

REQUEST FOR QUALIFICATIONS (RFQ)

FOR

GENERAL PLANNING CONSULTANT SERVICES

RFQ NO. 22-01



Mayor 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 ½" 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 (8½" X 11) when submitted.

All Offer documents must be bound. **Submit a total of one (1) original and five (5) 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:

**CHRISTOPHER C. BROSS
CONTRACTS AND PROCUREMENT MANAGER
BROWARD METROPOLITAN PLANNING ORGANIZATION
TRADE CENTRE SOUTH
100 WEST CYPRESS CREEK ROAD, SUITE 650
FORT LAUDERDALE, FL 33309
TELEPHONE: 954-876-0064**

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 at the above address only between the hours of 8 am – 5 pm, Monday through Friday, excluding Holidays observed by the BMPO. 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, manually, 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(s) contained in this Request For Qualifications shall have the following meanings:

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

"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.

"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.

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

"Offeror" shall refer to anyone submitting an Offer in response to this Request For Qualifications.

"Procurement Manager/Officer" shall refer to the BMPO staff member designated as the point of contact for this Solicitation.

"Provider(s)" or "Successful Offeror(s)" shall refer to the Offeror(s) receiving an award as a result of this Request For Qualifications.

"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.

"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.

"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). A minimum cost of \$0.15 per page shall apply to requests for hard copies of this RFQ.

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 the Deadline for Questions date and time identified in 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 Manager 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 for Questions.

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 amendment 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 Procurement Officer and designated point of contact for this Solicitation is:

Christopher C. Bross,
Contracts and Procurement Manager
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, FL 33309
(954) 876-0064
brossc@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 permanent ink 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 CONDITIONS / EXCEPTIONS TO THE SOLICITATION

Any Offer containing conditions or an exception that may change the terms and conditions of the Contract will be rejected as nonresponsive. Conditions include assumptions, exceptions, qualifications, points of discussion, and all other terms submitted by Proposers that may materially affect the Work. Failure to follow these simple instructions will result in Offers being found nonresponsive. If an Offeror desires to request a condition / exception to be considered, the Offeror must submit their request to the BMPO in writing and shall specifically reference the corresponding Section, paragraph and page number in this Solicitation, during the period of time the proposer may ask questions as outlined in this RFQ.

Where conditions are proposed during the solicitation question period, the BMPO, in its sole discretion, shall determine whether to consider the condition, and/or the acceptability

of the proposed condition. The BMPO is under no obligation to accept or consider any conditions or 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, where such is merely a matter of form and not substance. Irregularities are defined as those that will not have an adverse effect on BMPO's interest and will not materially affect the Offer by giving an Offeror an advantage or benefit not enjoyed by other Offerors.

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

Negotiations shall be conducted on a post award, per Task Work Order basis. Pursuant to Paragraph 5(b) of Section 287.055, Florida Statutes, the BMPO, at its sole discretion, reserves the right to enter into Task Work Order negotiations with the qualified responsive, responsible Offeror for the project. If the BMPO and said Offeror cannot negotiate a successful Task Work Order, the BMPO may terminate said negotiations and begin negotiations with the next qualified responsive, responsible Offeror. This process will continue until a Task Work Order 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.

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 amendment 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, BMPO 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, RULES 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, BMPO 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, rule, 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 Offers 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 OVERVIEW AND SCOPE OF SERVICES

2.1.1 The Broward Metropolitan Planning Organization (BMPO) will retain up to three (3) consultants for Indefinite Delivery Indefinite Quantity (IDIQ) contracts for general planning consultant services. The contract will be for a period of three (3) years with two (2) one-year extensions, with deliverables assigned on an as-needed basis. The maximum amount of the contract will not exceed \$10,000,000.

2.1.2 To allow for teaming opportunities and to maximize competition, the Broward MPO for this qualifications based procurement, allows for a firm to submit as a Prime and also to join other teams as a Subconsultant. Additionally, there is no limit to the amount of teams a firm can join as a Subconsultant.

2.1.3 The BMPO and consultant(s) will together define deliverables and execute their completion through mutually agreed upon separate task work orders, which will include a scope of work, schedule and not to exceed compensation amount (lump-sum).

2.1.4 Once signed by both parties, each task work order, together with a notice to proceed, will function as the authorization to commence and complete the agreed deliverables. A fully executed work order and subsequent notice to proceed will be required prior to any work being performed.

2.1.5 The services identified within the "Scope of Services" section are an outline of general activities that can be expected to be performed under the IDIQ contract. A more specific and deliverable-based scope of work will be provided within each individual work order issued pursuant to the Agreement. The BMPO shall request consultant services on an as-needed basis. There is no guarantee that any or all of the services described in the Scope of Services will be assigned during the term of the Agreement. The BMPO may, at its sole option, elect to have any or none of the services assigned.

