

Date: December 1, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor



Agenda Item No. 8(F)(10)

Resolution No. R-1161-21

Subject: Recommendation for Approval to Award Request for Qualifications (RFQ) No. MCC-9-18 General Contractor for Miscellaneous Construction Contract

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution awarding Contract *RFQ No. MCC-9-18* entitled: *General Contractor for Miscellaneous Construction Contract* to Magnum Construction Management, LLC d/b/a MCM (MCM) with a total compensation amount of \$70,000,000 for a five-year term with a one, two-year option to renew.

Contract *RFQ No. MCC-9-18 (MCC-9-18)* will replace *Contract No. MCC-8-10*, which expired on August 29, 2020, but as authorized by Resolution No. 1122-11, construction work could continue on awarded projects for an additional year, up until August 28, 2021. MCM will perform construction services on those projects issued under *MCC-8-10* whose scope of work extends beyond the contract stop date of August 28, 2021. These projects are detailed in Exhibit A. It is expected that the awarded contractors in Exhibit A will continue to work on those projects through completion.

In general, the scope of work in *MCC-9-18* includes the successful and timely completion of all work issued by the recommended General Contractor, who will not normally self-perform any construction work, but rather, will provide services, including but not limited to the work noted below, such that any work can be performed by the subcontractors awarded under this contract. The contract time for individual project orders issued under *MCC-9-18* will start when a Notice to Proceed is issued and continue until construction is completed, and a Certificate of Completion is obtained.

- Conduct preconstruction bidding activities
- Administer multiple simultaneous construction projects
- Secure permits for any construction activities
- Enter into subcontractor agreements for the completion of projects
- General project management prior to and post project award
- Provide education and business training to subcontractors
- Conduct outreach activities to encourage the participation of Small Business Enterprise subcontractors

Scope

Miami International Airport is located within District 6, which is represented by Commissioner Rebeca Sosa; however, the impact of this item is countywide.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any renewal, cancellation, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Background

At the June 6, 2017 Board meeting, Resolution No. R-585-17 was adopted rejecting all bids received in response to *ITB-MDAD-MCC-9-16*, which had been advertised in September 2016 to select a General Contractor through the Miscellaneous Construction Contract (MCC) Program for the Miami-Dade Aviation Department (MDAD). Through the Resolution, the Board directed the County Mayor or County

Mayor’s designee to develop a Request for Qualifications that would promote competition and allow for a qualitative award based on experience and not on price, which differs from the existing *MCC-8-10* Contract that was awarded on price.

In response to the Board’s directive, *MCC-9-18* was advertised on November 5, 2019 for a five-year term and a one, two-year option to renew. On January 14, 2020, the County received eight proposals, of which seven proposers had a local address.

During the proposal review process, the Strategic Procurement Division (SPD) of the Internal Services Department requested an opinion from the County Attorney’s Office (CAO) regarding the letters received by the County, and a legal opinion was issued (Exhibit B) in response. Additionally, the Small Business Division (SBD) of the Internal Services Department issued a letter addressing SBE goal deficit concerns issued in the letters. SPD also consulted with CAO regarding local preference eligibility of the top ranked proposer. In response the CAO issued a legal opinion finding that the proposer was not eligible for local preference, see Exhibit C.

On May 4, 2021, the Board considered an amended recommendation to defer the award of *MCC-9-18* or in the alternative to reject all proposals and perform the work through other County contracts or with in-house staff. However, the recommendation was rejected and the Board directed the Administration to negotiate the Miscellaneous Construction *Contract No. MCC-9-18* with the next highest ranked vendor, MCM, subject to additional vetting. As the Administration began implementing the BCC’s directive, a report from the Office of the Inspector General (OIG) was issued, which raised concerns regarding MCM’s performance on the *MCC-8* contract, see Exhibit D.

Based on the review of the OIG report, the County negotiated additional protections to address the concerns raised, including stronger prohibitions on outside employment, and incorporated additional ethics requirements which are consistent with section 2-11.1 of the Code of Miami Dade County. The additional protections regarding outside employment apply to all key management staff identified as having direct influence in the project orders bidding process and the additional ethics requirements apply to the primary management staff including the general manager, SBD program manager, projects/construction managers.

The proposed construction fee negotiated with Suffolk/NV2A (9.27 percent) for all projects was accepted by MCM after extensive negotiations with the County, as were the proposed hourly rates for pre-construction services as referenced in Exhibit E. The construction fee in *MCC-8-10* was 8.52 percent for projects valued up to \$200,000 and 7.96 percent for all projects over \$200,000. The new hourly rates are, on average, approximately five percent higher than the rates in *MCC-8-10*.

As directed by the Board, and as a result of the County’s open and competitive procurement process based on a qualitative analysis instead of price, a recommendation for award is before the Board for *MCC-9-18* for consideration and approval.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$50,000,000. Should the County choose to exercise, at its sole discretion, the one two-year option to renew, the estimated cumulative value will be \$70,000,000. The total value of the previous contract, Contract No. *MCC-8-10* was \$129,925,000 for an 8 year and 8-month term. The allocation under the contract is lower than the previous contract due to a difference in the anticipated projects.

