

Adopted March 14, 2024



**BROWARD MPO
PROCUREMENT RULES**

**APPROVED BY
BMPO'S GOVERNING BOARD**

MARCH 14, 2024

BROWARD METROPOLITAN PLANNING ORGANIZATION

PROCUREMENT RULES

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CHAPTER 1. DEFINITIONS

- (1) The words defined in this Chapter shall apply to both these Rules and the BMPO's Procurement Procedures and shall have the meanings set forth below whenever they appear in these Rules and/or the Procedures and whether they are capitalized or not, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular provision.
- (2) Definitions
 - (a) **“Bid”** means a response to an Invitation to Bid (ITB).
 - (b) **“Broward MPO” / “BMPO” / “MPO”** means the Broward Metropolitan Planning Organization created pursuant to Section 339.175, Florida Statutes, duly recognized by the Governor of the State of Florida as the entity responsible for the continuing, cooperative, and comprehensive transportation planning in the urbanized area of Broward County, Florida
 - (c) **“Business”** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
 - (d) **“Change Directive”** means a written order issued by a BMPO approval authority, exercising its unilateral rights under the Contract.
 - (e) **“Competitive Range”** means the number of Proposals determined by an Evaluation and Selection Committee, which will permit an efficient competition among the most highly rated Proposals. A Competitive Range may be used as long as the Solicitation informs offerors that the number of Proposals can be limited for efficiency.
 - (f) **“Continuing Contract”** means a contract approved pursuant to the Consultants’ Competitive Negotiations Act (Section 287.055, Florida Statutes) for professional services between BMPO and a firm whereby the firm provides professional services for projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, for study activity if the fee for professional services for each individual study under the Contract does not exceed \$500,000, or for work of a specified nature as outlined in the Contract, with the Contract being for a fixed term or with no time limitation except that the Contract must provide a termination clause. Firms providing professional services under Continuing Contracts shall not be required to Bid against one another.
 - (g) **“Contract”** means all types of binding agreements, including task work orders, purchase orders, and any Contract Modifications regardless of what they may be called, for the procurement or disposal of Supplies, and Services.
 - (h) **“Contractor”** means any Person having a Contract with the BMPO.

- (i) **“Designee”** means a duly authorized representative of a person holding a superior position.
- (j) **“Electronic”** means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- (k) **“Electronic Posting” or “Electronically Post”** means the noticing of solicitations, MPO decisions or intended decisions, or other matters relating to procurement on the MPO Internet website.
- (l) **“Executive Director”** means the chief executive officer and the chief administrative officer of the MPO, including his/her designee, responsible for carrying out the policies of the MPO Board or MPO Executive Committee.
- (m) **“Formal Procurement Threshold”** means the dollar amount at which a formal Solicitation process is required. The Formal Procurement Threshold is \$35,000.
- (n) **“Interested Party”** means any Bidder or proposer with legal standing that is affected adversely by BMPO’s decision concerning a Solicitation or Contract award.
- (o) **“Invitation to Negotiate”** means a source selection process that is used when the Contracting Officer deems it is in BMPO’s best interest to negotiate with offerors to achieve the “best value” for the BMPO. A short list of acceptable proposers is created. Two negotiation methods may be used: single negotiation and concurrent negotiation.
- (p) **“Library of Service Providers”** means the library of qualified consultants to perform transportation planning or other services for the MPO on an as-needed basis in accordance with 2 CFR Part 200, Chapter 287, Florida Statutes and the MPO Procurement Rules.
- (q) **“Lobbyist”** means all persons, firms, or corporations employed or retained by a Person who seeks to encourage the approval, disapproval, or modifications of (1) any action or decision of the MPO Board; (2) any action, decision or recommendation of the Executive Director or General Counsel; (3) any action, decision or recommendation of an evaluation committee or committee member; or (4) any action, decision or recommendation of BMPO staff or consultants regarding a Procurement during the time period a Cone of Silence is in effect for the Procurement. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities. Lobbyists may be subject to registration requirements established by the MPO Board.

- (r) **“Micro Purchase”** means the purchase of Supplies or Services with a value of \$5,000 or less.
- (s) **“Modifications”** means all Contract amendments and Change Directives associated with a Contract.
- (t) **“MPO Board”** means the Metropolitan Planning Organization’s Governing Board.
- (u) **“MPO Executive Committee”** means the Broward Metropolitan Organization’s Executive Committee.
- (v) **“Offer”** means Bid or Proposal.
- (w) **“Offeror”** means anyone submitting an Offer in response to a formal procurement solicitation.
- (x) **“Person”** means any business, corporation, partnership, individual, union, committee, club, organization, agency, or group of individuals.
- (y) **“Potential Vendor”** means any Person that holds him/herself out as possessing the necessary qualifications or ability to Bid or propose on the subject matter of a Procurement.
- (z) **“Procurement”** means buying, purchasing, renting, leasing, or otherwise acquiring any Supplies or Services. It also includes all functions that pertain to the obtaining of any Supply or Service, including a description of requirements, selection and Solicitation of sources, preparation and award of Contracts and all phases of Contract administration.
- (aa) **“Procurement Officer” / “Contracting Officer”** means the person designated by the Executive Director to be responsible for overseeing MPO contracting and procurement proceedings and includes such person’s designee.
- (bb) **“Proposal”** means a response to a Request for Proposals (RFP) or Request for Qualifications (RFQ).
- (cc) **“Protest”** means a written objection to the commercial terms or technical specifications in the Solicitation or the Contract award.
- (dd) **“Protest Period”** means three (3) business days following the date of the posting of the Intent of Contract Award on BMPO’s website or the date of the issuance of an addendum as to the content of such addendum or the date of issuance of the Solicitation. A “business day” means a day of the week when the BMPO is open for business during normal business hours of 9 a.m. to 5 p.m. local time.

- (ee) **“Public Notice”** means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include the publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the MPO and maintained for that purpose.
- (ff) **“Real Property”** means land, and its permanently affixed buildings or structures, or permanently affixed buildings and/or structures where the land may not be part of the transaction, e.g. leasing.
- (gg) **“Regulated Utilities”** means a basic service such as electricity, gas, or water provided by an entity that is regulated by the State or Federal government or by a county, municipality or special district.
- (hh) **“Regulation”** means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describe organization, procedure, practice or requirements.
- (ii) **“Rules” / “Policy”** means the Broward Metropolitan Planning Organization Procurement Rules.
- (jj) **“Services”** means the furnishing of labor, time, and effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements, collective bargaining agreements or service agreements with Regulated Utilities, but shall include both professional and general services.
- (kk) **“Small Purchase”** means the purchase of Supplies or Services with a value of \$35,000 or less, but more than \$5,000.
- (ll) **“Sole Source Procurement”** means acceptance of a Proposal or Bid when it has been determined that the Supplies or Services desired are available from only one source; or, that competition is inadequate.
- (mm) **“Solicitation”** means the advertising of a formal Procurement through public notice.
- (nn) **“Solicitation Documents”** mean all of the documents used to solicit Bids or Proposals, including, but not limited to, the commercial terms, technical specifications of a Procurement and all addenda.
- (oo) **“Supplies”** means all property, except Real Property, including, but not limited to, goods, equipment, materials, and printing necessary for the accomplishment of BMPO’s mission.

- (pp) **“Suspension”** means an action taken that immediately prohibits a Person from participating in a Procurement for a temporary period, pending completion of a BMPO investigation and any judicial or administrative proceedings that may ensue. A Person so excluded is suspended.
- (qq) **“Task Work Order”** means authorization issued by BMPO pursuant to a duly awarded professional services Contract for Services as the need arises.

CHAPTER 2. GENERAL PROVISIONS

(1) Promulgation; Title

- (a) Promulgation: The Procurement requirements set forth in these Rules have been promulgated and approved by the Governing Board (“MPO Board”) of the Broward Metropolitan Planning Organization (“BMPO” or “Broward MPO”).
- (b) Title: These requirements shall be known and may be cited as the "Broward Metropolitan Planning Organization Procurement Rules."