2.1.6 Task Work Order Selection Process

a) The BMPO will develop a preliminary scope and schedule and provide the Consultants with a Request for Work Order Proposal ("RFWOP"), upon its determination that a Task Work Order is necessary under the Contract. The RFWOP will include the preliminary Scope of Work and the criteria to be used by the BMPO in determining selection.

b) The Consultants will be asked to provide a response to the RFWOP that is minimal in size and complexity.

- c) The BMPO Procurement Department will establish a deadline for submittal of the response. No responses will be accepted after the deadline.
- d) The BMPO will review and rank the received proposals. The process will be supervised by the BMPO Procurement Department and Project Manager.
- e) The BMPO Project Manager and Task Manager will, subject to Executive Director approval, finalize the Scope of Work and request a fee proposal from the highest-ranked Consultant and begin negotiations with that Consultant after receiving the fee proposal. Should negotiations be unsuccessful, the BMPO may begin negotiations with the next highest-ranked Consultant, and if negotiations are unsuccessful, the BMPO may then move to the next highest-ranked Consultant, and continue down the rankings until negotiations succeed.
- f) Compensation under each Task Work Order shall be based upon the negotiated not to exceed lump sum or schedule of hourly rates and charges specified in the contract.
- g) 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.

2.1.7 Scope Of Services

The Offeror(s) are expected to assemble a team which demonstrate a broad range of experience and expertise to provide support towards successful completion of the MPO's transportation planning activities set forth in the Unified Planning Work Program (UPWP) and other tasks that may be necessary as directed by the BMPO Board. The work involves providing assistance to staff on a Task Work Order assignment basis in a variety of planning, technical, engagement, multimedia and software activities.

Potential submitters can review the BMPO's Unified Planning Work Program (UPWP) at <http://www.browardmpo.org/index.php/core-products/budget-upwp> for more information on the anticipated tasks and projects.

2.1.7.1 Background

The BMPO is responsible for the development and implementation of a balanced, integrated, and multimodal transportation program that moves people and goods, creates jobs and strengthens communities. The BMPO receives grant funding from the Federal Highway Administration, the Federal Transit Administration, the Florida Department of Transportation, the Florida Commission for the Transportation Disadvantaged, and local funds.

Starting in 2015 the BMPO Board developed a Strategic Business Plan, an action-oriented strategy to guide the BMPO over the next five years. The Strategic Business

Plan was recently updated in 2020 and outlined goals and objectives based on the BMPO Board's directives. This plan defines the BMPO beyond what it is federally mandated to do.

2.1.7.2 Major Types Of Tasks & Scope Of Services:

Firms under contract for the general transportation planning services will support and assist BMPO Staff and other consultants hired by the BMPO with tasks shown in the BMPO's UPWP and Strategic Business Plan, or other tasks that may be necessary as directed by the BMPO Governing Board. Tasks below are numbered pursuant to the Work Program Tasks under the UPWP. There is no Task 7 or Task 8. Offers must specify team leaders/firm for each of the following tasks:

Task 1.0 UPWP and Organization Administration

- Unified Planning Work Program support;
- Public Participation Plan;
- Public meeting/outreach/committees/boards/event support;
- Grant application preparation;
- Software development and/or training/;
- Staff/Management/Board retreats;
- Federal and State compliance support;
- Public involvement assistance including website development, newsletter production and other educational and informational materials, as necessary
- Mapping and graphics production;
- Provides administrative support to the BMPO, as necessary.

Task 2.0 Data Collection and Analysis

- Data collection services and analysis;
- Safety analysis and support services;
- Equity analysis and support services;
- Economic analysis and support services;

Task 3.0 Metropolitan, Regional and Intermodal/Freight Planning

- Multimodal Priority List; Metropolitan Transportation Plan and support services;
- Freight and intermodal planning;
- Complete Streets and Localized Initiatives Program (CSLIP), Mobility Hub, Planning Technical Assistance Program (PTAP) and other BMPO program support services;
- Tactical Urbanism support;

Task 4.0 Complete Streets, Transit Planning and Congestion Management

- Public transportation planning;
- Active transportation planning;

- Safety and security planning;
- Planning and conceptual design of Complete Streets;
- Connected, autonomous, electric and shared-use vehicle analysis and planning;
- Health Impact Analysis support;
- Congestion management process;

Task 5.0 Transportation Improvement Program

- Transportation Improvement Program and support;

Task 6.0 Regional Transportation Model and Data

- Travel demand, traffic & accessibility modeling;
- Toll feasibility analysis;
- Resiliency / climate change / sea-level rise modeling and planning services;