Department	Allocation	Funding Source	Contract Manager
Aviation	\$50,000,000	Proprietary	Enrique Perez
Total:	\$50,000,000		

Track Record/Monitor

Basia M. Pruna of the Internal Services Department is the Assistant Division Director.

Vendor Recommended for Award

A Request for Qualifications was issued under full and open competition. Eight proposals were received in response to the solicitation. The recommended vendor is local.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage	
Magnum Construction Management, LLC d/b/a MCM	6201 SW 70 Street First Floor Miami, FL	Same	47	Munilla, Daniel
			71%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendors Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Suffolk/NV2A, A Joint Venture LLC	Yes	Evaluation Scores/Ranking after application of the local preference
CES Construction, LLC	Yes	
Lemartec Corporation	Yes	
Nunez Construction, Inc.	Yes	
The Whiting-Turner Contracting Company	No	
Thornton Construction Company, Inc.	Yes	
Turner Construction	Yes	

Due Diligence

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department. The scope of the solicitation was updated for anticipated projects.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise (SBE) Subcontractor Goal applies, as follows: SBE-Construction 20 percent.
- The Living Wage does not apply.

Attachments



Jimmy Morales
 Chief Operations Officer

Date: December 1, 2021
To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners
From: Daniella Levine Cava
Mayor 
Subject: Supplemental Information Recommendation of Award of Request for Qualifications
No. MCC-9-18, General Contractor for Miscellaneous Construction Contract

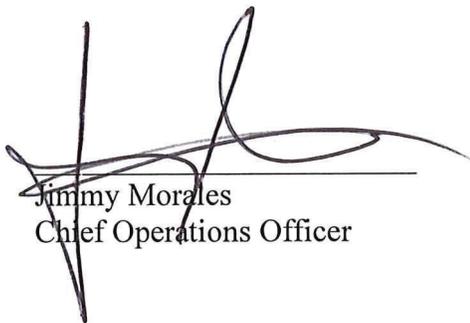
Attached for your consideration is the Findings and Recommendations by the Hearing Examiner that: (1) Lemartec Corporation’s (Lemartec) protest be denied and (2) finds that the bid process was neither anti-competitive nor did the County act in an arbitrary and capricious manner in recommending MCM for the award and upholds the award recommendation by the Administration.

Bid Protest

A recommendation to award a contract to Magnum Construction Management, LLC d/b/a MCM (MCM) for *MCC-9-18, General Contractor for Miscellaneous Construction Contract* was filed with the Clerk of the Board on August 26, 2021, and notice was sent to all proposers thereafter. Lemartec submitted on August 31, 2021 its Written Intent to Protest and Grounds for Protest (Exhibit A), asserting the recommendation to award is arbitrary and capricious, and MCM is non-responsible and ineligible for award.

The Findings and Recommendation of the Hearing Examiner (Exhibit B) determined that the County’s recommendation was a reasonable exercise of discretion and judgment given the totality of the facts and circumstances.

Attachments



Jimmy Morales
Chief Operations Officer

EXHIBIT A

Due to the size of the document, a copy may be requested.

HARVEY RUVIN, CLERK OF THE BOARD

IN RE: THE PROTEST OF THE
AUGUST 26, 2021 MAYOR'S
RECOMMENDATION OF AWARD OF
REQUEST FOR QUALIFICATIONS
MCC-9-18 FOR GENERAL
CONTRACTOR FOR
MISCELLANEOUS CONSTRUCTION
CONTRACT

LEMARTEC CORPORATION,

Petitioner,

v.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Respondent.

FILED FOR RECORD
2021 AUG 31 AM 11:31
CLERK OF COUNTY OF
MIAMI-DADE COUNTY, FL

PETITIONER LEMARTEC CORPORATION'S WRITTEN INTENT TO PROTEST AND GROUNDS FOR PROTEST

Petitioner, Lemartec Corporation ("Lemartec"), respectfully submits, pursuant to Section 2-8.4 of the Miami-Dade County ("County") Code and Implementing Order 3-21, a Notice of Intent to Protest and Grounds for Protest of the August 26, 2021 Recommendation of the County Mayor (the "Recommendation") to award the contract contemplated in Request for Qualifications MCC-9-18 (the "RFQ") to Magnum Construction Management, LLC ("MCM").¹ For the reasons set forth below, the Recommendation does not comply with Florida law, the County Code, and the RFQ, and therefore, Lemartec respectfully requests that the Hearing Examiner find that the Recommendation and the Mayor's decisions embodied therein are arbitrary. As a result, Florida

¹ Pursuant to Implementing Order 3-21, Lemartec submits with this protest a check made out to the Clerk of the Board in the amount of \$5,000.

law requires and that the Recommendation be rescinded or rejected and that the County proceed in a manner that complies with applicable law.²

INTRODUCTION

The County Code requires the Hearing Examiner to reject recommendations of award that are arbitrary. While the term "arbitrary" is often thrown around in bid protests without evidence, one must look no further for the prime example of arbitrary action by a governing entity than the County's actions with respect to this RFQ. One moment, MCM is non-responsible and ineligible for award, the next moment MCM is responsible without a change in the underlying facts. One moment the Mayor is concerned, in writing and before the Board of County Commissioners, that MCM **AND** Alberto Calderin ("Calderin") a member of MCM's key management staff, violated its existing County Contract and representations made to the County. And the next moment, the Mayor is recommending a contract to MCM that includes the same key management staff, Calderin, without concern. This about-face, we are sure, will become the very example of "arbitrary" in the future.

