations of, or changes to, the RFQ document that are made in writing and furnished to the Offerors by the BMPO may be relied upon.

1-19 VERBAL AGREEMENTS

No verbal agreement or conversation with any officer, agent, or employee of the BMPO, either before or after execution of the Agreement, shall affect or modify any of the terms or obligations contained in the Agreement. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon the BMPO or the Offeror.

1-20 ASSIGNMENT; NON-TRANSFERABILITY OF OFFER

Offers shall not be assigned or transferred. An Offeror who is, or may be, purchased by or merged with any other corporate entity during any stage of the RFQ process, up to and including awarding of and execution of an Agreement, is subject to having its Offer disqualified as a result of such transaction. The Executive Director shall determine whether an Offer is to be disqualified in such instances.

If, at any time during the RFQ process, filings, notices or like documents are submitted to any regulatory agency concerning the potential acquisition of Offeror, or the sale of a controlling interest in the Offeror, or any similar transaction, Offeror shall immediately disclose such information to the BMPO. Failure to do so may result in the Offer being disqualified, at the BMPO's sole discretion.

1-21 LEGAL REQUIREMENTS

Offerors are required to comply with all provisions of federal, state, county and local laws, ordinances, rules and regulations that are applicable to the Services being offered in this RFQ. Lack of knowledge of the Offeror shall in no way be a cause for relief from responsibility, or constitute a cognizable defense against the legal effects thereof.

1-22 FAMILIARITY WITH LAWS AND ORDINANCES

The submission of an Offer on the Services requested herein shall be considered as a representation that the Offeror is familiar with all federal, state and local laws, ordinances, rules and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such Services, or which in any way affects the conduct of the provision of such Services; and no plea of misunderstanding will be considered on account of ignorance thereof. If the Offeror discovers any provisions in the RFQ documents that are contrary to or inconsistent with any law, ordinance, or regulation, the Offeror shall report it to the BMPO in writing without delay.

1-23 ADVERTISING

In submitting an Offer, Offeror agrees not to use the results therefrom as a part of any advertising or Offeror sponsored publicity without the express written approval of the BMPO Executive Director or designee.

1-24 APPLICABLE LAW AND VENUE

The terms, conditions and provisions in this RFQ shall be included and incorporated in the final Agreement between the BMPO and the successful Offeror(s). The order of precedence will be the Agreement, the RFQ Documents, the Offeror's response and general law. Any and all legal action necessary to interpret or enforce the Agreement will be governed by the laws of Florida. The venue shall be Broward County, Florida.

1-25 BMPO'S EXCLUSIVE RIGHTS

The BMPO reserves the exclusive rights to:

1. Waive any deficiency or irregularity in the selection process;
2. Accept or reject any or all qualifications statements in part or in whole;
3. Request additional information as appropriate; and,
4. Reject any or all submittals if found by the BMPO Board not to be in the best interest of the BMPO.

By submitting an Offer for the services, all Offerors acknowledge and agree that no enforceable Agreement arises until the BMPO signs the Agreement, that no action shall lie to require the BMPO to sign such Agreement at any time, and that each Offeror waives all claims to damages, lost profits, costs, expenses, reasonable attorney fees, etc., as a result of the BMPO not signing such Agreement.

1-26 AMENDMENTS

The BMPO reserves the right to issue amendments to this RFQ. Each Offeror shall acknowledge receipt of such amendments on the form provided in Section 5. In the event any Offeror fails to acknowledge receipt of such amendments, his/her Offer shall nevertheless be construed as though the amendments had been received and acknowledged and the submission of his/her Offer shall constitute acknowledgment of receipt of all amendments, whether or not received by him/her. It is the responsibility of each prospective Offeror to verify that he/she has received all amendments issued before depositing the Offer with the BMPO.

1-27 EQUAL OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

As a sub-recipient of FHWA or FTA funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at

<https://www.fdotdbesupportservices.com/>. This office also recommends the use of certified DBEs listed in the Florida Unified Certification Program (UCP) in identifying DBEs for work on this contract, visit <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

All Offerors must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List. The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at eoohelp@dot.state.fl.us.

Offerors, contractors/consultants, sub-recipients, or subcontractor/consultants may not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder contractor/subcontract, sub-recipient, or subcontractor/consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of FHWA and/or FTA-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deem appropriate.

1-28 FEDERAL DEBARMENT

By submitting a response to this RFQ, the Offeror certifies that no principal (which includes officers, directors, or executives) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation on this transaction by any Federal department or agency.

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SECTION 2: SPECIFIC TERMS AND CONDITIONS

2-1 SCOPE OF SERVICES

I. Purpose

The Regional Transportation Technical Advisory Committee – Modeling Subcommittee (RTTAC-MS) is looking for Big Data sources and their applicability in evaluating regional travel behavior and in estimating, calibrating, and validating regional travel demand models. The data set should also lend itself for uses related to federal performance management measures and transportation planning activities. The Committee is looking to acquire one or more Big Data sets as a complete solution to support the Committee's aforementioned tasks and will consider solo proposals and/or partnerships that can provide no less than twelve consecutive months of the required data.

Proposals should provide the RTTAC-MS with necessary detailed information and understanding of the strengths, limitations, applicability, and acquisition costs of the proposed Big Data set(s) before committing to an investment in the data. The RTTAC-MS seeks to determine the feasibility of using the Big Data set(s) to accomplish at least the following:

- a. Estimate, calibrate, and validate its regional travel demand model.
- b. Analyze regional travel and mobility to help validate data the region collected through conventional surveys and existing traffic monitoring programs, and to provide additional information and understanding of aspects of mobility that are not easily captured through currently available data sources.
- c. Fulfill federal mandates for a regional Congestion Management Process (CMP).
- d. Understand the characteristics and impacts of emergent travel options and technologies on travel throughout the region, including, but not limited to, the rapid rise in the use of Transportation Network Companies (TNCs), such as Uber and Lyft, traffic information and route navigation apps such as Google Maps and Waze, and real-time arrival and trip-planning for transit, ridesharing, bike sharing, etc.

As a part of this effort the RTTAC-MS and a Broward County representative will evaluate proposals based on criteria that will generally fall into the following five broad categories:

1. Awareness of project needs and limitations as it pertains to travel demand modeling, performance and system management, and related planning analysis.
2. Identification of minimum data requirements available within proposed data solution describing suitability and value relating to the project needs and activities.
3. Data collection, cleaning, storage, and validation methodology and process breakdown explaining objectivity, limitations, appropriateness, and other considerations such as but not limited to privacy protection, availability, and accuracy.

4. Review and comparison of examples of how other metropolitan areas or public organizations have utilized the proposed data set(s) for similar applications.
5. Identify any additional data availability exceeding the data requirements outlined in the Scope of Services that may enhance objectives and yield innovative solutions and/or increase efficiency.

II. Background

The RTTAC-MS is made up of the three Metropolitan Planning Organizations of the Miami Urbanized Area (Broward Metropolitan Planning Organization, the Miami-Dade Transportation Planning Organization and Palm Beach Transportation Planning Agency) and Districts Four and Six of the Florida Department of Transportation (PARTNERS). For the purpose of this Probed GPS/Mobile Spatial and Temporal Data Acquisition project only, Broward County will be included as a PARTNER as they will be providing funding. All PARTNERS will have full access to the data acquired as part of this project.

The RTTAC-MS is a subcommittee of the Southeast Florida Transportation Council (SEFTC) and share the responsibility of developing, updating and maintaining the Southeast Florida Regional Planning Model (SERPM). The SERPM is used by the three MPOs in the development of their respective Metropolitan Transportation Plans and is also used by FDOT Districts Four and Six for multimodal projects.

One of the critical elements in the development and update of the SERPM model is current travel behavior data. As this is an ever-evolving field with technological advances in general and urban infill trends within the Tri-County Region (Broward, Miami Dade and Palm Beach Counties), the PARTNERS recognize the need for a robust and multi-dimensional data collection effort to continue to enhance the SERPM model through better understanding the Tri-County Region's travel patterns and characteristics. The PARTNERS also acknowledge that the data collected may be able to support activities beyond transportation-related functions.

The Southeast Florida Regional Travel Study was completed in 2017 and represented a major effort for the region to collect information on household characteristics and travel activity on selected sample household's representative of the Tri-County Region. The findings from the household survey were instrumental in the development of SERPM Version 8. Additionally, the Regional Travel Study collected global positioning systems (GPS) based travel data showing origin-destination, system and freight movement at the Traffic Analysis District (TAD) level. This data was very useful for the PARTNERS to understand travel behavior and supplemented the household trip making information obtained from the Regional Travel Study.

The PARTNERS intend to use state-of-the-art and innovative techniques for data collection that will lead to more cost-effective means of collecting vital travel behavior information. Innovative techniques refer to methods such as usage of mobile device data for anonymously identifying origin-destinations, mode choices, or usage of existing National Household Travel Survey (NHTS) data to supplement and potentially supplant some of the traditional methods of identifying household travel characteristics and the associated travel behaviors.

III. Proposal Format

Section 1 – Awareness of Project Issues

The proposal shall include a brief discussion of travel demand modeling and transportation system performance management, demonstrating familiarity with the data needs of these activities. Awareness of unique regional considerations should also be addressed.

- A. Comprehensive explanation of travel demand modeling activities in model application, development, and support accompanied by the required data for successful completion of these activities.
- B. Proposed data set(s) provides data for use in model calibration and validation within the required region at the Traffic Analysis Zone (TAZ) level of resolution, at a minimum. Explanation of additional proposed data availability and resolutions should also be included, if applicable.
- C. Explanation of data accessibility and format for ease of use and application.
 - Describe platform and/or software necessary for accessing, viewing, utilizing, and downloading data.
 - Detail data formatting options and post-processing methodology, if any, that may be necessary prior to use.
- D. Discuss available technical support and guidance.
 - Elaborate on technical support availability and any technical training that may be provided.

Section 2 – Minimum Data Requirements

The proposed data set(s) should depict features such as people, vehicle movements, freight and goods, and trip origins and destinations in the Tri-County region at Traffic Analysis Zone (TAZ) level to provide insights and/or inferences to be utilized for travel demand modeling, system performance management, and other planning activities. The proposal should include which features are accessible within the data along with relevant explanation on how these features are extracted from the raw data, which may be further clarified in Section 4: Data Collection and Processing Methodology. The following list outlines the minimum data requirements identified as necessary for use by the PARTNERS. Additional consideration will be given for supplementary and innovative data exceeding these requirements, as described in Section 3 Supplemental and Additional Data Considerations.