(2) Purposes, Rules of Construction

- (a) Interpretation: These Rules shall be construed and applied to promote its underlying purposes and policies.
- (b) Purposes and Policies: The underlying purposes of these Rules are to provide BMPO with a unified purchasing system, with centralized responsibility allowing for the processing of some work by delegation. These Rules enable BMPO to maximize to the fullest extent practicable, the purchasing value of public funds by fostering effective broad-based competition within the free enterprise system, while promoting fair and equitable treatment of all Persons who deal with BMPO. These Rules provide safeguards for the maintenance of the quality and integrity of the Procurement process by BMPO.
- (c) Law and Grant Requirements: These Procurement Rules apply to every purchase/procurement and sale by the Broward MPO without regard to the source of funds, including local, State and Federal funding, except as otherwise provided by law. In any situation where compliance with these Rules, in whole or in part, will place BMPO in conflict with state or federal law, including, but not limited to FTA Circular 4220.1F, “Third Party Contracting Guidance;” FTA Master Agreement; FTA Administrator’s Policy Letters; 2 CFR Part 200 (“Supercircular”) requirements; and FHWA and Federally mandated provisions, as may be revised from time to time, or the terms of any grant, BMPO shall comply with such federal or state law, grant requirements, or authorized Regulations, which are mandatorily applicable and which are either not reflected in these Rules or are contrary to provisions of these Rules. When using Federal funds and there is a conflict between Federal, State and/or local

requirements, Federal requirements take precedence unless State or local requirements are more stringent. Notwithstanding the provisions in these Procurement Rules, Broward MPO purchasing shall be conducted in a manner that preserves Local, State and Federal funding received by Broward MPO in connection with its transportation planning responsibilities.

- (3) **Supplementary General Principles of Law Applicable:** The principles of law and equity, including laws relative to ethics, and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of these Rules.
- (4) **Requirement of Good Faith:** These Rules require all parties involved in the negotiation, development, performance, or administration of BMPO Contracts to act in good faith.
- (5) **Open Competition Required:** All Procurement transactions shall be conducted in a manner providing full and open competition, unless exempted by these Rules.
- (6) **Singular-Plural and Gender Rules.** In these Rules, unless the context requires otherwise: words in the singular number include the plural, and those in the plural include the singular; and words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.
- (7) **Permissive and Imperative Rules.** For the purposes of these Rules, the word “may” and “should” denotes the permissive and “must” and “shall” denotes the imperative.
- (8) **Exemptions:** The Procurement of the following are exempted from the competitive solicitation requirements of these Rules:
 - (a) Sole Source (See Chapter 4 (17)).
 - (b) Emergency Procurements (See Chapter 4 (19)).
 - (c) Utilization of other competitively procured governmental agencies' contracts also known as “piggyback contracts.” Awarded Bids by any local, State, or Federal governmental agency, cooperative purchasing organizations, or purchasing associations. Commodities or services that are the subject of contracts with the State, its political subdivisions or other governmental entities, or with the United States government, are exempt from this section; provided, however, that this subsection shall apply only if (i) the commodities or services are the subject of a price schedule negotiated by the State or Federal GSA Schedule, or (ii) the commodities or services are the subject of a contract with another governmental entity that is based strictly on competitive Bids or competitive Proposals and not on any preference. Such utilization of other government agencies' contracts shall only be valid during the term of that contract or Bid award.

- (d) Real Property, abstracts of title for Real Property, title insurance for Real Property, and other related costs of the leasing and acquisition of Real Property. This exemption does not include land surveying or appraisal services.
- (e) Purchases between governments and nonprofit organizations.
- (f) Interlocal Agreements (ILA's) for professional services. ILA's for professional services between the MPO and its government members as authorized in Chapter 5 of these Rules, may be exempt from this section of the Rules.
- (g) Borrowing funds. Any transaction for, or related to, the borrowing of money from a licensed, registered or otherwise permitted lending entity, whether private or governmental in nature.
- (h) Existing Agreements. Lease agreements and service contracts for the maintenance, repair, or servicing of existing equipment owned or leased by MPO, at the date of adoption of these Rules.
- (i) Task Work Orders issued under Continuing Contracts. Library professional service providers that have current Continuing Contracts with the MPO may be used by the Executive Director to provide required services as requested by the MPO through the issuance of Task Work Orders, consistent with these Rules and in accordance with State and Federal laws.
- (j) Auditing services: The BMPO will undertake the Procurement of external auditing services pursuant to the provisions of these Rules subject to the following restriction: Any auditing company that has served as the Broward MPO's lead external auditor in the year immediately preceding the Procurement shall be ineligible to participate in that Procurement as the prime contractor.
- (k) Other Exemptions: With the approval of the Executive Director, the following supplies and services may be procured without competition, subject to the requirements of these Rules:

 Servicing or warranty work of equipment by an authorized dealer or representative when work by another party would void a warranty or guarantee; work performed by building owner's contractor in BMPO leased office space, renewal of software licenses; used equipment and machinery; advertising in newspapers, periodicals and related publications, television, radio and similar media (including barter agreements); licenses; dues and memberships in professional, trade and other similar associations; postage; subscriptions; published books, manuals, maps, periodicals, films, technical pamphlets, copyrighted artwork and educational aids; services of visiting speakers and lecturers; job-related seminars and training; purchases using petty cash; food services (not including outsourced vending); rental of hotel and conference

space; Regulated Utilities charges; governmental fees; insurance; and employee travel expenses.

- (1) A competitive process may be used whenever practicable, at the sole discretion of the Contracting Officer, for the Procurement of items exempted from these Rules.
- (9) Conflict of Interest. In connection with the MPO's procurement of commodities or services, MPO employees shall adhere to the conflict of interest and unauthorized compensation provisions applicable to State and local public officials, as set forth in Section 112.313, Florida Statutes.
- (10) These Rules, as revised, shall be effective immediately upon its approval by the MPO Board as to any Solicitations initiated after such approval. These Rules shall supersede and rescind the Broward Metropolitan Planning Organization Procurement Rules, Amended and Adopted July 8, 2021.

Legislative History:

Policy Adopted 10/14/10

Policy Amended and Adopted 5/12/11 (Modified Section 2; Created new Section 7)

Policy Amended and Adopted 6/9/11 (Created new Paragraph 9.5)

Policy Amended and Adopted 12/8/11 (Created new Paragraph 6.4)

Policy Amended and Adopted 6/13/13 (Created Definitions, Modified Sections 2, 3, 7, etc.)

Policy Amended and Adopted 10/12/17 (Modified Sec. 6, Created new Sec.10, etc.)

Policy Amended and Adopted 7/8/21

CHAPTER 3. ORGANIZATION

- (1) Approval Authority for Procurement Actions and Contracts.
 - (a) The MPO Board shall approve Contracts exceeding \$250,000.
 - (b) The MPO Executive Committee shall approve Contracts exceeding \$35,000.
 - (c) The Executive Director shall approve the following with notification provided to the MPO Board of actions taken through regular reports:
 - 1. All Contracts when they do not exceed \$35,000.
 - 2. Emergency purchases in urgent situations presenting a clear and present substantial threat to life or property where immediate action is required and a quorum of the MPO Executive Committee or the MPO Board for an emergency special meeting cannot be obtained before the deadline for action. In such emergency situations, the Executive Director may approve the purchase or contract, subject to later ratification by the MPO Executive Committee or the

MPO Board. To the extent practicable, the Executive Director shall notify one or more of the MPO Executive Committee Members of such emergency purchases.

3. Contracts not exceeding the aggregate sum of one hundred thousand dollars (\$100,000) from the same Person during the course of any fiscal year, unless such Contracts are first authorized by the MPO Executive Committee or MPO Board as limited by Chapter 4 of the BMPO Rules. This subsection shall not apply to purchases of utilities, BMPO operations and maintenance, or to ongoing Contracts or Contracts with library of service providers or Contracts with MPO members for services.
- (2) Delegation of Authority to Executive Director: Except as otherwise provided in these Rules, all rights, powers, duties and authorities relating to the Procurement of Supplies and Services vested in the MPO Board are hereby delegated to the Executive Director subject to the limitations contained in Section (1) above. The Executive Director is specifically authorized to delegate the approval authority set forth in subsections (1)(c) and (3) of this Chapter. The Executive Director's authority also includes the power to initiate Procurements, determine responsiveness, cancel Procurements, negotiate, enter into and modify Contracts. The Executive Director may terminate Contracts approved by the MPO Executive Committee, the MPO Board, or Executive Director after consultation with the General Counsel and dispose of surplus property on behalf of BMPO.
 - (3) Additional Authority of the Executive Director
 - (a) The Executive Director may promulgate and issue Procurement Procedures to implement and augment the provisions of these Rules.
 - (b) The Executive Director is authorized to participate in, sponsor, conduct, or administer Contracts with one or more public Procurement units for the Procurement of any Supplies or Services with one or more public Procurement units (i.e., any City, Town, County, and any other subdivision of the state or a public agency of any such subdivision, public authority, educational, health, or any other institution, and any other entity which expends public funds for the Procurement of Supplies and Services). Such will include joint or multiple party contracts between public Procurement units and open-ended Contracts which are made available to public Procurement units. Where a local public Procurement unit or external Procurement entity, such as the National Joint Power Alliance or similar organization, administer a cooperative purchase activity complying with the general requirements of these Rules, BMPO's participation in such a purchase shall be deemed to have complied with these Rules.
 - (c) The Executive Director is authorized to purchase from Contracts and schedules generated by the State of Florida as well as units of the Federal Government as permitted by Federal law and Regulation.

