

REQUEST FOR PROPOSALS (RFP)
FOR
ENTERPRISE RESOURCE PLANNING (“ERP”)
SYSTEM AND IMPLEMENTATION SERVICES

RFP No. 16-01



Commissioner Richard Blattner, Chair

Gregory Stuart, Executive Director
Broward Metropolitan Planning Organization
100 West Cypress Creek Road, Suite 850
Fort Lauderdale, Florida 33309

DATE ISSUED: January 15, 2016

CLOSING DATE AND TIME: February 22, 2016 @ 3:00 P.M. EST

INSTRUCTIONS FOR SUBMITTING A PROPOSAL IN RESPONSE TO A FORMAL REQUEST FOR PROPOSALS

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

- a) Proposer'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 Proposal being deemed "Non-Responsive."

All Proposals must be submitted on 8 ½" by 11" paper, neatly typed on one side only, 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.

The original document package must not be bound, although, the document package copies should be individually bound. Submit one (1) unbound one-sided original, four (4) bound copies (**a total of five [5] hard copies**), and two (2) CD's each containing an electronic version (**including specifications and pricing form excel worksheets**), of the complete Proposal, which must be received by the deadline for receipt of Proposals as specified in Section 2-2, the Solicitation Timetable.

The original, and all copies, must be submitted in a sealed envelope or container stating on the outside the Proposer's name, return address, telephone number, the Solicitation number, the Solicitation Closing Date & Time and the Title of the Solicitation, to:

**LYDIA WARING, PROCUREMENT OFFICER
BROWARD METROPOLITAN PLANNING ORGANIZATION
TRADE CENTRE SOUTH
100 WEST CYPRESS CREEK ROAD, SUITE 850
FORT LAUDERDALE, FL 33309
TELEPHONE: 954-876-0049**

THE RESPONSIBILITY FOR OBTAINING AND SUBMITTING A PROPOSAL TO THE PROCUREMENT OFFICER ON OR BEFORE THE STATED TIME AND DATE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. 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 PROPOSAL RECEIVED AFTER THE DATE AND TIME STATED IN THIS REQUEST FOR PROPOSALS WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. TELEGRAPHIC OR FACSIMILE PROPOSALS SHALL NOT BE CONSIDERED.

Hand-carried Proposals may be delivered to the above addresses only between the hours of 8:00 AM and 5:00 PM, Mondays through Fridays, excluding holidays observed by the BMPO. Proposers 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 Proposal must be signed by an authorized officer of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer. The submittal of a Proposal by an Proposer will be considered by the BMPO as constituting an offer by the Proposer to perform the required services, and/or provide the required goods, pursuant to the terms stated in the Proposal and this Request for Proposals.

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SECTION 1: GENERAL TERMS AND CONDITIONS

1-1 DEFINITIONS

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

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

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

The term "Proposal" shall refer to any proposal(s) submitted in response to this Request For Proposals.

The term "Proposer" or "Vendor" shall refer to anyone submitting a Proposal in response to this Request For Proposals.

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

The terms "Provider" or "Successful Proposer" shall refer to the Proposer receiving an award as a result of this Request For Proposals.

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

The term "Subcontractor" or "Subconsultant" shall refer to any person, firm, entity, or organization, other than the employees of the Successful Proposer, who contract with the Successful Proposer 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 Proposer.

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

1-2 AVAILABILITY OF REQUEST FOR PROPOSALS

Copies of this Solicitation package may be obtained from the BMPO's Procurement Office located at Trade Centre South, 100 West Cypress Creek Road, Suite 850, Fort Lauderdale, FL 33309. To request the Solicitation package through the United States Postal Service, mail your request with the following information: the Solicitation number and title, the name of the Proposer's contact person, the Proposer's name, and complete mailing address, telephone number, and fax number. A minimum cost of fifteen cents (15¢) per page shall apply to requests for hard copies of this RFP.

Proposers 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 Proposers are solely responsible for those risks.

1-3 QUESTIONS REGARDING SOLICITATION

Any questions, explanations, or other requests desired by Proposer(s) regarding the Solicitation must be requested in writing to the BMPO's Procurement Officer (see below) in accordance with Section 1-18. Among other penalties, violation of these provisions by any particular Proposer shall render their Proposal to be deemed non-responsive and any award to Proposer voidable, at the sole discretion of the BMPO.

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

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 850
Fort Lauderdale, FL 33309
(954) 876-0049
WaringL@BrowardMPO.org

1-4 CONTENTS OF SOLICITATION

- a) General Conditions.
 - 1) It is the sole responsibility of the Proposer to become thoroughly familiar with the Solicitation requirements and all terms and conditions affecting the performance of this Solicitation. By the submission of a Proposal to do the Work, the Proposer certifies that a careful review of the RFP documents has taken place and that the Proposer is fully informed and understands the requirements of the RFP documents and the quality and quantity of service to be performed. Pleas of ignorance by the Proposer 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 Proposer 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) Additional Information/Amendment
 - 1) Requests for additional information, explanation, clarification or interpretation must be made in writing to the Procurement Officer at the address identified above. **To be considered, all requests must be received by the Procurement Officer no later than seven (7) working days prior to the Solicitation Closing Date & Time.** Any request received after that time may not be reviewed for inclusion in this Solicitation. The request shall contain the requester's name, address, and telephone number.
 - 2) The Procurement Officer will issue a response to any inquiry if deemed necessary, by written amendment to the Solicitation, issued prior to the Solicitation Closing Date & Time. The Proposer 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.
 - 3) It is the Proposer's responsibility to ensure receipt of all amendments and substitute Proposal Forms. It is the Proposer's further responsibility to verify with the Procurement Officer, prior to submitting a Proposal, that all amendments have been received. The Proposer shall submit the Proposal form entitled "**AMENDMENT ACKNOWLEDGMENT FORM,**" with their Proposal.

c) 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 PROPOSAL

a) Preparation/Submission.

- 1) The Proposal Forms and affidavits set forth in this RFP shall be used when submitting a Proposal. Use of any other forms shall result in the rejection of the Proposer's Proposal. All forms submitted shall be completed and signed only by the Proposer.
- 2) The Proposal will either be typed or completed legibly in ink. The Proposer's authorized agent will sign the Proposal Forms in ink, and all corrections made by the Proposer 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 Proposal.

The BMPO is exempt from federal excise tax. 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 Proposal 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 CONTRACTOR list maintained by the Florida Department of Management Services following a conviction for a public entity crime, may not submit a Proposal 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 CONTRACTOR list.

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

Each Proposer 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 Proposer's shall submit the duly signed and notarized form entitled, "**ANTI-KICKBACK AFFIDAVIT.**" Proposer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Proposer, 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 Proposer, 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 Proposer's shall submit the duly signed form entitled "**NON-COLLUSION AFFIDAVIT.**"

f) Antitrust Laws.

By acceptance of a Contract, the Successful Proposer 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 RFP (“**Independence Affidavit**”), the Proposer 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 RFP. Additionally, the Proposer 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 A PROPOSAL

a) Modification of a Proposal.

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

b) Withdrawal of an Proposal.

A Proposal may be withdrawn only by written communication delivered to the Procurement Office prior to the Solicitation Closing Date & Time. A Proposal 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 Proposer.

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

Proposals received after the Solicitation Closing Date & Time shall be deemed unresponsive, and shall not be opened or considered. Modifications of Proposals received after the Solicitation Closing Date & Time shall also not be considered. Withdrawals of Proposals 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 Proposals, re-advertise this Solicitation, postpone or cancel, at any time, this Solicitation process, or waive any irregularities in this Solicitation, or in the Proposals received as a result of this Solicitation.

1-9 COST OF PROPOSALS

All expenses involved with the preparation and submission of Proposals to the BMPO, and any work performed in connection therewith, shall be borne by the Proposer(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Proposer(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 Proposer's to perform an oral presentation in support of their Proposals or to exhibit or otherwise demonstrate the information contained therein. This presentation or demonstration may be performed before the Evaluation/Selection Committee or the Executive Board of the BMPO. If required, Proposer's will be notified in writing prior to the date of such a presentation.

1-11 EXCEPTIONS TO THE SAMPLE CONTRACT

If the Proposer finds it impossible or impractical to adhere to any portion of the terms and conditions of the Sample Contract, the Proposer shall state that Proposer is requesting an exception. All exceptions taken must be clearly specified at the end of the Proposer's cover letter, and shall be referenced by utilizing the corresponding Section, paragraph, and page number in this Solicitation. Objections or deviations expressed only in other parts of the proposal, either directly or by implication, will not be accepted as deviations, and the Proposer in submitting a Proposal, shall accept this stipulation without recourse. The Proposer does not need to list exceptions with respect to blank or incomplete terms or conditions listed in the Sample Contract that are subject to negotiation between the BMPO and the Successful Proposer (ex. xx (#) of days, etc.).

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

The BMPO is under no obligation to accept or consider any exceptions, or accept any Proposal with an exception.

1-12 PROPRIETARY/CONFIDENTIAL INFORMATION

Proposer's are hereby notified that all information submitted as part of, or in support of Proposals, will be available for public inspection after opening of the Proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law." Proposer's must claim the applicable exemptions to disclosure provided by law in their response to the RFP 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 Proposals 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 Proposal, in its best interest. Acceptance or rejection of any Proposal shall not nullify the BMPO's rights hereunder.

1-13 EVALUATION OF PROPOSALS

a) Rejection of Proposal.

- 1) The BMPO may reject any Proposer's Proposal;

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 Proposal if the Proposer does not accept, or attempts to modify the terms and conditions of this Solicitation.

b) Waiver of Informalities.

The BMPO reserves the right to waive any informalities or irregularities in this Solicitation.

c) Demonstration of Competency

- 1) A Proposal 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 Proposer 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 Proposer's site or hold a pre-award qualification hearing to determine if the Proposer 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 Proposer, 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 Proposer to show evidence that it has been designated as an authorized representative of a manufacturer, supplier and/or distributor if required by this Solicitation.
- 4) The BMPO reserves the right to audit all records pertaining to and resulting from any award as a result of this Solicitation, financial or otherwise.

1-14 NEGOTIATIONS

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

The BMPO, in its sole discretion, reserves the right to enter into Contract negotiations with the highest evaluated responsive, responsible Proposer for the project. If the BMPO and said Proposer cannot negotiate a successful Contract, the BMPO may terminate said negotiations and begin negotiations with the next highest evaluated responsive, responsible Proposer. This process will continue until a Contract acceptable to the BMPO has been executed or all Proposals are rejected. No Proposer 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. No rights shall inure to the benefit of any Proposer 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 Proposer 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 Proposer 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 the next highest evaluated responsive, responsible Proposer.

c) Independent Contractor.

The Successful Proposer shall be a contractor operating independently from the BMPO. All employees and contractors to the Successful Proposer shall be considered to be, at all times, the sole employees or contractors of the Successful Proposer under its sole discretion and not an employee, Contractor, or agent of the BMPO. Nor shall employees and contractors to the Successful Proposer enjoy any privity of contract with the BMPO. Neither the Successful Proposer nor any of its employees shall receive any BMPO benefits available to employees of the BMPO. The Successful Proposer shall supply competent and capable employees and contractors. The BMPO may require the Successful Proposer 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 Proposer in writing of such extensions. Additional extensions beyond the first ninety (90) day extension may occur, if, the BMPO and the Successful Proposer 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 Proposer'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 highest evaluated responsive, responsible Proposer 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 Proposer 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 Proposer may protest any recommendation for the award of a Contract or rejection of all Proposals, 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 Proposer 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 850, 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 Proposer submits with its Proposal 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 Proposer. In addition, the Successful Proposer shall not change or substitute subcontractors, subconsultants, or suppliers from those listed in the Proposal 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 Proposal, a list of such subcontractors shall be provided to the Executive Director, subject to his approval.

All Proposer's shall submit the completed Proposal form entitled "**PROPOSER'S DISCLOSURE OF SUBCONTRACTORS, SUBCONSULTANTS, AND SUPPLIERS**" with their Proposal. **FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER THE PROPOSAL NON-RESPONSIVE.**

1-18 INTERPRETATIONS AND INQUIRIES

All Proposer's shall carefully examine the RFP documents. Any ambiguities or inconsistencies shall be brought to the attention of the BMPO or its agent in writing prior to the deadline.

Any questions concerning the intent, meaning and interpretation of the RFP documents shall be requested in writing, and received by the BMPO prior to the date and time as specified in Section 2-2, the Solicitation Timetable. Written inquiries shall be sent via email to:

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 850
Fort Lauderdale, Florida 33309
Email: WaringL@browardmpo.org

Submission of a Proposal will serve as prima facie evidence that the Proposer has examined the RFP 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 RFP documents. Therefore, oral statements will not be binding and should not be relied upon. Any interpretation of, or changes to, the RFP documents will be made in the form of a written addendum to the RFP document and will be furnished by the BMPO to all Proposer's who request the RFP documents from the Procurement Office. Only those interpretations of, or changes to, the RFP document that are made in writing and furnished to the Proposer's 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 Proposer.