- Trip origin and destination by time of day and mode
- Mode choice data
- External-external (EE), External-Internal (EI), and Internal-External (IE) trips
- Freight and/or goods movement
- Travel time

Section 3 – Supplemental and Additional Data Considerations

The proposed solution may include supplementary and/or complimentary data elements in addition to the required components described in Section 2 Minimum Data Requirements. Additional features of interest may include, but are not limited to, the following:

- Transit route and operations
- Bike and pedestrian data
- Express/toll lanes data
- TNC usage data
- CAV usage data
- Data integration strategies
- Real-time traffic monitoring data
- Micro-mobility data
- Socio-economic data
- Historical and/or special incidents, events, and trends

Section 4 – Data Collection and Processing Methodology

The proposal shall include detailed explanation of the employed data collection and processing methodologies. Explanation should be transparent and easily understood to inform the PARTNERS on the processes used and related issues for consideration prior to choosing a Big Data solution, including but not limited to: source of the data, data processing, cleaning, and validation, limitations and accuracy, privacy concerns, and availability.

A. Source of the Proposed Data Set(s):

- Describe the source and/or technology used to collect and extract the raw data.
- Elaborate on providers involvement in collecting/purchasing data from a third-party source, if applicable.

B. Data processing, cleaning, and validation methodology:

- Explanation of methodology employed for converting raw data to processed, usable data and insights.
- Report on procedures and methods employed to extract features from raw data and differentiate between various modes, trip purposes, as well as other relevant features.
- List conditions that are intentionally applied to filter out data throughout the process.
- Specify any potential limitations, accuracy considerations, and/or intrinsic assumptions that may exist keeping in mind the context of the scope activities including data usability and analysis.

C. Privacy concerns:

- Describe how data set(s) account for potential public privacy concerns or other relevant discretionary considerations.
- Be responsible to conduct data privacy impact analysis periodically for privacy protection and compliance.

D. Availability:

- Specify the who, when, and how long, PARTNERS (and respective consultants) can have access to the data and/or platform(s) for accessing the data as well as any restrictions on this availability.
- Explain access protocols for the data and/or platform(s) including availability for offline access.
- Elaborate on any availability restrictions that may exist due to the funding limitations outlined in the scope.

Section 5 – Use Case Examples in Similar Applications

The proposal should also include state-of-the-practice review of proposed Big Data set(s) usage for analyzing travel behavior and mobility by other public agencies and metropolitan areas with similar characteristics (such as population, diversity, land mass, etc.) to the Tri-County region. The examples should include how the data was utilized for the various activities, whether it replaced and/or improved upon conventional methods, and any lessons learned for future applications. Use case examples and evidence may include both quantified and qualified details as well as documented support from the client. The PARTNERS are seeking relevant documented use cases and/or examples for the following applications of the proposed data solution:

1. Use Case Examples for Travel Demand Modeling Activities
2. Use Case Examples for System and Performance Management Activities
3. Use Case Examples for Other Planning and Mobility Studies
4. Use Case Examples for Innovative Solutions

Section 6. SCHEDULE

The duration of this contract will depend on the pricing and availability options presented to the RTTAC-MS Committee. Consideration of previously purchased sources that reduce cost should be included.

2-2 SOLICITATION TIMETABLE

The anticipated schedule for this Solicitation and the determination of qualified firms shall be as follows, and may be altered at any time, as best meets the needs of the BMPO. Scheduled meetings may be held virtually, in accordance with procedures to be developed by the BMPO. **During the declared public health emergency, all public meetings will be held via teleconference on [ZOOM/ Microsoft Teams/ GoToMeeting].** Any updates to meeting locations will be provided on the BMPO website: <http://www.browardmpo.org/index.php/solicitations/current-solicitations> and/or <http://www.browardmpo.org/index.php/calendar>

ACTION/ACTIVITY	DATE	LOCAL TIME	LOCATION
Advertisement Start (Date Issued)	March 22, 2021	See BMPO Website	BMPO Website: http://www.browardmpo.org/index.php/solicitations/current-solicitations
Deadline for Questions (Submit via email only)	April 6, 2021	5:00 pm	Via Email to BMPO Procurement Officer WaringL@browardmpo.org
Hand-Carried Delivery (Sealed Envelope)	April 15, 2021	Between the hours of 9:00 am to 3:00 pm	BMPO Procurement Office Trade Centre South, Suite 650 100 W. Cypress Creek Road Fort Lauderdale, FL 33309
Deadline for Offers Due (Sealed Envelope) Advertisement Closing Date	April 15, 2021	3:00 pm	BMPO Procurement Office 100 W. Cypress Creek Road Fort Lauderdale, FL 33309
Opening of Sealed Offers	April 15, 2021	On or about 3:15 pm	BMPO Procurement Office 100 W. Cypress Creek Road Fort Lauderdale, FL 33309
Evaluation/Selection Committee Determination Qualification and Shortlist	May 5, 2021	On or about 2:00 pm	For virtual meeting link please visit the BMPO Website Calendar: http://www.browardmpo.org/index.php/calendar
Oral Presentations/Interviews (Shortlisted Firms) (If needed)	May 19, 2021	On or about 10am to 2pm Order Selected in a Random Drawing	For virtual meeting link please visit the BMPO Website Calendar: http://www.browardmpo.org/index.php/calendar
Evaluation/Selection Committee Discussion, Evaluate and Recommend	May 19, 2021	On or about 2:00 pm After the last firm presentation	For virtual meeting link please visit the BMPO Website Calendar: http://www.browardmpo.org/index.php/calendar
<i>Posting</i> – Intended Award	May 24, 2021	On or about 2:00 pm	BMPO Website
Negotiations Meeting (Intended Award Firm(s))	June 3, 2021	On or about 9:30 am	BMPO Procurement Office 100 W. Cypress Creek Road Fort Lauderdale, FL 33309
BMPO Board Approval of Intended Award	July 8, 2021	On or about 9:30 am	For virtual meeting link please visit the BMPO Website Calendar: http://www.browardmpo.org/index.php/calendar

BMPO = Broward Metropolitan Planning Organization

2-3 TERM OF CONTRACT: UPON COMPLETION AND ACCEPTANCE

The Contract(s) resulting from this Solicitation shall commence upon the date of execution and BMPO Board approval and shall remain in effect until such a time as the Services acquired in conjunction with this RFQ have been completed and accepted by the BMPO.

2-4 METHOD OF AWARD: TO THE HIGHEST EVALUATED RESPONSIVE, RESPONSIBLE, AND QUALIFIED OFFEROR

The award of any Contract resulting from this Solicitation will be made to the highest evaluated responsive, responsible and qualified Offeror, and whose Offer will be most advantageous to the BMPO. See also Sections 1-13 and 3-3.

2-5 METHOD OF PAYMENT: PERIODIC INVOICES FOR SERVICES RENDERED

The Successful Offeror(s) shall submit fully documented monthly invoices in a form and with documentation acceptable to the BMPO within thirty (30) calendar days after the services have been rendered and following the end of each month throughout the life of the contract. These invoices shall be submitted to the Broward Metropolitan Planning Organization, ATTN: Accounts Payable at accountspayable@browardmpo.org. All documentation shall reference the appropriate Contract number, the type of Service(s) provided, the dates or period that the Service(s) were provided in the prior thirty (30) days.

2-6 CONTENTS OF OFFER

The Offer shall be submitted in the format set forth in Section 3-5.4, and shall include the Qualifications Offer (detailed below) within Chapter 2 of the response after the Qualifications Offer Cover Sheet. The Offer shall include all of the required documents in accordance with Section 3-5 and Section 3-7.

1) The Qualifications Offer.

i) Cover page.

The form entitled **QUALIFICATIONS OFFER COVER SHEET** is to be used as the cover page for the Qualifications Offer. This form must be fully completed and signed by an authorized officer of the Offeror submitting the Offer.

ii) Table of contents.

The table of contents should outline in sequential order the major areas of the Offer. All pages of the Offer, including enclosures, must

be clearly and consecutively numbered and correspond to the table of contents.

iii) Executive summary.

Provide a brief summary describing the Offeror's ability to perform Work requested in this Solicitation, a history of the Offeror's background and experience providing services, the qualifications of the Offeror's personnel to be assigned to these project, the subcontractors, subconsultants, and/or suppliers and a history of their background and experience, a list of all projects in the last three (3) years and any other information called for by this Solicitation which the Offeror deems relevant, including restating any exceptions to this Solicitation. This summary should be brief and concise to apprise the reader of the basic services offered, experience and qualifications of the Offeror, staff, subcontractors, subconsultants, and/or suppliers.

iv) Technical information.

Describe the Offeror's approach to organization management and the responsibilities of Offeror's management and staff personnel that will perform Work on the Contract; describe method employed to ensure prompt service, customer satisfaction, prompt complaint resolution, effective employee performance and training, and timely initiation and completion of all Work.

2) Contents of Offeror Qualification Form.

Offerors shall provide documentation that demonstrates their ability to satisfy all of the minimum qualifications requirements. Offerors who do not meet the minimum qualification requirements or who fail to provide supporting documentation and/or affidavits as specified herein will be deemed non-responsive. If a prescribed format or required documentation for the response to minimum qualification requirements is listed below, Offerors must use said format and supply said documentation to be considered responsive.

Each Offeror shall complete and submit the Offeror Qualification Form (Section 6). The Offeror Qualification Form shall include the information requested therein and shall address each item on a point-by-point basis. To the extent that an organization is comprised of one or more persons or business entities, information relative to each member of such "team" shall be provided.

In addition to the information requested in the Offeror Qualification Form, Offeror shall provide the following information to supplement the Offeror Qualification Form within Chapter 7 of the Offer:

- A) Any business owner who has previously operated a business under another name must include a description of the previous business. Failure to include such information will be deemed as intentional misrepresentation by the BMPO, and will render the Offeror's Offer non-responsive.
- B) Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Offeror is either performing or has completed within the last five (5) years. Describe the Offeror's qualifications and experience in the management of comparable projects in size and scope. The specific role of the Offeror in any project, which is referred to with regard to the Offeror's experience, shall be described in detail. The description should identify for each project:
 - i) The client name, address, telephone number and the name of the contact person;
 - ii) A description of the required Work;
 - iii) The contract period and duration;
 - iv) A statement or notation as to whether the Offeror was a prime contractor or subcontractor, subconsultant, or supplier; and
 - v) The result of the project.
- C) List any and all contracts the Offeror has performed for the BMPO.
- D) Describe any other experiences related to the tasks set forth in the attached Scope of Services.