Task 9.0 Broward County and Municipal Services

- Development of project cost estimates;
- Development of project traffic & traffic operation studies;
- Land use & urban design services;
- Development of preliminary right-of-way analysis;
- Traffic impact analysis;

2.1.7.3 The BMPO has established partnerships through interlocal agreement (ILA) and established programs to provide consulting and support services to its local government members. The BMPO intends to enable use of consultants selected under this procurement by its planning partners throughout the region as part of technical assistance or to conduct special planning studies that meet the needs of a local government. The BMPO will act as the fiscal agent and provide administrative support for the local government, which will provide a project manager and a scope of work that it negotiates separately with the consultant. Any of the metropolitan planning agencies in FDOT District Four, Broward County and/or any municipality within Broward County may use the results of this solicitation, once awarded, according to the BMPO Procurement Rules.

2.1.7.4 The Consultant Team(s) shall designate a project manager for the coordination of all services under the contract. Principal or key personnel identified in the response may be substituted with prior written approval of the BMPO. Replacements for key personnel under the contract must have equivalent professional qualifications and experience as those individuals listed in the response. The BMPO will not unreasonably withhold approval of substituted personnel.

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.

ACTION/ACTIVITY	DATE	LOCAL TIME	LOCATION
Advertisement Start (Date Issued)	February 11, 2022	See BMPO Website	BMPO Website: http://www.browardmpo.org/index.php/solicitations/current-solicitations
Deadline for Questions (Submit via email only)	February 22, 2022	5:00 pm	Via Email to BMPO Procurement Officer: Brossc@browardmpo.org
Deadline for Offers Due Advertisement Closing Date	March 8, 2022	4:00 pm	BMPO Procurement Office 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Opening of Sealed Offers	March 8, 2022	On or about 4:15 pm	BMPO Board Room 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Evaluation/Selection Committee Evaluation of Offers and Determination of Shortlist	March 17, 2022	On or about 2:00 pm	BMPO Board Room 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Oral Presentations/Interviews of Shortlisted Offerors (If Needed).	March 23, 2022	On or about 9am to 12pm Order Selected in a Random Drawing	BMPO Board Room 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Evaluation/Selection Committee Discussion, Evaluate and Recommend	March 23, 2022	On or about 2:00 pm After the last firm presentation	BMPO Board Room 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Review of Recommended Firms Fee Packages	March 24, 2022	On or about 5:00 pm	BMPO Offices 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309
Posting – Intended Award	March 25, 2022	On or about 2:00 pm	BMPO Website: http://www.browardmpo.org/index.php/solicitations/current-solicitations
BMPO Board Approval of Intended Award	April 14, 2022	On or about 9:30 am	BMPO Board Room 100 W. Cypress Creek Road Suite 650 Fort Lauderdale, FL 33309

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 for a three (3) year term with the BMPO having the option to renew the Contract for two (2) one (1) year renewal periods.

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

The BMPO may require public presentations from no fewer than three (3) of the qualified firms. The award of any Contract(s) resulting from this Solicitation will be made to the qualified responsive, responsible Offeror(s), and whose Offer(s) will be most advantageous to the BMPO. See also Sections 1-13 and 3-2.

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

The Successful Offeror 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 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 19) and provide such documents as part of Offeror's Offer in the format set forth in Section 3-5.4.

7) Fee Submittal Package

The fee submittal package shall be provided in a separately sealed and marked package and must include a listing of each proposed staff member, the actual hourly labor rate for the proposed staff member, the personnel category and the average hourly labor rate for each personnel category.

Also to be included in the fee submittal package is the current year FDOT approved Consultant Audit Package with the FDOT “Prequalification Letter,” which establishes the approved rates on an annual basis. For those firms that are not performing work for FDOT, audited overhead rates certified by an independent certified public accounting firm shall be acceptable. For smaller firms, certified loaded billing rates are acceptable.

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 Committee will evaluate Offers based on a weighted score point formula. The Committee anticipates discussions and/or oral presentations, and reserves the right to interview Offerors if needed. The Committee will evaluate the finalists and make an award recommendation to the Executive Director. The Board will consider the recommendation and authorize execution of an agreement in accordance with the terms of this RFQ and the Offeror’s Offer.

The Committee shall score the responsive and qualified Offers based on the evaluation criteria set forth in Section 2-7 and shall reduce the number of firms (short list) to a minimum of three (3) for further evaluation. The Committee may require public presentations by the short listed firms regarding their qualifications and experience, understanding of the Scope and planning approach, innovation and creativity, and demonstrated knowledge of local conditions.