1-20 ASSIGNMENT; NON-TRANSFERABILITY OF PROPOSAL

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

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

1-21 LEGAL REQUIREMENTS

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

1-22 FAMILIARITY WITH LAWS AND ORDINANCES

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

1-23 ADVERTISING

In submitting a Proposal, Proposer agrees not to use the results therefrom as a part of any advertising or Proposer 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 RFP shall be included and incorporated in the final Agreement between the BMPO and the successful Proposer(s). The order of precedence will be the Agreement, the RFP Documents, the Proposer'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 Proposals 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 a Proposal for the services, all Proposer's 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 Proposer 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 RFP. Each Proposer shall acknowledge receipt of such amendments on the form provided in Section 5. In the event any Proposer fails to acknowledge receipt of such amendments, his/her Proposal shall nevertheless be construed as though the amendments had been received and acknowledged and the submission of his/her Proposal shall constitute acknowledgment of receipt of all amendments, whether or not received by him/her. It is the responsibility of each prospective Proposer to verify that he/she has received all amendments issued before depositing the Proposal with the BMPO.

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

By submitting a response to this RFP, Proposer certifies that it does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, as amended 42 USC 2000d to 2000d-4, and Title 49 CFR, Part 21, the Civil Rights Restoration Act of 1987 and the Florida Civil Rights Act of 1992 in the performance of the Services requested herein. Proposer shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts, and certifies that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation for the Services required herein under any BMPO program or activity. Failure of Provider to comply with this provision may result in the immediate termination of the Agreement by the BMPO or such other remedy as the BMPO deems appropriate.

As a recipient of federal funds, the BMPO is required to establish a Disadvantaged Business Enterprise (“DBE”) Program and a DBE participation goal when it is anticipated that more than \$250,000 of federal funding will be available for 3rd party contracting opportunities within the federal fiscal year. The BMPO developed a Disadvantaged Business Enterprise (“DBE”) Program with an overall goal of 8% DBE participation, and submitted the DBE Program to the Federal Transit Administration (“FTA”) for approval. When a BMPO project is funded with assistance from the Federal Highway Administration (“FHWA”) the overall DBE participation goal is 9.91%. To meet the DBE participation goal, an equivalent percentage of the contracted labor must be performed by DBE’s as prime contractors or through subcontract and/or joint venture projects. For more information on the BMPO DBE Program and how the BMPO calculates its DBE Program goal, please refer to the BMPO Disadvantaged Business Enterprise Program document located on the BMPO web site at: <http://www.browardmpo.org>.

The BMPO is required to track and report DBE contracting activities and payments to the FTA and FHWA semi-annually (December 1st and June 1st). Successful Proposer(s) shall agree to assist the BMPO in the completion of any documents required to be submitted to the FTA or FHWA for compliance with the DBE program. Proposer’s shall complete and submit the Anticipated DBE Participation Statement and the Bid Opportunity List provided in this RFP.

1-28 FEDERAL DEBARMENT

By submitting a response to this RFP, the Proposer 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.

SECTION 2: SPECIFIC TERMS AND CONDITIONS

2-1. SCOPE OF SERVICES

The BMPO is requesting Proposals from experienced individual(s), group(s), or company(ies), to provide the Services described herein for the BMPO.

2-1.1. BMPO and Project Background.

The Broward Metropolitan Planning Organization is a federally mandated transportation policy-making board located in Fort Lauderdale, Florida. The BMPO Board is made up of elected officials representing Broward County, all 31 Broward municipalities, Broward County Public Schools, Broward County Transit and the South Florida Regional Transportation Authority (SFRTA/Tri-Rail). Its mission is to influence the expenditure of federal and state funds to provide a regional transportation system that ensures the safe and efficient mobility of people and goods, optimizes transit opportunities, and enhances the environmental and economic well-being of Broward County. Since becoming a structurally independent organization in 2010, its annual operating budget has increased from \$2.5 million to over \$13 million.

The BMPO desires to gain more complete ownership of its core business information systems, as it continues to grow in size, with a suite of integrated systems. The BMPO has been utilizing the system (Tyler Eden) licensed by the SFRTA for its basic accounting functionality since becoming independent from Broward County in 2010. The BMPO itself does not have direct access to the SFRTA's system, but will send relevant items (AP invoices, new vendor entries, general interest allocations, etc.) via email for SFRTA staff to enter. Several other business processes, such as human resources and employee time and expense entry, are characterized by the processing and retention of paper forms.

The BMPO's system must improve its service to the community and increase employee productivity. The system must be powerful, reliable, and user-friendly. The BMPO has placed a particular emphasis on ensuring the security of its employees' personal information, and expects the system provider to conform to the established data security standards of the industry.

This project aims to accomplish two main objectives. The first and most crucial is the migration of the BMPO's technology operations, core financial processes, and budgeting activities directly under its own control. The second objective is to capitalize on the opportunity presented by increased BMPO ownership of its business processes and technology to leverage the latest in enterprise resource planning software. The BMPO aims to select an integrated and open business suite of applications that will enable appropriate information to be shared across the organization as well as to streamline interfaces to current and future third-party systems used by the BMPO. A modern, integrated enterprise resource planning system will modernize business processes, reduce duplicate and paper entry, ensure data integrity and security, and

facilitate greater efficiency and effectiveness of management decisions. **The Broward MPO's financial management system must comply with the requirements set forth in 2 CFR 200.302.**

2-1.2. Current Application Environment.

| *Legend for Current Applications | | |
|---|-------------|---|
| Legend Code | | Description |
| R | Replacement | The BMPO is intending on replacing this application with the selected solution. |
| C | Consider | The BMPO is considering replacing this application with the selected solution, based on the strength of the finalist Vendor offering and cost/benefit of the replacement module |
| M | Maintain | The BMPO is intending on retaining the application, not replacing it thru this effort |
| I | Interface | The BMPO is intending on keeping the application and interfacing/integrating it with the selected solution. |

| Current ERP Application | Application Notes/Description | Departmental Owner | Likely Future?* | Expected ERP Module |
|--------------------------------|--|---------------------------|------------------------|---|
| Tyler Eden | Current financial system of record containing the BMPO's data used for financial reporting, including general ledger, budgets, purchasing, receipting, accounts payable, payroll, and grant management | Finance/SFRTA | R | Accounts Payable, Bank Reconciliation, Budgeting, Contract Management, Cash Management, Contract Management, Fixed Assets, General Ledger, General Requirements, Human Resources, Miscellaneous Billing and Accounts Receivable, Payroll, Project and Grant Accounting, Purchasing, Time and Attendance |

2-1.3. Current Technical Environment.

The BMPO is transitioning its IT environment to a different architecture, and therefore the proposed ERP solution must support the following future-state environment:

A Microsoft Active Directory-based computing environment comprised of approximately 20 Windows-based computers and 25-30 users. The computers are a mixture of traditional laptops, desktops and some tablet devices using the Microsoft Windows 8 and 10 operating system software and locally installed versions of Microsoft Office 2013.

The email system is a hosted Microsoft Exchange-based environment with user access being provided using the Outlook mail client and mobile devices.

There is a centralized file and print environment comprised of several Microsoft Windows-based virtual servers. The servers are backed up using VM snapshot technologies that allow for the rapid recovery of the entire machine and individual files. There are no database or email integration backup agents used as they are not applicable to the environment.

The BMPO has redundant Internet connections and private (10 Mbps MPLS) WAN connectivity to the server hosting facility.

The telephone system is also a hosted solution and utilizes VoIP technology.

2-1.4. ERP System Solution.

The BMPO is requiring that Proposers propose a complete ERP solution, including software, hardware specifications, project management, and other technology services for the entire scope of the project that may or may not include components owned by the vendor.

An outline of the required software system solution has been provided as follows:

Software:

- **Application Software:**
 - Accounts Payable
 - Bank Reconciliation
 - Budgeting
 - Cash Management
 - Contract Management
 - Document Management
 - Fixed Assets
 - General Ledger
 - Human Resources
 - Miscellaneous Billing and AR
 - Payroll
 - Project and Grant Accounting
 - Purchasing
 - Time and Attendance
 - Report Writer
 - Any other necessary software components to support the proposed Application Software solution

Services:

- **Required Services**
 - Project Management
 - Hardware design and installation consulting
 - Software Installation
 - Data Conversion
 - Report Development
 - Integration and Interface Development
 - Implementation and Training Services

- Change Management
- Knowledge Transfer to Staff
- System Documentation Development
- Ongoing Support and Maintenance Services
- **Optional Services**
 - Software Modifications
 - Operational Redesign Assistance
 - On-Going Hosting Services

It is important to note that the BMPO is considering both a BMPO-hosted and a Vendor-hosted solution. It is optional, but not mandatory, for Proposers to provide information on both solutions as part of their Proposal. If a Proposer does propose a Vendor-hosted solution, any differences from a BMPO-hosted solution must be clearly delineated in the appropriate sections of the Proposal.

2-1.5. Functional Requirements

The requirements defined in this section contain the overall general functions of the requested software solution. The primary objective of the BMPO in implementing a new system is to provide a more integrated information system environment that will eliminate the redundant entry of data, provide improved system capabilities, provide improved access to data, and streamline overall operations.

Identified in the attached Excel spreadsheet (version 2010) are a number of requirements that must be addressed in the Proposal.

These requirements are considered mandatory in implementing the complete solution. Together they define a system that will operate efficiently in the proposed computer environment while providing a high level of flexibility in meeting the BMPO's current and future data needs. Proposers must replace cells A1:G1 in the first module (General and Technical Requirements) with the Proposer's **Company Name** which will be repeated and printed for each subsequent module.

The **Priority** column includes one of the following entries to indicate the importance of the specification/report to the BMPO:

| | |
|----------------------|--|
| "H" – High: | This would be a feature that the BMPO already has and uses in its current software or, alternatively, is available and/or tracked in a shadow system (i.e., spreadsheet, document, external database, etc.). |
| "M" – Medium: | This is a feature that the BMPO would like in the new system that is not currently being tracked or is not existing functionality. |
| "L" – Low: | This would be a feature that, while of interest, is not applicable at this time or something that could be a future deployment. |

Each Proposer should review the specifications and reports listed in each subsection and respond as to their availability within the vendor's software system. The responses should be entered under the **"Availability"** column of each form as follows:

| | |
|----------|---|
| Y | Functionality is provided out of the box through the completion of a task associated with a routine configurable area that includes, but is not limited to, user-defined fields, delivered or configurable workflows, alerts or notifications, standard import/export, table driven setups and standard reports with no changes. These configuration areas will not be affected by a future upgrade. The proposed services include implementation and training on this functionality, unless specifically excluded in the Statement of Work, as part of the deployment of the solution. |
| R | Functionality is provided through reports generated using proposed Reporting Tools. |
| T | Functionality is provided by proposed third party functionality (i.e., third party is defined as a separate software Vendor from the primary software Vendor). The pricing of all third party products that provide this functionality MUST be included in the cost proposal. |
| M | Functionality is provided through customization to the application, including creation of a new workflow or development of a custom interface, which may have an impact on future upgradability. |
| F | Functionality is provided through a future general availability (GA) release that is scheduled to occur within 1 year of the proposal response. |
| N | Functionality is not provided |

Use the **Cost** column for “M” or “F” responses to estimate the cost to be incurred by the BMPO to secure the specification/report. Use the **Comment** column to provide additional comments pertaining to your response for that item.

The **Required Product(s)** column is to be used to specify what product (e.g. product name / software module) is proposed. The cells D10:G10 in the form which currently read “*Replace this text with the primary product name(s) which satisfy requirements*” must be updated. This name will be automatically populated in the **Required Product(s)** column for each specification in the module. The automated values in this column must be updated for any exceptions where a different or additional product is required to satisfy the requirement.

Vendors proposing a multi-product solution should complete a General and Technical module specification response for each product.

Additional details and descriptions related to the specifications of the requested ERP System and Services may be found in Section 2-6 of this RFP.

2-1.6. Summary of Key Transaction Volumes

A summary of key transaction and operating volumes and standards is included below. These volumes and standards reflect actual & estimated amounts for the current environment.

| Operating Volumes/Standards | |
|--|---------------|
| Broward Metropolitan Planning Organization | |
| Total Staff (Full time: 1FTE) | 19 |
| Total Staff (Part time: 0.5 FTE) | 0 |
| Number of IT users | 2 |
| Number of ERP System Users (Total Current) | 4 |
| Number of ERP System Users (Anticipated Future) | 25 |
| Number of Users (Anticipated Future) Per Area | |
| Accounts Receivable | 3 |
| Purchasing | 3 |
| Payroll/Personnel | 3 |
| Year End Processing | 3 |
| General Ledger/Bank Reconciliation | |
| Chart of Accounts Structure | XXX-XX-XXXX |
| Chart Segment One Name/Account Mask | Fund/XXX |
| Chart Segment Two Name/Account Mask | Department/XX |
| Chart Segment Three Name/Account Mask | Object/XXXX |
| Fiscal Year End | June 30 |
| Number of Funds | 2 |
| Number of Manual Journal Entries (Monthly) | 50-100 |
| Number of Cash Accounts | 5 |
| Number of Bank Accounts | 5 |
| Budgeting | |
| Number of Approval Levels | 2 |
| Budget Frequency | Yearly |
| Number of Funds Budgeted | 2 |
| Fixed Assets | |
| Fixed asset tagging? | Yes |
| Tracking / Reporting of Non-depreciable Assets? | No |

| Project/Grant Accounting | |
|---|-----------|
| Do Projects/Grants Cross Funds? | No |
| Purchasing/Contract Management | |
| Number of Requisitions per Month | 10-20 |
| Number of Purchase Orders per Month | 5-10 |
| Number of Blanket Purchase Orders per Month | 0 |
| Number of Invoices Without a Purchase Orders per Month | 10-15 |
| Accounts Payable | |
| Number of Vendors Maintained in Accounts Payable System | 164 |
| Frequency of Check Runs | 2-3/week |
| Check Signature Method | Dual |
| Human Resources and Payroll | |
| Number of Permanent Employees | 19.00 |
| Number of Part-Time Employees | 0 |
| Number of Seasonal Employees | 0 |
| Number of Bargaining Units | 0 |
| Number of Applicants (Annually) | 2 |
| Payroll Frequency | bi-weekly |