3) Financial Stability.

Each Offeror shall provide a statement in writing, signed by a duly authorized representative, stating the present financial condition of the Offeror, and disclosing information as to Offeror's involvement in any current bankruptcy proceedings or has been involved in any bankruptcy proceedings within the last three (3) years.

4) Litigation History.

Each Offeror shall provide a statement describing any prior or pending litigation or investigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Offeror, any of its employees, subcontractors or subconsultants is or has been involved within the last three (3) years. The statement shall be included within Chapter 10 of the Offer.

5) Statement of Organization.

Each Offeror shall complete and submit the Offeror's Statement of Organization (Section 14). To the extent the information is not provided for on the form, Offeror shall supplement the Statement of Organization with the following information to be included within Chapter 3 of the Offer:

- A) Provide an organizational chart showing all individuals, including their titles, whom will perform any work on the Contract. This chart must clearly identify the Offeror's employees and those of the subcontractors or subconsultants.
- B) Describe the experience, qualifications, and other vital information, including relevant experience on similar contracts, of all key individuals and subcontractors or subconsultants who will perform work on the Contract. This information shall include functions to be performed by the key individuals and the subcontractors or subconsultants.
- C) Provide resumes with job descriptions and other detailed qualification information on all key personnel who will be assigned to the Contract, including any subcontractors or subconsultants. All key personnel includes (but is not limited to) all partners, managers, seniors and other professional or technical staff that will perform work on the Contract.

6) Affidavits and Acknowledgements.

Offeror shall complete and submit all affidavits, forms, certifications and acknowledgments set forth in this RFQ (Section 4 thru Section 17) and provide such documents as part of Offeror's Offer in the format set forth in Section 3-5.4.

2-7 EVALUATION CRITERIA

Following the closing of the Solicitation, the Offers will be evaluated by an Evaluation and Selection Committee (“Committee”) appointed by the Executive Director or his/her designee. The Committee will first review each submittal for compliance with the minimum qualifications and mandatory requirements of the RFQ. Failure to comply with any mandatory requirements, as determined by the Committee, will disqualify a submittal. The highest ranked respondents will be short-listed on the basis of the Offers by the Evaluation and Selection Committee and may be called for oral presentations before the Evaluation Committee regarding their responses, approach to the Services, and ability to furnish the required Services.

Following discussions and/or presentations by each short listed Offeror, the Committee will rank the finalists and make an award recommendation to the Executive Director. The Successful Offeror(s) shall execute a contract with the BMPO, subject to negotiations and approval by the Executive Director and upon completion of an acceptable contract, the Executive Director will present the contract to the BMPO Executive Committee or the Board (as such may be appropriate pursuant to BMPO Procurement Rules) for approval. The BMPO Executive Committee or the Board will consider the rankings and authorize the execution of an agreement in accordance with the terms of this RFQ and the Offers.

In the event the rankings result in a tie for the most highly qualified firm, the Committee shall select the firm with the most first place votes. If there is still a tie, the Committee shall rank the firms that are tied in order of preference. For this ranking each member of the Committee shall rank the firms from most preferred to least preferred, with the number one (1) being used for ranking the most preferred firm. The firm with the most first place votes will be recommended for the award. If there is still a tie, the Committee shall determine the tie breaker between the remaining firms.

The Offers scores are based on a point total and not a percentage factor. The Committee will evaluate and rank responsive Offers based on the Evaluation criteria listed below:

EVALUATION CRITERIA

➤ **Awareness of Project Needs (0 - 30 points):**

Proposal should demonstrate understanding of travel demand model data requirements and data set shall meet the needs outlined in the Scope of Services. Describe how solution provides ease of use, efficiency within the process, and any technical requirements or support that will be provided for achieving the project objectives.

➤ **Identification of Key Data Requirements (0 - 30 points):**

Clearly identify features of proposed data meeting the minimum requirements including trip origin and destination by time of day, mode choice, external-external/external-internal/internal-external trips, freight and/or goods movement, and travel time data.

- **Data Collection and Processing Methodology (0 - 25 points):**
Proposal should present the source of the data and describe in detail the methodology employed for data processing, cleaning, and validation prior to deployment. Thorough explanation of limitations and accuracy should be addressed along with privacy and availability.
- **Use Case Examples in Similar Applications (0 - 10 points):**
Provide details of previous and relevant use case examples using proposed data solution for travel demand modeling activities, system and performance management activities, and other applicable considerations.
- **Innovative Solutions (0 - 05 points):**
Identify any additional data availability exceeding the data requirements outlined in the Scope of Services that may enhance objectives and yield innovative solutions and/or increase efficiency. Any relevant use case examples of these additional data considerations should be described. Access to graphic user interface.

2-8 INDEMNIFICATION OF THE BMPO BY THE SUCCESSFUL OFFEROR

The Successful Offeror shall indemnify, and hold harmless the BMPO, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Successful Offeror and other persons employed or utilized by the Successful Offeror in the performance of the services under the Contract.

2-9 PROFESSIONAL LIABILITY INSURANCE

- a) The Successful Offeror shall furnish to the BMPO certificates of insurance that indicate that insurance coverage has been obtained which meets the requirements below.
 - 1) Comprehensive General Liability Insurance on a comprehensive basis in an amount not less than \$2,000,000.00 per occurrence, and \$2,000,000.00 annual aggregate. The Broward Metropolitan Planning Organization **must** be shown as an additional insured with respect to this coverage.
 - 2) Professional Liability Insurance (Errors and Omissions) with limits not less than \$2,000,000.00 per occurrence, and \$2,000,000.00 annual aggregate.
 - 3) Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the work, in an amount not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 annual aggregate. Coverage shall stipulate that it is primary over any insurance or self-insurance program available to the BMPO.

- 4) Workers' Compensation Insurance for all employees of the Offeror as required by Florida Statutes Chapter 440, and Employer's Liability limits of not less than \$500,000 per accident.
- b) The insurance coverage required shall include those classifications, as listed in the standard liability insurance manuals, which most nearly reflect the operations of the Successful Offeror.
 - c) All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:
 - 1) The company must be rated no less than "B" as a management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the BMPO; or
 - 2) The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved To Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.
 - d) Certificates will indicate no cancellation, modification, or change in insurance shall be made without sixty (60) days written advance notice to the certificate holder.
 - e) Compliance with the foregoing requirements shall not relieve the Successful Offeror of his liability and obligation under this section or under any other section if this section or under any other section of the Contract.
 - f) Issuance of a purchase order, work authorization or notice to proceed is contingent upon receipt of the insurance documents within five (5) business days after the executing of the Contract by the BMPO. If the insurance certificate is received within the specific time frame, but not in the manner prescribed in this Section, the Successful Offeror shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the BMPO. If the Successful Offeror fails to submit the required insurance documents in the manner prescribed in this Agreement within five (5) business days after the executing of the Contract by an authorized official of the BMPO, the Successful Offeror shall be in default of the terms and conditions and the Contract shall be deemed terminated immediately. Under these circumstances, the Successful Offeror may be prohibited from submitting future Offers to the BMPO for a period of twelve (12) months.

- g) The Successful Offeror shall be responsible for assuring that the insurance certificate required in conjunction with this Section remain in force for the duration of the period of performance for any contractual agreement(s) resulting from this solicitation. If insurance certificates are scheduled to expire during the term hereof, the Successful Offeror shall be responsible for submitting new or renewed insurance certificates to the BMPO at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the term hereof, the BMPO shall suspend the Contract until such time as the new or renewed certificates are received by the BMPO in a manner prescribed in this Section; provided however, that this suspension period does not exceed thirty (30) days, the BMPO may at its sole discretion, terminate the Contract and seek re-procurement charges from the Successful Offeror.
- h) If, in the judgment of the BMPO, prevailing conditions warrant the provision by Successful Offeror of additional liability insurance coverage or coverage which is different in kind, the BMPO reserves the right to require the provision by Successful Offeror of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the Successful Offeror fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the BMPO's written notice, the Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

2-10 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Successful Offeror understands that agreements between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. The BMPO and Successful Offeror(s) agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

2-11 TAXPAYER IDENTIFICATION NUMBER

The Successful Offeror(s) shall provide the BMPO with their Taxpayer Identification Number prior to being recommended for award of any Contract resulting from this Solicitation.

2-12 FEDERAL TRANSIT ADMINISTRATION REQUIRED PROVISIONS.

This Project may be funded with assistance from the Federal Transit Administration (“FTA”). If so, the BMPO will follow, and require the Successful Offeror(s) to comply with, all applicable 3rd party procurement policies in accordance with FTA Circular C4220.1f (Third Party Contracting Guidance). Offerors are hereby advised that the applicable FTA required contractual provisions set forth in Exhibit “C-1” to the Sample Contract shall be set forth in any Contract resulting from this RFQ. By submitting an Offer, Offerors acknowledge and agree that the Successful Offeror(s) shall be required to comply with the provisions in Exhibit “C-1” of the Sample Contract if awarded the Contract.

2-13 FEDERAL HIGHWAY ADMINISTRATION REQUIRED PROVISIONS

This Project may be funded with assistance from the Federal Highway Administration (“FHWA”). If so, the BMPO will follow, and require the Successful Offeror(s) to comply with, all applicable 3rd party procurement policies in accordance with the Regulations of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time. Offerors are hereby advised that the applicable FHWA required contractual provisions set forth in Exhibit “C-2” to the Sample Contract shall be set forth in any Contract resulting from this RFQ. By submitting an Offer, Offerors acknowledge and agree that the Successful Offeror(s) shall be required to comply with the provisions in Exhibit “C-2” of the Sample Contract if awarded the Contract.

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SECTION 3: OFFER PROCESS

3-1 INTRODUCTION

The BMPO is under no obligation to retain the services of a consultant for any or all tasks described herein. Furthermore, the BMPO reserves the right to modify, alter, or change the Scope of Services set forth herein.

3-2 EVALUATION AND SELECTION COMMITTEE

Offers submitted will be evaluated by the Evaluation and Selection Committee detailed in Section 2-7 of this RFQ, who will review and evaluate submissions and provide a recommendation to the Executive Director and BMPO Board.

