

## 1.0 GENERAL TERMS AND CONDITIONS

(Rev 03/01/2021)

**Intent:** The General Terms and Conditions as described herein apply to the acquisition of goods/equipment/services with an estimated aggregate cost of \$25,000.00 or more.

### Definition:

“Agreement” or “Contract” – Means a binding written agreement for the solicited Work and/or Services required by the MPA, including purchasing orders, containing terms and obligations governing the relationship between the MPA and Contractor.

“Contractor” shall mean selected Bidder/Proposer who enters into an Agreement with MPA.

“ITB” – Invitation to Bid.

“ITQ” – Invitation to Quote.

“MPA” – Means Miami Parking Authority a/k/a The Department of Off-Street Parking of The City of Miami.

“RFLI” – Request for Letters of Interest.

“RFP” - Request for Proposal.

“RFQ” – Request for Qualifications.

“Scope of Services” or “Scope of Work” – Means the work to be performed by the selected Contractor under this Contract.

“Services” – included all labor, materials, equipment, supervision, expertise, maintenance, repair, and services provided to be provided by the Awarded Vendor to successfully perform the Services required under this solicitation.

“Solicitation” – Means this Request for Proposal document and all associated addenda and attachments.

**1.1 INVITATION - This Invitation is extended to Proposers/Bidders that can provide the requirement/work specified herein. The requirements presented in this Solicitation represents the MPA's anticipated needs.**

**1.2 ACCEPTANCE OF GOODS OR EQUIPMENT-** Any good(s) or equipment delivered under this Solicitation, if applicable, shall remain the property of the seller until a physical inspection and actual usage of the good is made, and thereafter is accepted as satisfactory to the Miami Parking Authority (MPA). It must comply with the terms herein and be fully in accordance with the specifications and of the highest quality. In the event the goods/equipment supplied to MPA are found to be defective or does not conform to the specifications, the MPA reserves the right to cancel the order upon written notice to the Contractor and return the product to the Contractor at the Contractor's expense.

**1.3 ACCEPTANCE OF OFFER -** The signed or electronic submission of your Solicitation response shall be considered an offer on the part of the Bidder/Proposer; such offer may be deemed to be accepted upon issuance by MPA of a purchase order or execution of an Agreement.

**1.4 CHANGES/MODIFICATIONS-** Proposer/Bidder may change or withdraw a proposal at any time prior to the submission deadline; however, no oral modifications will be allowed. Written modifications shall not be allowed following the submission deadline.

**1.5 ACCEPTANCE/ REJECTION-** the MPA reserves the right to accept or reject any or all responses or parts of responses after opening/closing date and request re-issuance of the goods/services described in the Solicitation. In the event of such rejection, the MPA CEO, shall notify all affected Bidders/Proposers and make available a written explanation for the rejection. MPA also reserves the right to reject the response of any Bidder/Proposer who has previously failed to properly perform under the terms and conditions of a Contract, to deliver on time Contracts of a similar nature, and who is not in a position to perform the requirements defined in this Formal Solicitation. The MPA further reserves the right to waive any irregularities or minor informalities or technicalities in any or all of the responses and may, at its discretion re-issue this Formal Solicitation.

**1.6 ADDENDA-**If any revision to this Solicitation becomes necessary, the MPA will post an addendum prior to the response deadline. However, please be advised that the MPA may revise the deadline for response submittal at any time prior to the date and time scheduled for opening

responses. It is the responsibility of each Proposer to inquire and confirm whether any has been issued by the MPA before the Solicitation deadline. It is the Bidder's/Proposer's responsibility to ensure receipt of all Addenda.

### **1.7 ALTERNATE BID RESPONSES WILL NOT BE CONSIDERED.**

**1.8 ASSIGNMENT-** Contractor agrees not to subcontract, assign, transfer, convey, sublet, or otherwise dispose of the resulting Contract, or any or all of its right, title, or interest herein, without Miami Parking Authority CEO's prior written consent.

**1.9 ATTORNEY'S FEES-** In connection with any litigation, mediation, and arbitration arising out of this Solicitation, each party shall bear their own attorney's fees through and including appellate litigation and any post-judgement proceedings.

**1.10 AUDIT RIGHTS AND RECORDS RETENTION-** The Successful Bidder/Proposer agrees to provide access at all reasonable times to MPA or to any of its duly authorized representatives, to any books, documents, papers, and records of Contractor which are directly pertinent to this Formal Solicitation, for the purpose of audit, examination, excerpts, and transcriptions. The successful Bidder/Proposer shall maintain and retain any and all of books, documents, papers, and records pertinent to the Contract for three (3) years after the MPA makes the final payment and all other pending matters are closed. Contractor's failure to or refusal to comply with this condition shall result in the immediate cancellation of a resulting Agreement by MPA.

**1.11 AVAILABILITY OF CONTRACT STATE-WIDE-** Any governmental, not-for-profit, or quasi-governmental entity in the State of Florida, may avail itself of this resulting Agreement and purchase any and all goods/services, specified herein from the successful Bidder(s)/ Proposer(s) at the Contract price(s) established herein, when permissible by federal, state, and local laws, rules, and regulations.

### **1.12 AWARD OF CONTRACT:**

**A.** The Formal Solicitation, Bidder's/Proposer's response, any addenda issued, and the purchase order shall constitute the entire Agreement, unless modified in accordance with any ensuing Agreement, amendment, or addenda.

**B.** The award of an Agreement where there are tie Bids will be decided by the MPA CEO or designee in the instance that Tie Bids cannot be determined by applying Section 287.0 87, Florida Statutes Preference to Businesses with Drug-Free Workplace Programs.

**C.** The award of a resulting Agreement may be preconditioned on the subsequent submission of other documents as specified in the Special Conditions or Technical Specifications. Bidder/Proposer shall be in default of its Contractual obligation if such documents are not submitted in a timely manner and in the form required by MPA. Where Bidder/Proposer is in default of these Contractual requirements, the MPA through action taken by the Procurement Department will void its acceptance of the Bidder/Proposer's response and may accept the response from the next lowest responsive, responsible Bidder or Proposal most advantageous to MPA or re-solicit MPA's requirements. The MPA at its sole discretion, may seek monetary restitution from Bidder/Proposer and its bid/proposal bond or guaranty, if applicable, as a result of damages or increased costs sustained as a result of the Bidder/Proposer's default.

**D.** The term of the Contract shall be specified in one of three documents which shall be issued to the successful Bidder/Proposer. These documents may either be a purchase order, notice of award and/or the actual Agreement.

**E.** The MPA reserves the right to automatically extend the terms of this Agreement for up to one hundred twenty (120) calendar days beyond the stated Contract term in order to provide MPA departments with continual service and supplies while a new contract is being solicited, evaluated, and/or awarded. If the right is exercised, MPA shall notify the Bidder/Proposer in writing of its intent to extend the Contract at the same price, terms, and conditions for a specific number of days. Additional extensions over the first one hundred twenty (120) days extension may occur, if the MPA and the Successful Bidder/Proposer are in mutual agreement of such extensions.

**F.** Where the Agreement involves a single shipment of goods to the MPA, the Contract term shall conclude upon completion of the expressed or implied warranty periods.

**G.** The MPA reserves the right to award the Contract on a split-order, lump sum or individual-item basis, or such combination as shall best serve the interests of the MPA unless otherwise specified.

H. An Agreement may be awarded to the Bidder/Proposer by the Board of Directors and or CEO, based upon the minimum qualification requirements reflected herein. As a result of an ITB, RFP, RFQ, or RFLI, the MPA reserves the right to execute or not execute, as applicable, an Agreement with the Proposer, whichever is determined to be in MPA's best interests. Such Agreement will be furnished by the MPA, will contain certain terms as are in the MPA's best interests, and will be subject to approval as to legal form by the City Attorney and Risk Management.