- (d) The Executive Director may sell to, acquire from, or use any Supplies or Services belonging to a local public Procurement unit or external Procurement entity, such as the National Association of State Procurement Officials or similar organization.
 - (e) The Executive Director shall have the authority to enter into Contracts awarded by other governmental units. if the Contract was awarded through an open and free competitive Bid system. The actual award of such a Contract shall be made under the provisions contained in these Rules for the award of Contracts by BMPO, and BMPO shall enter into a Contract with the Contractor.
 - (f) The Executive Director may authorize the use of purchasing cards (P-Cards) subject to the provisions of these Rules and pursuant to procedures approved by the Executive Director.
 - (g) The Executive Director shall approve Contract Modifications to MPO Executive Committee or MPO Board awarded Contracts, for no-cost administrative and no-cost time extensions, only.
 - (h) The Executive Director shall approve all insurance policies procured through BMPO's insurance broker, subject to the approved budget (Unified Planning Work Program ["UPWP"]).
- (4) Delegation of Authority to Contracting Officer
- Except as otherwise provided in this Policy, all rights, powers, duties and authorities relating to the Procurement of Supplies and Services vested in the Executive Director are hereby delegated to the Contracting Officer as more fully set out in Section (5) below.
- (5) Authority of the Contracting Officer: Except as otherwise specifically provided in these Rules, the Contracting Officer shall:
- (a) Procure or supervise the Procurement of all Supplies and Services.
 - (b) Use any Procurement method authorized by these Rules.
 - (c) Transfer or sell surplus Supplies or property (i.e., those Supplies no longer having any use to BMPO, including, but not limited to, obsolete or scrap material and nonexpendable supplies that have completed their useful life cycle), to other governmental agencies, BMPO staff, or to the public by sealed Bids, public auction (including auctions conducted via the Internet), trade, or disposal of property in any other method consistent with the State of Florida and Federal laws, and other applicable laws and Regulations. The Contracting Officer and BMPO Directors shall not be entitled to purchase any such Supplies or property.

- (d) Execute purchase orders when the requisition for the purchase order has been approved by the Executive Director or designee.
- (6) Duties of General Counsel and Delegation of Authority: The General Counsel shall serve as legal counsel to the BMPO Board and provide legal services for the BMPO Board and BMPO staff. General Counsel shall review all Contracts and Contract Modifications to be approved by the MPO Board, MPO Executive Committee or Executive Director for form and legal sufficiency before such documents are executed.
- (7) Regulated Utilities. Payments made to Regulated Utilities for Services provided to BMPO owned or leased facilities, including, but not limited to, its administrative offices, in addition to being exempt from the competitive solicitation requirements of these Rules, are not subject to the limitations on spending authority set forth in this Chapter and payment for such expenses as they are incurred for operations from annually budgeted funds are hereby expressly authorized.

CHAPTER 4. SOURCE SELECTION, CONTRACT FORMATION, ADMINISTRATION

- (1) Types of Contracts Allowable: Except as provided in this section, any type of Contract which will promote the best interest of BMPO and which is consistent with the applicable State of Florida and Federal laws and other applicable laws and Regulations may be used in accordance with the requirements of these Rules.
- (2) Methods of Source Selection: All Contracts shall be solicited in accordance with the provisions of this Chapter and these Rules. A Procurement's potential value may not be divided or reduced to avoid the additional requirements applicable to larger acquisitions. All Contracts made in accordance with this Section shall be provided for in the approved budget (Unified Planning Work Program ["UPWP"]).
- (3) Modifications: BMPO shall have the right, based on a clause contained in each Contract for the delivery of Supplies and Services to enter into Contract amendments or Change Directives to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope or term of the Contract; or to direct other changes in Contract execution to meet unforeseen field, regulatory or market conditions.
- (4) Micro Purchases
 - (a) Conditions for Use. Micro Purchases may be authorized by the Executive Director for Supplies and Services, provided that each Micro Purchase does not exceed \$5,000.00. Purchases shall not be artificially divided so as to constitute a Micro Purchase under this section.

- (b) Competitive Pricing. The Contracting Officer, using good purchasing practices, may use any method of Procurement for Micro Purchases, including published pricing, provided that pricing is determined to be fair and reasonable. Micro Purchases do not require the solicitation of multiple quotes.
- (5) Small Purchases
- (a) Conditions for Use. Small Purchases may be authorized by the Executive Director for Supplies and Services, provided that each Small Purchase does not exceed \$35,000.00. Purchases shall not be artificially divided so as to constitute a Small Purchase under this section.
 - (b) Competitive Pricing. Small Purchases shall require, at a minimum, two written quotations from prospective vendors.
 - (c) Decline to Provide Quotation. If, in subsection (5)(b) above, after reasonable effort, only one source provides a responsive quotation, then award may be made to the responsive source if the pricing is determined to be fair and reasonable by the Contracting Officer.
- (6) Formal Competitive Procurement Process. Formal competitive Procurement procedures are used for the Procurement of Supplies or Services estimated to be greater than the Formal Procurement Threshold. The three types of competitive Procurement processes are the Invitation to Bid (ITB), the Request for Proposals (RFP), and the Request for Qualifications (RFQ). However, these Rules also grant the flexibility to try alternative and innovative types of Procurements (see Section 20).
- (a) The Contracting Officer shall obtain an independent cost estimate in connection with every solicitation above the Formal Procurement Threshold, including contract modifications, under this section. The independent cost estimate should be developed before the issuance of the solicitation.
 - (b) Public Notice. A notice of Solicitation (ITB, RFP, RFQ or any other formal Procurement process) shall be placed on BMPO's website as a means of advising the public and vendor communities of the Procurement. At its sole discretion, BMPO may post the notice in additional locations using any of a variety of advertising methods. The bidding window shall not be less than fourteen (14) calendar days. The advertisement shall state the title, date, and hour of the public Bid opening. Solicitation Documents shall include instructions prescribing the conditions for submitting offers.
 - (c) Receipt of Offers. Offers shall be submitted so as to be received at the location and in the manner designated in the solicitation document no later than the exact time set for the receipt of the Offers. Except as provided in this subsection, Offers received after this time for any reason shall not be considered and shall not be

opened. An attempt will be made to contact the Offeror to make arrangements for the return of the Offer. An Offer will not be considered late if it is submitted via U.S. Postal Service Express Mail Next Day Service or a commercial express mail service and the Offeror provides written documentation showing that the Offer package was dispatched at the place of mailing two working days prior to the exact time set for the receipt of the Offers. The timeliness of submission is the sole responsibility of the Offeror.

- (d) Withdrawal of Offers. Any Offeror may withdraw its Offer, either personally or by written request, received by BMPO, at any time prior to the exact time set for the receipt of the Offers. An Offeror's negligence in preparing its Offer confers no right of withdrawal of its Offer after the exact time set for the receipt of the Offers. No Offer may be withdrawn for at least one hundred eighty (180) days following the Offer due date.
- (e) Bid Opening and Public Announcement of Proposals Received
 1. The Contracting Officer shall decide the date and time for Bid opening and announcement of Proposals received and such information shall be advertised to the public.
 2. All Bids received in accordance with the time set for receipt shall be publicly opened and when practical, read aloud by the Contracting Officer to the Persons present. The Bids received shall be recorded. If it is impractical to read the entire Bid, as where many items are involved, the total amount of the Bid shall be read.
 3. All Proposals received in accordance with the time set for receipt shall be publicly announced and recorded.
- (f) Determination of Responsiveness
 1. Any Offer which fails to conform to the essential and material requirements of the Solicitation Documents shall be rejected as non-responsive unless otherwise noted in the Solicitation Documents.
 2. Unless otherwise noted in the Solicitation Documents, an Offer shall be rejected when the Offeror imposes conditions which modify requirements of the Solicitation Documents. Offers will be rejected in cases in which the Offeror: (i) attempts to protect itself against future changes in conditions such as increased costs, if a total price to BMPO cannot be determined for evaluation; (ii) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery" or words with a similar meaning; (iii) states a price, but qualifies such price as being subject to "price in effect at time of delivery" or words with a similar meaning; (iv) where not authorized by the Solicitation Documents, conditions or qualifies the Offer by stipulating that the Offer is to be considered only if certain conditions demanded

by the Offeror are agreed to by BMPO or prior to date of award, Offeror receives (or does not receive) award under a separate Procurement; (v) limits the rights of BMPO under any Contract clause; or (vi) fails to comply with all of the requirements of the Solicitation Documents.