The Committee shall examine the documentation submitted in the Offers to determine the responsiveness of each Offeror. Failure to provide the required information will disqualify any such Offer as non-responsive and such Offer will not be considered. The Committee will disqualify any Offerors that make exaggerated or false statements or fail to meet any of the mandatory requirements.

The evaluation of Offers and the determination of conformity and acceptability shall be the sole responsibility of the Committee. Such determination shall be based on information furnished by the Offeror, as well as other information reasonably available to the BMPO.

The Committee may make such investigations as it deems necessary to determine the ability of the Offeror to perform the Services and the Offeror shall furnish the BMPO all such information for this purpose as the BMPO may request before and during the RFQ period. The Committee reserves the right to make additional inquiries, interview some or all Offerors, make site visits, obtain credit reports, or any other action they deems necessary to fairly evaluate all Offerors. The Committee may at its sole discretion reject an Offeror or disqualify an Offeror.

3-3 EVALUATION PROCEDURES

Services will be secured in compliance with BMPO policies and procedures.

Factors that will be considered in reviewing the qualifications of Offerors to determine if Offers are qualified to perform the Services include, but are not limited to:

- a) Qualifications, reputation, and experience of the firm and the personnel that will be directly involved in all elements of the work.
- b) Capability to perform all desired elements of the project.
- c) Experience with projects that are similar to the scope of this project and quality of, and performance on, previous projects.

3-4 CONSULTANT REQUIREMENTS

Mandatory Minimum Requirements

In order for an Offer to be considered, the Offeror must meet the following mandatory minimum requirements:

1. Offerors shall possess all licenses, business tax receipts and/or permits required to perform the Services requested herein in the State of Florida.
2. Offerors shall possess, and demonstrate using the Personnel and References forms provided, **three (3) years** of experience, knowledge, skills, and abilities with a project(s) of similar size and complexity in accordance with the scope of services.
3. Offerors shall provide **three (3)** similar examples of previously completed scope of services.

To meet the above requirement(s), the Offeror may use qualifications and resources of a Sub-Consultant that will be used by Offeror to perform the Work. Use of Sub-Consultants to meet such requirements shall be clearly indicated in the Offer.

3-5 PREPARATION OF OFFERS

3-5.1 Number Of Responses

Six (6) bound hard copies and six (6) electronic version on flash drives, of the complete Offer must be received by the deadline for receipt of Offers as specified in the Solicitation Timetable.

3-5.2 Response Packaging

Each Offer shall be submitted in a separate plain sealed parcel, box or other secure packaging, marked as the "Offer." The outside of the sealed package shall clearly indicate **RFQ No. 21-01, Probed GPS/Mobile Spatial and Temporal Data Acquisition**, Offeror's name, address and the name, telephone number, and email address of the Offeror's specific contact person. Each copy shall contain all required information in order to be considered responsive.

3-5.3 Signatures

Offers by corporations shall be executed in the corporate name by the President or Vice-President (or other corporate officer if accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the Corporate Secretary or an Assistant Secretary. The corporate address and state of incorporation shall be shown below the signature.

Responses by partnerships shall be executed in the partnership name and signed by a partner. His/her title shall appear under his/her signature and the official address of the partnership shall be shown below the signature.

3-5.4 Offer Format

The Offer shall be typewritten on 8 ½ x 11 inch white paper, with a **maximum of 10 pages total**. **This page limitation is not intended to include any required attachments, i.e., resumes qualification forms, etc.** All pages shall be secured by binding. Bindings and covers will be at the Offer's discretion. Unnecessarily elaborate special brochures, art work, expensive paper and expensive visual and other presentation aids are neither necessary nor desired.

Offers shall be organized in chapters according to Table 3.5.4. Chapters shall be separated by a tab indicating the chapter number.

All pages are to be consecutively numbered. If a form is provided and there is insufficient space for a response on a form, the response may be continued on a blank page immediately following the form. The additional pages are to be numbered the same as the form with the addition of the letter "a," "b," "c," etc. If a form is provided and additional forms are needed, the form may be copied. The

copied pages are to be numbered the same as the form with the addition of the letter "a," "b," "c," etc.

Offers shall be complete and unequivocal. In instances where a response is not required, or is not applicable or material, a response such as "no response is required" or "not applicable" is acceptable.

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Table
3-5.4 – Offer Format

Chapter 1	Letter of Intent
Chapter 2	Qualifications Offer Cover Sheet
Chapter 3	Offeror's Statement of Organization
Chapter 4	Project Approach
Chapter 5	Personnel
Chapter 6	Offeror's Disclosure of Subcontractors
Chapter 7	Offeror Qualification Form
Chapter 8	Financial Stability
Chapter 9	Financial Statement
Chapter 10	Litigation History
Chapter 11	Insurance Requirement
Chapter 12	Criminal Convictions
Chapter 13	Offeror's Non-Collusion Affidavit
Chapter 14	Independence Affidavit
Chapter 15	Drug-free Workplace Affidavit
Chapter 16	Amendment Acknowledgement Form
Chapter 17	Anti-Kickback Affidavit
Chapter 18	Non-discrimination Affidavit
Chapter 19	Accuracy of Offer Certification
Chapter 20	DBE Participation Statement and Bid Opportunity List
Chapter 21	E-Verify

3-6 SUBMITTAL, RECEIPT AND OPENING OF OFFERS

All Offers shall be submitted on or before the date and time as specified in Section 2-2, the Solicitation Timetable, to:

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309
warinl@browardmpo.org

All Offerors are reminded that it is the sole responsibility of the Offeror to ensure that their Response is time stamped in the office of the BMPO prior to the date and time as specified in Section 2-2, the Solicitation Timetable. Failure of an Offeror to submit their Offer and ensure that their Offer is time stamped prior to the time as specified in Section 2-2, the Solicitation Timetable, shall render an Offeror to be deemed non-responsive and the Offer shall not be considered for award.

Responses submitted and time stamped on or before as specified in Section 2-2, the Solicitation Timetable shall be opened publicly in accordance with this RFQ.

3-7 SEALED OFFERS

The Sealed Offers will be opened as specified in Section 2-2, the Solicitation Timetable. The Committee shall examine the documentation submitted in the Offer at a time thereafter to determine the responsiveness and responsibility of each Offeror. Offerors shall provide the following information:

3-7.1 Letter of Intent

The Letter of Intent is to be signed by an officer of the company authorized to bind the submitter to its provisions. The Letter of Intent is to contain a statement indicating the period during which the Offer to perform the Services will remain valid. A period of not less than one hundred twenty (120) calendar days is required.

3-7.2 Offeror's Statement of Organization

Offerors shall complete Section 14. Offerors are permitted to supply additional information that will assist the BMPO in understanding the Offeror's organization.

3-7.3 Personnel

Offerors shall demonstrate significant personnel experience. All personnel performing services under this Agreement shall have at least three (3) years of experience in their respective disciplines. Offerors shall carefully provide, in the format requested, all of the information requested in Section 15. Additionally, if applicable, Offeror shall demonstrate certification as a Disadvantaged Business Enterprise (DBE) and/or describe the use of any DBE subcontractors and subconsultants to perform the Services requested herein and provide documentation of DBE status for any such subcontractors and subconsultants.

3-7.4 Experience

Each Offeror shall have successful experience in providing services applicable to the Services sought pursuant to this RFQ and other tasks that may be necessary as directed by the BMPO Board. A summary of all of the most recently awarded and serviced comparable jobs for the past five (5) years shall be provided. This record shall show the name of the entity (Government/ Other), address, description of services, dates of service, rates and fees and a contact/reference person with phone number. Offerors shall provide references for all jobs summarized using the form provided in Section 6.

3-7.5 Financial Stability

Offerors shall demonstrate financial stability. Offerors shall provide a statement of the Offeror's financial stability, including information as to any current bankruptcy proceedings.

3-7.6 Financial Statement

Offerors shall include a copy of their latest audited financial statements. If the Offeror is a corporation, it shall submit a copy of the latest audited financial statements of the corporation. In the event the Offeror does not have audited financial statements, they may substitute non-audited financial statements and complete federal tax returns for the last two years.

3-7.7 Litigation History

Offerors shall provide a summary of any litigation or arbitration that the Offeror, its parent company or its subsidiaries have been engaged in during the past three (3) years against or involving (1) any public entity for any amount, or (2) any private entity for an amount greater than One Hundred Thousand Dollars (\$100,000.00). The summary shall state the nature of the litigation or arbitration, a brief description of the case, the outcome or projected outcome, and the monetary amounts involved. The BMPO may disqualify any Offeror it determines to be excessively litigious.

3-7.8 Insurance Requirements

Offeror shall provide proof, in the form of a certificate of insurance, of Offeror's compliance with the insurance requirements specified in this RFQ.

3-7.9 Criminal Convictions

Offerors shall provide a summary of any criminal convictions of the company, owners, officers and anybody who may perform work under this Agreement, related to the services requested herein. The BMPO may disqualify an Offeror on the basis of past criminal convictions when those convictions relate to dishonesty, antitrust violations, or unfair competition

3-7.10 Offeror's Non-Collusion Certification

Any Offerors submitting an Offer to this RFQ shall complete and execute the Non-Collusion Affidavit of Offeror included in Section 10 of these RFQ documents.

3-7.11 Drug-Free Workplace

Offeror shall certify that it has implemented a drug-free workplace program in accordance with Section 287.087, Florida Statutes. In order to receive consideration, a signed certification of compliance (Section 8) shall be submitted with the RFQ response.

3-7.12 Amendments

The Offerors shall complete and sign the Amendment Acknowledgement Form in Section 5 and include it in the Offer in order to have the Offer considered. In the event any Offeror fails to acknowledge receipt of such amendments, his/her Offer shall nevertheless be construed as though the amendment had been received and acknowledged and the submission of his/her Offer shall constitute acknowledgment of receipt of all amendments, whether or not received by him/her.

3-7.13 Independence Affidavit

Offerors shall list and describe their relationships with the BMPO in accordance with Section 1-5(g) of the RFQ (Section 12).

3-7.14 Accuracy of Offer Certification

Offeror shall certify and attest, by executing the form in Section 13 of these RFQ documents, that all Forms, Affidavits and documents related thereto that it has enclosed in the Offer in support of its Offer are true and accurate. Failure by the Offeror to attest to the truth and accuracy of such Forms, Affidavits and documents shall result in the Offer being deemed non-responsive and such Offer will not be considered.