Regarding the County's arbitrary about-face, the Mayor and County staff's determination that MCM is ineligible for award was based on reason and evidence, specifically, a number of findings by the County Office of Inspector General ("OIG") regarding MCM's conduct during the term of the incumbent contract, MCC-8-10:

- MCM and Calderin violated the MCC-8-10 contract. Calderin engaged in outside employment without approval from MDAD, in direct violation of the MCC-8-10 contract from the inception of the contract in 2011 through 2019.

² Pursuant to Implementing Order 3-21, Section II, Lemartec reserves the right to augment this Protest based on information received from the Clerk of the Board based on Lemartec timely public records request made within the three-day period within which to file this Protest.

- Calderin's outside employment created a massive appearance of impropriety. Calderin ran his own general contracting company, through which he sought and obtained numerous County contracts using subcontractors that he was also awarding contracts to on MCC-8-10 on behalf of MCM.
- Evidence demonstrates Calderin was getting paid by the County for the time he was spending on work with his outside company. Calderin was a full-time employee of MCM for MCC-8-10, and was paid by the County based on hours worked when he was clearly also running his private business during weekday business hours.
- MCM became aware of Calderin's malfeasance and never reported it to MDAD.
- Calderin promised to stop his outside employment and cease seeking County contracts, but he was lying. He just changed the name of his company and immediately got certified to continue going after County contracts.
- MCM displayed an egregious lack of oversight in its failure to notice Calderin's initial outside employment, its failure to notify MDAD once it did learn of it, and its failure to notice that Calderin never actually stopped his outside employment, even after he promised that he would.

None of these facts changed. However, for no stated reason addressing the misrepresentations, lack of oversight, malfeasance, the County issued the Recommendation to award to MCM. Even more, the County went out of its way to avoid addressing these glaring issues in the Recommendation, in violation of the County's own procurement rules. The County Code requires certain due diligence be completed **and explained** in every recommendation of award, including a recommendation regarding a responsibility determination. The Recommendation is silent on responsibility and silent on the due diligence that was required to be conducted. The County is simply breaking its rules to award this contract to MCM.

That is not the only rule that has been broken—the OIG report is just the tip of the iceberg, and there are a plethora of other reasons that the award to MCM is arbitrary and capricious:

- MCM lied to the evaluation committee. MCM did not disclose the OIG investigation as required by the RFQ. MCM also did not disclose another audit that it was the subject of, which found that MCM did not comply with its required community workforce plan or responsible wages requirements. MCM's failure to comply with these material disclosure requirements of the RFQ renders MCM's proposal nonresponsive and ineligible for award.
- The County allowed MCM to obtain a material modification to the contract, a reduction in the required bond by two-thirds—from \$30 Million to \$10 Million. This change is clearly prohibited by Florida law and provides MCM with yet another competitive advantage.
- The County ignored its own rules regarding scoring. One selection committee member was a clear outlier, and removal of that member's scores would have resulted in Lemartec winning. At a minimum, the County was required by its established procurement rules to analyze this committee member's scores, request a written explanation from the committee member, and report this information to the Board.

MCM is manifestly ineligible for award. After a fulsome analysis of the OIG Report and applicable law, the County properly concluded the same. That determination, in light of the facts and law, was an obvious one. But then, without any explanation, evidence, or change in circumstances, the County determined the opposite and issued the Recommendation. The Recommendation is arbitrary and capricious and cannot stand.

STATEMENT OF FACTS

A. MCM's History of Non-Responsibility—The MCC-8-10 and the OIG Investigation

MCM is awarded and obtains undeserved benefits from the MCC-8-10 Contract.

MCC-9-18, which is the subject of the Recommendation and this Protest, is the latest miscellaneous construction contracts (“MCC”) program procured by MDAD, and was preceded by MCC-8-10. Exhibit “A” at 2. The MCC program delegates the administration of construction projects at MDAD to a general contractor, who then subcontracts the miscellaneous construction contracts on a competitive basis to subcontractors. Exhibit “D” at 2. MCC-8-10 was awarded to MCM on December 19, 2011. Exhibit “K” at 1. The award of MCC-8-10 to MCM was for a four-year term and contract value of \$50,125,000. *Id.* However, through a series of change orders extending and expanding the contract without any competitive process, MCM’s total contract term was increased to nearly twice the length (nine years) and three times the contract value (\$130 million). Exhibit “K.”

During the term of MCC-8-10, the County audits MCM for violating a different contract.