3. An Offer will be rejected if a bid bond, insurance or similar instrument is required and an Offeror fails to furnish it in accordance with the requirements of the Solicitation Documents and applicable law.
4. After submitting an Offer, if an Offeror transfers all of its assets or that part of its assets related to the Offer during the period between the Offer submission due date and the award, the Offer will be rejected.

(g) Determination of Responsibility

1. Offerors shall provide the BMPO with any information required to determine the responsibility of the Offeror.
2. Before award of the Contract, the Contracting Officer shall determine that an Offeror is responsible and that its prices are reasonable. Examples of a responsible Offeror is one that meets the standards set forth below:
 - a. Has adequate financial resources as of the date of the award, or the ability to obtain such resources as required during performance of the Contract.
 - b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - c. Has a satisfactory record of performance, including but not limited to conformance to Equal Employment Opportunity requirements and attainment of Disadvantaged Business Enterprise goals; achievement of a work record without debarment or suspension; schedule compliance; and budgetary compliance. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
 - d. Is otherwise qualified and eligible to receive an award under applicable laws and Regulations.
 - e. Has the necessary organization, experience, operational controls, and technical skills, or has demonstrated the ability to obtain them.
 - f. Has the necessary production, construction, and technical equipment and facilities, or has demonstrated the ability to obtain them.

- (h) Cancellation or Rejection of Offers. The Contracting Officer may cancel any Offer prior to or after the opening of Bids or receipt of Proposals. BMPO may reject any and all Offers when the Contracting Officer deems it to be in the best interest of BMPO to do so and where such cancellation or rejection is consistent with Federal, State, and local Procurement regulations. When resoliciting after the rejection of all Offers received, if there are no changes to the scope and if the Executive Director determines that there were sufficient document holders during the initial Procurement to assure a competitive pool of Offerors, he or she may limit notification of the solicitation to the document holders.
- (i) Mistakes in Offers
 1. General. Technicalities or minor irregularities in Offers may be waived if the Contracting Officer determines that it shall be in BMPO's best interest. The Contracting Officer may either give an Offeror an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its Offer or waive the deficiency if it is to BMPO's advantage to do so.
 2. Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by the Contracting Officer prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
 3. Mistakes Discovered Before Due Date of Offers. An Offeror can correct mistakes discovered before the Offer due date by withdrawing the original Offer and submitting a new Offer prior to the Offer due date.
- (j) Minor Irregularities in Offers
 1. A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in an Offer from the exact requirement of the Solicitation Document. If such a situation exists, the Contracting Officer shall allow the Offeror to correct the irregularity or shall waive the requirement if permitting such correction or waiving such requirement would not be prejudicial to other Offerors or provide the Offeror with a competitive advantage over the other Offerors.
 2. A defect or variation in an Offer is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial or negligible when contrasted with the total cost or scope of the Procurement.
 3. The Contracting Officer shall either give the Offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in an Offer, or waive the deficiency, whichever is to the advantage of BMPO.

- (k) Reasonableness of Price (Price/Cost Analysis)
 - 1. A price or cost analysis shall be used to determine the reasonableness of the price of the Offer.
 - 2. If only one Offer is received, the sole Offeror is required to provide information to, and cooperate with, BMPO as necessary in order for its Offer to be considered for award. No Offer will be accepted if the single Offer price appears unreasonable, if the single Offer is determined to be nonresponsive or if no determination is made as to the reasonableness of the single Offer.
 - 3. BMPO, at its sole option, may negotiate with one Offeror when only one responsive Offeror has submitted an Offer.
 - (l) Clarifications. Clarifications are limited exchanges that are permitted after receipt of Offers between BMPO and an Offeror concerning certain aspects of an Offer, including, but not limited to, past performance information, explanation of provided information or resolution of minor or clerical errors.
 - (m) Offer Guarantee. When deemed necessary by the Contracting Officer, Offer guarantees shall be prescribed in the public notice of the Solicitation. When Offer guarantees are required, unsuccessful Offerors shall be entitled to return of the Offer guarantee. A successful Offeror shall forfeit any Offer guarantee required by the Contracting Officer upon failure on its part to enter into a contract within fifteen (15) days after the award.
 - (n) Sureties On Performance. For Solicitations seeking commodities or services, the Contracting Officer, in his or her discretion, may include a performance bond as a requirement in such Solicitation.
 - (o) Required Contract Provisions. All contracts awarded by the MPO shall contain the provisions required by applicable Federal, State and local law, as may be amended from time to time, including, but not limited to, a statement of compliance with the Public Entity Crime Act (F.S. 287.133), the Anti-Kickback Act, Davis-Bacon Act, the Equal Employment Opportunity Order, remedies for contractor's breach of contract terms, insurance, and termination for cause and for convenience (for contracts in excess of \$10,000).
- (7) United States Department of Transportation (“USDOT”) / Federal Transit Administration (“FTA”) / Federal Highway Administration (“FHWA”) Required Disadvantaged Business Enterprise (DBE) and Title VI Programs and Limited English Proficiency Plan (LEP).
- (a) The MPO as a recipient of USDOT funds through the FTA/FHWA is required to develop and sustain DBE and Title VI of the Civil Rights Act Programs and LEP Plan.

- (b) Where the MPO is a recipient of USDOT funds through the FTA/FHWA, all contracts awarded by the MPO utilizing these funds shall be subject to:
 - (i) applicable Federal, State and local law, as may be amended from time to time;
 - (ii) the MPO's DBE and Title VI Programs and LEP Plan; and
 - (iii) include the provisions required by these Programs and Plan.

- (8) Competitive Sealed Bidding
 - (a) Purpose: To solicit competitive single or multi-step sealed bids. The Executive Committee or MPO Board will consider the award of the Contract on the basis of the lowest bid price submitted by a responsive and responsible Offeror.

- (9) Request for Proposals (RFP)
 - (a) Purpose: To engage in a competitive Procurement process that requires evaluation of Offeror's proposed costs and understanding of the Contract performance requirements and Offeror's abilities to perform the Work, in accordance with established evaluation criteria. The RFP Procurement process does not require award to the Offeror with the lowest financial offer.

 - (b) Evaluation of Proposals: All Proposals received shall be evaluated by an Evaluation and Selection Committee (Committee) comprised of BMPO staff members and may include other governmental agency personnel or individuals selected by the Executive Director. In the event of an absence of a Committee member(s) the Contracting Officer has the discretion to proceed with an evaluation without a full complement of members provided a minimum of three (3) members are physically present. The Committee may reduce the number of firms to those that are within the Competitive Range for further discussions (assuming two or more Offerors submit Proposals.). The Committee may request oral presentations from the firms and seek clarifications about the Proposals from the firms when a presentation will afford the Committee the opportunity to better ascertain qualifications of the proposers and the technical requirements of the Proposal. The requirements for presentations or discussion will be the same for each firm. Clarifications may also be requested in writing from the firms. Discussions during presentations are not intended to include negotiations.

 - (c) Discussions
 - 1. Discussions are not required to be conducted with any Offeror provided: (i) the Solicitation did not commit in advance to discussions or it notified all offerors that award might be made without discussion and the award is in fact made without any written or oral discussion with any proposer; (ii) the Procurement is for Supplies for which prices or rates are fixed by law and

Regulation; (iii) the time for delivery will not permit discussions; or (iv) due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial Proposal would result in a fair and reasonable price.