**1.13 BID BOND/BID SECURITY-** A cashier's check or certified check, or a Bid Bond signed by a recognized surety company that is licensed to do business in the State of Florida, payable to the MPA is required from all Bidders/Proposers, if so indicated under the Special Conditions. This check or bond guarantees that a Bidder/Proposer will accept the order or Agreement, as bid/proposed, if it is awarded to Bidder/Proposer. Bidder/Proposer shall forfeit bid deposit to the MPA should MPA award the Agreement to Bidder/Proposer and Bidder/Proposer fails to accept the award. The MPA reserves the right to reject any and all surety tendered to the MPA. Bid deposits are returned to unsuccessful Bidder/Proposer within ten (10) days after the award and successful Bidder's/Proposer's acceptance of award. If sixty (60) days have passed after the date of the Formal Solicitation closing date, and no Contract has been awarded, all bid deposits will be returned on demand.

**1.14 RESPONSE FORM (HARDCOPY FORMAT)-** All forms should be completed, signed, and submitted accordingly.

**1.15 AUTHORITY OF MPA CEO-** The Chief Executive Officer of the Miami Parking Authority ("CEO"), or his designee, is further authorized to negotiate and execute all documents including any contracts, amendments, renewals, addendums, extensions, and modifications, including increases in capacity and increases to the Contract funding subject to allocations, appropriations, and budgetary approval having been previously made, without the necessity of subsequent MPA Board approval in compliance with applicable regulations and in a form acceptable to MPA staff and legal sufficiency.

**1.16 BRAND NAMES-** If and wherever in the specifications brand names, makes, models, names of any manufacturers, trade names, or Bidder/Proposer catalog numbers are specified, it is for the purpose of establishing the type, function, minimum standard of design, efficiency, grade, or quality of goods only. When the MPA does not wish to rule

out other competitors' brands or makes, the phrase "OR EQUAL" is added. When bidding/proposing an approved equal, Bidder/Proposer shall submit, with their response, complete sets of necessary data (factory information sheets, specifications, brochures, etc.) in order for the MPA to evaluate and determine the equality of the item(s) bid/proposed. The MPA CEO shall be the sole judge of equality and its decision shall be final. Unless otherwise specified, evidence in the form of samples may be requested if the proposed brand is other than specified by the MPA. Such samples are to be furnished after Formal Solicitation opening/closing only upon request of the MPA. If samples should be requested, such samples must be received by the MPA no later than seven (7) calendar days after a formal request is made.

**1.17 CANCELLATION-** The MPA CEO reserves the right to cancel all Solicitations at his/her discretion before its opening/closing. In the event of Bid/Proposal cancellation, the MPA CEO shall notify all prospective Bidder/Proposers and make available a written explanation for the cancellation.

**1.18 CAPITAL EXPENDITURES-** Contractor understands that any capital expenditure that the firm makes, or prepares to make, in order to deliver/perform the goods/services required by the MPA, is a business risk which the Contractor must assume. The MPA will be not be obligated to reimburse amortized or unamortized capital expenditures, or to maintain the approved status of any Contractor. If Contractor has been unable to recoup its capital expenditures during the time it is rendering such goods/services, it shall not hold MPA liable for such expenditures.

**1.19 MPA NOT LIABLE FOR DELAYS-** It is further expressly agreed that in no event shall the MPA be liable for, or responsible to, the Bidder/Proposer/ Contractor/, any Sub-Contractor/Sub-Consultant, or to any other person for, or on account of, any stoppages or delays in the work herein provided for by injunction or other legal or equitable proceedings or on account of any delay for any cause over which the MPA has no control.

**1.20 COLLUSION-** Bidder/Proposer, by submitting a response, certifies that its response is made without previous understanding, Agreement, or connection either with any person, firm or corporation submitting a response for the same items/services or with the Miami Parking Authority's Procurement Department or initiating department. The Bidder/Proposer certifies that its response is fair, without control, collusion, fraud, or other illegal action. Bidder/Proposer certifies that it is in compliance with the

Conflict of Interest and Code of Ethics and all applicable State and local laws. The MPA will investigate all potential situations where collusion may have occurred and the MPA reserves the right to reject any and all bids/responses where collusion may have occurred.

**1.21 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS-** Contractor understands that Contracts 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. MPA and Contractor agree to comply with and observe all applicable laws, codes, and ordinances as that may in any way affect the goods or equipment offered including but not limited to:

**A.** Executive Order 11246, Equal Employment Opportunity, as amended which prohibits discrimination against any employee, applicant or client because of race, creed, color, national origin, sex, or age with regard to but not limited to, the following: employment practices, rate of pay or other compensation methods, and training selection.

**B.** Occupational, Safety, and Health Act (OHSA), as applicable to this Formal Solicitation.

**C.** The State of Florida Statutes, Section 287.133(3)(a) on Public Entity Crimes.

**D.** Environmental Protection Agency (EPA), as applicable to this Formal Solicitation.

**E.** Uniform Commercial Code (Florida Statutes, Chapter 672).

**F.** Americans with Disabilities Act of 1990, as amended from time to time.

**G.** National Institute of Occupational Safety Hazards (NIOSH), as applicable to this Formal Solicitation.

**H.** National Forest Products Association (NFPA), as applicable to this Formal Solicitation.

**I.** City Procurement Ordinance City Code Chapter 18, Article III

**J.** Conflict of Interest, City Code Chapter 2, Article IV.

**K.** RESERVED

**L.** The Florida Statutes and Local Government Prompt Payment Act, Chapter 218, Part VII.

Lack of knowledge by the Bidder/Proposer will in no way be a cause for relief from responsibility. Non-compliance with all local, state, and federal directives, orders, and laws may be considered grounds for termination of Contract(s). Copies of the City Ordinances may be obtained from the City Clerk's Office.

**1.22** MPA's Chief Executive Officer or his designee and/or the MPA's Board of Directors ("Board") reserves the right to accept any timely submission deemed to be in the best interest of the MPA, to waive any minor (e.g., not material) technicalities, omissions, or irregularities in any submission and/or reject any, or all submissions, and re-advertise, at MPA's option, for new submissions.

**1.23 CONE OF SILENCE -** The Cone of Silence is applicable to Miami Parking Authority. The Cone of Silence prohibits certain types of communications with staff members and public disclosure of bid material prior to issuance. Please direct all inquiries to the procurement department.

**1.24 CONFIDENTIALITY-** As a Public Entity, the Miami Parking Authority is subject to the Florida Sunshine Act and Public Records Law. A confidentiality provision shall have no application when disclosure is required by Florida law or upon court order.

**1.25 CONFLICT OF INTEREST-** Bidders/Proposers, by responding to this Formal Solicitation, certify that to the best of their knowledge or belief, no elected/appointed official or employee of the Miami Parking Authority is financially interested, directly or indirectly, in the purchase of goods/services specified in this Formal Solicitation. Any such interests on the part of the Bidder/Proposer or its employees must be disclosed in writing to the MPA. Further, you must disclose the name of any MPA employee who owns, directly or indirectly, an interest of ten percent (10%), as per Section 2-11.1. (b) (8) of the Miami-Dade County Code, or more of the total assets of capital stock in your firm.

**A.** Bidder/Proposer further agrees not to use or attempt to use any knowledge or property or resource which may be within his/her/its/ trust, or perform his/her/its duties, to secure a special privilege benefit, or exemption for himself/herself, or others. Bidder/Proposer may not disclose or use information not available to members of the general public and gained by reason of his/her/its position, except for information relating exclusively to governmental practices, for his/her/its personal gain or benefit or for the personal gain or benefit of any other person or business entity.