Beginning in 2013, the County conducted an audit of MCM’s contract for work on the Cruise Terminal “D” expansion, which it was awarded in 2021. Exhibit “O” at 2. This audit was required to be disclosed pursuant to the RFQ but MCM blatantly failed to disclose it, which is addressed more fully below. That audit report found that MCM did not comply with the County’s Community Workforce Program, which requires that the firm employs workers from certain areas within the County for a minimum number of days, and Responsible Wages requirements, which require that employees be paid certain minimum wages. Exhibit “O” at 2–5. MCM submitted names to the County for Community Workforce plan eligibility, but the investigation found that “the trades corresponding to those workers were substantially completed at the time of MCM’s submission, yet one worker was never on the project” and three others did not work the required

120 days. Exhibit "O" at 4. MCM submitted additional names, however, the audit revealed that none of those employees worked the required number of days. MCM did not rectify the issue until the auditor notified the County of non-compliance, and the County reduced the Community Workforce Plan requirements. *Id.* With respect to Responsible Wages, the auditor found that MCM and its subcontractors failed to pay 24 workers the required rates, and, for another ten workers, subcontractors "claimed to have made the required benefit contributions to employee labor unions but were unable to provide supporting documentation." *Id.* MCM clearly has a history of dishonest performance on County contracts.

MCM's General Manager violates the MCC-8-10 Contract for his personal gain.

MCM's general manager for the MCC-8-10 contract was Calderin. The MCC-8-10 contract included a provision stating:

The General Manager shall have no duties or responsibilities other than pursuant to this Contract and shall maintain no office other than within the airport or at such other airport location(s) as shall be provided by the MDAD. This individual shall not seek additional employment activities outside this contract nor perform any work outside the MCC-8-10 contract without receiving prior written consent from the Contracting Officer.

Exhibit "B" at 6 (emphasis added). In 2016, five years into the MCC-8-10 contract, MDAD and the OIG received a tip alleging that Calderin was **improperly favoring certain subcontractors under MCC-8-10** that he also had a business relationship with through his own private contracting company, the Calderin Group. Exhibit "B" at 8.

Calderin incorporated The Calderin Group in September of 2008. Calderin was both the principal and the qualifier for The Calderin Group. Exhibit "B" at 7. The Calderin Group was a County-certified small business enterprise ("SBE") construction firm. *Id.* Calderin, on behalf of The Calderin Group, actively bid on numerous County contracts throughout the term of the MCC-8-10 contract and was awarded six of those contracts. Exhibit "B" at 9–10. The Calderin Group was

awarded its first contract in 2012 and completed work on the last contract it was awarded in February of 2019, only after being forced to cease work due to the OIG investigation. Exhibit "B" at 10. Neither Calderin nor MCM ever sought nor received approval from MDAD for this outside employment in violation of the MCC-8-10 contract.

Not only did Calderin have outside employment in direct violation of the terms of the MCC-8-10 contract, he utilized subcontractors on his personal company's contracts that he was also selecting for subcontracts on the MCC-8-10 contract, the very favoritism and violation that the anonymous tip disclosed. Exhibit "B" at 13–17. In other words, Calderin was responsible for selecting and managing firms on behalf of the County with whom he had partnered with through his own private company, which clearly puts him into a position to be able to manipulate those subcontractors on his private contracts to curry favor for awards under the MCC-8-10 contract. Exhibit "B" at 17. In fact, evidence reflects that Calderin did abuse his position to take advantage of MCC-8-10 SBE subcontractors that he was also utilizing on his other contracts—when going after a contract at the airport with his outside business, Calderin had one of the MCC-8-10 subcontractors, A1 All Florida Painting, loan him \$50,000 for the bid bond. Exhibit "B" at 14.

Furthermore, Calderin's role as general manager for MCC-8-10 was a full-time position, for which he was paid an hourly rate for the hours worked. Exhibit "B" at 6. However, it is clear that Calderin was also working for The Calderin Group during weekday business hours. According to a County WASD employee, Calderin was the primary contact for his private company's contract with WASD, and they conducted all business during normal business hours. Exhibit "B" at 12. Yet, Calderin was supposed to be a full-time employee on MCC-8-10, and MDAD reported to the OIG that Calderin "worked long hours yet had insufficient output for the number of hours logged." Exhibit "B" at 17. Clearly, Calderin was getting paid by the County for work he did and was required to do on the County contracts awarded to The Calderin Group while also getting paid by the County for work he did and was required to do in his general manager position on MCC-

8-10. Calderin's doublebilling for his personal gain substantiates the egregious nature of his breach of the clear terms of the MCC-8-10 contract. How could the County determine that Calderin and MCM are responsible? Of course, initially, the Mayor and her staff said, "no way."

MCM's management was complicit in MCM's flagrant violation of the MCC-8-10 contract.

Even more, MCM became aware that it was violating the MCC-8-10 contract in 2015 and did absolutely nothing. According to MCM, in 2015 Calderin informed Jorge Munilla, who was President of MCM at the time, that he was setting up his own business and Jorge Munilla told him that he was ok with it if he didn't do private business on the MCM clock, even though such private work is a direct violation of MCM's MCC-8-10 contract. Exhibit "B" at 11. Upon learning that Calderin was engaged in outside employment in violation of the MCC-8-10 contract, Jorge Munilla did not seek approval from MDAD. Of course, contrary to his statements to Jorge Munilla, Calderin continued to work on his private business on County time. Exhibit "B" 11. Another principal of MCM, Pedro Munilla, became aware of Calderin's outside employment and MCM's ongoing contract violation in 2017, as a result of the OIG investigation. He stated that "he was comfortable with the situation as long as Calderin obtained no airport contracts." Exhibit "B" at 11. Pedro Munilla also failed to get the required approval from MDAD; therefore breaching the terms of the MCC-8-10 contract.