2. If discussions are conducted with one Offeror, discussions must be conducted with all Offerors within the Competitive Range.
 3. Following the evaluation and if applicable any presentations and discussions, the Contracting Officer shall consolidate the cost and technical evaluations of the Committee and all score sheets along with their comments and recommendations. After reviewing the evaluations and recommendations made by the Committee, the Contracting Officer shall provide the Committee's recommendation to the Executive Director for consideration of Contract award by the MPO Executive Committee or MPO Board, if it is a Formal Procurement.
 - (d) Contract Award: After evaluation of Proposals in accordance with the criteria set forth in the RFP, the MPO Executive Committee or MPO Board will consider awarding the Contract to the Offeror of the Proposal most advantageous to the BMPO, price and other factors considered.
- (10) Procurement of Professional, Architectural, Engineering, Testing, Landscape Architectural, and Land Surveying Services
- (a) Purpose To comply with the requirements of Section 287.055, Florida Statutes, or this Policy.
 - (b) Requests for Qualifications (RFQs) Solicitation: When procuring professional services on a Consultants' Competitive Negotiations Act ("CCNA") Project or Continuing Contract, a request for RFQs will be publicly advertised.
 - (c) Review of Qualifications: All qualifications and submittals of those firms responding to an RFQ shall be reviewed and evaluated by an Evaluation and Selection Committee (Committee) comprised of BMPO staff members and may include other governmental agency personnel selected by the Executive Director. In the event of an absence of a Committee member(s) the Contracting Officer has the discretion to proceed with an evaluation without a full complement of members provided a minimum of three (3) members are physically present.
 - (d) Short List: The Committee shall reduce the number of firms (i.e. short list) to at least three for further discussions (assuming three or more proposers submit responses to the RFQs). In short listing the firms, the Committee will attempt to select the best qualified firms to render the solicited service for the particular CCNA Project or Continuing Contract without considering price.

- (e) **Presentations:** The Committee will request presentations from the shortlisted firms and discuss the Proposals with the firms when a presentation will afford the Committee the opportunity to better ascertain qualifications of the proposers, seek clarifications about qualifications and address the technical requirements of the Proposal. The requirements for presentations or discussion will be the same for each firm. Clarifications may also be requested in writing from the firms. Discussions during presentations are not intended to include negotiations.
- (f) **Ranking of Firms:** The Committee members, after discussions and/or presentations by each short-listed firm, will finalize their scoring, as they deem appropriate, and vote on the final ranking. Total scores for each evaluation criteria shall be based upon an average of the scores of all Committee members unless otherwise provided for in the Solicitation Documents.
- (g) **Ranking Reported to the Executive Director:** After reviewing the evaluations and recommendations made by the Committee, the Contracting Officer shall provide the Committee's recommendation to the Executive Director for consideration of Contract award by the MPO Executive Committee or MPO Board, if it is a Formal Procurement.
- (h) **Negotiations:** Upon approval by the Executive Director of the highest ranked firm, the Contracting Officer shall request the fee Proposal from the highest ranked firm, and the BMPO negotiations team, as approved by the Executive Director, will attempt to negotiate a Contract with the highest ranked firm to perform services at a compensation which is determined by the Executive Director to be fair and reasonable. If the negotiations team is unable to negotiate a satisfactory Contract with the firm obtaining the highest ranking, then negotiations with that firm shall be formally terminated. The negotiations team then shall undertake negotiations with the second ranked firm. If these negotiations also prove unsatisfactory, negotiations shall again be terminated and the negotiations team will negotiate, in turn, with each firm in accordance with its ranking by the Committee, until an agreement is reached, or the short list is exhausted. When a short list is exhausted, a new Solicitation for RFQs in accordance with the provision of this subsection must be initiated in the event BMPO decides it still wishes to procure the Services.

If CCNA indefinite delivery/indefinite quantity (IDIQ) continuing contracts are to be awarded, the Contracting Officer shall request an audited overhead and certified payroll rates package, to be broken down by discipline and classification, to be provided by the intended contract awardees prior to contract award. Fee negotiations will take place on a Work Order basis.
- (i) **Compensation:** BMPO shall negotiate a Contract with the most qualified firm for professional services (or firms on a Work Order basis in the case of Continuing Contracts) at compensation which the Contracting Officer determines is fair and

reasonable. In making such determination, BMPO shall conduct an analysis of the cost of the professional services, including their scope and complexity.

- (j) Award of Contract: At the successful conclusion of negotiations and approval by the Executive Director, a Contract will be presented to the MPO Executive Committee or MPO Board for award. The Executive Director, MPO Executive Committee or MPO Board will review the selection process and may reject all Proposals if it is determined that such rejection is consistent with the provisions of this Chapter. If a single or multiple CCNA indefinite delivery/indefinite quantity (IDIQ) continuing contract(s) has been recommended for award, then the master Contract(s) will be presented to the MPO Executive Committee or MPO Board for award. All subsequent negotiated Work Orders will be presented to the MPO Executive Committee, MPO Board or the Executive Director, if the Contract amount is within his or her approval authority, for award.
 - (k) Contingent Fee Disclosure: Each Contract entered into by BMPO for professional services shall contain a prohibition against contingent fees. For the breach or violation of this provision, BMPO shall have the right to terminate the Contract without liability and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration, as well as any damages suffered by BMPO as a result.
 - (l) Library of Service Providers. The MPO may establish a pool of qualified consultants, in accordance with applicable law, to be used as needed to provide prompt and efficient professional services required by the MPO on a project-by-project basis, as may be authorized by the MPO from time to time. Notwithstanding any provisions in these Procurement Rules to the contrary, the Executive Director may procure a Contract utilizing the library of service providers by selecting a firm from the library that can provide the required services requested by the MPO. The MPO reserves the right to select one or more firms to perform a specific project or projects. All Contracts shall be subject to the expenditure limits set forth in Chapter 3 of these Procurement Rules or a Contract that would result in a Person from the library receiving Contracts from the MPO for the same services in a cumulative amount exceeding the expenditure limits set forth in Chapter 3 of these Procurement Rules, during a single fiscal year, shall be approved by the MPO Executive Committee or MPO Board as warranted by BMPO Rules.
- (17) Sole Source Procurement
- (a) The Executive Director is responsible for making the final determination on Sole Source Procurements that are within the Executive Director's approval authority or for making a final recommendation to the MPO Executive Committee or MPO Board when the Contract amount is greater than the Executive Director's approval authority.

- (b) Sole Source Procurement may be used only when a Contract award is infeasible under other competitive Procurement methods and at least one of the following circumstances applies: (i) the item is available only from a single source; (ii) the public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to BMPO, or a situation requiring immediate action by BMPO, as determined by the Executive Director) will not permit a delay resulting from a competitive Solicitation; (iii) FTA/FHWA authorizes noncompetitive negotiations under the same or similar conditions; (iv) after Solicitation of a number of sources, competition is determined inadequate; or (v) the item is an associated capital maintenance item that has been determined by staff to be safety critical.
 - (c) A cost analysis verifying the proposed cost data and the evaluation of the specific elements of costs and profit, is required.
 - (d) The Executive Director or designee shall negotiate, as appropriate, price, delivery, and terms with the sole source Contractor.
- (18) Communications and Cone of Silence (the following shall be inserted in all Formal Procurements):

ANY COMMUNICATIONS BETWEEN ANY POTENTIAL VENDOR, SERVICE PROVIDER, BIDDER, LOBBYIST OR CONSULTANT AND ANY MPO BOARD MEMBER, STAFF MEMBER, COMMITTEE MEMBER, OR CONSULTANT OF BMPO REGARDING THIS PROCUREMENT ARE STRICTLY PROHIBITED FROM THE DATE ON WHICH THE SOLICITATION ADVERTISEMENT APPEARS ON BMPO'S WEBSITE THROUGH THE DATE OF CONTRACT AWARD AND FROM THE DATE OF THE FILING OF ANY NOTICE OF PROTEST OF AWARD THROUGH RESOLUTION FOR THE PARTIES INVOLVED IN THE PROTEST OR CONTRACT AWARD, WHICHEVER IS LONGER.

The only exceptions to this are: (i) any communications with the Contracting Officer or BMPO's designated point of contact; (ii) site visits to the apparent low Bidder's or apparent successful proposer's facilities (iii) any communications made on the record at a publicly noticed meeting of BMPO, or (iv) negotiation meetings held by the BMPO negotiations team or Contracting Officer.

It may be determined that other Contracts such as Sole Source Procurements may include a Cone of Silence provision and if so, the Cone of Silence language may be applied for that specific Procurement. Any violation of the Code of Silence requirements shall constitute grounds for immediate and permanent disqualification of the offending firm and possible debarment or suspension. At the Executive Director's sole discretion, it may also serve as grounds for the voiding of any Contract with the violator and/or to temporarily or permanently debar the violator from future work with BMPO.