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

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) | January 15, 2016 | See BMPO Website | BMPO Website: http://www.browardmpo.org/doing-business-m |
| Deadline for Submittal of Written Questions | February 4, 2016 | 5:00 pm | BMPO Procurement Office |
| Sealed Proposals Due (<i>Sealed Envelope</i>) Advertisement Closing Date | Monday, February 22, 2016 | 3:00 pm | BMPO Procurement Office Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| Opening of Sealed Proposals | Monday, February 22, 2016 | On or about 3:15 pm | BMPO Board Room Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| Evaluation/Selection Committee Determination Qualification and Shortlist | TBD (<i>Tentative March 14, 2016</i>) | On or about 2:00 pm | BMPO Board Room Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| Software Demonstrations (<i>Shortlisted Firms</i>) | Weeks of March 28, 2016 and April 4, 2016 | Agenda TBD | BMPO Board Room Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| Evaluation/Selection Committee Discussions, Evaluate and Ranking | TBD (<i>Tentative April 13, 2016</i>) | TBD | BMPO Board Room Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| <i>Posting</i> – Intended Award | TBD (<i>Tentative April 14, 2016</i>) | On or about 2:00 pm | BMPO Website |
| Negotiations (<i>Highest Ranked Firm</i>) | TBD (<i>Tentative months of April and May, 2016</i>) | On or about 9:30 am | BMPO Executive Confer Rm Trade Centre South, Suite 850 100 W. Cypress Creek Road Fort Lauderdale, FL 33309 |
| BMPO Board Approval of Intended Award | TBD (<i>Tentative May 12, 2016</i>) | On or about 9:30 am | BMPO Board Room Trade Centre South, Suite 850 |
| Conclude Negotiations (<i>If needed</i>) | TBD | TBD | BMPO Executive Conf. Room Trade Centre South, Suite 850 |

BMPO = Broward Metropolitan Planning Organization

2-3 TERM OF CONTRACT: UPON COMPLETION AND ACCEPTANCE

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

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

The award of any Contract resulting from this Solicitation will be made to the highest evaluated responsive, responsible and qualified Proposer, and whose Proposal will be most advantageous to the BMPO.

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

The Successful Proposer(s) shall submit fully documented invoices within thirty (30) calendar days after the services have been rendered. These invoices shall be submitted to the Broward Metropolitan Planning Organization, ATTN: Accounts Payable, Trade Centre South, 100 West Cypress Creek Road, Suite 850 Fort Lauderdale, FL 33309. 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 PROPOSAL

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

1) The Proposal.

i) Cover page.

The form entitled **PROPOSAL COVER SHEET** is to be used as the cover page for the Proposals. This form must be fully completed and signed by an authorized officer of the Proposer submitting the Proposal.

ii) Table of contents.

The table of contents should outline in sequential order the major areas of the Proposal. All pages of the Proposal, including enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

iii) Executive summary.

Provide a brief summary describing the Proposer's ability to perform Work requested in this Solicitation, a history of the Proposer's background and experience providing services, the qualifications of the Proposer'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 five (5) years and the timeliness in which they were completed, and any other information called for by this Solicitation which the Proposer 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 Proposer, staff, subcontractors, subconsultants, and/or suppliers.

iv) Technical Proposal

Proposer's shall provide the technical information and project approach details in the following order (Proposers shall provide in their Proposal the question or request for information referenced below with Proposer's response referencing the section headings and numbering provided below):

A. Application Software

As the BMPO is contemplating a BMPO-hosted versus Vendor-hosted solution, aspects of the proposed solution to be provided should be clearly delineated where they vary between these two approaches in the sections below.

The Proposer shall provide a general description of the application program product and how it will meet requirements of this RFP. This section must address, at a minimum, the following items:

1. Describe your overall proposed technology solution.
2. Describe the product direction for the company, including time frames.
3. Describe unique aspects of the Proposer's solution in the marketplace.
4. Describe components of the solution that are industry standards versus being proprietary to the Proposer.
5. For third party products proposed that are integrated with the Proposer's solution provide the following for each product:
 - a. Reason that this product is a third-party product versus being part of the software Vendor's solution,
 - b. Extent to which this third-party product is integrated with the Vendor's solution.

B. Technical Infrastructure

Vendors should identify where conflicts may exist between their solution and current technologies being used in the BMPO as described in Section 2 of the RFP.

As the BMPO is contemplating a BMPO-hosted versus Vendor-hosted solution, aspects of the proposed solution to be provided should be clearly delineated where they vary between these two approaches in the sections below.

1. Hardware and Storage Environment
 - a. Describe the proposed computer hardware and storage environment to support the system. In the event that there are multiple computer systems available, list all options. Indicate which is the preferred hardware platform and why. List the conditions in which the preferred hardware platform would change. A hardware configuration, which takes into account the size of the organization, application modules, database size, and anticipated growth, must be provided.
 - b. What system architecture do you propose? Describe the number and type of: application servers, database server(s), and development and test environments. Describe your proposal's technical architecture (preferably using a PowerPoint or Visio diagram). This should show components such as the database server, applications server, reporting server, test/training server, firewall(s), web server(s), web browser, minimum workstation requirements, remote access, wireless connectivity, network connectivity to LANs and WAN, etc. Describe any potential use of virtual server technologies (e.g. Microsoft Virtual Server, VMware) and application

accelerators and note what Vendors you partner with or recommend and/or support.

- c. Describe your proposed information architecture/model (preferably using a PowerPoint or Visio diagram). This should depict data models, taxonomy, data elements, coding structures, a process for standardizing on a particular coding structure, data definitions (employees, Vendors, invoices, etc.)
2. System Performance
 - a. System response time must not impede the ability for staff to perform their required job functions using the system. Will your system be available 99.5% of the time, except for planned downtime?
 - b. Can you guarantee a 3-second maximum response time?
 - c. What are your guarantees on system performance?
 3. Security:
 - a. Describe the identification and authorization capabilities of your proposed solution for users.
 - b. Describe how your system interoperates with Active Directory.
 - c. Describe the security audit capabilities of your proposed solution.
 - d. What functions does your proposed system have to protect the privacy of information designated “private” (e.g. personally identifiable, SSN, credit card, ACH, HIPAA, etc.) that it processes or stores?
 - e. What will you do to address vulnerabilities in your product discovered subsequent to us deploying your code? In what time interval will they be fixed (Critical and non-critical)? At what cost to the BMPO?
 - f. What is your process for notifying the customer and fixing bugs once they have been identified?

C. Vendor Hosted Option

Note: response to this section is optional. Proposers will not be penalized for lack of response to this section.

1. Please describe your **vendor hosted model**, including: hosting, integration, help desk, provisioning and desktop management capabilities, deployment model (dedicated servers, shared environment, etc.), impact to the BMPO’s network and bandwidth, and any partners that may be involved in service delivery.
2. Please describe your proposed **service level agreement**, including any tiered levels of service, response times, and standard metrics.
3. Please describe your **support model**, including: cost structure for support calls.
4. Please describe your **data center and storage facilities**, including: locations, staffing, physical security, environmental controls (including redundant power), redundancy/load balancing capabilities, data backups and disaster recovery capabilities.
5. Please describe your **logical security**, including: firewall security, authentication controls, and data encryption capabilities.
6. Please describe your **change management**, upgrade, and patch management policies & practices?
7. Describe your **systems administration/management** capabilities including: monitoring of performance measures, intrusion detection, and error resolution.

8. Describe how you will help the BMPO move to a new operation at the **end of the contract** term or if the contract is terminated, including the process for notifying of termination.
9. Please provide a copy of your most recent **SSAE 16 Type II audit**.

D. Implementation Plan

Provide an implementation plan in narrative format supported by an activity-level project plan using Microsoft Project 2007 that details how the proposed solution is to be implemented. This implementation plan should include the following elements as further described below:

1. General Implementation Approach
2. Hardware, Software & Storage Design and Installation Consulting
3. Data Conversion Plan
4. Report Development
5. Integrations and Interfaces
6. Training
7. Change Management Approach
8. Testing
9. Operational Redesign Approach
10. System Documentation and Manuals
11. Disaster Recovery Plan
12. Knowledge Transfer

The Vendor should not be constrained to only include the above items in the Vendor's proposal response if the Vendor feels that additional elements may add value to the overall implementation. The BMPO requests that the Vendor provide their work plan in a Microsoft Project format as part of the proposal response.

It is expected that the Vendor will lead the efforts in each of the implementation areas described below unless stated otherwise. Further details on what is to be provided as part of the Vendors proposed implementation plan are included in the following subsections.

As the BMPO is contemplating a BMPO-hosted versus Vendor-hosted solution, aspects of the services to be provided should be clearly delineated where they vary between these two approaches.

D-1 General Implementation Approach

Provide a general overview of the implementation approach you plan to use for the BMPO that includes addressing the following items:

1. Describe how you transition from the sales cycle to the implementation phase of the project.
2. Describe key differentiators of the approach as it relates to implementing a solution on time, within budget and with the ability to meet the needs of a diverse client like the BMPO.

3. Describe how you conclude on a preferred implementation phasing of software modules. What is your recommended approach for this implementation?
4. Describe your approach towards running parallel systems for a period of time.

Any unique tools, techniques or methods that you use should be described in this section.

D-2 Project Management Approach

The BMPO expects the Vendor to provide project management resources leading to the successful deployment of the system. This project manager will work as a team member with the BMPO's project management office ("PMO"). It is expected that this project manager will be "on the ground" as appropriate to team with the BMPO PMO. This project manager can be an employee of the Vendor or a partner of the Vendor. In either case, the costs for the project manager should be clearly denoted in the pricing section of this RFP.

As part of any significant engagement, the BMPO employs a project management approach that is based on the Project Management Institute's project management body of knowledge (PMBOK). The BMPO would expect responding Vendors to adhere to such standards as part of the project.

Provide an overall description of the Vendor project management approach towards this type of engagement and projected timing for major phases.

Provide a high-level work plan for achieving the successful deployment of your proposed system.

D-3 Data Conversion Plan

It is anticipated that data conversion will occur when migrating to the new application. The Vendor is expected to assist the BMPO in the conversion of both electronic and manual data to the new system. It is expected that the BMPO will be responsible for data extraction from current systems and data scrubbing and data pre-processing and that the Vendor will be responsible for overall data conversion coordination, definition of file layouts, and data import and validation into the new ERP. Please provide pricing for data conversions in the associated Microsoft Excel pricing spreadsheet.

1. Describe your general approach towards data conversion and how you would work with the BMPO to conclude on what should be converted.
Please describe your BMPO's recommended approach toward retention of legacy data.
2. Describe your history with converting data from the BMPO's current system (Tyler Eden) to the proposed system.

D-4 Report Development

For specific reporting requirements, it is anticipated that the Vendor will take the lead on developing any reports required as part of the initial deployment of the system. The Vendor is expected to provide specialized knowledge and information to the BMPO staff during the development of needed reports, via technical training on the tools used for report development, database schema and architecture, etc.

Provide information on your reporting approach including:

1. Description of various methods of reporting including Business Intelligence,
2. Methods for the BMPO to identify, specify, and develop required custom BMPO reports during the implementation.
3. A listing of standard reports available in the system out of the box.

D-5 Integrations and Interfaces

It is expected that information generally would need to be entered only once into the system. Modules within the system should be integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another unless that is the preference of the BMPO. Existing BMPO interfaces between core modules that may currently exist (e.g., AP posting to GL) or shadow systems that will likely be replaced are not included as they are assumed to be included in an integrated ERP System.

The Microsoft Excel pricing sheet contains a listing of current and/or desired application interfaces. Please provide pricing for interface development in the associated Microsoft Excel pricing spreadsheet.

In addition:

1. Describe the extent to which the various modules are integrated together versus being purchased separately and interfaced
2. Describe your approach towards interfacing and integration with other solutions including use of specific tools, methods and standards.
3. Describe data exchange standards (e.g. XML, Web Services, or EDI) supported or provided by your product.
4. As it pertains to the BMPO's current technical environment described previously, identify potential issues for integrating with specific technologies that are used within the BMPO.
5. If local customizations are made, do you provide any tools or assistance to easily incorporate customizations into new version/releases of your software?

D-6 Training

Given the size of the BMPO, it is intended for the Vendor to provide all end user and technical training on-site through implementation, including:

- a. End user implementation training will be provided by the Vendor and include joint participation by the relevant BMPO process owner team lead supporting the process area in the new software system.
- b. Technical Implementation training will include training for BMPO IT staff on the technologies required to support the new ERP system.

The Vendor should provide an overall description of its training approach, including the following:

General timeframe in which training will be conducted

The Vendor must list the nature, level, and amount of training to be provided in each of the following areas:

- o Technical training (e.g., programming, operations, etc.)
- o User training
- o Other staff (e.g., executive level administrative staff)

D-7 Change Management Approach

The BMPO recognizes that a movement from the current environment to a new solution will present change management challenges. The Vendor should clearly identify their approach towards Change Management including any unique approaches or tools that will be used.