Following discussions and/ or presentations by each short listed firm, the Committee may make any adjustments to their scoring as they deem appropriate. The Committee shall then rank and vote on the final recommendation of qualified short listed firms based on the Committee’s final total weighted average scoring, and provide such recommendation to the BMPO Executive Director for approval. Successful Offerors shall execute a contract with the BMPO, in the same form attached as Section 20 to the RFQ.

Upon Executive Director approval of the Committee’s recommended qualified firms, the separately sealed Fee Submittal Packages of the recommended qualified firms will be opened and reviewed.

The Executive Director will present the recommendation to the BMPO Executive Committee and/or the Board (as such may be appropriate pursuant to BMPO Procurement Rules) for approval. The BMPO Executive Committee and/or the Board will consider the recommendation and authorize the final execution of an agreement in accordance with the terms of this RFQ and the Offers.

In the event the final Committee scoring results in a tie for rankings of the most highly qualified firm(s), the Committee shall select the firm(s) with the highest individual Committee member rankings. If there is still a tie, the Committee shall rank the firms that are tied based on the final scoring for the highest weighted evaluation criterion.

The Committee will evaluate responsive Offers based on the Qualifications criteria listed below:

EVALUATION CRITERIA

The following evaluation criteria and scoring shall be utilized in evaluating the Offers:

Technical Evaluation Criteria	Weight
<p><u>Qualifications and Experience</u></p> <ul style="list-style-type: none"> • Project Managers have experience managing and administering consultant contracts. • Consultant team has documented experience relevant to Scope of Services. • Sub-consultant ability relating to identified areas of expertise. • Demonstrated appropriate resources (hardware / software / licenses). 	40
<p><u>Understanding of Scope</u></p> <ul style="list-style-type: none"> • Demonstrated understanding of the Scope and planning approach. 	30
<p><u>Innovation and Creativity</u></p> <ul style="list-style-type: none"> • Innovative and creative response • Identification of opportunities within anticipated tasks 	20
<p><u>Other</u></p> <ul style="list-style-type: none"> • Demonstrated understanding of local conditions 	10

Technical Evaluation Criteria Scoring

9 - 10 Outstanding – Proposer exemplifies superior and/or exceptional characteristics in the evaluation criteria categories.

7 – 8 Very Good – Proposer illustrates extremely strong, but not exceptional, characteristics in the evaluation criteria categories.

5 – 6 Satisfactory – Proposer demonstrates competitive average characteristics in most of the evaluation criteria categories. Proposer may be particularly strong in only one or more areas.

3 – 4 Poor – Proposer does not stand out. Evaluator has substantial concerns about the overall strength of the Proposer.

1 – 2 Unsatisfactory – Proposer has serious deficiencies when compared to most of the evaluation criteria categories. In addition, several items may not be addressed or may be missing.

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 third 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: QUALIFICATIONS 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 Offers 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 deem 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 the State of Florida Consultants Competitive Negotiations Act and BMPO policies and procedures.

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

- a) Qualifications 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 Scope of Services.
- c) Experience with projects that are similar to the Scope of Services 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. Utilizing the Personnel and References forms provided, the Offeror shall demonstrate no less than five (5) years of experience, knowledge, skills, and abilities with providing general transportation planning services similar to the Scope of Services Tasks identified in Section 2.1.7.2.
3. Offerors shall provide **three (3)** examples of previously completed projects incorporating similar Scope of Services Tasks identified in Section 2.1.7.2

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

One (1) original and five (5) 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.

In addition, **in a separate sealed package, two (2) bound hard copies of the Fee Submittal Package** 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 Fee Submittal Package shall be separately sealed and clearly marked "Fee Submittal Package." The outside of the sealed

package shall clearly indicate **RFQ No. 22-01, General Planning Consultant Services** 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 (or other Florida legally recognized business entities) shall be executed in the partnership (or business entities) name and signed by a partner or other entity official. 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 (which specifically includes Items 1-5 in Table 3-4.1, below) 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.

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's 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
Chapter 22	Government-Wide Debarment And Suspension (Non Procurement)
Chapter 23	Certification Regarding Lobbying

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:

Christopher Bross,
Contracts and Procurement Manager
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309
brossc@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 provide a copy of the most recent Dun and Bradstreet report. A parent copy Dun and Bradstreet report is acceptable. A copy of the most recent audited financial statements will be accepted if a Dun and Bradstreet report is unavailable. In the event the Offeror does not have a Dun and Bradstreet report or 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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 type 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 Offerors 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.

Offeror's Signature

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

ACKNOWLEDGMENT

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 _____, 2022.

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 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.)

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

SECTION 12: INDEPENDENCE AFFIDAVIT (Continued)

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** _____, 2022.

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 _____, 2022.