(19) Emergency Procurements

Notwithstanding any other provision of these Rules, the Executive Director may make Emergency Procurements when the Executive Director determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to BMPO requires emergency action. After the Executive Director makes such a written determination, BMPO may proceed with the Procurement of Services or Supplies necessitated by the immediate danger, without competition. However, such Emergency Procurement shall be made with such competition as is practicable under the circumstances. The Executive Director shall furnish a copy of the written determination and any other documents relating to the emergency action to the MPO Board at its next regularly scheduled meeting.

(20) Other Methods

The Executive Director may develop and implement procedures for other methods of Procurement, including, but not limited to, Electronic Procurement, Cooperative Purchasing, and Invitation to Negotiate, and shall promulgate rules for any such procedures he or she develops as soon as doing so would be both feasible and practicable.

(21) Authorization for the Use of Electronic Transmissions

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State law, so long as there exists:

- (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) a method for accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(22) Disadvantaged Business Enterprises

- (a) Contractors shall cooperate with BMPO in meeting commitments and goals with regard to the maximum use of Disadvantaged Business Enterprises (DBE). Best efforts shall be used to ensure DBEs receive the maximum opportunity to compete for subcontracts.
- (b) Contractors shall ensure that certified DBE firms are provided with the maximum opportunity to participate in the performance of work under a contract. The DBE participation which Contractors commit to in their Offers that meets or exceeds the Contract goal shall become the goal of record, and BMPO shall monitor the DBE participation committed to in the Offer. If Contractors cannot meet the stated DBE Contract goal, they shall provide BMPO with information necessary to establish each Contractor's good faith efforts to obtain the DBE participation goal.

Successful achievement of good faith efforts will be based on criteria specified by BMPO in the Contract documents.

CHAPTER 5.

AUTHORIZATION AND PROCEDURE TO PROVIDE SERVICES TO MPO MEMBERS

- (1) **Agreement Required.** The MPO may perform transportation planning services for those MPO members who are signatories to the effective “MPO Interlocal Agreement For Creation of the Broward Metropolitan Planning Organization,” as such may be amended, through separate Contracts as approved by the MPO Board. For purpose of this Chapter 5, MPO members include all voting members, alternate members and non-voting member(s). The provision of such transportation planning services shall be pursuant to a written Contract between the MPO and the respective member. Services provided by the MPO may include, but not be limited to, administrative, technical, graphical, public engagement and product review activities. Such services may be provided by MPO staff or by qualified consultants with whom the MPO has retained services pursuant to these Procurement Rules. A Contract to provide services to an MPO member shall be approved in accordance with Chapter 3 of these Procurement Rules.
- (2) **Services to be Provided. Members Responsible For Consultant Fees, Costs and Expenses.** The MPO may assist an MPO member by providing additional resources to accomplish assignments as authorized by the MPO member. A written Contract with a MPO member shall provide for those services specific to the respective MPO member’s requirements, a particular project, or to provide support for transportation and/or related planning activities and services as may be requested from time to time by the MPO member and accepted by the MPO. Each Contract shall contain a general scope of services that outlines services (or separate tasks) that may be assigned to the MPO under one or more general planning Contracts and/or Work Orders. Pursuant to the Contract, the MPO member shall be financially responsible for the total costs associated for those services as provided pursuant to each services Contract. The MPO shall establish and maintain separate cost recovery accounts for the benefit of each participating MPO member, which member may be required, prior to the commencement of any such services, deposit and maintain a sufficient balance to ensure the payment of the fees and costs reasonably anticipated for these services whether provided through MPO consultants or by MPO staff. The MPO shall have no obligation to independently fund the fees, costs or expenses of these services.
- (3) **Use of Library Providers.** In providing these services to an MPO member, the MPO may utilize consultants in the MPO’s library of service providers that have Continuing Contracts with the MPO. The use of any Continuing Contract shall conform to the requirements of Section 287.055, Florida Statutes, as may be amended and any successor statute.
- (4) **General planning Contracts or Work Orders for services issued pursuant to a Contract with an MPO member shall be approved by the MPO Executive Committee or the MPO Board**

as provided in Chapter 3 of these Procurement Rules. General planning Contracts or Task Work Orders may be approved by the Executive Director in accordance with the expenditure limits set forth in Chapter 3 of these Procurement Rules. All general planning Contracts or Task Work Orders issued by the MPO pursuant to the library of service providers shall conform to the requirements of Chapter 4 (16) (1) of these Procurement Rules.

CHAPTER 6. SURPLUS PROPERTY

- (1) Applicable law. All Surplus Property shall be disposed of in accordance with Federal requirements; Chapter 274, Florida Statutes; and the provisions of this Section. Depending on the cost and age of the Surplus Property, and whether the Surplus Property was acquired with Federal funds, approval from FTA or FHWA may be needed before being disposed.
- (2) Market value exceeds \$35,000. All sales of personal property (except trade-in personal property) that has become obsolete and unusable, or the sale of which is otherwise determined to be in the best interest of MPO, the market value of which is expected to be greater than thirty-five thousand dollars (\$35,000), shall be made to the highest, most responsive and responsible bidder obtained in accordance with Chapter 4 of these Rules. Property eligible to be sold under this subsection may also be sold through an appropriately advertised public auction (Publication of notice not less than one week or more than two weeks prior to sale in a newspaper having a general circulation in the Broward County area). Surplus property may be disposed of for value to any Person or may be disposed of for the value without bids to any governmental unity or political subdivision or offered by sale or donation to private nonprofit agencies as defined in Section 273.01(3), Florida Statutes. All such sales or donations shall have the prior approval of the MPO Executive Director consistent with FTA or FHWA requirements.
- (3) Market value between \$5,000 and \$35,000. All sales of personal property (except trade-in personal property) that has become obsolete and unusable, or the sale of which is otherwise determined to be in the best interest of MPO, the market value of which is expected to be greater than five thousand dollars (\$5,000) but less than thirty five thousand dollars (\$35,000), shall be made to the highest, most responsive and responsible bidder obtained in accordance with the procedures in Chapter 4 of these Rules. Property eligible to be sold under this subsection may also be sold through and appropriately advertised public auction (publication of notice not less than one week or more than two weeks prior to sale in a newspaper having a general circulation in the Broward County area). Surplus property may be disposed of for value to any Person or may be disposed of for the value without bids to any governmental unity or political subdivision, or offered by sale or donation to private nonprofit agencies as defined in Section 273.01(3), Florida Statutes. All such sales or donations shall have the prior approval of the MPO Executive Director consistent with FTA and FHWA requirements.
- (4) Market value less than \$5,000. All sales of personal property (except trade-in personal property) that has become obsolete or unusable, or the sale of which is otherwise

determined to be in the best interest of the MPO, and the value of which is expected to be less than five thousand dollars (\$5,000), may be disposed of for value to any Person or may be disposed of for value without bids to the State, to any governmental unit or to any political subdivision, BMPO staff, or, if the property is without commercial value, it may be donated, destroyed, or abandoned. Property, the value of which is estimated to be under \$5,000, may be disposed of in the most efficient and cost-effective means as determined by the Executive Director. Sale may be made to the highest and most responsible bidder. Property eligible to be sold under this section may also be sold under the procedures contained in Chapter 4 of these Rules or at an appropriately advertised public auction.

- (5) Awarding agency share. For the sale of original or replacement items of equipment, the fair market value of which exceeds \$5,000, the Accounting Manager shall make available to the awarding agency an amount calculated by multiplying the current market value or proceeds from the sale by the awarding agency's share of the equipment.

CHAPTER 7. DEBARMENT AND SUSPENSION PROCEDURES

- (1) Authority: After thirty (30) days notice to the Person involved and a hearing before the Executive Director, the Executive Director, after consultation with the General Counsel, shall have authority to debar a Person for cause from consideration for award of future Contracts. The debarment shall be for a period commensurate with the seriousness of the cause(s), but no more than three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful or egregious, a longer term of debarment will be imposed, up to a period of five (5) years. The Executive Director shall also have the authority to suspend a Person from consideration for award of a Contracts if he or she:
 - (a) as adequate evidence that there may be a cause for debarment of the Person; and
 - (b) Concludes that immediate action is necessary to protect BMPO's interests.
 - (c) If no debarment proceeding follows the suspension, the suspension shall not be for a period exceeding twelve (12) months.
- (2) Cause for Debarment. The causes for debarment, when based on a preponderance of the evidence, include the following:
 - (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such contract or subcontract.
 - (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other

offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.