D-8 Testing

The Vendor should describe their recommended approach to the following types of testing that are anticipated to be performed on the project and the type of assistance they anticipate providing to the BMPO related to such testing:

- a. System testing
- b. Integration testing
- c. Stress/performance testing
- d. User acceptance testing (UAT)

D-9 Operational Redesign

With the deployment of a new application, the BMPO wishes to take advantage of capabilities within the software that provide support for operational improvements. Vendors are requested to describe their approach towards operational redesign including discussion on the optimal time in which to conduct redesign as it relates to implementation of the new software.

D-10 System Documentation and Manuals

The Vendor is expected to provide user manuals and online help for use by the BMPO as part of the initial training and on-going operational support. Additionally, the Vendor is expected to provide technical documentation.

1. Describe what documentation (user guide, technical guide, training materials, etc.) is available on the system proposed and any related costs.
2. Describe what types of documentation you anticipate developing during the course of the project.

D-11 Disaster Recovery Plan

Please describe the services you provide pertaining to disaster recovery, if any, as part of your proposed solution.

D-12 Knowledge Transfer

The Vendor should describe their process for ensuring that a transfer of knowledge occurs back to BMPO staff such that staff is capable of supporting and maintaining the application in the most proficient manner once the Vendor implementation engagement is complete.

E. Staffing Plan

1. The Vendor must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). Include resumes for all personnel that will be assigned to the project. If the Vendor is using a subcontractor, please include information on subcontracting staff being used and their specific role on the project.
2. Please provide an overall project organizational structure for BMPO staff involvement during the project (for both a BMPO-hosted and Vendor-hosted solution). Identify the roles and responsibilities of each component of this structure. This includes an appropriate governance structure in which to manage the project.
3. Provide an estimate of BMPO full-time equivalents (FTE) you expect to engage throughout the duration of the project. Include an estimate for each role among both business staff and IT as well as a total for all BMPO staff.

F. Ongoing Support Services

1. Please specify the nature and conditions of any post-implementation support options including:
 - a. Post-go live support that is included in the proposal response
 - b. Onsite support (e.g. system tuning, application configuration, interface issues, report development, network optimization, user training and tips to optimize the user experience)
 - c. Telephone support,
 - d. Help Desk services (If there is a service level agreement for your help desk, please provide a copy with your RFP response.)
 - e. Toll-free support line
 - f. Users group (i.e. - information about it, where it is held and when. If no, are you planning one?)

- g. Online knowledgebase (i.e. – how it is accessed, who updates it, etc.)
2. Provide an estimate of BMPO staff FTE required for ongoing support and maintenance of the system. Include an estimate for each role and a total for all BMPO staff.
3. Describe your maintenance programs and options with associated pricing.
4. Describe and provide pricing for any “software as a service” (SaaS) model that you offer (where there is no up-front license fee, but instead a monthly charge which may include maintenance).

G. Functional System Requirements

Responses to the requirements referenced in section 2-1.5 of this RFP must be provided in this section of the Vendor's response. Use the Microsoft Excel specification spreadsheet provided and attach added explanation pages as necessary. **Please note: The response to these requirements should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.**

v) Price Proposal

Complete the pricing forms that have been provided in the associated Microsoft Excel pricing spreadsheet. It is the responsibility of the Vendor to ensure the accuracy of the pricing provided as part of your Proposal. Any errors in providing an accurate price response due to inaccuracies in the provided templates are the sole responsibility of the responding Vendor. If there is not enough space to describe the pricing on these forms, please attach a separate pricing page and provide the pricing information in the same type of format so that it is easy to understand. The BMPO requests a firm, fixed price for each of the components described below that are included on the attached Microsoft Excel pricing spreadsheet as separate tabs:

- Vendor Checklist (including Hosting/Licensing Model, Travel & Lodging Costs, and Discount)
- Proposal Summary (no direct input required)
- Module Summary (no direct input required)
- Application Software
- Other Software
- Hardware
- Implementation Services
- Train-the-Trainer Training
- Optional End-User Training
- Interfaces
- Modifications
- Other Implementation Services

Pricing forms shall remain in the original Excel format. Pricing should include the complete costs for the solution including all travel and operating costs. The Vendor shall be responsible for all design, information gathering, and required programming to achieve a successful implementation. All prices quoted must include all hardware equipment software and services necessary to make the system specified fully operational for the intent, function, and purposes stated herein. These costs must be included in the base proposal.

The BMPO will not consider time and materials pricing. Vendors shall provide firm and fixed pricing based on the functionality described. For each item, indicate if the cost is one-time, annual, or other.

- The Vendor shall provide price information for each separate component of the proposed solution, as well as the costs of any modifications necessary to fully comply with the RFP specifications.
 - If any lump sum amounts are provided, Vendors should indicate in the comments sections what the lump sum consists of.
- In the event the product or service is provided at no additional cost, the item should be noted as "no charge" or words to that effect.
- In the event the product or service is not being included in the Vendor proposal, the item should be noted as "No Bid".

Vendors shall provide all pricing alternatives in these cost sheets.

- Vendor shall provide prices in U.S. dollars.

Vendor shall make clear the rationale and basis of calculation for all fees.

Vendors shall show separate subtotals for the required elements of the proposed solution, and for any layers of optional elements.

Please note: Pricing workbook should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.

In presenting software license fees, the Vendor shall:

Explain all factors that could affect licensing fees;

Make clear what type of license is offered for each price (named user, concurrent user, installed copies, processor-based, etc.);

Indicate which product versions, operating platform(s), and machine classes are included for each price;

Indicate whether a product is for "server" or "client," as applicable; and,

Make clear the extent of any implementation services that are included in the license fees (installation, configuration, training, etc.)

To the extent possible, Vendors shall show any applicable discounts separately from the prices for products and services.

The BMPO, during the course of the selection process may decide to purchase a subset of the Vendor's proposal components with the initial contract. The BMPO requires that Vendors agree for a period of three (3) years from the date of the Vendor's proposal to honor software and services pricing established within the Vendor's proposal response for Vendor proposed components which are not included in the BMPO's initial purchase. The price of the proposed components can only be increased by the Vendor during such time period by an amount equal to the annual CPI-U adjustment for the South region or 3%, whichever is less. The BMPO reserves the right to purchase hardware separately.

The BMPO prefers that Vendors provide separate prices for each item in the proposed solution. However, the Vendor is also encouraged to present alternatives to itemized costs and discounts, such as bundled pricing, if such pricing would be advantageous to the BMPO.

The BMPO reserves the right to pursue direct purchase of all items and services proposed, as well as to obtain independent financing.

The BMPO is considering both a vendor-hosted solution through an ASP or SaaS licensing model and a traditional on premise solution. As such, the BMPO is requesting proposals to include detailed information regarding the Vendors hosting and licensing options. If multiple solutions are proposed, please include a separate pricing form for each hosting/licensing model.

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2) Contents of Proposer Qualification Form.

Proposers shall provide documentation that demonstrates their ability to satisfy all of the minimum qualifications requirements. Proposers 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, Proposers must use said format and supply said documentation to be considered responsive.

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

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

- 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 Proposer's Proposal non-responsive.
- B) Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer is either performing or has completed within the last ten (10) years. Describe the Proposer's qualifications and experience in the management of comparable projects in size and scope. The specific role of the Proposer in any project, which is referred to with regard to the Proposer's experience, shall be described in detail. The description should identify for each project:
 - i) The organization 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 Proposer was a prime contractor or subcontractor, subconsultant, or supplier; and
 - v) The result of the project.

- C) List any and all contracts the Proposer 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 Proposer shall provide a statement in writing, signed by a duly authorized representative, stating the present financial condition of the Proposer, and disclosing information as to Proposer'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 Proposer 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 Proposer, 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 Proposal.

5) Statement of Organization.

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

- 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 Proposer'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.

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

7) License and Maintenance Agreements.

Proposers shall include sample license and maintenance agreements for all components of the recommended solution (i.e., hardware, software, operating system, database, etc.). Indicate the basis on how licenses are determined.

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2-7 EVALUATION CRITERIA

Following the closing of the Solicitation, the Proposals will be evaluated by an Evaluation and Selection Committee (“Committee”) appointed by the Executive Director or his/her designee. The Committee will evaluate and rank Proposals based on a weighted score point formula. The Committee reserves the right to interview ranked Proposers if needed. The Committee will rank the finalists and make an award recommendation to the BMPO Board. The Board will consider the rankings and authorize negotiations with the top ranked firm and execution of an agreement in accordance with the terms of this RFP and the Proposer’s Proposal.

The Proposal scores are based on a point total and not a percentage factor. Total scores for each evaluation criteria shall be based upon an average of the scores of all Committee members.

After determining the Proposals that satisfy the mandatory minimum criteria, the Committee shall evaluate and rank the Proposals in a two round evaluation process using the evaluation criteria as follows:

Round 1

| Round 1 Criteria | Scoring Range |
|--|----------------------|
| Functional Requirements | 0-35 |
| Cost (including initial and ongoing costs) | 0-25 |
| Implementation Requirements | 0-15 |
| Technical Requirements | 0-15 |
| Number and Size of Comparable Government Installations, Financial Stability, Completeness of Response, and Quality of Proposal Response | 0-10 |
| | |
| Total points | 100 |

Round 2

The Committee shall select the top-ranked Proposers from Round 1 to proceed to Round 2 of the evaluation process, which may include the following activities:

- Follow-up questions and answers with the Proposers.
- On-site demonstrations to include module/functionality demonstrations, technical demonstrations, service presentation, and other due diligence.
- Reference checking with comparable entities using the Proposer's product(s).
- Potential site visits to comparable entities using the Proposer's product(s).

| Round 2 Criteria | Scoring Range |
|---|----------------------|
| Functionality | 0-30 |
| Service and Support | 0-20 |
| Vendor Qualifications | 0-15 |
| Technical Requirements | 0-10 |
| Cost (including initial and ongoing costs) | 0-25 |
| | |
| Total points | 100 |

The Committee may require public presentations regarding the firms' qualifications, approach to the Work, demonstrations and ability to furnish the required services. Following discussions and possible presentations by each qualified firm selected to continue on to Round 2, the Committee may make any adjustments to their scoring as they deem appropriate. At any point during Round 2 of the evaluation, a Proposer may be excluded from further consideration based on the mandatory minimum requirements or the evaluation criteria set forth in this Section.

In Round 2, the Committee shall select and rank, in order of preference, the firms deemed to be the most highly qualified to perform the required services. The Committee shall then vote on the final ranking and provide such recommendation to the BMPO Executive Director for approval. Successful Proposers shall execute a contract with the BMPO, subject to negotiations and approval by the Executive Director and/or the BMPO Board.

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2-8 INDEMNIFICATION OF THE BMPO BY THE SUCCESSFUL PROPOSER

The Successful Proposer 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 Proposer and other persons employed or utilized by the Successful Proposer in the performance of the services under the Contract.

2-9 PROFESSIONAL LIABILITY INSURANCE

- a) The Successful Proposer 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 Proposer 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 Proposer.
- 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 Proposer 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 Proposer 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 Proposer 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 Proposer shall be in default of the terms and conditions and the Contract shall be deemed terminated immediately. Under these circumstances, the Successful Proposer may be prohibited from submitting future proposals to the BMPO for a period of twelve (12) months.
- g) The Successful Proposer 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 Proposer 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 Proposer.

- h) If, in the judgment of the BMPO, prevailing conditions warrant the provision by Successful Proposer of additional liability insurance coverage or coverage which is different in kind, the BMPO reserves the right to require the provision by Successful Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer(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 Proposer to comply with, all applicable 3rd party procurement policies in accordance with FTA Circular C4220.1f (Third Party Contracting Guidance). Proposers 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 RFP. By submitting a Proposal, Proposers acknowledge and agree that the Successful Proposer 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 Proposer 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. Proposers 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 RFP. By submitting a Proposal, Proposers acknowledge and agree that the Successful Proposer shall be required to comply with the provisions in Exhibit “C-2” of the Sample Contract if awarded the Contract.

SECTION 3: PROPOSALS PROCESS

3-1 EVALUATION AND SELECTION COMMITTEE

Proposals submitted will be evaluated by an Evaluation and Selection Committee consisting of staff from the BMPO, who will review and rank submissions and provide a recommendation to the Executive Director and BMPO Board.

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

The evaluation of Proposals 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 Proposer, 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 Proposer to perform the Services and the Proposer shall furnish the BMPO all such information for this purpose as the BMPO may request before and during the RFP period. The Committee reserves the right to make additional inquiries, interview some or all Proposers, make site visits, obtain credit reports, or any other action it deems necessary to fairly evaluate all Proposers. The Committee may at its sole discretion reject a Proposer or qualify a Proposer.

3-2 EVALUATION PROCEDURES

Note that the BMPO is under no obligation to retain the services of a vendor 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. The BMPO reserves the right to reject any or all Proposals in their entirety, or to select certain equipment or software products from various Vendor proposals, based on the best interests of the BMPO.

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

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

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

3-3 CONSULTANT REQUIREMENTS

Mandatory Minimum Requirements

In order for a Proposal to be considered, the Proposer must meet the following mandatory minimum requirements:

1. Proposers shall possess all licenses, business tax receipts and/or permits required to perform the Work requested herein in the State of Florida.
2. Proposers shall possess, and demonstrate using the Personnel and References forms provided, five (5) years of experience, knowledge, skills, and abilities with a project(s) of similar size and complexity in accordance with the scope of services.
3. Proposers shall provide at least two examples of previously completed ERP System software implementation with a project of similar size and complexity for a local government within the State of Florida.