**B.** Bidder/Proposer hereby acknowledges that he/she/it has not contracted or transacted any business with the MPA, or any person or agency acting for the MPA and has not appeared in representation of any third party before any board, commission, or agency of the MPA within the past two (2) years. Bidder/Proposer further warrants that he/she/it is not related, specifically to the spouse, son, daughter, parent, brother, or sister, to: (i) any member of the commission; (ii) the mayor; (iii) any MPA employee; or (iv) any member of any board agency of the MPA.

**C.** A violation of this section may subject the Bidder/Proposer to immediate termination of any professional services Agreement with MPA, imposition of the maximum fine and/or any penalties allowed by law. Additionally, violations may be considered by and subject to actions by the Miami-Dade County Commission on Ethics.

**1.26 COPYRIGHT OR PATENT RIGHTS-** Bidder/Proposers warrant that there has been no violation of copyright or patent rights in manufacturing, producing, or selling the goods shipped or ordered and/or services provided as a result of this Formal Solicitation, and Bidder/Proposer agrees to hold MPA harmless from any and all liability, loss, or expense occasioned by any such violation.

**1.27 COSTS INCURRED BY BIDDER/PROPOSER-** All expenses involved with the preparation and Submission of responses to the MPA, or any work performed in connection therewith shall be borne by the Bidder(s)/Proposer(s).

**1.28 DEBARMENT AND SUSPENSIONS (SEC 18-107 CITY OF MIAMI CODE); (WITHIN CONTEXT OF SEC 18-72)**

**A.** Authority and requirement to debar and suspend. After reasonable notice to an actual prospective Contractual Party, and after reasonable opportunity for such party to be heard, the Chief Procurement Officer or designee, after consultation with the MPA CEO or designee, the City Attorney shall have the authority to debar a Contractual Party, for the causes listed below, from consideration for award of MPA Contracts. The debarment shall be for a period of not fewer than three (3) years. The MPA CEO or designee, within the context of Sec 18-72, shall also have the authority to suspend a Contractual Party from consideration for award of MPA Contracts if there is probable cause for debarment, pending the debarment determination. The authority to debar and suspend Contractors shall be exercised in accordance the City of Miami Code.

**B.** Causes for debarment or suspension. Cause for suspension or debarment include the following:

(1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private Contract or Sub-Contract, or incident to the performance of such Contract or Sub-Contract.

(2) 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.

(3) Conviction under State or Federal Anti-trust Statutes arising out of the submission of Bids or Proposals.

(4) Violation of Contract provisions, which is regarded by the MPA CEO or designee, to be indicative of non-responsibility. Such violation may include failure without good cause to perform in accordance with the terms and conditions of a Contract or to perform within the time limits provided in a Contract, provided that failure to perform caused by acts beyond the control of a party shall not be considered a basis for debarment or suspension.

(5) **Debarment** or suspension of the Contractual Party by any Federal, State, or other governmental entity.

(6) False certification pursuant to paragraph (c) below.

(7) Found in violation of a zoning ordinance or any other city ordinance or regulation and for which the violation remains noncompliant.

(8) Found in violation of a zoning ordinance or any other city ordinance or regulation and for which a civil penalty or fine is due and owing to the city.

(9) Any other cause judged by the MPA CEO or designee to be so serious and compelling as to affect the Responsibility of the Contractual Party performing MPA Contracts.

**C.** Certification. All Contracts for goods and services, sales, and leases by the MPA shall contain in a certification that neither the Contractual Party nor any of its principal owners or personnel have been convicted of any of the violations set forth above or debarred or suspended as set forth in paragraph (b) (5).

**D.** Debarment and suspension decisions. Subject to the provisions of paragraph (a), the MPA CEO or designee, shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the Contractual Party, along with a notice of said party's right to seek judicial relief.

**1.29 DEBARRED/ SUSPENDED VENDORS-** An entity or affiliate who has been placed on the State of Florida debarred or suspended vendor list may not submit a response on a Contract to provide goods or services to a public entity, may not submit a response on a Contract with a public entity for the construction or repair of a public

building or public work, may not submit response on leases of real property to public entity, may not award or perform work as a Contractor, supplier, subcontractor, or consultant under Contract with any public entity, and may not transact business with any public entity.

**1.30 DEFAULT/FAILURE TO PERFORM-** the CEO shall be the sole judgement of non-performance, which shall include any failure on the part of the successful Bidder/Proposer to accept the award, to furnish required documents, and /or to fulfill any portion of this Contract within the time stipulated. Upon default by the successful Bidder/Proposer to meet any terms of this Agreement, the MPA will notify the Bidder/Proposer of the default and provide the Contractor three (3) days (weekends and holidays excluded) to remedy the default. Failure on the Contractor's part to correct the default within the three (3) days shall result in the Contract being terminated and upon the MPA notifying in writing the Contractor of its intentions and the effective date of termination. The following shall constitute default:

**A.** Failure to perform the work or deliver the goods/services required under the Contract and/or within the time required or failing to use the SubContractors, entities, and personnel as identified and set forth, and to the degree specified in the Contract.

**B.** Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely to ensure timely completion.

**C.** Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non-conforming with the terms of the Contract.

**D.** Becoming insolvent, being declared bankrupt, or committing any act of bankruptcy, or insolvency, or making an assignment for the benefit of creditors, if the insolvency, bankruptcy, or assignment render the successful Bidder/Proposer incapable of performing the work in accordance with and as required by the Contract.

**E.** Failure to comply with any of the terms of the Contract in any material aspect. All costs and charges incurred by the MPA as a result of default or a default incurred beyond the time limits stated, together with the cost of completing the work, shall be deducted from any monies due or which may be become due on this Contract.

**1.31 DETERMINATION OF RESPONSIVENESS-** Each Response will be reviewed to determine if it is responsive to the submission requirements outlined in the Formal

Solicitation. A "responsive" response is one which follows the requirements of the Formal Solicitation, includes all documentation, is submitted in the format outlined in the Formal Solicitation, and is submitted and received by MPA within the time specified, and has appropriate signatures as required on each document. Failure to comply with these requirements may deem a response non-responsive.

**1.32 DISCOUNTS OFFERED DURING TERM OF CONTRACT-** Discount prices offered in the response shall be fixed after the award by the MPA Board of Directors, unless otherwise specified in the Special Terms and Conditions. Price discounts off the original prices quoted in the response will be accepted from successful Bidder(s)/Proposer(s) during the term of the Contract. Such discounts shall remain in effect for a minimum of 120 days from approval by the MPA Board of Directors. Any discounts offered by a manufacturer to Bidder/Proposer will be passed on to the MPA.

**1.33 DISCREPANCIES, ERRORS, AND OMISSIONS-** Any discrepancies, errors, or ambiguities in the Formal Solicitation or Addenda (if any) should be reported in writing to the MPA's Procurement Department. Should it be found necessary, a written addendum will be incorporated in the Formal Solicitation and will be part of the purchase Agreement (Contract documents). The MPA will not be responsible for any oral instructions, clarifications, or other communications.

**A.** Order of Precedence- Any inconsistency in this Formal Solicitation shall be resolved by giving precedence to the following documents, the first of such list being the governing documents.

- (1) Addenda (as applicable)
- (2) Specifications
- (3) Special Conditions
- (4) General Terms and Conditions

**1.34 EMERGENCY/DISASTER PERFORMANCE-** In the event of a hurricane or other emergency or disaster situation, the Bidder/Proposer shall provide the MPA with the commodities/services defined within the scope of this Formal Solicitation at the price contained within the Bidder/Proposer's response. Further, Bidder/Proposer shall deliver/perform for the MPA on a priority basis during such times of emergency.