- (c) Conviction for any public entity crime as defined under Section 287.133, Florida Statutes, or any federal public entity crime law.
 - (d) Conviction under state or Federal antitrust statutes arising out of the submission of Bids or Proposals.
 - (e) Violation of Contract provisions, including deliberate failure without good cause to perform in accordance with the terms and specifications or within the time limit provided in the Contract; or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts with BMPO or another governmental entity, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (f) Refutation of an offer by failure to provide bonds, insurance or other required certificates within the time period set forth in Contract documents.
 - (g) Refusal to accept a purchase order, agreement, or Contract, or to perform provided such order was issued timely and in conformance with the offer received or a Change Directive.
 - (h) Presence of principals or corporate officers in the Business, who were principals within another Business at the time when the other Business was suspended within the last three years under the provisions of this subsection.
 - (i) Violation of the ethical standards for public business set forth in Florida Statutes.
 - (j) Unilateral withdrawal of an Offer before one hundred eighty (180) days have elapsed from the date of due date of Offers or a time specified in the ITB, RFP, or RFQ.
 - (k) Violation of this Policy's Cone of Silence requirements.
- (3) Decision: The Executive Director shall issue a written decision to debar or suspend. The decision shall state the reason for the action taken and, if the decision is to debar, the length of the debarment; and, notice to the debarred or suspended Person of his or her right to appear before the MPO Board to appeal the Executive Director's decision.
- (4) Notice of Decision: A copy of the decision for the debarment or suspension shall be mailed or otherwise furnished no later than three (3) business day from the decision to the debarred or suspended Person and any other party intervening.

(5) Hearing Procedure for Debarment, Suspension of Vendors

- (a) Right of Appeal: Any Person dissatisfied or aggrieved with the notification of the Executive Director's determination regarding a determination to debar or suspend must, within ten (10) calendar days of such notification, appeal said determination to BMPO in accordance with the procedures contained in this subsection, or it shall have waived such right.
- (b) Hearing Date: Within ten (10) calendar days from the receipt of the notice of appeal, BMPO shall schedule a hearing to be held at the next regularly scheduled meeting of the MPO Executive Committee, at which time the Person shall be given the opportunity to demonstrate why the decision of the Executive Director should be overturned.
- (c) Hearing Procedure:
 - 1. BMPO shall cause to be served upon the Person a notice of hearing, stating the time and place of the hearing. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the Person.
 - 2. The Person shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was covered under direct examination, and to impeach any witness regardless of which party first called him to testify.
 - 3. In any hearing before the MPO Executive Committee, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida.
 - 4. Within thirty (30) calendar days from the hearing, the General Counsel shall complete and submit to the Executive Director a final order consistent with the MPO Executive Committee's decision regarding the appeal. The Executive Director shall then sign the order and issue the final order to the Person who filed the appeal. The final order shall include the MPO Executive Committee's findings of fact and conclusions as to whether the debarment or suspension should be upheld or overturned.
 - 5. All Persons must comply with this procedure before challenging the decision pursuant to any other procedure. All attorney's fees, costs, and expenses incurred by the Person who files the appeal to the MPO Executive Committee shall be solely borne by that Person regardless of the outcome of the appeal.

(6) Reinstatement

- (a) Grounds: Request for reinstatement shall be made in writing based upon the following: (i) discovery of new and material evidence not previously available; (ii) dismissal of the indictment or reversal of the conviction; and (iii) bona fide change in ownership or management sufficient to justify a finding of present responsibility.
- (b) Procedures: The request for reinstatement shall be forwarded by the Executive Director to the MPO Board for a determination on reinstatement. The determination whether to reinstate shall be based on the written submission of evidence, without further hearing. Upon consideration of the written submission and any response from the Executive Director, the MPO Board shall make a determination whether or not reinstatement is warranted under the standards set forth above.

CHAPTER 8. VENDOR PROTEST PROCEDURES

The following are the procedures for protesting Solicitations and Contract awards:

- (1) Protest Policy: BMPO provides Interested Parties with the opportunity for an administrative review of written Protests and strives to resolve any Protest expeditiously at the Contracting Officer's level to the maximum extent possible.
- (2) Filing a Protest: Only an Interested Party may file a Protest regarding the Solicitation Documents issued by BMPO by filing a written Notice of Protest with BMPO within seventy-two (72) hours from the availability date of the Solicitation Documents set forth in the advertisement posted on BMPO's website, excluding Saturdays, Sundays and legal holidays observed by BMPO or from the date of the issuance of any addenda if specifically relating to the content of the addendum. Failure to file a written Notice of Protest within the provided timeframes, for any reason whatsoever, shall constitute a complete and absolute waiver of Protest rights.

With respect to any Protest of Contract award, the Notice of Protest shall be filed within the Protest Period. BMPO shall require in its Solicitation Documents that an Interested Party post with its formal Protest a protest bond in the amount of 1% of the Contract amount or \$5,000, whichever is greater. Payment in the form of a cashier's check is acceptable. In the event the Interested Party receives an adverse determination on its Protest, the bond shall be forfeited to BMPO.

An Interested Party shall file a formal written Protest within ten (10) business days of filing a Notice of Protest. In order to be considered, the Protest must contain: (i) the Interested Party's name, address, telephone number, email address, and taxpayer identification number; (ii) identification of the Procurement or Contract at issue; (iii) a complete and concise statement of the grounds for the Protest, supported by relevant documents; (iv)

identification of all Persons with information germane to the Protest; (v) a chronology of efforts made to resolve the matter prior to filing the Protest; and (vi) a statement of the relief requested.

Filing of a Written Notice of Protest or Formal Protest: All Written Notices of Protests or Formal Protests must be filed with the Contracting Officer. All Protests must be received at the address shown on the Solicitation Documents during normal office hours of 9:00 am to 5:00 pm, local time. Failure to file a Notice of Protest or a Protest as discussed herein, shall constitute a complete and absolute waiver of any such rights.

- (3) Stay of Contract Award. In the event of a timely protest, the Contracting Officer shall stay the award of the contract, unless, after consulting with the MPO attorney, the Contracting Officer determines that the award of the contract without delay is necessary to protect substantial interests of the MPO.
- (4) Protest Committee. The protest committee shall have the authority to review, settle and resolve the protest. The protest committee shall be comprised of the Contracting Officer, the finance officer, and, if applicable, the director or designee of the department or office for which the contract is to be awarded. The committee's review shall be informal. The Contracting Officer, or the director or designee of the department or office for which the contract is to be awarded, shall serve as the chairperson of the committee. The Contracting Officer shall provide for the disclosure of information regarding the protest to the appropriate awarding agency. The MPO General Counsel, or designee, shall be counsel to the committee.
- (5) Protest Committee Determination. The Contracting Officer shall reduce the protest committee's decision to writing and shall transmit or otherwise furnish a copy of the decision to the Interested Party. If the protest committee determines that the pending award of a contract or any element of the process leading to the award involved a significant violation of law or applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken. If the protest committee determines that the protest is without merit, the process leading to the award shall proceed forthwith.

The decision of the protest committee shall be final and conclusive unless, within seven (7) business days from the date of such decision, BMPO receives from the Interested Party a written request for review of the decision addressed to the Executive Director. The decision of the Executive Director shall be final and conclusive.

- (6) Remedies: If BMPO determines that a Protest is valid, the Executive Director, at his or her sole discretion, may: (i) Direct the Contracting Officer to issue a new or amended Solicitation; (ii) award the Contract or recommend that the MPO Executive Committee or MPO Board award the Contract, if the Contract amount exceeds the Executive Director's approval authority; (iii) terminate or suspend performance of an awarded Contract that is the subject of the Protest; or (iv) take any other action permitted by law to promote compliance with BMPO policies and applicable law.

- (7) Informal Resolution: The Contracting Officer may, at his or her sole discretion, agree to meet with the Interested Party within seven (7) calendar days, excluding Saturdays, Sundays and legal holidays observed by BMPO, after the filing of a Notice of Protest to attempt to resolve the matter.

CHAPTER 9. UNSOLICITED PROPOSAL POLICY

- (1) Definition

An unsolicited proposal is a written proposal for a new or innovative idea that is submitted to BMPO on the initiative of the offeror for the purpose of obtaining a contract or other agreement with BMPO, and that is not in response to a request for proposal, invitation to bid or any other BMPO initiated solicitation or program. All unsolicited proposals are subject to approval by the authorization granted in Chapter 3 of the BMPO Procurement Rules. As the term is used herein, it shall also refer to any proposals submitted in response to the advertisement referenced in Section (5)(a)(ii) of this Policy. The term “proposal” is also used herein to reference an unsolicited proposal.