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

3-4 PREPARATION OF PROPOSALS

3-4.1 Number Of Responses

One (1) unbound one-sided original and four (4) bound copies (**a total of five [5]**), and two (2) CD's each containing an electronic version (**including specifications and pricing form excel worksheets**), of the complete Proposal must be received by the deadline for receipt of Proposals specified in the Solicitation Timetable. The original document package must not be bound, although, the document package copies should be individually bound.

The original, and all copies, must be submitted in a sealed envelope or container stating on the outside the Proposer's name, address, telephone number, the Solicitation number, the Solicitation title, and the Solicitation Closing Date & Time. Each copy should contain all mandatory and optional information submitted by the Proposer. Additional copies may be requested by the BMPO at its discretion.

3-4.2 Response Packaging

Each Proposal shall be submitted in a separate plain sealed parcel, box or other secure packaging, marked as the "Proposal." The outside of the sealed package shall clearly indicate **RFP No. 16-01, ERP System and Implementation Services**. Proposer's name, address and the name and telephone number of the Proposer's specific contact person. The Proposal shall contain four (4) complete bound copies and one (1) unbound original (for a total of five [5] hard copies), and two (2) complete electronic copies on CD, (including specifications and pricing form excel worksheets) and is required to be submitted to the BMPO by the date and time indicated herein. Each copy shall contain all required information in order to be considered responsive.

3-4.3 Signatures

All required signatures shall be manual, and signed by an authorized representative who has the legal authority to bind the Proposer in contractual obligations. The Proposal shall be typed or legibly printed in ink. Use of erasable ink is not permitted. All blank spaces shall be filled in and noted, in ink or typed, with amounts extended and totaled as appropriate. All corrections made by Proposer to any part of the Proposal document shall be initialed in ink. Failure to manually sign the appropriate forms will disqualify the Proposer and the Proposal will not be considered.

Proposals by corporations shall be executed in the corporate name by the President or Vice-President (or other corporate officer if accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the

Corporate Secretary or an Assistant Secretary. The corporate address and state of incorporation shall be shown below the signature.

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

3-4.4 Proposal Format

The Proposal shall be typewritten on 8 ½ x 11 inch white paper. Pages shall be secured by binding. Bindings and covers will be at the Proposer's discretion. Unnecessarily elaborate special brochures, art work, expensive paper and expensive visual and other presentation aids are neither necessary nor desired.

Proposals 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.

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

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Table

3-4.4 – Proposal Format

| | |
|------------|--|
| Chapter 1 | Letter of Intent |
| Chapter 2 | Proposal Cover Sheet |
| Chapter 3 | Proposer's Statement of Organization |
| Chapter 4 | Technical Proposal |
| Chapter 5 | Personnel |
| Chapter 6 | Proposer's Disclosure of Subcontractors |
| Chapter 7 | Proposer Qualification Form |
| Chapter 8 | Financial Stability |
| Chapter 9 | Financial Statement |
| Chapter 10 | Litigation History |
| Chapter 11 | Insurance Requirement |
| Chapter 12 | Criminal Convictions |
| Chapter 13 | Proposer'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 Proposal Certification |
| Chapter 20 | DBE Participation Statement and Bid Opportunity List |
| Chapter 21 | E- Verify |
| Chapter 22 | Price Proposal |
| Chapter 23 | Sample License and Maintenance Agreements |

3-5. SUBMITTAL, RECEIPT AND OPENING OF PROPOSALS

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

Lydia Waring, Procurement Officer
Broward Metropolitan Planning Organization
Trade Centre South
100 West Cypress Creek Road, Suite 850
Fort Lauderdale, Florida 33309

All Proposers are reminded that it is the sole responsibility of the Proposer to ensure that their Response is time stamped in the office of the Broward Metropolitan Planning Organization prior to the date and time as specified in Section 2-2, the Solicitation Timetable. Failure of an Proposer to submit their Proposal and ensure that their Proposal is time stamped prior to the time as specified in Section 2-2, the Solicitation Timetable, shall render an Proposer to be deemed non-responsive and the Proposal 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 RFP.

3-6. SEALED PROPOSALS

The Sealed Proposals will be publicly opened at Trade Centre South, 100 West Cypress Creek Road, Suite 850, Fort Lauderdale, FL 33309, on the date and time as specified in Section 2-2, the Solicitation Timetable. The Committee shall examine the documentation submitted in the Proposal at a time thereafter to determine the responsiveness and responsibility of each Proposer. Proposers 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 Proposal to perform the Services will remain valid. A period of not less than one hundred twenty (120) calendar days is required.

3-7.2 Proposer's Statement of Organization

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

3-7.3 Personnel

Proposers 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. Proposers shall carefully provide, in the format requested, all of the information requested in Section 15. Additionally, if applicable, Proposer 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

Proposer shall have successful experience in providing ERP Software, services and support, or other similar experience as may be applicable to the Services sought pursuant to this RFP, **to provide professional services and products for the BMPO's ERP System as further outlined in the Scope of Services.** 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 governmental entity, address, description of services, dates of service, rates and fees and a contact/reference person with phone number. Proposers shall provide references for all jobs summarized using the form provided in Section 6.

3-7.5 Financial Stability

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

3-7.6 Financial Statement

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

3-7.7 Litigation History

Proposers shall provide a summary of any litigation or arbitration that the Proposer, 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 Proposer it determines to be excessively litigious.

3-7.8 Insurance Requirements

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

3-7.9 Criminal Convictions

Proposers 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 Proposer on the basis of past criminal convictions when those convictions relate to dishonesty, antitrust violations, or unfair competition

3-7.10 Proposer's Non-Collusion Certification

Any Proposers submitting a Proposal to this RFP shall complete and execute the Non-Collusion Affidavit of Proposer included in Section 10 of these RFP documents.

3-7.11 Drug-Free Workplace

Proposer 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 RFP response.

3-7.12 Amendments.

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

3-7.13 Independence Affidavit

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

3-7.14 Accuracy of Proposal Certification

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

SECTION 4: PROPOSAL COVER SHEET

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

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

SECTION 5: AMENDMENT ACKNOWLEDGEMENT FORM

Amendment #

Date Received

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

PROPOSER:

(Company Name)

(Signature)

(Printed Name & Title)

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

SECTION 6: PROPOSER 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 Proposal 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)

PROPOSERS MUST INCLUDE A COPY OF EACH LICENSE OR BUSINESS TAX RECEIPT LISTED WITH PROPOSAL

- (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 five (5) government contract references for similar work in each category in which products and services are offered and include a complete listing of all local government clients for the requested products and services

| | |
|--------------------------------|-----|
| Vendor name: | |
| Customer name: | |
| Customer contact: | |
| Customer phone number: | () |
| Customer E-mail address | |
| System which Solution Replaced | |

| |
|--|
| Describe Nature of Project and Services Provided to This Client: |
| |

| |
|---|
| Configuration of Solution Implemented (Hardware, Software): |
| |

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

**SECTION 7: PROPOSER’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: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

**FAILURE TO COMPLETE AND RETURN THIS FORM
MAY DEEM YOUR PROPOSAL 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 CONTRACTORS 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.

CONTRACTOR's Signature

SECTION 9: ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 }
COUNTY OF BROWARD } SS:

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

By: _____

Title: _____

Sworn and subscribed before this
____ day of _____, 20____

Notary Public, State of Florida

(Printed Name)

My commission expires: _____

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

SECTION 10: NON-COLLUSIVE AFFIDAVIT

State of _____)
) SS:
County of _____)

being first duly sworn, deposes and says that:

- (1) He/she is the (Owner, Partner, Officer, Representative or Agent) of the Bidder that has submitted the attached Bid;
- (2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal:
- (3) Such Proposal is genuine and is not collusive or a sham Proposal;
- (4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from bidding in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices, or to fix any overhead, profit, or cost elements of the price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;
- (5) Any hourly rates quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered
in the presence of:

By: _____
Witness

By: _____
Printed Name: _____

Witness

Title: _____

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

NON-COLLUSIVE AFFIDAVIT (Continued)
ACKNOWLEDGMENT

State of _____)

) SS.

County of _____)

BEFORE ME, the undersigned authority personally appeared to me well known and known by me to be the person described herein and who executed the foregoing Affidavit and acknowledged to and before me that _____ executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this ____ day of _____, 20__.

My Commission Expires:

Notary Public State of Florida at Large

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

SECTION 11: NON-DISCRIMINATION AFFIDAVIT

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

By: _____

Title: _____

Sworn and subscribed before this

____ day of _____, 20__

Notary Public, State of Florida

(Printed Name)

My commission expires: _____

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

SECTION 12: INDEPENDENCE AFFIDAVIT

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

1. He/She is _____ of _____, the PROPOSER that has submitted the attached Proposal;
2. a. Below is a list and description of any relationships, professional, financial or otherwise that PROPOSER 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 PROPOSER agrees and understands that PROPOSER shall give the BMPO written notice of any other relationships professional, financial or otherwise that PROPOSER enters into with the BMPO its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of this Agreement.

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

SECTION 12: INDEPENDENCE AFFIDAVIT

SECTION 13: ACCURACY OF PROPOSAL CERTIFICATION

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

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

1. He/She is _____ of _____, the PROPOSER that has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all Forms, Affidavits and documents submitted in support of such Proposal;
3. All Forms, Affidavits and documents submitted in support of this Proposal and included in this Proposal 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 PROPOSAL 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 _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____ as _____ for _____.

Personally known to me _____ OR

Has produced Identification _____, type of identification produced _____

NOTARY PUBLIC

My Commission Expires:

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

SECTION 14: STATEMENT OF ORGANIZATION

1. Full Name of Proposer:

Principal Business Address, Phone and Fax Numbers:

2. Principal Contact Person(s):

3. Form of Proposer (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 Proposer. Provide proof of the ability of the individuals so named to legally bind the Proposer.

| Name | Address | Title |
|-------|---------|-------|
| <hr/> | | |
| <hr/> | | |
| <hr/> | | |

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 Proposer has had successful experience providing ERP System software and 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 Proposals.

Signature

Title

Name

Date

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

SECTION 15: PERSONNEL

For all principals of the Proposer and key personnel providing services sought in the RFP, 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 Proposer.

- 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 Proposer'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 PROPOSAL NON-RESPONSIVE**

SECTION 16: DBE PARTICIPATION STATEMENT AND BID OPPORTUNITY LIST

ANTICIPATED DBE PARTICIPATION STATEMENT

RFP 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: _____

RFP Number/Advertisement Number: _____

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

| | | |
|---------------------------------|--|--|
| 1. Federal Tax ID Number: _____ | 6. <input type="checkbox"/> DBE | 8. Annual Gross Receipts: |
| 2. Firm Name: _____ | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Less than \$1 Million |
| 3. Phone: _____ | | <input type="checkbox"/> Between \$1 - \$5 Million |
| 4. Address: _____ | | <input type="checkbox"/> Between \$5 - \$10 Million |
| _____ | | <input type="checkbox"/> Between \$10 - \$15 Million |
| _____ | | <input type="checkbox"/> More than \$15 Million |
| | 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 - \$15 Million |
| _____ | | <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 - \$15 Million |
| _____ | | <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 PROPOSALS – RFP
FAILURE TO COMPLETE, SIGN AND RETURN THE DBE PARTICIPATION STATEMENT
AND BID OPPORTUNITY LIST MAY DEEM YOUR PROPOSAL NON-RESPONSIVE**

SECTION 17: E-VERIFY

Contract No: _____

Financial Project No(s): _____

Project Description: _____

CONTRACTOR/Consultant acknowledges and agrees to the following:

CONTRACTOR/Consultant:

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

By: _____

Title: _____

Sworn and subscribed before this

____ day of _____, 20__

Notary Public, State of Florida

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

SECTION 18: SAMPLE CONTRACT

AGREEMENT BETWEEN THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND

FOR ERP SYSTEM AND IMPLEMENTATION SERVICES RFP No. 16-01

This Agreement (“Agreement”) is made and entered into the _____ day of _____, 2016, by and between the Broward Metropolitan Planning Organization, with its principal business address located at Trade Centre South, 100 West Cypress Creek Road, Suite 850, Fort Lauderdale, FL 33309, hereinafter referred to as (“BMPO”),

And

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

WITNESSETH:

WHEREAS, the BMPO, pursuant to its Procurement Code, solicited proposals from firms to perform Software Services in connection with the Project; and

WHEREAS, Proposals were evaluated and ranked 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, as the highest ranked firm to perform ERP System Implementation Services in connection with the Project; and

WHEREAS, on _____, the Board of the BMPO ratified the ranking of Proposals received in response to **RFP No. 16-01** 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 Proposals for **ERP System and Implementation Services, RFP No. 16-01, dated January 15, 2016**, (“RFP”), referenced hereto and made a part hereof, as Exhibit “A”, and the CONTRACTOR’S Proposal, 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-1), 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 _____ 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 RFP have been completed and accepted by the BMPO in accordance with this Agreement and the terms of the Request for Proposals.
- 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 parties hereto may further extend this Agreement by mutual consent, in writing, prior to the expiration of the then current term. This provision in no way limits either party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.

SECTION 3. COMPENSATION

- 3.1 In consideration for the Scope of Services to be performed by CONTRACTOR pursuant this Agreement, the BMPO agrees to pay CONTRACTOR, in the manner specified in the Scope of Services, the total amount not to exceed _____ AND NO/100 Dollars (\$_____.00). The amount of compensation payable by the BMPO to CONTRACTOR shall be based upon the amounts negotiated between the parties as indicated on attached Exhibit "B", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon BMPO'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR'S obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.
- 3.2 CONTRACTOR may submit an invoice for compensation, developed and agreed upon by the BMPO Executive Director and CONTRACTOR, no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the

nature of the services performed and shall also show a summary of fees with accrual of the total and credits for portions paid previously.