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 planning consultant 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-\$15Million
_____		<input type="checkbox"/> More than \$15 Million
	7. <input type="checkbox"/> Sub-contractor	
5. Year Firm Established: _____	<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-\$15Million
_____		<input type="checkbox"/> More than \$15 Million
	7. <input type="checkbox"/> Sub-contractor	
5. Year Firm Established: _____	<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-\$15Million
_____		<input type="checkbox"/> More than \$15 Million
	7. <input type="checkbox"/> Sub-contractor	
5. Year Firm Established: _____	<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

Solicitation No: _____

Solicitation Title: _____

Company/Firm: _____ ("Contractor")

Contractor and any sub-contractors shall comply with Section 448.095, Fla. Stat., "Employment Eligibility," including registration and use of the E-Verify system to verify the work authorization status of employees. Failure to comply with Section 448.095, Fla. Stat. shall result in termination of the resulting Contract/Purchase Order, if awarded. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If the contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- (a) All persons employed by Contractor to perform duties within Florida during the term of the contract; and
- (b) All persons (including sub-contractors/sub-vendors) assigned by Contractor to perform work pursuant to the contract with the BMPO. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract/agreement is a condition of the contract with the BMPO.

By executing this form, I, _____, being duly authorized by and on behalf of, Contractor, verify Contractor's compliance with Section 448.095, Fla. Stat. I hereby declare under penalty of perjury that the foregoing is true and correct.

Authorized Signature: _____ **Date:** _____

Print Name: _____ **Title:** _____

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____ (year) by _____ (name of person making the statement) as _____(title) of _____ (company name), on behalf of _____(company name), who ___ is personally known to me or ___ has provided _____ as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Taped, Printed or Stamped)

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

SECTION 18: GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)

Debarment, Suspension, Ineligibility and Voluntary Exclusion

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180.**
- (2) To the best of its knowledge and belief, that its Principals and Subrecipient’s at the first tier:**
 - a) Are eligible to participate in covered transactions of any Federal department or agency and are not presently:**
 - 1. Debarred,**
 - 2. Suspended,**
 - 3. Proposed for debarment,**
 - 4. Declared ineligible,**
 - 5. Voluntarily excluded, or**
 - 6. Disqualified,**
 - b) Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:**
 - 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,**
 - 2. Violation of any Federal or State antitrust statute, or**
 - 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,**
 - c) It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,**
 - d) It has not had one or more public transactions (Federal, State, local) terminated for cause or default within a three-year period preceding this Certification,**
 - e) If, at a later time, it receives any information that contradicts the statement of subsections 2.a – 2.d above, it will promptly provide that information to FTA,**

- f) It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR Part 180 if it:
 - 1. Equals or exceeds \$25,000,
 - 2. Is for audit services, or
 - 3. Requires the consent of a Federal Official, and

- g) It will require that each covered lower tier contractor and subcontractor:
 - 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - 2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - i. Debarred from participation in any federally assisted Award;
 - ii. Suspended from participation in any federally assisted Award;
 - iii. Proposed for debarment from participation in any federally assisted Award;
 - iv. Declared ineligible to participate in any federally assisted Award;
 - v. Voluntarily excluded from participation in any federally assisted Award;
 - vi. Disqualified from participation in any federally assisted Award.

- (3) It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principles including any of its first tier Subrecipient's or its Third Party Participants at a lower tier, in unable to certify compliance with the preceding statements in this Certification Group.

Certification:

Contractor: _____

Name and Title of Contractor's Authorized Official: _____

Signature: _____ **Date:** _____

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

SECTION 19: CERTIFICATION REGARDING LOBBYING

**Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Firm] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.**
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]**
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall

be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

_____ Signature of Firm's Authorized Official

_____ Printed Name of Firm's Authorized Official

_____ Title of Firm's Authorized Official

_____ Date

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

SECTION 20: SAMPLE CONTRACT

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

FOR

RFQ No. 22-02

This Agreement ("Agreement") is made and entered into the _____ day of _____, 2022, 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. 22-02 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. 22-02, 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.

SECTION 2. TERM

- 2.1** The term of this Agreement will be for a period of three (3) years (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 \$10,000,000, 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 fees as indicated on attached Exhibit "B". Compensation for the professional fees established for a Task Work Order will be calculated by multiplying the average hourly labor rate for each personnel category times the allowed overhead multiplier, times the allowed profit for labor hours and then adding the total fees for each task. Profit shall be negotiated based on the scope and complexity of the Task Work Order and shall not exceed fifteen percent (15%) of the total direct labor and indirect costs. Hours of effort and personnel categories shall be negotiated on a per Task Work Order basis. The average rates for each personnel category may be adjusted to up to three (3) percent annually during the term of the contract, subject to prior BMPO approval. 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 complete 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 shall submit an invoice for compensation, developed and agreed upon by the BMPO Executive Director and CONTRACTOR, 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 amendment 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: Vilma Hurtado

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

Telephone number: (954) 876-0057

Email: hurtadov@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 _____ 2022.