- (2) Policy

It is the policy of the BMPO to accept the submission of new and innovative ideas.

Unsolicited proposals allow unique and innovative ideas or approaches that have been developed to be made available for use in accomplishment of the BMPO mission. Unsolicited proposals are offered with the intent that BMPO may enter into a contract with the offeror for research and development, new services, or other efforts supporting the BMPO mission, and often represent a substantial investment of time and effort by the offeror.

A valid unsolicited proposal must:

- (a) Be innovative and unique;
- (b) Be independently originated and developed by the offeror;
- (c) Be prepared without BMPO supervision, endorsement, direction, or direct BMPO involvement, except for preliminary meetings with BMPO staff for informational purposes and/or requests for information; and
- (d) Include sufficient detail to permit a determination that BMPO support could be worthwhile and the proposed work could benefit the agency’s mission responsibilities.

All unsolicited proposals will be treated as public records, in accordance with Florida Statutes, and will be made available to the public upon request.

(3) Content of Unsolicited Proposals

Upon receipt of an unsolicited proposal, BMPO staff shall ensure that the proposal includes the following information to permit consideration in an objective and timely manner. If the proposal does not contain the information required in (3)(a) and (3)(b) below, BMPO staff shall request the missing information from the proposer. The proposal cannot be accepted until receipt of the requested missing information.

- (a) Basic information:
 - (i) Offeror's name and address and type of organization; e.g., profit, non-profit, educational, small business;
 - (ii) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
 - (iii) Identification of proprietary data to be used only for evaluation purposes;
 - (iv) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;
 - (v) Date of submission; and
 - (vi) Signature of a person authorized to represent and contractually obligate the offeror.
- (b) Information Required
 - (i) Concise title and abstract (approximately 200 words) of the proposed effort;
 - (ii) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of BMPO's mission;
 - (iii) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and
 - (iv) Type of support needed, if any, from the BMPO; e.g., facilities, equipment, materials, financial or personnel resources.
- (c) Fee
 - (i) A fee of \$5,000 payable to the "Broward Metropolitan Planning Organization" must accompany an unsolicited proposal or proposal submitted in response to the advertisement addressed in Section (5)(a)(ii) of this Policy ("Payment"). Proposals submitted without the Payment shall not

be accepted. Unsolicited proposals submitted by governmental entities shall be exempt from the payment of any fees.

- (ii) Payment shall be made by cash, cashier's check, or any other non-cancelable instrument. Personal checks will not be accepted.
- (iii) If the Payment is not sufficient to pay BMPO's costs of evaluating the unsolicited proposal or negotiating a contract with the successful proposer, BMPO shall request in writing additional amounts required based on good faith efforts to estimate these additional amounts. The proposer submitting the proposal shall pay the requested additional fee within thirty (30) days. Failure to pay any additional fees shall result in the proposal being rejected or the negotiations being suspended or terminated.
- (iv) BMPO shall refund any Payment, or subsequent additional fees, in excess of the costs of evaluating the proposal and negotiating the contract after the evaluation and/or negotiation is complete.
- (v) The fee requirement can be waived if it conflicts with federal requirements or can be waived or reduced by the Executive Director upon presentation of justification by the proposer.
- (vi) Unsolicited proposals valued at \$100,000 or less shall be exempt from the Payment requirement in Section (3)(c)(i) and (3)(c)(iii). However, the BMPO Executive Director or his/her designee shall have the authority to require a payment (in an amount not to exceed the Payment amounts provided herein) and/or a subsequent fee be paid by the proposer in the event that the staff time devoted to the unsolicited proposal, or outside consulting costs, is/are substantial, as determined solely by the BMPO Executive Director or his/her designee.

(4) Supporting Information

The unsolicited proposal shall also include the following information:

- (a) Financial plan that includes in sufficient detail for meaningful evaluation: (a) proposed price or total estimated cost for the effort; and (b) identifies all required funding sources and timing of funding ;
- (b) Period of time for which the proposal is valid (a 6-month minimum is suggested);
- (c) Type of contract preferred;
- (d) Proposed duration of effort;

- (e) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;
- (f) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
- (g) The names and telephone numbers of any BMPO points of contact (whether staff or outside consultants) already contacted regarding the unsolicited proposal.

(5) BMPO Procedures

- (a) The following procedures shall be followed by the BMPO as part of the consideration of the acceptance and negotiation of an unsolicited proposal:

- (i) Within sixty (60) days of receipt of an unsolicited proposal and before initiating a comprehensive evaluation, BMPO staff shall determine if the proposal:

- 1. Is a valid unsolicited proposal, meeting the requirements of this Policy Is related to BMPO's mission;
 - 2. Contains sufficient technical and cost information for evaluation; and
 - 3. Has been approved by a responsible official or other representative authorized to obligate the offeror contractually.

- (ii) If the proposal(s) meets these requirements, BMPO shall promptly acknowledge receipt and publicly advertise on its website its receipt of the proposal and solicitation for receipt of any additional proposals. Additional proposals are due within thirty (30) days of the publication date of the advertisement or the date stated in the advertisement, whichever is later. Following the due date for proposals, BMPO shall promptly begin to process any related unsolicited proposals received.

- (b) Comprehensive Evaluation:

- (i) When performing a comprehensive evaluation of an unsolicited proposal, evaluators (comprised of BMPO staff) shall consider the following factors, in addition to any others appropriate for the particular proposal:

- 1. Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;
 - 2. Overall scientific, technical, or socioeconomic merits of the proposal;

3. Potential contribution of the effort to BMPO's specific mission;
 4. The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;
 5. The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and
 6. The realism of the proposed cost.
- (ii) The evaluators shall notify the BMPO Executive Director of their recommendation(s) when the evaluation is completed.
- (iii) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition.
- (iv) BMPO staff shall have at least ninety (90) days from the due date for proposals stated in the advertisement provided for in Section (5)(a)(ii) to complete its comprehensive evaluation and provide its recommendation to the BMPO Executive Committee. When deemed necessary due to the complexity of the issues or other special circumstances, this timeframe may be extended by the BMPO Executive Director.
- (c) Contract Negotiations:
- (i) BMPO may commence negotiations on a sole source basis when an unsolicited proposal has received a favorable comprehensive evaluation by BMPO staff and has been endorsed and approved by the BMPO Executive Committee and the requirements for a sole-source procurement in accordance with BMPO's Procurement Rules and procedures have been met.
- (d) Proposal Selection and Contract Award:
- (i) The selection of a successful proposal and/or award and execution of any contract or agreement relating to an unsolicited proposal is subject to approval by the BMPO Executive Committee or BMPO Board. The BMPO Procurement Rules shall govern the drafting of any contract between the BMPO and the proposer.
 - (ii) If an unsolicited proposal involves the use of any federal funds, in whole or in part, the award and execution of any contract or agreement relating to the unsolicited proposal is contingent upon it satisfying any applicable federal requirements, which in the case of a conflict with the provisions of this policy shall prevail.

(e) Rejection of Unsolicited Proposal

BMPO shall return an unsolicited proposal to the offeror at any time, citing reasons, when it is determined that the proposal or the proposal's subject matter:

- (i) Is substantially available to BMPO without restriction from another source;
- (ii) Closely resembles a proposed or pending competitive acquisition requirement;
- (iii) Does not relate to BMPO's mission;
- (iv) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal; or
- (v) Fails to meet the requirements listed herein, including but not limited to, the Payment requirement and the requirements of Section (5)(d)(ii).

(f) Cone of Silence.

- (i) Any communications between a proposer and any board member, staff member, or consultant of BMPO regarding its proposal are strictly prohibited from the date on which the proposer's proposal is received by BMPO or the date of advertisement (whichever is earlier) through the date of contract award. If multiple unsolicited proposals are received prior to advertisement, the cone of silence shall apply to each proposer as of the date of proposal submittal.
- (ii) The only exceptions to this are: (i) any communications with the Procurement Officer or BMPO's designated point of contact; (ii) site visits to the proposer's facilities (iii) any communications made on the record at a publicly noticed meeting of BMPO, or (iv) negotiation meetings held by the Procurement Officer.
- (iii) Any violation of the Cone of Silence requirements shall constitute grounds for immediate and permanent rejection of the proposer's proposal. At the Procurement Officer's sole discretion, it may also serve as grounds for the voiding of the resulting contract with the proposer.