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SECTION 4: QUALIFICATION'S OFFER COVER SHEET

OFFEROR'S NAME (Name of firm, entity, or organization):	
FEDERAL EMPLOYER IDENTIFICATION NUMBER:	
NAME AND TITLE OF OFFEROR'S CONTACT PERSON:	
Name: _____	Title: _____
MAILING ADDRESS:	
Street Address: _____	
City, State, Zip: _____	
TELEPHONE: (_____) _____	FAX: (_____) _____
OFFEROR'S ORGANIZATION STRUCTURE:	
_____ Corporation _____ Partnership _____ Proprietorship _____ Joint Venture _____ Other (explain):	
IF CORPORATION:	
Date Incorporated/Organized: _____	
State of Incorporation/Organization: _____	
States registered in as foreign Corporation: _____	
OFFEROR'S SERVICES OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR:	
Identify here as well:	
LIST NAMES OF OFFEROR'S SUBCONTRACTORS AND/OR SUBCONSULTANTS FOR THE SINGLE CATEGORY OR COMBINATION OF CATEGORIES OF SERVICES PROPOSED:	
OFFEROR'S AUTHORIZED SIGNATURE:	
The undersigned hereby certifies that this Offer is submitted in response to this Solicitation.	
Signed by: _____	Date: _____
Print name: _____	Title: _____

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 5: AMENDMENT ACKNOWLEDGEMENT FORM

Amendment #

Date Received

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

OFFEROR:

(Company Name)

(Signature)

(Printed Name & Title)

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 6: OFFEROR’S QUALIFICATION FORM

All information supplied in connection with this form is subject to review and verification. Any and all determinations concerning this information will be used to determine eligibility for participation in the award. Inaccurate or incomplete answers may result in your Offer being deemed as “Non-Responsive.”

- (1) How many years has your organization been in business under your present business name? _____ years
- (2) State of Florida Business Tax Receipt type and number: _____
- (3) County (state county) Business Tax Receipt type and number and number: _____
- (4) City Business Tax Receipt type and number: _____
(state city)

OFFERORS MUST INCLUDE A COPY OF EACH LICENSE OR BUSINESS TAX RECEIPT LISTED WITH OFFER

- (5) Have you ever had a contract terminated (either as a prime contractor or sub-contractor,) for failure to comply, breach, or default?
_____ yes _____ no

(IF YES, PLEASE ENCLOSE A DETAILED EXPLANATION ON SEPARATE SHEET)

(6) Please list a minimum of three (3) entity references for similar work in each category in which services are offered:

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

**FAILURE TO COMPLETE AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

**SECTION 7: OFFEROR'S DISCLOSURE OF
SUBCONTRACTORS, SUBCONSULTANTS, AND SUPPLIERS**

Please list all Subcontractors, Subconsultants, and Suppliers to be used in connection with performance of the Contract. (Use additional pages, if necessary):

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

**FAILURE TO COMPLETE AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 8: DRUG-FREE WORKPLACE AFFIDAVIT

FLORIDA STATE STATUTE 287.087

Identical Tie Bids: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) 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.
- 2) 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, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under Contract a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Contract, 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 893 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.
- 5) 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.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section.

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

Vendor's Signature

SECTION 9: ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 }
COUNTY OF BROWARD } SS:

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum that my organization may receive as a result of this Solicitation will be paid to any employees of the BMPO, its elected officials, and/or its consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

STATE OF FLORIDA)
)
_____ COUNTY)

The foregoing document was sworn to and subscribed before me by _____ by means of [] physical presence or [] online notarization, and _____ are personally know to me or have produced _____ as identification and who did take an oath.

WITNESS MY HAND AND OFFICIAL SEAL THIS ____ DAY OF _____, 2021.

Notary Public Signature

Notary Public Printed Signature

Notary Stamp Seal

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 11: NON-DISCRIMINATION AFFIDAVIT

I, the undersigned, hereby duly sworn, depose and say that the organization, business or entity represented herein shall not discriminate against any person in its operations, activities or delivery of services under any agreement it enters into with the Broward Metropolitan Planning Organization. The same shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

By: _____

Title: _____

STATE OF FLORIDA)
)
 _____ **COUNTY**)

The foregoing document was sworn to and subscribed before me by _____ by means of [] physical presence or [] online notarization, and are personally know to me or have produced _____ as identification and who did take an oath.

WITNESS MY HAND AND OFFICIAL SEAL THIS ___ DAY OF _____, 2021.

Notary Public Signature

Notary Public Printed Signature

Notary Stamp Seal

**FAILURE TO COMPLETE AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 12: INDEPENDENCE AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the OFFEROR that has submitted the attached Offer;
2.
 - a. Below is a list and description of any relationships, professional, financial or otherwise that OFFEROR may have with the BMPO, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past two (2) years.
 - b. Additionally, the OFFEROR agrees and understands that OFFEROR shall give the BMPO written notice of any other relationships professional, financial or otherwise that OFFEROR enters into with the BMPO its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of this Agreement.

(If paragraph 2(a) above does not apply, please indicate by stating, "Not applicable" in the space below.)

[THIS SPACE INTENTIONALLY LEFT BLANK]

**SECTION 12: INDEPENDENCE AFFIDAVIT
(CONTINUED)**

3. I have attached an additional page to this form explaining why such relationships do not constitute a conflict of interest relative to performing the Services sought in the RFQ.

Signature (ink only)

Print Name (CORPORATE SEAL)

Title

Date

STATE OF FLORIDA)
)
_____ **COUNTY**)

The foregoing document was sworn to and subscribed before me by _____ by means of [] physical presence or [] online notarization, and _____ are personally know to me or have produced _____ as identification and who did take an oath.

WITNESS MY HAND AND OFFICIAL SEAL THIS ___ DAY OF _____, 2021.

Notary Public Signature

Notary Public Printed Signature

Notary Stamp Seal

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 13: ACCURACY OF OFFER CERTIFICATION

OFFEROR, by executing this Form, hereby certifies and attests that all Forms, Affidavits and documents related thereto that it has enclosed in support of its Offer are true and accurate. Failure by OFFEROR to attest to the truth and accuracy of such Forms, Affidavits and documents shall result in the Offer being deemed non-responsive and such Offer will not be considered.

The undersigned individual, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the OFFEROR that has submitted the attached Offer;
2. He/She is fully informed respecting the preparation and contents of the attached Offer and of all Forms, Affidavits and documents submitted in support of such Offer;
3. All Forms, Affidavits and documents submitted in support of this Offer and included in this Offer are true and accurate;
4. No information that should have been included in such Forms, Affidavits and documents has been omitted; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

**SECTION 13: ACCURACY OF OFFER CERTIFICATION
(CONTINUED)**

5. No information that is included in such Forms, Affidavits or documents is false or misleading.

Signature

Print Name (CORPORATE SEAL)

Title

Date

STATE OF FLORIDA)
)
_____ **COUNTY**)

The foregoing document was sworn to and subscribed before me by _____ by means of [] physical presence or [] online notarization, and _____ are personally know to me or have produced _____ as identification and who did take an oath.

WITNESS MY HAND AND OFFICIAL SEAL THIS ___ DAY OF _____, 2021.

Notary Public Signature

Notary Public Printed Signature

Notary Stamp Seal

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 14: STATEMENT OF ORGANIZATION

1. Full Name of Offeror:

Principal Business Address, Phone and Fax Numbers:

2. Principal Contact Person(s):

3. Form of Offeror (Corporation, Partnership, Joint Venture, Other):

4. Provide names of partners or officers as appropriate and indicate if the individual has the authority to sign in name of Offeror. Provide proof of the ability of the individuals so named to legally bind the Offeror.

Name	Address	Title

If a corporation, in what state incorporated: _____

Date Incorporated: _____
Month Day Year

If a Joint Venture or Partnership, date of Agreement: _____

Name and address of all partners (state whether general or limited partnership):

If other than a corporation or partnership, describe organization and name of principals:

5. Indicate the number of years the Offeror has had successful experience providing data analytics services to governmental entities: Years: _____

6. List all contractors participating in this project (including subcontractors, etc.):

a. Name	Address	Title
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

7. Outline specific areas of responsibility for each contractor listed in Question 6.

1. _____

2. _____

3. _____

4. _____

8. County or Municipal Business Tax Receipt No.

(Attach Copy)

Social Security or Federal ID No.

9. List states and categories in which your organization is legally qualified to do business. Indicate registration or license numbers, if applicable. List states in which partnership or trade name is filed.

10. Have you ever failed to complete any work awarded to you? Yes ____ No ____
If so, note when, where and why:

11. Within the last five years, has any officer or partner of your organization ever been an officer or partner of any other organization that failed to complete a contract?

Yes ____ No ____ If yes, attach a separate sheet of explanation.

12. Within the last five years, have you ever had a performance, payment or bid bond called?

Yes _____ No _____ If yes, attach a separate sheet of explanation.

13. Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the BMPO?

Yes _____ No _____ If yes, attach a separate sheet of explanation.

14. Within the last five years, have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against any other governmental entity in Florida?

Yes _____ No _____ If yes, attach a separate sheet of explanation.

15. On a separate sheet, describe the management systems and reporting systems that your organization will utilize to perform the services described in this request for qualifications.

Signature

Title

Name

Date

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 15: PERSONNEL

For all principals of the Offeror and key personnel providing services sought in the RFQ, provide a detailed resume indicating that individual's areas of expertise and experience. Resumes must be provided in the following format; however, additional information may be provided at the option of the Offeror. **Do not include social security numbers or personal information.**

- A. Name and Title
- B. Years Experience with:
 - This Contractor:
 - With Other Similar Contractors:
- C. Education:
 - Degree(s):
 - Year/Specialization:
- D. Professional References: (List a minimum of 3)
- E. Other Relevant Experience and Qualifications
- F. List specifically the number of crew members that will be assigned to provide services, if awarded the Contract, and identify their respective tasks.
- G. Attach applicable licenses for each individual performing Services pursuant to this Contract.
- H. If applicable, attach documentation demonstrating Offeror's status as a disadvantage business entity (DBE) and documentation demonstrating the DBE status of any proposed subcontractors and subconsultants.