This _____ day of _____ 2022.

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 _____, 2022.

Print Name: _____

“Sample Contract”

AGREEMENT BETWEEN THE BMPO AND _____ FOR

EXHIBITS LIST

- 1) **Exhibit “A”** – RFQ No. 22-02, Date Issued: _____, 2022
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. 22-02

Date Issued: _____

A FULL COPY OF RFQ No. 22-02 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**

UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT)

Federal Transit Administration (FTA)

EXHIBIT C-1

FUNDING SUPPLEMENT

**FEDERALLY FUNDED
FORMAL PROCUREMENTS (>\$150,000)**



**Broward Metropolitan Planning Organization
(BMPO)
TRADE CENTER SOUTH
100 WEST CYPRESS CREEK ROAD, SUITE 650
FORT LAUDERDALE, FL 33309**

APPLICABLE PROVISIONS & CERTIFICATION FORMS

PROVISIONS

= Applicable to this solicitation and/or purchase

1.	<input checked="" type="checkbox"/> NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES	4
2.	<input checked="" type="checkbox"/> FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD	4
3.	<input checked="" type="checkbox"/> ACCESS TO THIRD PARTY CONTRACT RECORDS	4
4.	<input checked="" type="checkbox"/> CHANGES TO FEDERAL REQUIREMENTS	5
5.	<input checked="" type="checkbox"/> CIVIL RIGHTS (TITLE VI, ADA, EEO).....	5
6.	<input checked="" type="checkbox"/> DISADVANTAGED BUSINESS ENTERPRISES (DBEs)	6
7.	<input checked="" type="checkbox"/> INCORPORATION OF FTA TERMS	7
8.	<input checked="" type="checkbox"/> TERMINATION	7
9.	<input checked="" type="checkbox"/> DEBARMENT AND SUSPENSION	7
10.	<input type="checkbox"/> BUYAMERICA	8
11.	<input checked="" type="checkbox"/> RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION	8
12.	<input checked="" type="checkbox"/> LOBBYING	8
13.	<input checked="" type="checkbox"/> CLEAN AIR.....	9
14.	<input checked="" type="checkbox"/> CLEAN WATER	9
15.	<input type="checkbox"/> CARGO PREFERENCE	9
16.	<input checked="" type="checkbox"/> FLY AMERICA	10
17.	<input type="checkbox"/> VETERANS EMPLOYMENT	10
18.	<input type="checkbox"/> FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT	10
19.	<input type="checkbox"/> CONSTRUCTION EMPLOYEE PROTECTIONS – CONTRACT WORK HOURS & SAFETY STANDARDS ACT	16
20.	<input type="checkbox"/> CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT.....	16
21.	<input type="checkbox"/> BONDING FOR CONSTRUCTION ACTIVITIES EXCEEDING \$150,000	17
22.	<input type="checkbox"/> SEISMIC SAFETY	17
23.	<input type="checkbox"/> NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT.....	17
24.	<input type="checkbox"/> TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS.....	18
25.	<input type="checkbox"/> CHARTER SERVICE OPERATIONS	19
26.	<input type="checkbox"/> SCHOOL BUS OPERATIONS	19
27.	<input type="checkbox"/> DRUG USE AND TESTING.....	19
28.	<input type="checkbox"/> ALCOHOL MISUSE AND TESTING.....	20
29.	<input type="checkbox"/> PATENT AND RIGHTS IN DATA	20
30.	<input type="checkbox"/> SPECIAL NOTIFICATION REQUIREMENT FOR STATES.....	20
31.	<input checked="" type="checkbox"/> ENERGY CONSERVATION	20
32.	<input type="checkbox"/> RECYCLED PRODUCTS.....	20
33.	<input checked="" type="checkbox"/> CONFORMANCE WITH NATIONAL ITS ARCHITECTURE.....	21
34.	<input checked="" type="checkbox"/> ADA ACCESS	21
35.	<input type="checkbox"/> BUS TESTING.....	21
36.	<input type="checkbox"/> PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.....	22
37.	<input type="checkbox"/> TVM CERTIFICATION.....	22

Reserved

(Intentionally Left Blank)

Provisions 1 through 7 apply to ALL CONTRACTS

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

B. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD

A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution or performance of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.

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

C. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

A. For a period of three years following Contract closing, the Contractor shall maintain, preserve and make available to BMPO, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times, to any books, documents, papers and records of Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to Contractor's records and 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.