**1.35 ENTIRE ITB/BID CONTRACT OR AGREEMENT-** The ITB Contract Agreement consists of this MPA Formal Solicitation and specifically this General Conditions Section, Contractor's Response and any written Agreement entered

into by the Miami Parking Authority and Contractor in cases involving ITBs, RFPs, RFQs, and RFLs. It shall represent the entire understanding and Agreement between the parties with respect to the subject matter hereof and supersedes all other negotiations, if any made by and between the parties. To the extent that the ITB conflicts with, modifies, alters, or changes any of the terms and conditions contained in the Contract, the Contract shall prevail. In the event of conflict in the Contract Documents the priorities stated shall govern; revisions (amendments) to the Contract which are executed shall govern over the Contract. The Contract shall govern over the ITB, any addendum to the ITB and the ITB response. The ITB shall govern over the ITB response.

**1.36 ESTIMATED QUANTITIES-** Estimated quantities or estimated dollars are provided for your guidance only. No guarantee is expressed or implied as to quantities that will be purchased during the Contract period. The MPA is not obligated to place an order for any given amount subsequent to the award of this Agreement. Said estimates may be used by the MPA for purposes of determining the low Bidder or most advantageous Proposer meeting specifications. The MPA reserves the right to acquire additional quantities at the prices bid/proposed or at lower prices in this Formal Solicitation.

### **1.37 EVALUATION OF RESPONSES-**

**A. Rejection of Responses -** The Miami Parking Authority may reject a response for any of the following reasons:

- (1) Bidder/Proposer fails to acknowledge receipt of Addenda;
- (2) Bidder Proposer misstates or conceals any material fact in the Response;
- (3) Response does not conform to the requirements of the Formal Solicitation;
- (4) Response requires a conditional award that conflicts with the method of award;
- (5) Response does not include required samples, certificates, licenses as required and;
- (6) Response was not executed by the Bidder's/Proposer's authorized agent;
- (7) Bidder/Proposer is not registered in the Florida Division of Corporations;
- (8) Responses vary from the provided specifications.

The foregoing is not an all-inclusive list of reasons for which a Response may be rejected. The MPA may reject and re-advertise for all or any part of the Formal Solicitation whenever it is deemed in the best interest of the MPA.

### **B. Elimination from Consideration**

- (1) A Contract shall not be awarded to any person or firm which is in arrears to MPA upon any debt or Contract, or which is a defaulter as surety or otherwise upon any obligation to the MPA
- (2) A Contract may not be awarded to any person or firm which has failed to perform under the terms and conditions of any previous Contract with the MPA or deliver on time Contracts of a similar nature
- (3) A Contract may not be awarded to any person or firm which has been debarred by the City in accordance with the City's Debarment and Suspension Ordinance.

### **C. Determination of Responsibility**

- (1) Responses will only be considered from entities who are regularly engaged in the business of providing the goods/equipment/services required by the Formal Solicitation. Bidder/Proposer must be able to demonstrate a satisfactory record of performance and integrity; and have sufficient financial, material, equipment, facility, personnel resources, and expertise to meet all Contractual requirements. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established entity in line with the best industry practices in the industry as determined by the MPA.
- (2) The MPA may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Bidder/Proposer, including past performance (experience) with the MPA or any other governmental entity in making the award.
- (3) The MPA may require the Bidder(s)/Proposer(s) to show proof that they have been designated as an authorized representative of a manufacturer or supplier which is the actual source of supply, if required by the Formal Solicitation.

**1.38 EXCEPTIONS TO GENERAL AND/OR SPECIAL CONDITIONS OR SPECIFICATIONS-** No exceptions shall be taken to the general conditions and/or special conditions or specifications. Any exception taken may be subject to being deemed non-responsive.

**1.39 F.O.B. DESTINATION-** Unless otherwise specified in the Formal Solicitation, all prices quoted/proposed by the Bidder/Proposer must be F.O.B. DESTINATION, inside delivery, with all delivery costs and charges included in the Bid/Proposal price, unless otherwise specified in this Formal Solicitation. Failure to do so may be cause for rejection of bid/proposal.

**1.40 FIRM PRICES-** The Bidder/Proposer warrants that prices, terms, and conditions quoted in its response will remain firm for the period of performance or resulting

purchase orders or Contracts, which are to be performed or supplied over a period of time.

#### **1.41 RESERVED**

**1.42 GOVERNING LAW AND VENUE-** The validity and effect of this Agreement shall be governed by the laws of the State of Florida. The parties agree that any action, mediation, or arbitration arising out of this Contract shall take place in Miami-Dade County, Florida.

**1.43 HEADINGS AND TERMS-** The headings to the various paragraphs of this Agreement have been inserted for convenient reference only and shall not in any manner be constructed as modifying, amending, or affecting in any way the expressed terms and provisions hereof.

**1.44 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)-** Any person or entity that performs or assists the MPA with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended and the Miami Parking Authority Privacy Standards. HIPAA mandates for privacy, security, and electronic transfer standards, which include but are not limited to:

- A.** Use of information only for performing services required by the Contract or as required by law;
- B.** Use of appropriate safeguards to prevent non-permitted disclosures;
- C.** Reporting to the MPA of any non-permitted use or disclosure;
- D.** Assurances that any agents and sub-Contractors agree to the same restrictions and conditions that apply to the Bidder/Proposer and reasonable assurances that IIHI/PHI will be held confidential;
- E.** Making Protected Health Information (PHI) available to the customer;
- F.** Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
- G.** Making PHI available to the MPA for an accounting of disclosures; and
- H.** Making internal practices, books and records related to PHI available to the MPA for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or

electronic transfer of data). The Bidder/Proposer must give its customers written notice of its privacy information practices, including specifically, a description of types of uses and disclosures that would be made with protected health information.

**1.45 INDEMNIFICATION-** Contractor shall indemnify, hold harmless and defend the MPA, its officials, officers, agents, directors, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract and will indemnify, hold harmless and defend the MPA, its officials, officers, agents, directors and employees against, any civil actions, statutory or similar claims, injuries or damages arising or resulting from the permitted work, even if it is alleged that the MPA, its officials and/or employees were negligent. These indemnifications shall survive the term of this Contract. In the event that any action or proceeding is brought against MPA by reason of any such claim or demand, Contractor shall, upon written notice from MPA, resist and defend such action or proceeding by counsel satisfactory to MPA. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the MPA or its officers, employees, agents, and instrumentalities as herein provided. The indemnification provided above shall obligate Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at MPA's option, any and all claims of liability and all suits and actions of every name and description which may be brought against MPA whether performed by Contractor, or persons employed or utilized by Contractor. This indemnity will survive the cancellation or expiration of the Contract. Contractor shall require all Sub-Contractor Agreements to include a provision that they will indemnify the MPA. The Contractor agrees and recognizes that the MPA shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the MPA participated either through review or concurrence of the Contractor's actions. In reviewing, approving, or rejecting any submissions by the Contractor or other acts of the Contractor, the MPA in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under this Agreement. Nothing contained in this Agreement in any way is intended to be a waiver of the limitation placed upon the City or MPA's liability as set forth in Chapter 768, Florida Statutes. Additionally, the MPA does not waive sovereign immunity,



and no claim or award against the MPA shall include attorney's fees, investigative costs, or pre-judgment interest. This Section 1.42 shall survive the termination of the Agreement.

**1.46 FORMATION AND DESCRIPTIVE LITERATURE-** Bidder/Proposer must furnish all information requested in the spaces provided in the Formal Solicitation. Further, as may be specified elsewhere, each Bidder/Proposer must submit for evaluation, cuts, sketches, descriptive literature, technical specifications, and Material Safety Data Sheets (MSDS) as required, covering the products offered. Reference to literature submitted with a previous response or file with will not satisfy this provision.

**1.47 INSPECTIONS-** The MPA may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such tests, as the City and or MPA deems reasonably necessary, to determine whether the goods and/or services required to be provided by the Contractor under this Contract conform to the terms and conditions of the Formal Solicitation. Contractor shall make available to the City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City and or MPA representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of the City of Miami Ordinance No. 12271 (Section 18-79), as same may be amended or supplemented from time to time.