In May of 2017, the OIG informed MDAD of its preliminary findings regarding Calderin's unsanctioned employment. Exhibit "B" at 2. MDAD responded that it would address this issue with MCM, and, due to other performance issues, would seek Calderin's removal as general manager from MCC-8-10. Exhibit "B" at 2. MDAD approached MCM and told it that Calderin would be permitted to finish the work on his existing contracts with The Calderin Group, but that he was not permitted to bid on any future County contracts while acting as general manager under MCC-8-10. **MCM also represented to MDAD that it would not include Calderin in its proposal for**

MCC-9-18. Exhibit "G." Yet, MCM breached that representation and included Calderin again as the general manager as a part of its MCC-9-18 proposal. Exhibit "F" at 75.

MCM's general manager promises to stop violating the MCC-8-10 contract, but continues to do so.

Additionally, Calderin sent a letter and sworn affidavit to MCM promising to stop all County business under The Calderin Group at the close of the 2017 tax season. Exhibit "B" at 19. However, instead of ceasing his outside business as represented to the County, **Calderin tried to hide his conflicting employment merely by changing the name of his company from The Calderin Group to Primecon** in 2019, when all of his County work under The Calderin Group ended. Exhibit "B" at 19; Exhibit "H." Primecon promptly applied for SBE certification from the County, and in February of 2020, was added as an eligible vendor to the County's MCC-7040 pool. Exhibit "B" at 3. Clearly, Calderin never stopped operating his private business during MCC-8-10.

MCM agrees to replace its general manager.

On June 30, 2020, three years after MCM was initially notified that it was in violation of its MCC-8-10 contract, MCM received the OIG's draft report, which included much of the foregoing. MCM removed Calderin from his position on MCC-8-10 the next day. Exhibit "B" at 3. **MCM also agreed with the OIG that Calderin's outside business activities "could needlessly create an appearance of impropriety"** and stated that it thought the issue had been resolved in 2018, when Calderin promised his company would become inactive. Exhibit "B" at 4.

MCM allowed its new general manager to commit the exact same breach of MCC-8.

Incredibly, MCM replaced Calderin with Juan Munilla, who was **also engaged in outside employment.** In 2020, Juan Munilla was listed as the qualifier for Falcon 6 Infrastructure Advisory

Group ("Falcon 6"). To be clear, even after MCM removed Calderin, it remained in violation of the MCC-8-10 contract. Exhibit "J." Even more, Falcon 6 has been approved for qualification to obtain County contracts pursuant to the MCC-7040 prequalification pool. Exhibit "C."

B. The RFQ and MCM's Material Misrepresentations and Violations

The County issues MCC-9-18 to replace MCC-8-10.

The County issued the RFQ on November 19, 2019, and proposals were due on January 14, 2020. Exhibit "E." Like the services in MCC-8-10, the RFQ solicited qualifications from experienced firms to act as the general contractor on MDAD's MCC-9-18 program for projects at MDAD-operated facilities. Exhibit "D" at 2.

The successful firm is responsible for managing preconstruction bidding activities, administering all simultaneous construction projects awarded under the MCC, entering into subcontractor agreements, and general project management. Exhibit "D" at 2, 6. However, unlike MCC-8-10, this solicitation was solely based on qualifications and was not based on price. Exhibit "A" at 2.

It is important and material that the evaluation and selection process was based on the experience and history of the proposers and their key management personnel. Consequently, hiding audits and findings of malfeasance and violations from the evaluation committee gives the offender an unfair competitive advantage.

The selected firm is required to provide key management staff that are available on an on-call basis 24 hours per day, seven days per week. Exhibit "D" at 7. In fact, the RFQ evaluation criteria awarded 30 points out of 100 to the experience and qualifications of the proposed key management staff. *Id.* The Proposer Information Section of the RFQ required proposers to provide

detailed information regarding the qualifications of key management staff, especially the proposed General Manager. Proposer Information Section at 3. It stated

Describe the experience of the proposed General Manager (GM) including education and/or certifications in engineering, architecture or building construction as well as an active State of Florida General Contractor's license. Provide specific details on building construction and management experience with similar responsibility in a comparably sized program. A copy of the individual resume, job description, and other detailed qualification information should be included as part of the submittal.

Exhibit "T" at 3.

MCM breaks its agreement with MDAD and includes Calderin as its proposed general manager.

Despite its agreement with MDAD not to include Calderin, the OIG investigation, and MCM's clear knowledge of Calderin's egregious actions during MCC-8-10, MCM unbelievably proposed Calderin as its General Manager for the MCC-9-18 contract. Exhibit "F" at 75. The proposal stated—falsely—that Calderin "has successfully worked as the General Manager for the MCC-8 program for the past 7+ years with exceptional results." *Id.*

MCM violates the RFQ by failing to disclose required information.