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

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

3.5 Payment shall be made to CONTRACTOR at:

3.6 CONTRACTOR agrees to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged for which CONTRACTOR receives reimbursement for a period of at least three (3) years after completion of the work provided for in this Agreement. Such books and records shall be available at all reasonable times for examination and audit by BMPO.

3.7 If it should become necessary for BMPO to request CONTRACTOR to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only if set forth in an addendum to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit "B".

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 7.2 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.

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 RFP (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, _____, Project Manager 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.** 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.

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.

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.

Further, CONTRACTOR shall provide a complete copy of all working papers to the BMPO, prior to final payment by the BMPO.

- 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 850
Fort Lauderdale, FL 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 Proposal. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Proposal, 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 RFP 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 Subcontractors.** CONTRACTOR shall utilize the subcontractors identified in the Proposal and Scope of Services that was a material part of the selection of CONTRACTOR to provide the services for this Project. CONTRACTOR shall obtain written BMPO Executive Director approval prior to adding, changing or modifying the list of sub-consultants submitted by CONTRACTOR.

- 7.11 Contractor's Staff.** CONTRACTOR will provide the key staff identified in their proposal for Project as long as said key staff are in CONTRACTOR's employment.

CONTRACTOR will obtain prior written BMPO Executive Director approval to change key staff. CONTRACTOR shall provide the BMPO Executive Director with such information as necessary to determine the suitability of proposed new key staff. The BMPO Executive Director will be reasonable in evaluating key staff qualifications.

If the BMPO Executive Director desires to request the removal of any of CONTRACTOR's staff, the Executive Director shall first meet with CONTRACTOR and provide reasonable justification for said removal.

- 7.12 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.

- 7.13 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.
- 7.14 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.

- 7.15 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.
- 7.16 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.
- 7.17 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.
- 7.18 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 8 of this Agreement shall prevail and be given effect.
- 7.19 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.
- 7.20 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.
- 7.21 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 7.20 above.

- 7.22 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 7.23 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.
- 7.24 Multiple Originals.** This Agreement may be fully executed in four (4) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.25 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.26 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.
- 7.27 Public Records.** 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.
- 7.28 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.
- 7.29 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.

SECTION 8. DISADVANTAGED BUSINESS ENTERPRISE

- 8.1** 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.
- 8.2** 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.

SECTION 9. GRANT OF LICENSE, SOFTWARE, WARRANTIES

- 9.1 License and Scope.** BMPO agrees to license the software detailed in Exhibit <##> (“Software”) and receive the services detailed in the Statement of Work detailed in Exhibit <##> (“Services”). CONTRACTOR agrees to provide Software and Services (the “Solution”), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit <##> and shall not exceed the total amount included in Exhibit <##> without the prior written consent of BMPO. The BMPO, without prior and mutual written agreement, will incur no other service costs. The service costs in Exhibit <##> are inclusive of all services described in the Statement of Work included as Exhibit <##>. BMPO agrees to provide server, desktop and other hardware and configuration based on CONTRACTOR’s recommendation per Exhibit <##>.
- 9.2 User Documentation.** CONTRACTOR shall deliver to BMPO xxxxx (##) complete copies of the user documentation describing the functionality and operation of the Software in BMPO’s environment and technical documentation describing the technical support procedures to assist with the on-going support of the Software (“Documentation”), including an electronic version with the ability to modify to the needs of BMPO. As part of the license granted herein, CONTRACTOR agrees that Documentation provided with the Software will be updated to reflect any Customizations contracted by BMPO with CONTRACTOR. BMPO shall have the right to make as many additional copies of the Documentation for its own use as it may determine.

- 9.3 Incorporation by Reference.** The CONTRACTOR shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the CONTRACTOR's response to the Request for Proposal provided herein as Exhibit <##> and Exhibit <##>, respectively and CONTRACTOR's Documentation. The Parties agree that where there is a conflict between terms of this Agreement and information presented in the Contract Documents, this Agreement shall take precedence.
- 9.4 Standard Forms and Contracts.** Any forms and contracts the CONTRACTOR(s) proposes to include as part of any agreement resulting from the RFP must have been submitted as part of CONTRACTOR's proposal. Any forms and contracts not submitted as part of the proposal and subsequently presented for inclusion may be rejected. BMPO reserves the right to accept or reject in whole or in part any form contract submitted by a CONTRACTOR and/or to require that amendments be made thereto, or that an agreement drafted by the BMPO be utilized. This requirement includes, but is not limited to, the following types of forms: subcontractor, franchise, warranty agreements, maintenance contracts, third party licenses and support agreements.
- 9.5 Grant of License.** CONTRACTOR hereby grants to BMPO a nonexclusive, nontransferable, perpetual license to use the Software described in Exhibit <##> solely for internal business purposes on any central processing unit owned by BMPO and/or its designated service provider.
- 9.6 Use of Licenses by Personnel Who Are Not Employees.** BMPO's consultants, contractors, external customers, and business partners may access and use the Software under the BMPO's direction.
- 9.7 Replication of Software.** BMPO shall not copy Software for any purposes other than for back up, disaster recovery and/or testing. BMPO has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using CONTRACTOR's recommended database and development tools without voiding the maintenance and support terms or warranties herein.
- 9.8 Disaster Recovery & Disaster Recovery Testing.** There will be no additional software license cost to process at another site in the event of a disaster that shuts down BMPO's primary location or for testing at the disaster recovery site.
- 9.9 Warranty.**
- A. CONTRACTOR represents and warrants that it has the right to grant the licenses set forth under this Agreement. CONTRACTOR further represents and warrants that it has good and marketable title to the

Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. CONTRACTOR further represents and warrants that neither the Software in the form delivered by CONTRACTOR to BMPO, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by BMPO, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

- B. In the event that any third party makes a claim or files a lawsuit challenging BMPO's right to use the Software, CONTRACTOR shall defend and indemnify BMPO and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that CONTRACTOR shall have the sole and exclusive right to select and retain counsel for BMPO in connection with the defense thereof, and shall make all decisions relating to the conduct of the BMPO's defense and any settlement made on behalf of BMPO. In resolving any such infringement claim, CONTRACTOR shall, in its reasonable discretion, either procure a license to enable BMPO to continue to use the Software or develop or obtain a non-infringing substitute acceptable to BMPO at CONTRACTOR's cost.
- C. CONTRACTOR represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, CONTRACTOR marketing literature, and any other communications attached to or referenced in this Agreement.
- D. CONTRACTOR represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of BMPO as set forth in the Contract Documents.
- E. BMPO has: (i) presented detailed technical specifications of the particular purpose for which the Software is intended, (ii) provided detailed descriptions and criteria of how the Software can be defined to accomplish particular purpose, and (iii) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, BMPO's particular purpose, CONTRACTOR, at the time this Agreement is in force, has (#) reason and opportunity to know the particular purpose for which the Software is required, (#) that BMPO is relying on CONTRACTOR's experience and

knowledge of the Software to identify those components which are most suitable and appropriate, and (#) that BMPO is relying on CONTRACTOR's experience and knowledge to identify the appropriate Services that will assist in making the Software operational. Therefore, CONTRACTOR warrants that the Software including all products included in this Agreement are fit for the purposes for which they are intended as described in the Contract Documents.

- F. CONTRACTOR represents and warrants that all Software products provided under this Agreement are compatible with and certified for use and operation in BMPO's operating environment. Furthermore, CONTRACTOR acknowledges that it has reviewed the hardware system ordered by BMPO and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for BMPO's current and reasonably projected use, including account and transaction volumes.

9.10 Continuity of Warranty. BMPO may continue the Warranty protection described above by purchasing and paying for on-going Maintenance and Support Services described below. By doing so, all Warranty, and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Maintenance and Support Fees are kept current.

9.11 Disclaimers and Limitations of Remedies.

Except as specifically stated in the Warranty section of this Agreement, the Software is Licensed "as is" without warranty of any kind, other than expressed or implied herein. In no event shall CONTRACTOR be liable for any indirect, special or consequential damages unless as otherwise stated herein, including, but not limited to, loss of anticipated profits, revenue or savings, arising from the use of or inability to use the Software or breach of any expressed or implied warranty, even if CONTRACTOR or its agent has been advised of the possibility of such damages.

9.12 Intellectual Property. All information, data, programs, publications and media created specifically for and paid for by the BMPO or as a result of the Services identified in this Agreement is the property of the BMPO unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

9.13 Patents, Copyrights, and Proprietary Rights Indemnification. The CONTRACTOR, at its own expense, shall completely and entirely defend the BMPO from any claim or suit brought against the BMPO arising from claims of violation of United States patents or copyrights resulting from the

CONTRACTOR or the BMPO's use of any equipment, technology, documentation, and/or data developed in connection with the Services and Software (together the Solution) described in this Agreement. The BMPO will provide the CONTRACTOR with a written notice of any such claim or suit. The BMPO will also assist the CONTRACTOR, in all reasonable ways, in the preparation of information helpful to the CONTRACTOR in defending the BMPO against this suit.

In the event that the BMPO is required to pay monies in defending such claims, resulting from the CONTRACTOR being uncooperative or unsuccessful in representing the BMPO's interest, or in the event that the BMPO is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, CONTRACTOR agrees to fully reimburse the BMPO for all monies expended in connection with these matters. The BMPO retains the right to offset against any amounts owed CONTRACTOR any such monies expended by the BMPO in defending itself against such claims.

Should a court order be issued against the BMPO restricting the BMPO's use of any portion of the Software related to the claim and should the CONTRACTOR determine not to further appeal the claim issue, at the BMPO's sole option the CONTRACTOR shall provide, at the CONTRACTOR's sole expense, the following:

- A. Purchase for the BMPO the rights to continue using the contested Software product(s) or portions thereof which may include purchase of a third party software product, or
- B. Provide substitute software products to the BMPO which are, in the BMPO's sole opinion, of equal or greater quality, or
- C. Refund all monies paid to the CONTRACTOR for the Solution subject to the court action. The CONTRACTOR shall also pay to the BMPO all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

9.15 Insurance.

Evidence of insurance coverage, required herein, is to be provided to us in ACORD Certificate Form 25 or 25-S or an equivalent form.

General Liability limits may be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies.

Notify Your Insurance Agent

CONTRACTOR may prevent unnecessary follow up resulting from incomplete insurance certificates, by sending or faxing a copy of these insurance requirements to CONTRACTOR's agent when requesting an insurance certificate.

9.16 Unlimited Liability for Software CONTRACTOR Infringement.

The CONTRACTOR will reimburse BMPO for all costs related to infringement (not "finally awarded"). There shall be no limit of liability on behalf of the CONTRACTOR if the software is determined to be infringing.

9.17 Confidentiality

Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Except as otherwise required by law, each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement. This obligation of confidentiality shall not apply to (a) information that at the time of the disclosure is in the public domain; (b) information that, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party; (c) information that a party can establish by reasonable proof was in that party's possession at the time of disclosure; (d) information that a party receives from a third party who has a right to disclose it to that party; or (e) information that is subject to FOIA or Florida's public records law.

9.18 Title and Confidentiality

Title and full rights to the Software licensed under this agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies BMPO make, remain with CONTRACTOR. It is agreed the Software is the proprietary, confidential, trade secret property of CONTRACTOR, whether or not any portions thereof are or may be copyrighted, and BMPO shall take all reasonable steps necessary to protect the confidential nature of the Software, as BMPO would take to protect its own confidential information. BMPO further agrees that BMPO shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees, agents, or subcontractors working for BMPO to whom such disclosure is necessary to the use for

which rights are granted hereunder. BMPO shall appropriately notify all employees, agents, and subcontractors to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. The obligations imposed by this section upon BMPO, its employees, agents, and subcontractors, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this agreement if BMPO is required to disclose or make the Software available to a third party or to a court if the Software is required to be disclosed pursuant to Florida "open records" law, or is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced.

9.19 Identification of Parties to the Agreement Clause

Both the CONTRACTOR and BMPO shall be clearly identified by name. Neither of the identified parties to the Agreement shall assign or encumber any of its rights, or delegate or subcontract any of its duties defined in the Agreement, in whole or in part, to other third parties unless the other party to the Agreement gives prior written consent. Subject to the foregoing covenant against assignment and delegation, the rights created by the Agreement shall pass to the benefit of the identified party and the duties and obligations resulting from the Agreement shall bind the identified party and their respective successors and assignees.

9.20 Risk During Software Installation

Delivery of the Software shall be made in accordance with the Project Schedule referenced as part of this Agreement. Minor variances from this Project Schedule may be permitted subject to a mutual agreement by both parties and confirmed by prior written notice. The Software shall be installed and placed into good working order by representatives of the CONTRACTOR. During the time period where the Software is in transit and until the Software is fully installed in good working order, the CONTRACTOR and its insurer shall be responsible for the Software and relieve the BMPO of responsibility for all risk or loss or damage to the Software. In addition, CONTRACTOR shall hold the BMPO and its officers, employees and agents harmless from any risk of loss or damage arising out of occurrences during the installation of the Software.

9.21 Subcontractors

CONTRACTORS may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the CONTRACTOR must obtain written prior approval from the BMPO for activities or duties to take place at the BMPO site. In using subcontractors, the CONTRACTOR agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the CONTRACTOR.