**1.48 INSPECTION OF RESPONSE-** Responses received by the MPA pursuant to a Formal Solicitation will not be made available until such time as the MPA provides notice of a decision or intended decision within 30 days after bid closing, whichever is earlier. Bid/Proposal results will be tabulated and may be furnished upon request via e-mail to the Procurement Department. Tabulations are also available on MPA's Web Site following recommendation for award.

**1.49 INSURANCE-** Within ten (10) days after receipt of Notice of Award, the successful Contractor, shall furnish evidence of Insurance to the Procurement Department. Submitted evidence of coverage shall demonstrate strict compliance to all requirements listed on the Special Conditions entitled "Insurance Requirements". The City and MPA shall be listed as an "Additional Insured." Issuance of a purchase order and or Agreement is contingent upon the receipt of proper insurance documents. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Solicitation the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City and MPA. If the Contractor fails to submit the required insurance documents in the manner

prescribed in this Solicitation within fifteen (15) calendar days after receipt Notice of Award, the Contractor shall be in default of the Contractual terms and conditions and shall not be awarded the Contract. Under such circumstances, the Bidder/Proposer may be prohibited from submitting future responses to the City and MPA. Information regarding any insurance requirements shall be directed to the Risk Administrator, Department of Risk Management, at 444 SW 2nd Avenue, 9th Floor, Miami, Florida 33130, 305-416-1604. The Bidder/Proposer shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in effect for the duration of the Contractual period; including any and all option terms that may be granted to the Bidder/Proposer.

**1.50 INVOICES-** Invoices shall contain purchase order number and details of goods and/or services delivered (i.e., quantity, unit price, extended price, etc.); and in compliance with Chapter 218 of the Florida Statutes (Prompt Payment Act) Part VII.

**1.51 LOCAL PREFERENCE -** City Code Section 18-85, states, "when a responsive, responsible non-local Bidder submits the lowest bid price, and the bid submitted by one or more responsive, responsible local Bidders who maintain a local office, as defined in Section 18-73, is within fifteen percent (15%) of the price submitted by the non-local Bidder, then that non-local Bidder and each of the aforementioned responsive, responsible local Bidders shall have the opportunity to submit a best and final bid equal to or lower than the amount of the low bid previously submitted by the non-local Bidder. Contract award shall be made to the lowest responsive, responsible Bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between a local Bidder and a non-local Bidder, Contract award shall be made to the local Bidder."

**1.52 MANUFACTURER'S CERTIFICATION-** The MPA reserves the right to request from Bidders/Proposers separate Manufacturer's Certification of all statements made in the Bid/Proposal. Failure to provide such certification may result in the rejection of Bid/Proposal or termination of Contract/Agreement, for which the Bidder/Proposer must bear full liability.

**1.53 MODIFICATIONS OR CHANGES IN PURCHASE ORDERS AND CONTRACTS-** No Contract or understanding to modify this Formal Solicitation and resultant purchase orders or Contracts, if applicable, shall be binding upon the MPA unless made in writing by the MPA CEO, through the issuance of a change order, addendum, amendment, or supplement to the Contract, purchase order or award sheet as appropriate.

**1.54 NO PARTNERSHIP OR JOINT VENTURE-** Nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between MPA and Contractor, or to create any other similar relationships between the parties.

**1.55 NON-CONFORMANCE TO CONTRACT CONDITIONS-** Items may be tested for compliance with specifications under the direction of the Florida Department of Agriculture and Consumer Services or by other appropriate testing Laboratories as determined by the MPA. The data derived from any test for compliance with specifications is public record and open to examination thereto in accordance with Chapter 119, Florida Statutes. Items delivered not conforming to specifications may be rejected and returned at Bidder's/Proposer's expense.

These non-conforming items not delivered as per delivery date in the response and/or Purchase Order may result in Bidder/Proposer being found in default in which event any and all re-procurement costs may be charged against the defaulted Contractor. Any violation of these stipulations may also result in the supplier's name being removed from the MPA's supplier list.

**1.56 NON-DISCRIMINATION-** Bidder/Proposer agrees that it shall not discriminate as to race, sex, color, age, religion, national origin, marital status, or disability in connection with its performance under this Formal Solicitation. Furthermore, Bidder/Proposer agrees that no otherwise qualified individual shall solely by reason of his/her race, sex, color, age, religion, national origin, marital status, or disability be excluded from the participation in, be denied benefits of, or be subjected to, discrimination under any program or activity. In connection with the conduct of its business, including performance of services and employment of personnel, Bidder/Proposer shall not discriminate against any person on the basis of race, color, religion, disability, age, sex, marital status, or national origin. All persons having appropriate qualifications shall be afforded equal opportunity for employment.

**1.57 NON-EXCLUSIVE CONTRACT/PIGGYBACK PROVISION-** At such times as may serve its best interest, the MPA reserves the right to advertise for, receive, and award additional Contracts for these goods and/or services, and to make use of other competitively bid (governmental) Contracts, Agreements, or other similar sources for the purchase of these goods and/or services as may be available. It is hereby agreed and understood that this Formal Solicitation does not constitute the exclusive rights of the successful Bidder(s)/Proposer(s) to receive all orders

that may be generated by the MPA in conjunction with this Formal Solicitation.

**1.58 LOCAL BUSINESS TAX-** Any person, firm, corporation, or joint venture, with a business location in the City of Miami and who is submitting a Response under this Formal Solicitation shall meet the City's Local Business Tax requirements in accordance with Chapter 31, Article II of the City of Miami Code. Others with allocation outside the City of Miami shall meet their Local Business Tax requirements. A copy of the Local Business Tax Receipt (BTR) must be submitted with the response; however, the MPA may at its sole option and in its best interest allow the Bidder/Proposer to supply the BTR to the MPA during the evaluation period, but prior to award.

**1.59 ONE PROPOSAL-** Only one (1) Response from an individual, firm, partnership, corporation, or joint venture will be considered in response to this Formal Solicitation.

**1.60 OWNERSHIP OF DOCUMENTS-** It is understood by and between the parties that any documents, records, files, or any other matter whatsoever which is given by the MPA to the successful Bidder/Proposer pursuant to this Formal Solicitation shall at all times remain the property of the MPA and shall not be used by the Bidder/Proposer for any other purposes whatsoever without the written consent of the MPA.

**1.61 PARTIAL INVALIDITY-** If any provision of this Contract or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Contract or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

**1.62 PERFORMANCE/PAYMENT BOND-** A Contractor shall be required to furnish a Performance/Payment Bond as part of the requirements of a resulting Agreement, in an amount equal to one hundred percent (100%) of the Contract price.

**1.63 PREPARATION OF RESPONSES (HARDCOPY FORMAT)-** Bidders/Proposers are expected to examine the specifications, required delivery, drawings, and all special and general conditions. All Proposal amounts, if required, shall be either typewritten or entered into the space provided with ink. Failure to do so will be at the Bidder's/Proposer's risk.

**A.** Each Bidder/Proposer shall furnish the information required in the Formal Solicitation. The Bidder/Proposer

shall sign the Response and print in ink or type the name of the Bidder/Proposer, address, and telephone number on the face page and on each continuation sheet thereof on which he/she makes an entry, as required.

**B.** If so required, the unit price for each unit offered shall be shown, and such price shall include packaging handling and shipping, and F.O.B. Miami delivery inside City premises unless otherwise specified. Bidder/Proposer shall include in the response all taxes, insurance, social security, workmen's compensation, and any other benefits normally paid by the Bidder/Proposer to its employees. If applicable, a unit price shall be entered in the "Unit Price" column for each item. Based upon estimated quantity, an extended price shall be entered in the "Extended Price" column for each item offered. In case of a discrepancy between the unit price and extended price, the unit price will be presumed correct.