Not only did MCM include Calderin in its proposal in direct contravention of MCM's agreement with the County, MCM made a number of material omissions in an attempt to prevent evaluation committee discussion of its misconduct relating to Calderin. Question Number 4 of the Proposer Information Section required that proposers provide a list of all work being performed in Miami-Dade County and include "whether or not the contract was **audited by the County and the results therefrom.**" Exhibit "T" at 2 (emphasis added). In response to that question, MCM only stated "Other than for MCC-8-10, MCM is not entirely sure whether the projects were or are

being audited," conveniently omitting the results of the audit and the OIG investigation as required by the RFQ. Exhibit "F" at 54.

MCM also failed to disclose the County's audit of MCM's contract at the seaport in 2013, for the Cruise Terminal "D" expansion; however, MCM certainly included that same contract to bolster its experience. Exhibit "F" at 54, 57, 59. As detailed in the foregoing, that report found that MCM did not comply with the County's Community Workforce Program and Responsible Wages requirements. Exhibit "O" at 2. None of this information was disclosed in MCM's proposal.

Furthermore, the Contractor Due Diligence Affidavit, which was signed and notarized by MCM required MCM to disclose a list of instances where it has received a formal notice of non-compliance. MCM did not mention its blatant non-compliance with the MCC-8-10 contract as a result of the outside employment of Calderin. Exhibit "F" at 182-83.

Proposals are ranked.

The evaluation committee ranked the proposals on May 14, 2020. As a reminder, this ranking was not based on price but on experience and qualifications, including issues with contract compliance which MCM hid from the evaluation committee. Suffolk/NV2A, a Joint Venture, LLC, (Suffolk), which claimed local preference, was ranked first receiving 462 points. Exhibit "P" at 9. MCM and its deficient proposal were ranked second, receiving 457 points, and Lemartec was ranked third, receiving 447 points. *Id.*

An outlier score changed the ranking.

Notably, one evaluation committee member's scoring resulted in a 12-point gap between the score given to MCM, which she ranked first, and Lemartec, which she ranked fourth. See Nancy Pantoja's scores. Exhibit "P" at 13. The largest gap in either direction from any other evaluator was only seven points, making Ms. Pantoja's score, with nearly double the next-highest

gap, a clear outlier. Despite County requirements, the contracting officer did not require Ms. Pantoja to provide a written explanation for this gap, nor was it brought to the administration's attention when it received the recommendation of the evaluation committee. Exhibit "P" at 8.

Proposers are re-ranked based on local preference.

On May 4, 2021, the Mayor brought an item to the Board of County Commissioners to withdraw the recommendation to Suffolk/NV2A, based upon the finding that Suffolk/NV2A was improperly deemed in compliance with the County's local preference requirements. This resulted in Suffolk/NV2A being ranked fifth, and moving MCM and Lemartec up to first and second place, respectively. The Board denied the award to Suffolk/NV2A and directed the Mayor to negotiate with the next responsive and responsible bidder, subject to further vetting by the administration. May 4, 2021, Board of County Commissioners Meeting Video at 8:18:26.³

C. The Administration's Reasoned Decision to Disqualify MCM

The County makes an obvious conclusion: the general manager that blatantly violated the MCC-8 contract and double-billed the County for years should not be the general manager of MCC-9.

The OIG issued its final report on the investigation of MCC-8-10 on May 12, 2021. As a result of the OIG's findings, County staff determined that Calderin is not permitted to work on the MCC-9-18 contract, should it be awarded to MCM. Exhibit "R" at 10. The County staff's determination was based on Calderin's violations, Calderin's misrepresentations, and MCM's agreement regarding Calderin all documented and detailed above. *Id.* This determination was not arbitrary; it was not without due diligence; it was not without reason. On the contrary, this determination was based on an OIG investigation, the staff's due diligence, and the reasonable

³ Board of County Commissioners Meeting, May 4, 2021, Item 8F6, accessible at https://miamidade.granicus.com/MediaPlayer.php?view_id=3&clip_id=6689.

conclusion that someone who had violated a County contract for nearly identical services should not be permitted once again to work for the County in a similar position.

The County Attorney's Office concludes that MCM is ineligible for award.

Additionally, the administration requested an opinion from the County Attorney's Office as to whether the proposal submitted by MCM is responsive in light of the administration's conclusion that Calderin would not be permitted to work on the MCC-9-18 contract. Exhibit "R" at 1. The County Attorney issued an opinion finding, without equivocation, that to the extent MCM is no longer able to include Calderin as its general manager for MCC-9-18, MCM may not be awarded the contract. Exhibit "R" at 4. The County Attorney found that MCM's high score was in large part based on the inclusion of Calderin, and substituting him after the fact would be a material change from the proposal and an impermissible bait and switch. Exhibit "R" at 6. The memo also stated, "[w]hile this opinion does not address whether MCM's failure to disclose the ongoing OIG investigation, the breach of the MCC-8 contract, or the failure to timely notify the contract officer of any changes in key personnel renders MCM non-responsive, the County may properly take notice of these facts in its determination of whether MCM is a responsible vendor for the MCC-9 solicitation." Exhibit "R" at footnote 3.