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

**SECTION 16: DBE PARTICIPATION STATEMENT AND BID
OPPORTUNITY LIST**

ANTICIPATED DBE PARTICIPATION STATEMENT

RFQ Number: _____

Contractor's Name: _____

Contractor's FEID Number: _____

Expected amount of contract dollars to be subcontracted to DBE(s):\$ _____

OR

It is our intent to subcontract _____ % of the contract dollars to DBE(s). Listed, below are the proposed DBE sub-contractors:

<u>DBE (s) Name</u>	<u>Type/Specialty Work</u>	<u>Dollar Amount/ Percentage</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submitted by: _____ Title: _____
(Type or Print)

Date: _____

Note: This information is used to track and report anticipated DBE participation in BMPO contracts. The anticipated DBE amount will not become part of the contractual terms.

**BID OPPORTUNITY LIST FOR PROFESSIONAL CONTRACTUAL SERVICES,
AND COMMODITIES & CONTRACTUAL SERVICES**

Prime Contractor / Prime Consultant: _____

Address/Telephone Number: _____

RFQ Number/Advertisement Number: _____

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on BMPO contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on BMPO projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific BMPO project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7 and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts:
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 Million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 Million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 Million
_____		<input type="checkbox"/> Between \$10 - \$15 Million
_____		<input type="checkbox"/> More than \$15 Million
5. Year Firm Established: _____	7. <input type="checkbox"/> Sub-contractor	
	<input type="checkbox"/> Sub-consultant	

1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts:
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 Million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 Million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 Million
_____		<input type="checkbox"/> Between \$10 - \$15 Million
_____		<input type="checkbox"/> More than \$15 Million
5. Year Firm Established: _____	7. <input type="checkbox"/> Sub-contractor	
	<input type="checkbox"/> Sub-consultant	

1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts:
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 Million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 Million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 Million
_____		<input type="checkbox"/> Between \$10 - \$15 Million
_____		<input type="checkbox"/> More than \$15 Million
5. Year Firm Established: _____	7. <input type="checkbox"/> Sub-contractor	
	<input type="checkbox"/> Sub-consultant	

**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR: REQUEST FOR QUALIFICATIONS – RFQ
FAILURE TO COMPLETE, SIGN AND RETURN THE DBE PARTICIPATION STATEMENT
AND BID OPPORTUNITY LIST MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 17: E-VERIFY

Contract No: _____

Financial Project No(s): _____

Project Description: _____

Vendor/Consultant acknowledges and agrees to the following:

Vendor/Consultant:

1. Shall utilize the U.S. Department of Homeland Security's E-Verify system to confirm the employment eligibility of all persons employed by the Contractor during the term of the Contract to perform employment duties within Florida and all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract with the Department.
2. Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Consultant during the term of the contract; and
3. Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

By: _____

Title: _____

Signature

Print Name (CORPORATE SEAL)

Title

Date

STATE OF FLORIDA)
)
_____ **COUNTY**)

The foregoing document was sworn to and subscribed before me by _____ by means of [] physical presence or [] online notarization, and are personally know to me or have produced _____ as identification and who did take an oath.

WITNESS MY HAND AND OFFICIAL SEAL THIS ___ DAY OF _____, 2021.

Notary Public Signature

Notary Public Printed Signature

Notary Stamp Seal

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM
MAY DEEM YOUR OFFER NON-RESPONSIVE**

SECTION 18: SAMPLE CONTRACT

**AGREEMENT
BETWEEN THE
BROWARD METROPOLITAN PLANNING ORGANIZATION
AND**

FOR

RFQ No. 21-_____

This Agreement (“Agreement”) is made and entered into the _____ day of _____, 2021, by and between the Broward Metropolitan Planning Organization, with its principal business address located at Trade Centre South, 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, FL 33309, hereinafter referred to as (“BMPO”),

And

_____ with its principal business address located at _____ (hereinafter referred to as “CONTRACTOR”) for _____ (the “Project”). References in this Agreement to “Executive Director” shall be meant to include his/her designee.

WITNESSETH:

WHEREAS, the BMPO, pursuant to Section 287.055, Florida Statutes, solicited offers from firms to provide the required expertise in connection with the Project; and

WHEREAS, Offers were evaluated by an Evaluation and Selection Committee; and

WHEREAS, the Board of the BMPO has selected the CONTRACTOR, upon the recommendation of the Evaluation and Selection Committee to perform Services in connection with the Project; and

WHEREAS, on _____, the Board of the BMPO ratified the evaluation and recommendation of Offers received in response to RFQ No. 21-_____ and authorized the appropriate BMPO officials to execute an agreement with the CONTRACTOR; and

WHEREAS, BMPO and CONTRACTOR desire to enter into an Agreement whereby the duties and obligations of each party to the other are set forth therein.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES

- 1.1** The CONTRACTOR must meet the requirements and perform the services identified in the Request for Qualifications for the BMPO's _____, RFQ No. 21-_____, dated _____, ("RFQ"), referenced hereto and made a part hereof, as Exhibit "A", and the CONTRACTOR'S Offer, attached hereto and made a part hereof, as Exhibit "B"; and
- 1.2** The Federal Transit Administration ("FTA") Required Contractual Provisions (attached hereto as Exhibit "C-1"), and the Federal Highway Administration ("FHWA") Required Contractual Provisions (attached hereto as Exhibit "C-2), collectively hereafter referred to as the "Federal Contractual Provisions" are attached hereto and made a part hereof, collectively as Exhibit "C". Prior to beginning the performance of any services under this Agreement, the CONTRACTOR will be provided with a Notice to Proceed from the BMPO. This Notice to Proceed will specify the applicable Federal Contractual Provisions which will apply to this Agreement and the services to be provided accordingly.
- 1.3** The parties agree that the Services and the Federal Contractual Provisions, as specified in Exhibits "A", "B" and "C", (hereinafter collectively referred to as the "Scope of Services" or "Services") contain the description of Contractor's obligations and responsibilities and are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.
- 1.4** CONTRACTOR agrees and acknowledges that CONTRACTOR is prohibited from exempting provisions of the Scope of Services and this Agreement in any of CONTRACTOR'S Services pursuant to this Agreement.
- 1.5** The Regional Transportation Technical Advisory Committee – Modeling Subcommittee (RTTAC-MS) is made up of the three Metropolitan Planning Organizations of the Miami Urbanized Area (Broward Metropolitan Planning

Organization, the Miami-Dade Transportation Planning Organization and Palm Beach Transportation Planning Agency) and Districts Four and Six of the Florida Department of Transportation (PARTNERS). For the purpose of this Probed GPS/Mobile Spatial and Temporal Data Acquisition project only, Broward County will be included as a PARTNER as they will be providing funding. All PARTNERS will have full access to the data acquired as part of this project.

SECTION 2. TERM

- 2.1 The term of this Agreement will be for a period of _____ (the "Term") which shall begin on the date it is fully executed by both parties and shall remain in effect until such a time as the Services acquired in conjunction with this RFQ have been completed and accepted by the BMPO in accordance with this Agreement and the terms of the Request for Qualifications. After the initial Term, the BMPO shall have the option to extend the Term, at its discretion, for two (2) one year extensions. To exercise one or both annual extension(s), the BMPO, through its Executive Director, shall notify CONTRACTOR, in writing, at least 90 days, prior to the expiration of the then current term.
- 2.2 Prior to beginning the performance of any services under this Agreement, the CONTRACTOR must receive a Notice to Proceed. CONTRACTOR shall perform the services describe in the Scope of Services within the time periods specified therein, said time periods shall commence from the date of the Notice to Proceed for such Services; **however this Agreement shall terminate no later than _____**, unless terminated earlier pursuant to Section 4 of this Agreement.
- 2.3 The BMPO through its Executive Director and the CONTRACTOR may further extend this Agreement by mutual consent, in writing, for no more than six (6) months, prior to the expiration of the then current term. This provision in no way limits either party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.

SECTION 3. COMPENSATION

- 3.1 In consideration for the Scope of Services to be performed by CONTRACTOR pursuant this Agreement, the BMPO agrees to pay CONTRACTOR, in the manner specified in the Scope of Services, the total amount not to exceed _____ AND NO/100 Dollars (\$_____.00), contingent upon the appropriation of funds. The BMPO shall request consultant services on an as-needed basis. There is no guarantee that any or all of the services described in Exhibit "A" will be assigned during the term of this Agreement. The BMPO may, at its option, elect to have any or all of these specified services. The amount of

compensation payable by the BMPO to CONTRACTOR shall be based upon the amounts negotiated between the parties as indicated on attached Exhibit "B", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon BMPO'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

3.1.1 Prior to beginning the performance of any services under this Agreement, the BMPO and the CONTRACTOR shall define specific services to be performed and deliverables for these services and sign separate task work orders. Each work order will specify a scope of work, time schedule and the compensation for those specific services. Once signed by both parties each work order and a Notice to Proceed will function as the authorization for the CONTRACTOR to compete the services and deliverables. CONTRACTOR shall perform the services described in the Scope of Services and each work order within the time periods specified therein, said time periods shall commence from the date of the Notice to Proceed for such Services.

3.2 CONTRACTOR may submit an invoice for compensation, developed and agreed upon by the BMPO Executive Director and CONTRACTOR, no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the nature of the services performed and shall also show a summary of fees with accrual of the total and credits for portions paid previously.

3.3 BMPO shall pay CONTRACTOR in accordance with the Florida Prompt Payment Act. Additionally, payment may be withheld by the BMPO Executive Director for failure of CONTRACTOR to comply with a term, condition or requirement of this Agreement.

3.4 Notwithstanding any provision of this Agreement to the contrary, the BMPO Executive Director may withhold, in whole or in part, payment to the extent necessary to protect BMPO from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Executive Director. The amount withheld shall not be subject to payment of interest by BMPO.

3.5 Payment shall be made to CONTRACTOR at:

-
-
- 3.6** CONTRACTOR agrees to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged for which CONTRACTOR receives reimbursement for a period of at least three (3) years after completion of the work provided for in this Agreement. Such books and records shall be available at all reasonable times for examination and audit by BMPO.
- 3.7** If it should become necessary for BMPO to request CONTRACTOR to render any additional services to either supplement the services described in the RFQ or to perform additional work, such additional work shall be performed only if set forth in an addendum to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit "B-1".