**C.** The Bidder/Proposer must state a definite time, if required, in calendar days for delivery of goods and/or services.

**D.** The Bidder/Proposer should retain a copy of all response documents for future reference.

**E.** All responses, as described, must be fully completed, and typed or printed in ink and must be signed in ink with the firm's name and by an officer or employee having authority to bind the company or firm by his/her signature. Bids/Proposals having any erasures or corrections must be initialed in ink by person signing the response or the response may be rejected.

**F.** Responses are to remain valid for at least 180 days. Upon award of a Contract, the content of the Successful Bidder's/Proposer's response may be included as part of the Contract, at the MPA's discretion.

**G.** The MPA Response Forms shall be used when Bidder/Proposer is submitting its response in hardcopy format. Use of any other forms will result in the rejection of the response. If submitting Hardcopy format, the original and three (3) copies of these sets of forms, unless otherwise specified, and any required attachments must be returned to the Miami Parking Authority or your response may be deemed non-responsive.

**1.64 PRICE ADJUSTMENTS-** Any price decrease effectuated during the Contract period either by reason of market change or on the part of the Contractor to other customers shall be passed on to MPA.

**1.65 PRODUCT SUBSTITUTES-** In the event a particular awarded and approved manufacturer's product becomes unavailable during the term of the Contract, the Contractor

awarded that item may arrange with the MPA's authorized representative(s) to supply a substitute product at the awarded price or lower, provided that a sample is approved in advance of delivery and that the new product meets or exceeds all quality requirements.

**1.66 CONFLICT OF INTEREST, AND UNETHICAL BUSINESS PRACTICE PROHIBITIONS-** Contractor represents and warrants to the MPA that it has not employed or retained any person or company employed by the MPA to solicit or secure this Contract and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

**1.67 PROMPT PAYMENT-** Bidders/Proposers may offer a cash discount for prompt payment; however, discounts shall not be considered in determining the lowest net cost for response evaluation purposes. Bidders/Proposers are required to provide their prompt payment terms in the space provided on the Formal Solicitation. If no prompt payment discount is being offered, the Bidder/Proposer must enter zero (0) for the percentage discount to indicate no discount. If the Bidder/Proposer fails to enter a percentage, it is understood and agreed that the terms shall be 2% 20 days, effective after receipt of invoice or final acceptance by the MPA, whichever is later. When the MPA is entitled to a cash discount, the period of computation will commence on the date of delivery, or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval for payment is authorized. If a discount is part of the Contract, but the invoice does not reflect the existence of a cash discount, the MPA is entitled to a cash discount with the period commencing on the date it is determined by the MPA that a cash discount applies. Price discounts off the original prices quoted on the Price Sheet will be accepted from successful Bidders/Proposers during the term of the Contract.

**1.68 PROPERTY-** Property owned by Miami Parking Authority is the responsibility of the Miami Parking Authority. Such property furnished to a Contractor for repair, modification, study, etc., shall remain the property of the MPA. Damages to such property occurring while in the possession of the Contractor shall be the responsibility of the Contractor. Damages occurring to such property while in route to Miami Parking Authority facilities, shall be the responsibility of the Contractor. In the event that such property is destroyed or declared a total loss, the Contractor shall be responsible for replacement value of the property at the current market value, less depreciation of the property, if any.

**1.69 PROVISIONS BINDING-** Except as otherwise expressly provided in the resulting Contract, all covenants, conditions, and provisions of the resulting Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**1.70 PUBLIC ENTITY CRIMES-** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a response on a Contract to provide any goods or services to a public entity, may not submit a response on a Contract with a public entity for the construction or repair of a public building or public work, may not submit responses on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**1.71 PUBLIC RECORDS-** Contractor will keep adequate records and supporting documentation, which concern or reflect its Scope of Services hereunder. Records subject to the provisions of the Public Records Law, Florida Statutes Chapter 119, shall be kept in accordance with the applicable statutes. Otherwise, the records and documentation will be retained by the Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The MPA, or any duly authorized agents or representatives of the MPA, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity shall be conducted only during normal business hours upon reasonable advance written notice. Contractor shall not be responsible for indemnifying MPA to the extent its employee is residing in MPA facilities as an extension of MPA Staff and under direct MPA supervision. Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the MPA to perform this service; (2) provide the public with access to public records on the same terms and conditions as the MPA would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; 3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost, to the MPA all public records in its possession upon termination of this Agreement

and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and, (5) provide all electronically stored public records to the MPA in a format compatible with the MPA information technology systems.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 373 - 6789, [PUBLICRECORDS@MIAMIPARKING.COM](mailto:PUBLICRECORDS@MIAMIPARKING.COM). MIAMI PARKING AUTHORITY, 40 NW 3<sup>RD</sup> ST SUITE 1103, MIAMI FL 33128.**

**1.72 QUALITY OF GOODS, MATERIALS, SUPPLIES, PRODUCTS, AND EQUIPMENT-** All materials used in the manufacturing or construction of supplies, materials, or equipment covered by this Solicitation shall be new. The items bid/proposed must be of the latest make or model, of the best quality, and of the highest grade of workmanship, unless as otherwise specified in this Solicitation.

**1.73 QUALITY OF WORK/SERVICES -** The work/services performed must be of the highest quality and workmanship. Materials furnished to complete the service shall be new and of the highest quality except as otherwise specified in this Solicitation.

**1.74 REMEDIES PRIOR TO AWARD (Sec. 18-106) -** If prior to Contract award it is determined that a Formal Solicitation or proposed award is in violation of law, then the Solicitation or proposed award shall be cancelled by the MPA CEO, as may be applicable, or revised to comply with the law.

**1.75 RESOLUTION OF CONTRACT DISPUTES (CITY OF MIAMI CODE, SEC. 18-105); (WITHIN THE CONTEXT OF SEC 18-72)**

**A. Authority to resolve Contract disputes.** The MPA CEO or designee, after obtaining the approval of the City Attorney, shall have the authority to resolve controversies between the Contractual Party and the MPA which arise under, or by virtue of, a Contract between them; provided that, in cases involving an amount greater than \$25,000, the MPA Board of Directors must approve the MPA CEO or designee's, decision. Such authority extends, without limitation, to controversies based upon breach of Contract, mistake, misrepresentation, or lack of complete performance, and shall be invoked by a Contractual Party by submission of a protest to the MPA CEO or designee.

**B. Contract dispute decisions.** If a dispute is not resolved by mutual consent, the MPA CEO or designee, shall promptly render a written report stating the reasons for the action taken by the MPA Board of Directors or the MPA CEO or designee, which shall be final and conclusive. A copy of the decision shall be immediately provided to the protesting party, along with a notice of such party's right to seek judicial relief, provided that the protesting party shall not be entitled to such judicial relief without first having followed the procedure set forth in this section.

#### **1.76 PROTESTED SOLICITATIONS, RESOLUTION AND AWARDS (City of Miami Code, Sec. 18-104)**

**A. Right to protest.** The following procedures shall be used for resolution of protested Solicitations and awards except for purchases of goods, supplies, equipment, and services, the estimated cost of which does not exceed \$25,000. Protests thereon shall be governed by the Administrative Policies and Procedures of Purchasing, within the context of Section 18-72 of the City Code.

##### **(1) Protest of Solicitation.**

- i. Any prospective Proposer who perceives itself aggrieved in connection with the Solicitation of a Contract may protest to the MPA CEO or designee. A written notice of intent to file a protest shall be filed with the MPA CEO or designee within three days after the ITBs, RFPs, RFQs, or RFLIs is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the MPA CEO or designee; or
- ii. Any prospective Bidder who intends to contest the Solicitation Specifications or a Solicitation may protest to the MPA CEO or designee. A written notice of intent to file a protest shall be filed with the MPA CEO or designee within three days after the Solicitation is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the MPA CEO or designee.