To be clear, the administration determined that Calderin would not be permitted to participate on the MCC-9-18 contract and that due to the OIG findings regarding MCM's egregious lack of managerial oversight, MCM was a non-responsive proposer. Exhibit "Q" at 1. Additionally, according to the County Attorney, because the administration determined that Calderin was prohibited from participating on MCC-9-18, MCM was thus ineligible for award.

D. The County's Arbitrary About-Face.

The Mayor provides a report to the Board of County Commissioners indicating her intent to negotiate with Lemartec.

Lemartec became the highest-ranked proposer after MCM's disqualification. However, instead of proceeding as the County normally does by continuing the process and commencing negotiations with Lemartec, the Mayor took a highly unusual step and issued a report to the Board of County Commissioners. Exhibit "Q." The report provided the Board with four options: (1) initiate a new, accelerated solicitation process for these services, (2) reconsider the administration's recommendation to have the County perform the services itself, (3) negotiate with the next highest-ranked responsive and responsible vendor, or (4) award the contract to MCM. Significantly, the report concluded by confirming that "in the absence of direction from the Board regarding one of the options stated above, the directive to the Administration at the Board meeting of May 4, 2021 to negotiate with the next responsive firm, will result in negotiations with Lemartec Corporation." *Id.* at 2.

The Board gave the Mayor no contrary direction.

The Airport and Economic Development Committee of the Board considered the Mayor's report, and after much discussion, took no action.

The Mayor stated her intent to negotiate with MCM anyways.

Even though the Airport Committee took no action on the Mayor's report, on July 20, 2021, the Mayor issued a memorandum in the wee hours of the morning of the Board meeting stating "[i]t is clear from the discussion at the [airport] committee that there is still a desire to direct the administration to negotiate with MCM.⁴ Therefore, the administration will continue following its

⁴ It is worth noting that the committee did not give a clear direction. In fact, the committee gave no direction at all. One Commissioner made a motion to negotiate with Lemartec. Other Commissioners were wary of

directive to negotiate with MCM." Exhibit "U." The Mayor's memorandum did not address her administration's prior written determination that Calderin would not be permitted to participate on MCC-9-18, or the OIG's findings, or its determination that MCM was non-responsible, or the County Attorney's determination that MCM would be ineligible for award if Calderin was no longer going to participate on MCC-9-18.

E. The MCC-9-18 Negotiations and Contract

MCM confirms its intent to use Calderin as its general manager.

It is clear that the administration decided to completely disregard its determination that MCM is non-responsible and that Calderin may not participate on MCC-9-18. MCM has affirmed that it will not be substituting Calderin. Exhibit "L" at 3. In an affidavit submitted to the County, MCM affirmed that a number of the key management staff from its proposal are still employed by MCM and available to work on MCC-9-18, including Calderin. *Id.* Furthermore, during the County's negotiation meeting with MCM, the County attempted to confirm the proposed key management staff, but MCM insisted that such discussion was not necessary, as it had already submitted an affidavit confirming the personnel. County Negotiation Meeting, July 27, 2021 Audio at 16:45.

The County allows MCM to provide a \$10 Million bond, whereas the RFQ required a \$30 Million bond.

The negotiated MCC-9-18 contract contains another fatal flaw. The RFQ required that the proposer provide a letter from a surety indicating that the proposer has a bonding ability of \$30 million. The draft contract, attached to the RFQ, required that the contractor deliver a performance and payment bond in the amount of \$30 million to the County within 15 calendar days of the notice

the OIG report and concerned about MCM, and the vote to lay the item on the table was tied three to three. Board of County Commissioners Airport and Economic Development Committee, July 13, 2021, Item 7A, accessible at https://miamidade.granicus.com/MediaPlayer.php?view_id=4&clip_id=6808

of award. Exhibit "D," Appendix 1 at 93. However, the agreement executed by MCM impermissibly revises this provision to only require a performance and payment bond of \$10 million. Exhibit "S" at 95.

MCM's proposed general manager is already in violation of the MCC-9 contract.

Additionally, the MCC-9-18 contract prohibits the general manager from having any duties or responsibilities other than pursuant to the contract and specifically prohibits outside employment activities without prior written permission from the contracting officer. Exhibit "S" at 25. MCM will be in violation of this provision on day one. Calderin is still the principal and qualifier for Primecon. Exhibit "I." There is no evidence that MCM has received permission for Calderin to maintain this outside employment during the course of MCC-9-18.

F. The Mayor's Recommendation

The Recommendation omits the County's prior finding that MCM is ineligible.

On August 26, 2021, the Mayor the Recommendation, recommending award to MCM. The Recommendation omitted the correspondence between administrative staff stating that Calderin would not be permitted to perform on the contract, the memorandum stating that staff found MCM non-responsible and the County Attorney opinion finding that if MCM were to replace Calderin, MCM would be ineligible for award. Exhibit "A."

The Recommendation excludes the due diligence information required by County law.

The Due Diligence section of the Recommendation is also alarmingly incomplete. It refers to a "re-procurement" and simply states that the administration has conducted a full review of the scope of services to ensure that the replacement contract reflects the County's needs, including "conducting market research, posting a draft solicitation for industry comment, and holding

meetings and drafting sessions with the user department." Exhibit "A" at 4. It makes no mention of vetting of proposer responsibility or the due diligence required by past County resolutions.