SECTION 4. TERMINATION

- 4.1** This Agreement may be terminated for cause by action of the BMPO Board if the CONTRACTOR is in breach and has not corrected the breach within thirty (30) days after written notice from the BMPO identifying the breach, or for convenience by action of the BMPO Board upon not less than sixty (60) days' written notice by the BMPO Executive Director.
- 4.2** This Agreement may be terminated for cause by the CONTRACTOR if the BMPO is in breach and has not corrected the breach within sixty (60) days after written notice from the CONTRACTOR identifying the breach.
- 4.3** Termination of this Agreement by the BMPO for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of BMPO as set forth in this Agreement or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 4.4** Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.
- 4.5** In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of BMPO's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by BMPO, the adequacy of which is hereby acknowledged by

CONTRACTOR, is given as specific consideration to CONTRACTOR for BMPO's right to terminate this Agreement for convenience.

- 4.6** In the event this Agreement is terminated, any compensation payable by BMPO shall be withheld until all documents are provided to BMPO pursuant to Section 7.1 of this Agreement. In no event shall the BMPO be liable to CONTRACTOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

SECTION 5. INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR hereby agrees to indemnify and hold harmless the BMPO, and its officials, employees and agents, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the BMPO Executive Director and the BMPO Attorney, any sums due CONTRACTOR under this Agreement may be retained by BMPO until all of BMPO'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by BMPO.

Nothing herein is intended to serve as a waiver of sovereign immunity by the BMPO nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The BMPO is subject to section 768.28, Florida Statutes, as may be amended from time to time.

The provisions of this section shall survive termination of this Agreement.

SECTION 6. INSURANCE

- 6.1** In order to insure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages as set forth in the RFQ (Exhibit "A"). This Agreement shall not be deemed approved until the CONTRACTOR has obtained all required insurance coverages and has supplied the BMPO with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The BMPO shall approve such certificates prior to the performance of any services pursuant to this Agreement.
- 6.2** CONTRACTOR shall make this same requirement binding on any of its subcontractors. CONTRACTOR shall indemnify and save the BMPO harmless from any damage resulting to them for failure of any subcontractor to take out or maintain such insurance.

SECTION 7. MISCELLANEOUS

- 7.1 Contract Administrator.** The Contract Administrator is responsible to coordinate and communicate with CONTRACTOR and to manage and supervise the execution and completion of the Services and the terms and conditions of this Agreement as set forth herein. For purposes of the Agreement, _____, [INSERT TITLE] for the BMPO is designated as the Contract Administrator.
- 7.2 Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of BMPO. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of BMPO and shall be delivered by CONTRACTOR to the BMPO Executive Director within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.
- 7.3 Audit and Inspection Rights and Retention of Records; Public Records.**
- 7.3.1** BMPO shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.
- 7.3.2** CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by BMPO, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CONTRACTOR is notified in writing by BMPO of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by BMPO to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all

requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for BMPO's disallowance and recovery of any payment upon such entry.

7.3.3 In addition, CONTRACTOR shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

7.3.4 In addition, CONTRACTOR shall provide a complete copy of all working papers to the BMPO, prior to final payment by the BMPO, in accordance with the RFQ for CONTRACTOR services.

7.3.5 CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to BMPO contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the BMPO and the public to all documents subject to disclosures under applicable law. CONTRACTOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the BMPO.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: David Clark

**Mailing address: 100 West Cypress Creek Road, Suite 650
Fort Lauderdale, FL 33309**

Telephone number: (954) 876-0043

Email: ClarkD@browardmpo.org

7.4 Policy of Non Discrimination. CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political

affiliation or any other factor which cannot be lawfully used as a basis for service delivery. CONTRACTOR agrees to comply with the provisions set forth in attached Appendix "A", including Contractor's responsibility to incorporate the provisions in subcontracts, throughout the term of this Agreement.

- 7.5 Public Entity Crime Act.** CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to BMPO, may not submit a bid on a contract with BMPO for the construction or repair of a public building or public work, may not submit bids on leases of real property to BMPO, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with BMPO, and may not transact any business with BMPO in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from BMPO'S competitive procurement activities. In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.
- 7.6 Independent Contractor.** CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees or agents of the BMPO. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 7.7 Third Party Beneficiaries.** Neither CONTRACTOR nor BMPO intends to directly or substantially benefit a third party by entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly

acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

7.8 Notices. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

BMPO:

Gregory Stuart, Executive Director
Broward Metropolitan Planning Organization
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309

With a copy to:
Alan L. Gabriel, Esq., BMPO General Counsel
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

CONTRACTOR:

7.9 Assignment and Performance. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CONTRACTOR. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the BMPO, which shall be in BMPO's sole and absolute discretion. A list of all such subcontractors shall be included in the Offer. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Offer, a list of such subcontractors shall be provided to the BMPO, subject to BMPO's approval.

CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFQ and to provide and perform such services to BMPO's satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

- 7.10 Conflicts.** Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against BMPO in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CONTRACTOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of BMPO in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 7.11 Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, BMPO shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 7.12 Materiality and Waiver of Breach.** BMPO and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. BMPO's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 7.13 Compliance with Laws.** CONTRACTOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 7.14 Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless BMPO or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 7.15 Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.16 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.
- 7.17 Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 7.18 Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 7.19 Prior Agreements.** This Agreement and its attachments constitute the entire agreement between CONTRACTOR and BMPO, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties

agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with Section 7.18 above.

- 7.20 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 7.21 Incorporation by Reference.** The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.22 Multiple Originals.** This Agreement may be fully executed in TWO (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.23 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.24 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 7.25 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 7.26 Truth-in-Negotiation Certificate.** Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 7.27 Disadvantage Business Enterprise (DBE) Program.**
- 7.27.1** The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of

this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

7.27.2 The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from The BMPO. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the BMPO. This clause applies to both DBE and non-DBE subcontracts.

7.27.3 As a sub-recipient of FHWA or FTA funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>

The contractor must also immediately and regularly enter DBE commitments and payments into FDOT Equal Opportunity Compliance (EOC) system. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at eoohelp@dot.state.fl.us.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BMPO, signing by and through its Chair and Executive Director, attested to and duly authorized to execute same, and Contractor, signing by and through its authorized representative, attested to and duly authorized to execute same.

BMPO

BROWARD METROPOLITAN
PLANNING ORGANIZATION

By: _____
Gregory Stuart, Executive Director

By: _____
Frank C. Ortis, Chair

This _____ day of _____ 2021.

This _____ day of _____ 2021.

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE USE OF AND
RELIANCE BY THE BMPO ONLY:

By: _____
Alan L. Gabriel, BMPO General Counsel
Weiss Serota Helfman Cole & Bierman, P.L.

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

CONTRACTOR

WITNESSES:

[Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

By: _____

This day ____ of _____, 2021.

Print Name: _____

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

EXHIBITS LIST

- 1) **Exhibit “A”** – RFQ No. 21-01____, Date Issued: _____, 2021
A full copy of this document is available for review upon request at the BMPO’s Offices.
- 2) **Exhibit “B”** – CONTRACTOR’s Offer/Offer, dated _____.
- 3) **Exhibit “C”** – Federal Contractual Provisions
Exhibit “C-1” Federal Transit Administration Required Contractual Provisions
Exhibit “C-2” Federal Highway Administration Required Contractual Provisions
- 4) **Appendix “A”** – BMPO Policy of Non Discrimination

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

EXHIBIT “A”

RFQ No. 21-_____

Date Issued: _____

A FULL COPY OF RFQ No. 21-_____ IS AVAILABE FOR REVIEW AND INSPECTION UPON REQUEST AT THE BMPO OFFICE.

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

**EXHIBIT “B”
CONTRACTOR’S OFFER**

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

Federal Contractual Provisions

EXHIBIT “C-1”

**FEDERAL TRANSIT ADMINISTRATION REQUIRED
CONTRACTUAL PROVISIONS**

The applicable provisions in this Section shall be set forth in any Contract resulting from this RFQ. By submitting an Offer, Offerors acknowledge and agree to comply with the applicable provisions in this Section in the event they are awarded the Contract.

1) Contract Provisions 2 C.F.R. §200. 326

The Purchaser's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

2) Remedies 2 C.F.R. Part 200, Appendix II, ¶ A

[Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.]

3) No Federal Government Obligations to Third Parties

a) Municipality and Consultant acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to the Municipality, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.

b) The Contractor shall 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 sub-Contractor who will be subject to its provisions.

4) False or Fraudulent Statements or Claims- Civil and Criminal Fraud. 31 U.S.C. Chap. 38

- a) 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 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 this Contract or the FTA assisted project for which work under this Contract 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.
- b) If the Contractor 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 Federal 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.
- c) The Contractor shall include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5) Access to Third Party Contract Records 49 CFR 18.39(i)(11).

Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee 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/her authorized representatives including any Project Management Oversight (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.

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. 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.

6) Changes to Federal Requirements 49 CFR Part 18

The 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 Contract (the FTA Master Contract) between the FTA Recipient and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

7) Termination for Cause and Convenience 2 C.F.R. Part 200, Appendix II, ¶ B

[All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement].

8) Civil Rights

a) 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 shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

i) 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 implements 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 shall comply with any implementing requirements FTA may issue.

- ii) 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 shall comply with any implementing requirements FTA may issue.
- iii) 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 shall comply with any implementing requirements FTA may issue.

9) Disadvantaged Business Enterprises (DBEs) 49 CFR Part 26

- a) As a sub-recipient of FHWA (or FTA) funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>
- b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at eoohelp@dot.state.fl.us.

- c) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of the DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFP 26.13(b)).
- d) Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT/ FTA assisted contracts. The Contractor is required to report its DBE participation obtained through race- neutral means throughout the period of performance.
- e) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Purchaser. The Contractor must promptly notify the Purchaser, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Purchaser.

10) Incorporation of FTA Terms FTA Circular 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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 the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the Municipality that would cause the FTA Recipient and/or the Purchaser or the Municipality to be in violation of the FTA terms and conditions.

11) Debarment and Suspension 2 C.F.R. §200.213

The Contractor certifies that neither it nor its "principals" [as defined at 49 CFR 29.995, or affiliates, [as defined at 49 CFR 29.905] are excluded or disqualified [as defined at 49 CFR 29.940 and CFR 29.945]. The Contractor is required to comply with 49 CFR 29, Subpart

C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

12) Buy America 49 CFR Part 661

The Contractor shall 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 purchase (currently less than \$100,000) made with capital, operating, or planning funds.

The Contractor shall submit with the Contract a completed Buy America certification form, Attachment 49 CFR 661.6, if applicable.

13) Resolution of Disputes, Breaches, or Other Litigation

[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.]