B. The Contractor shall maintain and BMPO shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's offices engaged in performing the Contract.

C. If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three years after any resulting final termination settlement. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

D. "Access to Records and Reports" applies with equal force and effect to any subcontractors hired by the Contractor to perform Work under this Contract. The Contractor shall insert this provision in all subcontracts under this Contract and require subcontractor compliance therewith.

4. CHANGES TO FEDERAL REQUIREMENTS

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 current Master Agreement between BMPO and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract. Contractor may contact either BMPO or FTA for a copy of the current FTA Master Agreement.

5. CIVIL RIGHTS (TITLE VI, ADA, EEO)

The following requirements apply to the underlying Contract:

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, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying Contract:

1. 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, 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 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that

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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, Contractor agrees to comply with any implementing requirements FTA may issue.

2. 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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities- In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

6. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs. The national goal for participation of DBEs is 10%.

B. 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 this DOT-assisted Contract. 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 BMPO deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. 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 BMPO. In addition, the Contractor shall return any retainage payments to subcontractors within 30 days after incremental acceptance of the subcontractor's Work by BMPO and Contractor's receipt of the partial retainage payment related to the subcontractor's Work.

D. The Contractor must promptly notify BMPO, 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 BMPO.

E. BMPO sets an annual overall goal for the participation of DBEs. This Contract contains a minimum level of DBE participation, and is awarded in reliance upon the Contractor's representations that it can attain such DBE participation levels in addition to all other of Contractor's representations, certifications and submittals as required by this Contract.

The Contractor shall cooperate with BMPO with regard to maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract work under this Contract. The Contractor shall assist BMPO in verifying compliance with the DBE requirements of this Contract, if any, by submitting status reports itemizing payments to all DBE subcontractors with each monthly request for payment. Upon Contract completion, the Contractor shall submit a summary of payments, by subcontract, made to all subcontractors to BMPO's Administrative Compliance Officer.

7. INCORPORATION OF FTA TERMS

The provisions of this Contract include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any BMPO requests which would cause BMPO to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

Provision 8 applies to AWARDS EXCEEDING \$10,000

8. TERMINATION

Refer to BMPO's Agreement provisions.

Provision 9 applies to AWARDS EXCEEDING \$25,000

9. DEBARMENT AND SUSPENSION

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

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in any federally assisted Award.

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

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

2. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Provisions 10 through 11 apply to
AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD
(\$150,000)**

10. BUY AMERICA
(For, Rolling Stock, Construction and Materials/Supplies)

The Buy America requirements apply to all contracts for construction, the acquisition of goods, or the acquisition of rolling stock that are valued at more than \$150,000.

The Contractor agrees to comply with 49 USC 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, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

11. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Refer to BMPO's General Terms and Conditions.

**Provisions 12 through 14 apply to
AWARDS EXCEEDING \$150,000 BY STATUTE**

12. LOBBYING

Contractors and all subcontractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of

Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to BMPO. Contractor should contact BMPO for the appropriate certification or retrieve a copy from the FTA Best Practices Manual at <http://www.fta.dot.gov/library/admin/BPPM/>.

13. CLEAN AIR

A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to BMPO and understands and agrees that BMPO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

14. CLEAN WATER

A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. Contractor agrees to report each violation to BMPO and understands and agrees that BMPO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Provisions 15 and 16 apply to the TRANSPORT OF PROPERTY OR PERSONS

15. CARGO PREFERENCE

(For, Rolling Stock, Construction and Materials/Supplies)

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

The Contractor agrees:

1. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding

paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to BMPO (through the Contractor in the case of a subcontractor's bill-of-lading);

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

16. FLY AMERICA

In the performance of Contracts that utilize FTA participation in the cost of international air transportation, Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S.-Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Provisions 17 through 22 apply to CONSTRUCTION ACTIVITIES

17. VETERANS EMPLOYMENT. As provided by 49 U.S.C. § 5325(k): (All Construction Awards)

A. To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

B. Contractor also assures that its subcontractors:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

18. FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT (Awards that exceed \$2,000)

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be

paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an

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authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) **Withholding** - The BMPO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the BMPO may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and

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

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

(5) Compliance with Copeland "Anti-Kickback" Act requirements - The contractor shall comply with the requirements of Section 1 of the Act, as amended, 18 U.S.C. § 874; Section 2 of the Act, as amended, 18 U.S.C. § 3145; and U.S. DOL regulations "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

19. CONSTRUCTION EMPLOYEE PROTECTIONS – CONTRACT WORK HOURS & SAFETY STANDARDS ACT
(For Construction Contracts that exceed \$150,000)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

20. CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT

Compliance with Copeland "Anti-Kickback" Act ("Act") requirements - The contractor shall comply with the following requirements:

(a) Section 1 of the Act, as amended, 18 U.S.C. § 874, applies to all Contracts:

(i) Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part

of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both;

(b) Section 2 of the Act, as amended, 18 U.S.C. § 3145, applies to construction and repair Contracts exceeding \$2,000:

(i) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(ii) Application — The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001; and

(c) U.S. DOL regulations “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3, which are incorporated by reference in this contract.