##### **(2) Protest of Award**

- i. Any actual proposer who perceives itself aggrieved in connection with the recommended award of Contract may protest to the MPA CEO or designee. A written notice of intent to file a protest shall be filed with the MPA CEO or designee within two (2) days after receipt by the proposer of the notice of the MPA's CEO or designee's recommendation for award of contract. The receipt by proposer of such notice shall be confirmed by the MPA by facsimile or electronic mail or U.S. mail, return receipt

requested. A notice of intent to file a protest is considered filed when received by the MPA CEO or designee; or

- ii. Any actual Responsive and Responsible Bidder whose Bid is lower than that of the recommended Bidder may protest to the MPA CEO or designee. A written notice of intent to file a protest shall be filed with the MPA CEO or designee within two (2) days after receipt by the Bidder of the notice of the MPA's responsiveness or non-responsibility. The receipt by Bidder of such notice shall be confirmed by the MPA via electronic mail or U.S. mail, return receipt requested. A notice of intent to file a protest is considered filed when received by the MPA CEO or designee.
- iii. A written protest based on any of the foregoing must be submitted to the MPA CEO or designee within five (5) days after the date the notice of protest was filed. A written protest is considered filed when received by the MPA CEO or designee. The written protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination. The written protest shall state with particularity the specific facts and law upon which the protest of the Solicitation or the award is based and shall include all pertinent documents and evidence and shall be accompanied by the required Filing Fee as provided in subsection (f). This shall form the basis for review of the written protest and no facts, grounds, documentation, or evidence not contained in the protester's submission to the MPA CEO or designee at the time of filing the protest shall be permitted in the consideration of the written protest. No time will be added to the above limits for service by mail. In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday or legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation of the time for filing.

**B. Authority to resolve protests; Hearing Officer(s)**  
Hearing officers appointed by the city shall have the authority to resolve protests filed under this chapter of the City Code. The MPA CEO or designee shall appoint a hearing officer, from a separate list of potential hearing officers pre-approved by the city commission, to resolve protests filed in accordance with this section, no later than five (5) working days following the filing of a bid protest. The hearing officer shall have the authority to settle and resolve

any written protest. The hearing officer shall submit said decision to the protesting party and to the other persons specified within ten (10) days after he/she holds a hearing under the protest.

**(1) Hearing Officer-** The hearing officer may be a special master as defined in Chapter 2, Article X Section 2-811 of the City Code, or a lawyer in good standing with the Florida Bar for a minimum of ten (10) years with a preference given to a lawyer who has served as an appellate or trial court judge. The hearing officer may be appointed from alternative sources (e.g., expert consulting agreements, piggyback contracts, etc.) where the city commission adopts a recommendation of the city attorney that such action is necessary to achieve fairness in the proceedings. The engagement of hearing officers is excluded from the procurement ordinance as legal services. The hearing officers appointed in the pre-qualified group should be scheduled to hear protests on a rotational basis.

**(2) Right of Protest-** Any actual bidder or proposer who has standing under Florida law dissatisfied and aggrieved with the decision of the city regarding the protest of a solicitation or the protest of an award as set forth above in this section may request a protest hearing. Such written request for a protest hearing must be initiated with a notice of intent to protest followed by an actual protest as provided in subsection 18-104(a). The notice of intent to protest and the actual protests as provided in subsection 18-104(a). The notice of intent to protest and the actual protest must each be timely received by the MPA CEO or designee and must comply with all requirements set forth in subsection 18-104(a). Failure to submit the required notice of intent to protest and the actual protest within the specified timeframes will result in an administrative dismissal of the protest.

**(3) Hearing Date-** Within 30 days of receipt of the notice of protest the MPA CEO or designee shall schedule a hearing before a hearing officer, at which time the person protesting shall be given the opportunity to demonstrate why the decision of the city relative to the solicitation or the award, which may include a recommendation for award by the MPA CEO or designee to the Board of Directors as applicable, should be overturned. The party recommended for award, if it is a protest of award, shall have a right to intervene and be heard.

**(4) Hearing Procedure-** The procedure for any such hearing conducted under this article shall be as follows:

- i. The City shall cause to be served by certified mail a notice of hearing stating the time, date, and place of the hearing.

The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the protester.

- ii. The party, any intervenor, and the city shall each have the right to be represented by counsel, to call and examine witness, to introduce evidence, to examine opposing or rebuttal witness on any relevant matter related to the protest even though the matter was not covered in the direct examination, and to impeach any witness regardless of which party first called him/her to testify. The hearing officer may extend the deadline for completion of the protest hearing for good cause shown, but such an extension shall not exceed an additional five (5) business days. The hearing officer shall consider the written protest and supporting documents and evidence appended thereto, supporting documents or evidence from any intervenor, and the decision or recommendation as to the solicitation or award being protested as applicable. The protesting party, and any intervenor, must file all pertinent documents supporting his/her protest or motion to intervene at least five business days before hearing as applicable. The hearing officer shall allow a maximum of two (2) hours for the protest presentation and a maximum of two (2) hours for the city response. When there is an intervenor, a maximum of two (2) will be added for the intervenor. In the event of multiple protests for the same project, the hearing officer shall allocate time as necessary to ensure that the hearing shall not exceed a total of one (1) one day.
- iii. The hearing officer shall consider the evidence presented at the hearing. In any hearing before the hearing officer, irrelevant, immaterial, repetitious, scandalous, or frivolous 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 trial in the courts of Florida. The hearing officer may also require written summaries, proffers, affidavits, and other documents the hearing officer determines to be necessary to conclude the hearing and issue a final order within the time limits set forth by this decision.
- iv. The hearing officer shall determine whether procedural due process has been afforded, whether the essential requirements of law have been observed, and whether the decision was arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence as a whole. Substantial evidence means such relevant evidence as reasonable mind might accept as adequate support a conclusion.
- v. Within ten (10) days from the date of the hearing, the hearing officer shall complete and submit to the MPA CEO or designee, the city attorney, any intervenor, and the person requesting said hearing a final order consisting of

his/her findings of fact and conclusions of law as to the denial or granting of the protest as applicable.

- vi. The decision of the hearing officer is final in terms of city decisions relative to the protest. Any appeal from the decision of the hearing officer shall be in accordance with the Florida Rules of Appellate Procedure.
- vii. **Compliance with filing requirements-** Failure of a party to timely file either the notice of the intent to file a protest or the written protest, together with the required filing fee as provided in subsection (f) with the MPA CEO or designee within the time provided in the subsection shall constitute a forfeiture of such party's rights to file a protest pursuant to this section. The protesting party shall not be entitled to seek judicial relief without first having followed the procedure set forth in this section.
- viii. **Stay of procurements during protests-** Upon receipt of a written protest filed pursuant to the requirements of this section, the city shall not proceed further with the solicitation or with award of the contract until the protest is resolved by MPA CEO or designee or Board of Directors, unless the MPA CEO or designee makes a written determination that the solicitation process or contract award must be continued without delay in order to avoid an immediate and serious danger to the public health safety or welfare.
- ix. **Costs-** All costs accruing from a protest shall be assumed by the protestor.
- x. **Filing Fee-** The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the city in an amount equal to one (1) percent of the amount of the bid or proposed contract, or \$5,000.00 whichever is less, which filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If a protest is upheld by the MPA CEO or designee and or the Board of Directors, as applicable, the filing fee shall be refunded to the protestor less any costs assessed under subsection (i) above. If the protest is denied, the filing fee shall be forfeited to the city in lieu of payment of costs for the administrative proceedings as prescribed by subsection (i) above.