14) Byrd Anti-Lobbying Amendment. 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4

- a) Contractor certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of the Municipality, BMPO, any federal 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.
- b) If any funds other than federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the Purchaser, the FTA Recipient, any federal 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 Contractor shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

- c) The Contractor 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.
- d) 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. A3801, et.seq., apply to this certifications and disclosure, if any.
- e) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000, and not more than \$100,000, for each such failure. See Attachment 49 CFR Part 20 Lobbying Certification.

15) Clean Air Act 2 C.F.R. Part 200, Appendix II, ¶ G

The Contractor shall 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 shall report each violation to the Purchaser and understands and agrees that the will, in turn, report each violation as required to assure notification to the FTA Recipient, FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or part with federal assistance provided by FTA.

16) Federal Water Pollution Control Act 2 C.F.R. Part 200, Appendix II, ¶ G

The Contractor shall 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. Contractor shall 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 the FTA Recipient, FTA and the appropriate EPA Regional Office.

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

17) Fly America 49 U.S.C. 40118; 41 CFR Part 301-10

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 sub-recipients (such as BMPO) 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.

18) Contract Work Hours and Safety Standards Act. 2 C.F.R. Part 200, Appendix II, ¶E

- a) 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 base rate of pay for all hours worked in excess of forty hours in such workweek.
- b) 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 therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c) Withholding for unpaid wages and liquidated damages – the FTA Recipient and/or the Purchaser 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 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 (b) of this section.
- d) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or

lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

19) Transit Employee Protective Arrangements 29 CFR Part 215

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- 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 USC A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. 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, 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 non-urbanized 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),n 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 sub-recipient 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 CFR 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 Non-urbanized 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 Non-urbanized 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.

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.

20) Charter Service Operations 49 CFR Part 604

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except 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.

21) Alcohol and Drug Testing 49 CFR Part 655

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 BMPO, 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 (*insert date*) and to submit the Management Information System (MIS) reports before (*insert date before March 15*) to (*insert title and address of person responsible for receiving information*). 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.

22) Patent Rights; Rights in Data and Copyrights 37 C.F.R. Part 401 and 49 C.F.R. Part 18

- a) Definition. The term “subject data,” as used in Section 18 of the Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Contract for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” do not include financial reports, cost analyses, or other similar information used for Project administration.

- b) General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Contract for the Project:
1. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the prior written consent of the Federal Government and the BMPO, unless the Federal Government has previously released or approved the release of such data to the public.
 2. The restrictions on publication of Paragraph 18.b(1) of the Master Agreement, however, do not apply to a Grant Agreement or Contract with an institution of higher learning.
- c) Federal Rights in Data and Copyrights. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in the Subsection 18.c of the Master Agreement. As used herein, “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 provide or otherwise extend to other parties the Federal Government’s license to:
1. Any subject data developed under the Grant Agreement or Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Contract for the Project, whether or not a copyright has been obtained; and
 2. Any rights of copyright to which a Contractor, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.
- d) Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the Master Agreement, FTA may make available to any FTA Contractor,

subcontractor, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the Master Agreement and shall be delivered as the Federal Government may direct. This does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use when the costs thereof are financed with Federal assistance through an FTA capital program.

- e) License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.
- f) Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and 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 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 the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

23) Energy Conservation 42 U.S.C. 6321 et seq.; 49 CFR Part 18

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Florida Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

24) Recycled Products 42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873

The Recycled Products requirements apply to all procurement actions involving items designated by the EPA in their "Comprehensive Procurement Guideline for Products Containing Recovered Materials". The RCRA directs the procuring agency, for purchases over \$10,000 or more, to specify a competitive preference for products containing these recycled products. FTA has developed the following language:

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.

25) ADA Access

49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

26) Rights to Inventions Made Under a Contract or Agreement 2 C.F.R. Part 200, Appendix II, ¶ F

- a) If the FTA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FTA. 2 C.F.R. Part 200, Appendix II, ¶ F.
- b) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or

in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

27) Methods of Procurement to be Followed 2 C.F.R. § 200.320

The Purchaser must use one of the following methods of procurement.

- a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the Purchaser must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Purchaser considers the price to be reasonable.
- b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 1. In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is *available*;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 2. If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for

- opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- d) Procurement by competitive Offers. The technique of competitive Offers is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

Requests for Offers must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for Offers must be considered to the maximum extent practical;

1. Offers must be solicited from an adequate number of qualified sources;
2. The Purchaser must have a written method for conducting technical evaluations of the Offers received and for selecting recipients;
3. Contracts must be awarded to the responsible firm whose Offer is most advantageous to the program, with price and other factors considered; and
4. The Purchaser may use competitive Offer procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be

used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- e) [Reserved]
- f) Procurement by noncompetitive Offers. Procurement by noncompetitive Offers is procurement through solicitation of an Offer from only one source and may be used only when one or more of the following circumstances apply:
 - 1. The item is available only from a single source;
 - 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3. The FTA or FTA Recipient expressly authorizes noncompetitive Offers in response to a written request from the Purchaser; or
 - 4. After solicitation of a number of sources, competition is determined inadequate.

28) Procurement of Recovered Materials 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. §200.320; PDAT Supplement, Chapter V, ¶ 7

- a) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired -
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
- b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

29) Contract Cost and Price 2 C.F.R. §200.323

- a) The Purchaser must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Purchaser must make independent estimates before receiving bids or Offers.

- b) The Purchaser must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Purchaser under Subpart E—Cost Principles of this part. The Purchaser may reference its own cost principles that comply with the Federal cost principles.
- d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

30) Prompt Payment 49 CFR § 26.29

- a) Purchaser requires that all subcontractors performing work on DOT/ FTA -assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.
- b) In accordance with 49 CFR § 26.29, the Purchaser established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Purchaser.
- c) Purchaser ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, Purchaser has selected the following method to comply with this requirement: [*Municipality selects one of the following options*]
 - i) The Purchaser may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from sub-contractors.
 - ii) The Purchaser may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
 - iii) The Purchaser may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage

owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

31) Federal awarding agency or pass-through entity review 2 C.F.R. §200.324

- a) The Purchaser and Contractor must make available, upon request of the FTA or FTA Recipient, technical specifications on proposed procurements where the FTA or FTA Recipient believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Purchaser desires to have the review accomplished after a solicitation has been developed, the FTA or FTA Recipient may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- b) The Purchaser must make available upon request, for the FTA or FTA Recipient pre-procurement review, procurement documents, such as requests for Offers or invitations for bids, or independent cost estimates, when:
 - i) The Purchaser's procurement procedures or operation fails to comply with the procurement standards in this part;
 - ii) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - iii) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - iv) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- c) The Purchaser is exempt from the pre-procurement review in paragraph (b) of this section if the FTA or FTA Recipient determines that its procurement systems comply with the standards of this part.
 - i) The Purchaser may request that its procurement system be reviewed by the FTA or FTA Recipient to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

- ii) The Purchaser may self-certify its procurement system. Such self-certification must not limit the FTA's right to survey the system. Under a self-certification procedure, the FTA may rely on written assurances from the Purchaser that it is complying with these standards. The Purchaser must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

32) Compliance with Federal Law Regulations, and Executive Orders

This is an acknowledgement that FTA financial assistance will be used to fund the Contract only. The Contractor will comply will all applicable federal law, regulations, executive orders, FTA policies, procedures, and directives.

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

Federal Contractual Provisions

EXHIBIT C-2

**FEDERAL HIGHWAY ADMINISTRATION REQUIRED
CONTRACTUAL PROVISIONS**

The resulting Contract will be funded, in whole or in part, with federal funds through the Federal Highway Administration (FHWA). Consequentially, the following FHWA and Federally-mandated provisions, as applicable, will be incorporated into the resulting Contract. Municipality and any subsequent Consultant(s) acknowledge and agree to comply with the applicable provisions in this Section. Italicized language indicates clauses, which require drafting specific to each agreement’s needs.

1) Contract Provisions 2 C.F.R. §200. 326

The Purchaser's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

2) Buy America Requirements 23 USC 313; 23 CFR 635.410

The Contractor shall 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 FHWA funded projects are produced in the United States, unless a waiver has been granted by FHWA 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 purchase (currently less than \$100,000) made with capital, operating, or planning funds.

3) USDOT Disadvantaged Business Enterprise (DBE) Program Requirements 49 CFR Part 26

a) As a sub-recipient of FHWA or FTA funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO

is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>

- b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at eoohelp@dot.state.fl.us.
- c) Bidders, contractors/consultants, sub-recipients, or subcontractor/consultants may not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder contractor/subcontract, sub-recipient, or subcontractor/consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of FHWA and/or FTA-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deem appropriate.

4) FHWA Non-Collusion Statement 23 USC 112(c); 23 CFR 635.112(f)

EACH BIDDER SHALL FILE A STATEMENT EXECUTED BY, OR ON BEHALF OF THE PERSON, FIRM, ASSOCIATION, OR CORPORATION SUBMITTING THE BID CERTIFYING THAT SUCH PERSON, FIRM, ASSOCIATION, OR CORPORATION HAS NOT, EITHER DIRECTLY OR INDIRECTLY, ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION, IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THE SUBMITTED BID. FAILURE TO SUBMIT THE EXECUTED STATEMENT AS PART OF THE BIDDING DOCUMENTS WILL MAKE THE BID NONRESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.

5) Sanctions and Penalties for Breach of Contract 2 CFR Part 200, Appendix II(A)

[All contracts in excess of \$150,000 shall contain provisions or conditions which will address 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.]

6) Termination for Cause and Convenience 2 C.F.R. Part 200, Appendix II, ¶ B

[All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement].

7) Rights to Inventions Made Under a Contract or Agreement 2 C.F.R. Part 200, Appendix II, ¶ F

- a) If the FHWA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FHWA. 2 C.F.R. Part 200, Appendix II, ¶ F.
- b) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8) Energy Efficiency 42 USC 6201; 2 CFR Part 200 Appendix II (H)

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Florida Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9) Procurement of Recovered Materials 2 CFR Part 200 Appendix II (K), 2 CFR 200.322; 40 CFR Part 247

- a) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired -
 - i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii) Meeting contract performance requirements; or
 - iii) At a reasonable price.
- b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

**APPENDIX “A”
(AS REFERENCED IN PARAGRAPH 7.3)**

NONDISCRIMINATION REQUIREMENTS

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, “USDOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Exhibit C of the Regulations.
- (3) **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (7) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid

Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).”