9.22 Control of Sub-Contractor, Project Team and Project Manager Designation

The CONTRACTOR understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the CONTRACTOR shall designate a single representative to act as an ex-officio member of the BMPO's project management team ("Project Manager") and who shall have the authority to act on behalf of the CONTRACTOR on all matters pertaining to this Agreement.

BMPO shall have the right to approve all subcontractors, Project Manager, and staff assigned to BMPO by CONTRACTOR ("Designated Staff"). In the event that a Designated Staff of the CONTRACTOR is, in the opinion of the BMPO, uncooperative, inept, incompetent, or otherwise unacceptable, the CONTRACTOR agrees to remove such person from the project. In the event of such a removal, the CONTRACTOR shall, within xxxxx (##) days, fill this representative vacancy as described above. Regardless of whom the CONTRACTOR has designated to fill this representative vacancy, the CONTRACTOR organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

9.23 Effect of Regulation

Should any local, state, or national regulatory authority having jurisdiction over the BMPO enter a valid and enforceable order upon the BMPO which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the BMPO of a material part of its Agreement with the CONTRACTOR. In the event this order results in depriving the BMPO of material parts or raising their costs beyond that defined in this Agreement, the BMPO shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon xxxxx (##) days written prior notice to the CONTRACTOR. Should the Agreement be terminated under such circumstances, the BMPO shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The BMPO shall not be charged for such compliance beyond the cost of the annual maintenance and support fees. The BMPO shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual maintenance and support fees.

9.24 Advertisement

CONTRACTOR shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the BMPO unless CONTRACTOR receives specific written authorization in advance from the BMPO's <Executive Director>. CONTRACTOR will limit and direct any of its advertising on the BMPO's premises and shall make arrangements for such advertising through the <Executive Director>. CONTRACTOR shall not install any signs or other displays within or outside of the BMPO's premises unless in each instance the prior written approval of the BMPO's <Executive Director> has been obtained. However, nothing in this clause shall preclude CONTRACTOR from listing the BMPO on its routine BMPO list for matters of reference.

9.25 Password Security

The CONTRACTOR warrants that no 'back door' password or other method of remote access into the Software code exists. The CONTRACTOR agrees that any and all access to any Software code residing on the BMPO's BMPO/server must be granted by the BMPO to the CONTRACTOR, at the BMPO's sole discretion.

9.26 Project Schedule and Acceptance.

CONTRACTOR will develop a detailed project schedule that details both CONTRACTOR and BMPO's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with CONTRACTOR's performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both CONTRACTOR and BMPO agree that a mutually agreeable Project Schedule will be submitted and approved by BMPO within xxxxx (##) days of the date the Agreement is signed by both parties ("Effective Date"). In the event CONTRACTOR is unable to provide the Project Schedule within xxxxx (##) days, BMPO will have at its option, the ability to terminate the Agreement and obtain all fees paid to CONTRACTOR. The Project Schedule will also include the criteria by which the software will be tested and accepted by BMPO.

9.27 Programming Services

BMPO may during the implementation period or thereafter require modifications, interfaces, conversion, report writing, etc., services from CONTRACTOR ("Customizations"). CONTRACTOR agrees to provide a written Change Order describing the work to be performed and estimating the costs for BMPO approval before any work is initiated by CONTRACTOR. CONTRACTOR will not exceed the costs set forth in the mutually agreed to Change Orders without justification, in writing, that is acceptable to the BMPO. No costs in excess of the estimates will be paid by BMPO unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is

released by the BMPO. Acceptance of the Customizations resulting from each Change Order shall be per the Acceptance Testing clause herein.

9.28 Acceptance Testing

For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

- A. Written Deliverable: CONTRACTOR may submit interim drafts (stamped, noted or otherwise clearly marked “Draft”) of a written deliverable to BMPO for review. BMPO agrees to review and provide comments to CONTRACTOR on each interim draft within xxxxx (#) business days after receiving it from CONTRACTOR. BMPO will have the opportunity to review the written deliverable for an acceptance period of xxxxx (#) business days after delivery of the final version (stamped, noted or otherwise clearly marked “Final Draft”) of the written deliverable (the “Acceptance Period”). BMPO agrees to notify CONTRACTOR in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by CONTRACTOR or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If CONTRACTOR does not receive any such deficiency notice from BMPO by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked “Approved” and dated will be provided to BMPO. If BMPO delivers to CONTRACTOR a timely notice of deficiencies and the items specified in the notice are deficiencies, CONTRACTOR will promptly correct the described deficiencies and return to BMPO for Acceptance. BMPO will not unreasonably withhold, delay or condition its approval of a final written deliverable.

CONTRACTOR is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the BMPO and date returned.

- B. Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by CONTRACTOR (“Software Deliverable”) performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the

functions described in the Contract Documents (“Defects”) through repeated testing cycles. In the event of conflicts between Contract Documents and Application Software Documentation the Contract Documents will prevail.

CONTRACTOR will work with the BMPO and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the “Acceptance Tests” or “Acceptance Testing”).

- i. The “Acceptance Test Period” for each Software Deliverable will be xxxxx (##) business days unless an alternate time is mutually agreed upon between CONTRACTOR and BMPO per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within xxxxx (#) business days, unless an alternate start date is mutually agreed upon by CONTRACTOR and BMPO per the Project Schedule, after the Software Deliverable is installed at BMPO’s designated site and CONTRACTOR has successfully completed CONTRACTOR’s installation test and notified BMPO that the Software deliverable is “Ready for Acceptance Testing.” CONTRACTOR will not be obligated to deliver a Software Deliverable to BMPO until BMPO demonstrates the readiness of the target technical platform and environment.
- ii. If BMPO determines during the Acceptance Test Period that the Software Deliverable contains a Defect, BMPO will promptly send CONTRACTOR a written notice reporting the alleged Defect describing it to CONTRACTOR in sufficient detail reasonably necessary for CONTRACTOR to recreate it. CONTRACTOR will modify the Software Deliverable to remove the reported Defect and will provide the modifications to BMPO for re-testing. BMPO will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from CONTRACTOR. In such a case, CONTRACTOR and BMPO will mutually agree upon an updated Acceptance Test Period.
- iii. By the end of the Acceptance Testing Period BMPO will provide CONTRACTOR with a final written list reporting any outstanding Defects (the “Punch List”). BMPO will then have xxxxx (##) business days after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the Defects that were reported on the Punch List have been

removed. If any Defects that were reported on the Punch List have not been removed, BMPO will provide CONTRACTOR with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.

- iv. CONTRACTOR and BMPO each agrees to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.
- C. “User Acceptance Testing” shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.
 - D. “Conditional Acceptance” will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase, or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be xxxxx (##) calendar days, CONTRACTOR and BMPO will work diligently to put the Phase into Go Live operations.
 - E. “Final Acceptance” involves use of the Solution in totality in production operations for a period of xxxxx (##) calendar days, provision of all Services by CONTRACTOR, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance. If after xxxxx (##) calendar days the Solution performs without Defects, the BMPO and the CONTRACTOR will both issue and execute a “Final Acceptance” of the Solution. The xxxxx (##) day time frame for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the Xxxxx (##) day time frame. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

9.29 Professional Services Warranty

- A. CONTRACTOR agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. CONTRACTOR agrees that, at all times, the employees of CONTRACTOR furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.

- B. CONTRACTOR agrees that all persons working for or on behalf of CONTRACTOR whose duties bring them upon the BMPO's premises shall obey the rules and regulations that are established by the BMPO and shall comply with the reasonable directions of the BMPO's officers. The BMPO may, at any time, require the removal and replacement of any of CONTRACTOR's employees for good cause.
- C. CONTRACTOR shall be responsible for the acts of its employees and agents while on the BMPO's premises. Accordingly, CONTRACTOR agrees to take all necessary measures to prevent injury and loss to persons or property located on the BMPO's premises. CONTRACTOR shall be responsible for all damages to persons or property caused by CONTRACTOR or any of its agents or employees. CONTRACTOR shall promptly repair, to the specifications of the BMPO, any damage that it, or its employees or agents, may cause to the BMPO's premises or equipment; on CONTRACTOR's failure to do so, the BMPO may repair such damage and CONTRACTOR shall reimburse the BMPO promptly for the cost of repair.
- D. CONTRACTOR agrees that, in the event of an accident of any kind, CONTRACTOR will immediately notify the BMPO's contact person and thereafter, if requested, furnish a full written report of such accident.
- E. CONTRACTOR shall perform the services contemplated in the Agreement without interfering in any way with the activities of the BMPO's staff or visitors.
- F. CONTRACTOR and its employees or agents shall have the right to use only those facilities of the BMPO that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the BMPO. The BMPO shall also extend parking privileges to properly identified members of CONTRACTOR's full-time staff on the same basis as they are extended to the BMPO's staff.
- G. The BMPO shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of CONTRACTOR or its employees or subcontractors.

9.30 Ineffective Training

CONTRACTOR will submit to BMPO an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, CONTRACTOR will provide to BMPO details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. BMPO will conduct a rating of the course after its completion and communicate the results of this rating to CONTRACTOR for future class improvements. In the event that BMPO asserts in good faith that any CONTRACTOR training consultant lacks the skill or capacity to adequately train BMPO's staff, CONTRACTOR shall replace such training consultant as soon as reasonably possible. If BMPO notifies CONTRACTOR within xxxxx (#) business days of the completion of said training, that in BMPO's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then CONTRACTOR shall provide a credit in training days to BMPO for all such training sessions.

9.31 Non-Performance Escalation Procedures

In the event that the BMPO determines that CONTRACTOR is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then the BMPO shall have the right to, in the sequence shown: (a) formally notify CONTRACTOR of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of CONTRACTOR and BMPO decision makers to attempt to resolve the non-performance, (d) require a CONTRACTOR employee to be on-site at BMPO's location until the non-performance is resolved, (e) request arbitration in Fort Lauderdale, Florida per terms of the American Arbitration Association or at BMPO's sole option, commencing suit in Broward County, Florida, the venue of which is agreed to by CONTRACTOR, (f) invoke the Termination clause herein.

9.32 Force Majeure Clause

Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

9.33 Force Majeure Requisites

Force majeure shall not be allowed unless:

- A. Within xxxxx (#) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and

extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

- B. Within xxxxx (#) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

9.34 120 Day Maximum

Under no circumstances shall delays caused by a force majeure extend beyond xxxxx hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the end of the xxxxx hundred-twenty (120) day period] written approval is received from the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

9.35 Right of Cancellation

Either party shall have the right to cancel the Agreement if force majeure suspends performance of scheduled tasks by xxxxx or more parties for a period of xxxxx hundred-twenty (120) or more days from the scheduled date of the task. If a cancellation due to a force majeure occurs before title passes to the BMPO, the CONTRACTOR may keep any parts of the system as it can salvage, but must remove same at its own expense. If cancellation occurs due to a force majeure after title passes to the BMPO, the system shall remain with the BMPO and the CONTRACTOR shall be entitled to any such payments as have accrued according to the payment schedule.

9.36 Liquidated Damages

Failure on the part of the CONTRACTOR to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the CONTRACTOR by the BMPO for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent of damages will be <###> per day for each day the project Go Live date as defined in the Project Schedule is extended.

9.37 Pricing

All prices for CONTRACTOR's Software and Services hereunder are firm for the term of the Agreement. The BMPO shall pay CONTRACTOR for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with CONTRACTOR's response to BMPO's RFP, this Agreement and any related addenda. BMPO reserves the right to delay the purchase of Software components ("Modules") and

related Services. The Modules subject to this price protection are included in Exhibit <##>.

9.38 Change Orders

The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes (“Change Order”). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

CONTRACTOR shall provide to BMPO a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and approved by BMPO, and shall be subject to the requirements in the section.

9.39 Payment Terms

It is expected that certain payments will be made to CONTRACTOR by BMPO upon delivery of the Software with additional payments made for Software and Services based on specific project milestones as defined in the Project Schedule.

CONTRACTOR shall invoice **BMPO** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

9.40 Software

- ##% Due upon Contract Execution
- ##% Due upon initial Software installation
- ##% Due in installments based upon Conditional Acceptance of each Software module
- ##% Due upon Final Acceptance

9.41 Services

- ##% Due in installments based on Conditional Acceptance of Milestones as defined in the Statement of Work
- ##% Due upon Final Acceptance

9.42 Customizations

- ##% Due as incurred upon completion of design
- ##% Due upon Conditional Acceptance of Modification
- ##% Due upon Final Acceptance

9.43 Maintenance and Support Services

- First year maintenance and support services fee due upon Final Acceptance

CONTRACTOR shall submit to the BMPO an invoice in a form agreeable to the BMPO. The invoice shall be accompanied by such supporting documentation as required by the BMPO.

9.44 Right to Withhold Payment

If the CONTRACTOR breaches any provision of this Agreement, the BMPO shall have a right to withhold all payments due to the CONTRACTOR until such breach has been fully cured.

9.45 Travel Expense Reimbursement

All travel expense costs must be included in the CONTRACTOR's fixed price cost. BMPO will not make a separate payment for reimbursable expenses. BMPO shall not be liable for additional travel costs incurred due for any reason outside of CONTRACTOR's control.

9.46 Funding Out

This Agreement shall terminate at such time, if any, that the BMPO Board fails to appropriate sufficient sums in the budget year for which the Agreement applies to pay the amount due.