**1.77 SAMPLES** - Samples of items, when required, must be submitted within the time specified at no expense to the MPA. If not destroyed by testing, Bidder(s)/Proposer(s) will be notified to remove samples, at their expense, within 30 days after notification. Failure to remove the samples will result in the samples becoming the property of the MPA.

**1.78 SELLING, TRANSFERRING OR ASSIGNING RESPONSIBILITIES** - Contractor shall not sell, assign, transfer, or subcontract at any time during the term of the

Agreement, or any part of its operations, or assign any portion of the performance required by this resulting Agreement, except under and by virtue of written permission granted by the MPA through the proper officials, which may be withheld or conditioned, in the MPA's sole discretion.

**1.79 SERVICE AND WARRANTY** – When specified, the Bidder/Proposer shall define all warranty, service and replacements that will be provided. Bidders/Proposer must explain on the Response to what extent warranty and service facilities are available. A copy of the manufacturer's warranty, if applicable, should be submitted with your response.

**1.80 SILENCE OF SPECIFICATIONS** - The apparent silence of these specifications and any supplemental specification as to any detail or the omission from it of detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials of first quality and correct type, size and design are to be used. All workmanship and services are to be first quality. All interpretations of these specifications shall be made upon the basis of this statement. If your firm has a current Contract with the State of Florida, Department of General Services, to supply the items on this Solicitation, the Bidder/Proposer shall quote not more than the Contract price; failure to comply with this request will result in disqualification of bid/proposal.

**1.81 SUBMISSION AND RECEIPT OF RESPONSES-** Responses shall be submitted in hardcopy format to the Administrative offices of Miami Parking Authority, 40 NW 3<sup>rd</sup> St. Suite 1103, Miami, FL 33128 ATTN Procurement Department, at or before the specified closing date and time as designated in the ITB, RFP, RFQ, or RFLI. **NO EXCEPTIONS.** Prosubmissions shall be rejected. Bidders/Proposers are welcome to attend the Solicitation closing; however, no award will be made at that time.

**1.82 TAXES** - The MPA is exempt from any taxes imposed by the State and/or Federal Government. Exemption certificates will be provided upon request. Notwithstanding, Bidders/Proposers should be aware of the fact that all materials and supplies which are purchased by the Bidder/Proposer for the completion of the Contract is subject to the Florida State Sales Tax in accordance with Section 212.08, Florida Statutes, as amended and all amendments thereto and shall be paid solely by the Bidder/Proposer.

**1.83 TERMINATION** – The MPA CEO, reserves the right to terminate this Contract with or without cause by written notice to the Contractor effective the date specified in the notice should any of the following apply:

**A.** The Contractor is determined by the MPA to be in breach of any of the terms and conditions of the Contract.

**B.** The MPA has determined that such termination will be in the best interest of the MPA to terminate the Contract for its own convenience;

**C.** Funds are not available to cover the cost of the goods and/or services. MPA's obligation is contingent upon the availability of appropriate funds.

**1.84 TERMS OF PAYMENT** - Payment will be made by MPA after the goods and/or services awarded to a Bidder/Proposer have been received, inspected, and found to comply with award specifications, free of damage or defect, and properly invoiced. No advance payments of any kind will be made by MPA. Payments shall be made after delivery within 45 days of receipt of an invoice and authorized inspection and acceptance of the goods/services pursuant to Section 281.74, Florida Statutes, and other applicable laws.

**1.85 TIMELY DELIVERY** - Time will be of the essence for any orders placed as a result of this Solicitation. The MPA reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on their Response. Deliveries are to be made during regular MPA business hours unless otherwise specified in the Special Conditions.

**1.86 TITLE** - Title to the goods or equipment shall not pass to the MPA until after the MPA has accepted the goods/equipment or used the goods, whichever comes first.

**1.87 TRADE SECRETS EXECUTION TO PUBLIC RECORDS DISCLOSURE**- All Responses submitted to the MPA are subject to public disclosure pursuant to Chapter 119, Florida Statutes. An exception may be made for "trade secrets." If the Response contains information that constitutes a "trade secret", all material that qualifies for exemption from Chapter 119 must be submitted in a separate envelope, clearly identified as "TRADE SECRETS EXCEPTION," with your firm's name and the Solicitation number and title marked on the outside. Please be aware that the designation of an item as a trade secret by you may be challenged in court by any person. By your designation of material in your Response as a "trade secret" you agree to indemnify and hold harmless MPA for any award to a plaintiff for damages, costs, or attorney's fees and for costs and attorney's fees incurred by the MPA by reason of any legal action challenging your claim.

**1.88 UNAUTHORIZED WORK OR DELIVERY OF GOODS**- The qualified Bidder(s)/Proposer(s) shall not be

paid for any work performed or goods delivered outside the scope of the Contract or any work performed by an employee not otherwise previously authorized.

**1.89 USE OF NAME** - The MPA is not engaged in research for advertising, sales promotion, or other publicity purposes. No advertising, sales promotion or other publicity materials containing information obtained from this Solicitation are to be mentioned, or imply the name of the MPA, without prior express written permission of the MPA CEO or designee or the MPA Board of Directors.

**1.90 RESERVED**

**1.91 VETERAN BUSINESS ENTERPRISE OPPORTUNITY** - In accordance with Section 18-110 of the City Code, after applying local preference provided in the City procurement ordinance, when considering two or more bids, proposals or other replies for the procurement of goods, equipment and Contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations, including without limitation, price, quality, and service, shall award such procurement or Contract to the certified veteran business enterprise. If a certified veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference as provided in this section or another vendor preference under the city procurement ordinance submit bids, proposals, or replies for procurement of goods, equipment and Contractual services which are equal with respect to all relevant considerations, including price, quality, and service, the city shall award the procurement or Contract to the business having the smallest net worth. MPA reserves the right to seek liquidated damages from Bidder/Proposer for services rendered in an untimely manner.

**1.92 EMPLOYEES AND SUB-CONTRACTORS ARE THE RESPONSIBILITY OF SUCCESSFUL PROPOSER**- All employees of the Successful Proposer shall be considered to be, at all times, the sole employees of the Successful Proposer under its sole direction/control and not employees or agents of the MPA. The Successful Proposer shall supply competent and physically capable employees. The MPA may require the Successful Proposer to remove an employee the MPA deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued employment under the Agreement is not in the best interest of the MPA. Each employee shall have and wear proper identification. All personnel of the Successful Proposer must be covered by Workers Compensation, unemployment compensation and liability insurance, a copy of which is to be provided to



the MPA. No personnel of the Successful Proposer may receive any MPA employment benefit. The Successful Proposer, its employees, agents, or representatives, shall be deemed to be independent Contractors and not agents or employees of the City or MPA, and shall not attain any rights or benefits under the civil service or pension ordinances of the City or MPA, or any rights generally afforded classified or unclassified employees. Contractor, its employees, agents, or representatives, shall not be entitled to Florida Worker's Compensation benefits as an employee of the City or MPA.

**1.93 APPLICATION (SEC 18-72 CITY OF MIAMI CODE)**

- *Application.* Regardless of the source of funds, including state and federal assistance monies, and except as otherwise specified by law, the provisions of this article shall apply to every purchase/procurement by:

A. All city entities or boards, as hereinafter defined, except for the community redevelopment agencies.

B. The Downtown Development Authority, the department of off-street parking, Liberty City Community Revitalization Trust, Civilian Investigative Panel, Bayfront Park Management Trust, Virginia Key Beach Park Trust, and the Miami Sports and Exhibition Authority (each referred to herein as the "board" or "city entity," as applicable); provided, however, that:

C. With respect to each board, the following terms shall have the meanings ascribed to them in this section:

(1) "City" shall mean the board.

(2) "City manager" shall mean the executive director of the board.

(3) "Chief procurement officer" shall mean the executive director of the board or his or her designee.

(4) "City commission" shall mean the board of directors of the board.