(d) For additional requirements of the Act not specified in this Article, see preceding Article FTA 17 – Construction Employee Protections – Davis Bacon Act.

21. BONDING FOR CONSTRUCTION ACTIVITIES EXCEEDING \$150,000 Bid Bond Requirements (For Construction)

Refer to BMPO's General Terms and Conditions

22. SEISMIC SAFETY

If this Contract for professional services involves the design of a new building or addition to an existing building, the Contractor agrees that any such new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Provision 23 applies to NONCONSTRUCTION ACTIVITIES

23. NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT (For all turnkey, rolling stock and operational contracts {except transportation services contracts and open market contracts} exceeding \$150,000.)

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provision Applicable to Nonconstruction Contracts Subject to the Contract Work hours and Safety Standards Act)," 29 CFR Part 5.

Provisions 24 through 28 apply to TRANSIT OPERATIONS

24. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority sub recipient participating a Project authorized by 49 U.S.C.

§ 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

25. CHARTER SERVICE OPERATIONS

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

26. SCHOOL BUS OPERATIONS

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

27. DRUG USE AND TESTING

The Contractor agrees to establish and implement a drug testing program that complies with 49 CFR Part 40 Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the BMPO, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the BMPO. 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.

28. ALCOHOL MISUSE AND TESTING

The Contractor agrees to establish and implement an alcohol testing program that complies with 49 CFR Part 40 Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the BMPO. 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.

Provision 29 applies to RESEARCH, DEVELOPMENT,
DEMONSTRATION, **DEPLOYMENT AND SPECIAL STUDIES**

29. PATENT AND RIGHTS IN DATA

Refer to BMPO's Agreement provisions.

Provision 30 applies ONLY to States and Organizations that are being funded
directly by the State with FTA grant funds.

30. SPECIAL NOTIFICATION REQUIREMENT FOR STATES

(Per FTA guidance dated July 2011: "The notification requirements concerning federal assistance apply only to States and those organizations that are being funded directly by the State with FTA grant funds. This would include sub-grantees, lessees, or third party contractors of the State. Government agencies that are not part of the State government who are receiving FTA grant funds directly from FTA do not have to comply with the special notification requirements for States." Therefore this clause does not apply to BMPO Contracts.)

The Federal Transit Administration ("FTA") is the Federal agency that is providing the Federal assistance for this Contract. The Catalog of Federal Domestic Assistance Number is _____, for the amount of \$____.

MISCELLANEOUS SPECIAL REQUIREMENTS

31. ENERGY CONSERVATION - (Applies to all Contracts)

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan, if any, issued in compliance with the Energy Policy and Conservation Act.

32. RECYCLED PRODUCTS - (Contracts greater than \$10,000 per year of Items Designated by EPA)

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) 10/28/21 Rev. 1

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.

33. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE - (Contracts & Solicitations for ITS Projects)

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

34. ADA ACCESS - (Contracts for Rolling Stock or Facilities Construction/Renovation)

A. BMPO must comply with: 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; all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act of 1990 (ADA), as amended; 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

B. All deliverable items provided by the Contractor for BMPO under this Contract shall comply with the above-referenced laws as well as all other applicable federal, state and local regulations and directives and any subsequent amendments thereto.

Provisions 35 through 37 apply to ROLLING STOCK PROCUREMENTS

35. BUS TESTING

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer

shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

36. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

37. TVM CERTIFICATION

The Transit Vehicle Manufacturer (TVM) shall provide BMPO with a certificate that complies with 49 CFR Part 26.49 stating that the TVM has complied with FTA's DBE requirements. The TVM shall also provide BMPO with the most current letter from the FTA approving the TVM's DBE goal/methodology and eligibility to participate in the FTA DBE program as a TVM in accordance with 49 CFR Part 26.49. If the FTA has not yet approved the DBE Goal, the TVM shall make a certification to that effect as required by 49 CFR Part 26.49 and in addition submit to BMPO a copy of the documents submitted to FTA for approval. These documents shall be submitted with the solicitation response or the TVM's submittal may be deemed non-responsive.

“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 ooohelp@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 7.4)**

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 sub-contractor 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).”