9.47 Maintenance and Support Services

For as long as BMPO pays the maintenance and support fees delineated in Exhibit <##>, CONTRACTOR will provide BMPO with maintenance and support services ("Extended Services") with respect to the Software. Such Extended Services shall consist of the following:

- A. CONTRACTOR shall provide maintenance for the Software necessary to insure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.
- B. CONTRACTOR shall provide BMPO with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
- C. CONTRACTOR agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (#) years from initial contract signing.
- D. CONTRACTOR agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of BMPO, which will not be unreasonably withheld. CONTRACTOR will not utilize subcontractors for any Extended

Services provided herein without the express written authorization of BMPO.

9.48 Annual Maintenance and Support Fees

Annual maintenance and support fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Southeast region or xxxxx (#) %, whichever is less, for as long as annual support fees are paid and the license agreement between the BMPO and the CONTRACTOR is in effect.

CONTRACTOR agrees to send an itemized invoice to the BMPO at least 90 days before maintenance is up for renewal.

9.49 Resolution and Response Time Warranty

CONTRACTOR warrants that all Resolution and Response Times delineated below shall be adhered to as follows, as determined by the CONTRACTOR's Project Manager:

Priority 1 support issues are defined as: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.

- Response to first call time limit – within xxxxx (#) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within xxxxx business day.
- If CONTRACTOR and BMPO are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, CONTRACTOR support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. BMPO acknowledges that programmers will not be available at that time.
- Penalty for not adhering to time limits - BMPO shall receive a xxxxx (#) % credit against the annual maintenance and support fees, per incident.

Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.

- Response to first call time limit – within xxxxx (#) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within xxxxx (#) business days.
- Penalty for not adhering to time limits - BMPO shall receive a xxxxx percent (#%) credit against the annual maintenance and support fees, per incident.

Priority 3 support issues are defined as: Non-Critical Issue – resolution period to be mutually agreed upon.

- Response to first call time limit – within xxxxx (##) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within xxxxx (##) business days.
- Penalty for not adhering to time limits - BMPO shall receive a xxxxx percent (#%) credit against the quarterly Support fees, per incident.

9.50 Termination of Annual Maintenance and Support

BMPO may cancel maintenance upon xxxxx (##) day notification to the CONTRACTOR.

Maintenance may be reinstated by the BMPO at an amount not to exceed the back fees that would have been due if maintenance/support had not been dropped. In the event of reinstatement of Maintenance, the BMPO shall not be forced to move to a new license model and no upgrade fees for licenses already purchased shall be charged by CONTRACTOR.

The CONTRACTOR shall give the BMPO at least xxxxx (#) months' notice before unilaterally canceling maintenance. In addition, the CONTRACTOR shall continue to support the software/product as long as it is supporting such Software for other customers of CONTRACTOR.

9.51 Source Code Escrow

CONTRACTOR shall place Source Code for the Software modules licensed by the BMPO in escrow with an independent third-party (with whom a separate Escrow Agreement will be entered into by CONTRACTOR at no additional cost to BMPO). The Source Code shall be kept current with the releases and versions of the Software in live use at the BMPO. The Source Code shall revert to BMPO for BMPO's use if CONTRACTOR files for bankruptcy or protection from creditors in a court of law. BMPO shall then have full rights to use source code for any purposes other than resale.

CONTRACTOR will provide appropriate source code to the BMPO in a timely manner in the event that the CONTRACTOR goes out of business or no longer supports the Software being licensed. The same applies if the CONTRACTOR is merged or acquired and the Software is no longer supported. Once the BMPO obtains the source code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.

9.52 Video and Audio Recording

BMPO reserves the right to record video and/or audio of any and all training sessions, whether held at BMPO site, CONTRACTOR site, or via teleconference. Use of such recordings shall be strictly for BMPO staff training purposes.

9.53 Federally Mandated Changes

CONTRACTOR shall supply BMPO with all federally mandated changes to CONTRACTOR's Software. CONTRACTOR will make a good faith effort to provide BMPO with these changes within xxxxx (##) days of their enactment dates prescribed by the aforementioned bodies. In the event that CONTRACTOR is unable to supply these changes within xxxxx (##) days of the enactment, BMPO will be credited a prorated share of the annual maintenance and support fee for every week CONTRACTOR is tardy in delivering the required change.

9.54 Future Releases/Upgrades

BMPO shall be entitled to future releases and upgrades, whether of a "minor" or major" nature, of CONTRACTOR Software for no additional cost beyond the annual maintenance and support fees delineated in Exhibit <##>.

9.55 Solution Longevity

The CONTRACTOR certifies that the Software will remain available and fully supported by CONTRACTOR for a minimum of xxxxx (##) years from the date the Agreement is signed and that any material changes to CONTRACTOR's company or products will not affect the BMPO's implementation, maintenance or support of the Software as long as BMPO pays the annual maintenance and support fees.

9.56 Successor Software Products

In the event CONTRACTOR makes available successor software products with substantially similar functionality as the Software which may be based on a new technical architecture ("Successor Products") within xxxxx (##) years of contract signing, BMPO may transfer the license for the Software to the Successor Products for no additional CONTRACTOR license fees. In such event, BMPO shall pay the then-current annual maintenance and support fees for the Successor Products, in addition to any services and/or third party fees associated with the Successor Products.

9.57 Functionality Replacement

The BMPO maintains the rights to the Software functionality that is licensed herein, even if that functionality later gets renamed or rebundled by CONTRACTOR.

9.58 Right to Outsource

Software licensed to BMPO may be used by a third-party CONTRACTOR hired by BMPO to perform outsource services on BMPO's behalf.

“Sample Contract”

**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES**

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 _____, attested to and duly authorized to execute same.

BMPO

BROWARD METROPOLITAN
PLANNING ORGANIZATION

By: _____
Gregory Stuart, Executive Director

By: _____
Richard Blattner, Chair

This _____ day of _____ 2016.

This _____ day of _____ 2016.

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
ERP SYSTEM AND IMPLEMENTATION SERVICES**

CONTRACTOR

WITNESSES: [Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

By: _____

This day ____ of _____, 2016.

Print Name: _____

“Sample Contract”

**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES**

EXHIBITS LIST

- 1) **Exhibit “A”** – RFP No. 16-01, Date Issued: January 15, 2016
A full copy of this document is available for review upon request at the BMPO’s Offices.
- 2) **Exhibit “B”** – CONTRACTOR’s Proposal, 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
ERP SYSTEM AND IMPLEMENTATION SERVICES**

EXHIBIT “A”

ERP SYSTEM AND IMPLEMENTATION SERVICES

RFP No. 16-01

Date Issued: January 15, 2016

**A FULL COPY OF RFP No. 16-01 IS AVAILABE FOR REVIEW AND INSPECTION
UPON REQUEST AT THE BMPO OFFICE**

“Sample Contract”

**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES**

**EXHIBIT “B”
CONTRACTOR’S PROPOSAL**

“Sample Contract”

**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES**

Federal Contractual Provisions

EXHIBIT “C-1”

**FEDERAL TRANSIT ADMINISTRATION REQUIRED
CONTRACTUAL PROVISIONS**

The applicable provisions in this Section shall be set forth in any Contract resulting from this RFP. By submitting a Proposal, Proposers acknowledge and agree to comply with the applicable provisions in this Section in the event they are awarded the Contract.

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.

In connection with the Project, the Contractor agrees that, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subcontractor, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subcontract, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Contractor, including any subcontractor, lessee, third party contractor, or other participant at any tier of the Project.

2. FEDERAL LAWS, REGULATIONS, AND DIRECTIVES.

The Contractor agrees that Federal laws and regulations control Project award and implementation. The Contractor also agrees that Federal directives, as defined in the Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Contractor understands and agrees that unless the Contractor requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or the Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Contractor understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Contractor on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal FTA laws, regulations, and directives may become effective after the date on which the Contractor executes this Agreement for the Project, and might apply

to this Agreement. Contractor agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Contractor signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Agreement. To accommodate changing Federal requirements, the Contractor agrees to include in each agreement with each subcontractor, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in this Agreement for the Project, and in the Master Agreement are minimum requirements, unless modified by FTA.

3. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.

Contractor acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Contractor's activities in connection with the Project. By executing Contract for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government or the BMPO in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

4. CIVIL RIGHTS.

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

B. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Contractors,” and any other applicable Federal directives that may be issued.

C. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Contractor agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

D. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26.

(2) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Contractor agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Contractor’s DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Contractor of the Contractor’s failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

E. Nondiscrimination on the Basis of Sex. The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

F. Nondiscrimination on the Basis of Age. The Contractor agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

G. Access for Individuals with Disabilities. The Contractor agrees to 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. The Contractor also agrees to comply with 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 in the administration of programs or activities receiving Federal financial assistance; with 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; with 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; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

I. Access to Services for Persons with Limited English Proficiency. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Contractors' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

J. Environmental Justice. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Laws. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

5. FEDERAL STANDARDS.

The Contractor agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

6. ACCESS TO THIRD PARTY CONTRACT RECORDS.

The Contractor agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

7. RIGHT OF THE FEDERAL GOVERNMENT TO TERMINATE.

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Contractor has violated the terms of the Grant Agreement or Contract for the Project including the Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Contract for the Project, or the Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to

comply with the terms of the Grant Agreement or Contract for the Project including the Master Agreement, the Federal Government reserves the right to require the Contractor to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

8. DEBARMENT AND SUSPENSION.

The Contractor agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of 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. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Contractor agrees to review the "Excluded Parties Listing System" at <http://epls.gov/> and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor, lessee, third party contractor, and other participant at a lower tier of the Project, will review the "Excluded Parties Listing System" at <http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions.

9. BUY AMERICA REQUIREMENTS

The Successful Proposer is hereby notified that this project is funded with federal funds from the FTA. Therefore, this project shall comply with the Buy America regulations published at 49 CFR Part 661. The Contractor shall comply with 49 U.S.C. §5323(j) and FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any amendments thereto in performing the Services requested in this RFP. If applicable, the Buy America certification forms shall be completed, signed, notarized and returned to the BMPO prior to Contract award.

10. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

A. Notification to FTA. The Contractor agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Contractor seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 56 of the Master Agreement shall be provided to the FTA Regional Counsel within whose

Region the Contractor operates its public transportation system or implements the Project.

B. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Contractor may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

C. Enforcement. The Contractor agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

D. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.

E. Alternative Dispute Resolution. FTA encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

11. LOBBYING RESTRICTIONS.

The Contractor agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Contract;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subcontractor, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

12. CLEAN AIR.

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Contractor agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure

incorporated in the applicable documents accompanying the approval of the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Contractor agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

(3) The Contractor agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

13. CLEAN WATER.

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

14. RIGHTS IN DATA AND COPYRIGHTS.

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

B. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Contract for the Project:

(1) Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the prior written consent of the Federal Government and the BMPO, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b(1) of the Master Agreement, however, do not apply to a Grant Agreement or Contract with an institution of higher learning.

C. Federal Rights in Data and Copyrights. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in the Subsection 18.c of the Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Contract for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Contractor, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

D. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the Master Agreement, FTA may make available to any FTA Contractor, subcontractor, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the Master Agreement and shall be delivered as the Federal

Government may direct. This does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use when the costs thereof are financed with Federal assistance through an FTA capital program.

E. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

F. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

G. Restrictions on Access to Patent Rights. Nothing in Section 18 of the Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

H. Data Developed Without Federal Funding or Support. In connection with the Project, the Contractor may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

I. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Contractor understands and agrees that the data and information it submits to the BMPO or Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

“Sample Contract”**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES****Federal Contractual Provisions****EXHIBIT C-2****FEDERAL HIGHWAY ADMINISTRATION (“FHWA”)****REQUIRED
CONTRACTUAL PROVISIONS**

The following terms apply to all contracts in which services involve the expenditure of federal funds:

A. It is understood and agreed that all rights of the BMPO relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.

B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.

C. Compliance with Regulations: The Consultant shall comply 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, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

D. Nondiscrimination: The Consultant, 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 material and leases of equipment. The Consultant will 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 Appendix B of the Regulations.

E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant'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.

F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the BMPO, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the BMPO, 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.

G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the BMPO shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Consultant under the contract until the Consultant complies and/or

2. cancellation, termination or suspension of the contract, in whole or in part.

H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the BMPO, 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the BMPO to enter into such litigation to protect the interests of the BMPO, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

I. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.

J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.

The Consultant, subrecipient 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 DOT-

assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.

L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.

M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the BMPO. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.

N. The BMPO hereby certifies that neither the consultant nor the consultant's representative has been required by the BMPO, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The BMPO further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The Consultant hereby certifies that it has not:

- 1 employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
- 2 agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
- 3 paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

“Sample Contract”

**AGREEMENT BETWEEN THE BMPO AND _____ FOR
ERP SYSTEM AND IMPLEMENTATION SERVICES**

**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 subcontractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 19: ADDITIONAL VENDOR INFORMATION

1. What is the Vendor's hourly rate for implementation assistance beyond that which is included in the Vendor proposal? If rates vary by skill set, specify the rate for each.
2. Please indicate two separate potential visits of two consecutive days each in which the Vendor will commit to being available for an onsite demonstration and your preference.

| Demonstration Date Options | | |
|-------------------------------------|-----------------|-----------------|
| Option | Visit #1 | Visit #2 |
| March 28 and 29th, 2016 | | |
| March 30th and 31st, 2016 | | |
| April 4 th and 5th, 2016 | | |

3. Please indicate the Vendor's preferred, comparably sized site visit location.