To summarize, the County found that due to his improper conduct, Calderin could not perform in MCC-9-18. The County also found that MCM is non-responsible due to its egregious lack of managerial oversight. Then, just a couple of weeks later, with zero change in the circumstances, the County did a complete-180 and, without explanation, negotiated a contract with material changes from the terms of the RFQ, and recommended MCM for award when MCM will be in violation of the contract as soon as it becomes effective.

STANDARD OF REVIEW

A public body has discretion to award contracts for public works on competitive bids, however, such discretion may not be exercised arbitrarily and capriciously. *City of Sweetwater v. Solo. Const. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002). It is arbitrary or capricious to "omit or alter material provisions required by the RFP." *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007). Furthermore, an award must be rejected if there is evidence of illegality, fraud, oppression, or misconduct on the part of the public body. *Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982); *D.O.T. v. Groves-Watkins Constructors*, 530 So. 2d 912, 814 (Fla. 1988) ("[T]he hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly."). Similarly, the County Code requires the hearing examiner to determine whether the County "acted fraudulently, arbitrarily, illegally, or dishonestly," and whether there has been a violation of the County Conflict of Interest and Code of Ethics Ordinance. Sec. 2-8.4(g)-(h), County Code. For the reasons explained in this protest, the award to MCM must be rejected because MCM is non-responsible and made material misrepresentations, and the County acted in an arbitrary and capricious manner.

GROUNDS FOR PROTEST

I. **The County's recommendation of award to MCM, a non-responsible proposer, is arbitrary and capricious.**

A. **The County's determination that MCM can be recommended for award, after it had already determined that MCM is ineligible for award, when the facts did not change is the definition of "arbitrary."**

The County determined, based on an abundance of evidence, that MCM is non-responsible and thus ineligible for award. The OIG issued a lengthy report showing that Calderin, the general manager under MCC-8-10 and proposed general manager under this RFQ was guilty of serious misconduct and that MCM was guilty of an egregious lack of managerial oversight. Based on that report, the County determined that (1) Calderin would not be permitted to perform on the MCC-9-18 contract and (2) MCM was non-responsible. The County also determined that, if Calderin were to be removed from MCC-9-18, MCM would be ineligible for award because the scoring of MCM's proposal would no longer be valid. Then, within a matter of weeks, and the revelation of absolutely zero new information, the County decided to negotiate the contract with MCM, permit MCM to use Calderin as its general manager, and recommend MCM for award.

A decision is "arbitrary if it is not supported by logic or the facts," and "capricious if it is adopted without thought or reason or is irrational." *Hadi v. Lib. Behavioral Health Corp.*, 927 So. 2d 34, 38 (Fla. 1st DCA 2006). The law is clear that completely changing course without an adequate explanation is arbitrary and capricious. In *Nippon Steel Corp. v. U.S. International Trade Commission*, the court stated "when an agency decides to change course . . . it must adequately explain the reason for [the] reversal[.] 494 F.3d 1371, 1378 n. 5 (Fed. Cir. 2007); *McHenry v. Bond*, 668 F.2d 1185, 1193 (11th Cir 1982) ("the requirement that an agency explain its departure from precedent . . . [is a] prerequisite[.] to a judicial finding that an agency's action is not arbitrary and capricious.").

One can think of no better example of "arbitrary" agency action than finding a proposer to be non-responsible based on proven serious unethical misconduct of one of the proposer's employees and severe lack of oversight by the proposer, as a result of a thorough investigation completed by the agency's independent fraud-investigation bureau, then turn around and say "oh never mind" for no apparent reason.

B. The County correctly determined, initially, that MCM is non-responsible. It would be arbitrary and capricious to award to a non-responsible proposer.

Responsibility refers to the proposer's ability to perform as provided in the solicitation, and the determination is made at the time of award. See Miami-Dade County Implementing Order 2-13. A responsibility determination can only stand if it is not arbitrary or capricious, or the product of fraud, dishonesty, illegality, or misconduct. See *Air Transport IT Servs. v. Miami-Dade Cty.*, Bid Protest re: MDAD-08-06 *12-13 (2009) (citing *Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982)). It is permissible to overturn an agency's finding of responsibility when that finding is arbitrary and capricious. See *Phosphorus Free Water Solutions, LLC v. South Florida Water Management*, Case No 21-1794BID (Fla. Div. Admin. Hrgs. 2021) (overturning agency's determination that the bidder recommended for award was responsible was arbitrary and capricious when the bidder did not satisfy the minimum experience qualifications and engaged in improper communications in violation of the terms of the solicitation).

The County was right in its initial determination that MCM is non-responsible. MCM permitted Calderin to engage in misconduct that is simply intolerable. He clearly violated the prohibition on outside employment stated in the MCC-8-10 contract. The contract stated that "The General Manager shall have no duties or responsibilities other than pursuant to this Contract and shall maintain no office other than within the airport or at such other airport location(s) as shall be provided by the MDAD. This individual shall not seek additional employment activities outside this contract nor perform any work outside the MCC-8-10 contract without receiving prior written

consent from the Contracting Officer." Exhibit "B" at 6. Calderin had his own company, The Calderin Group, and was actively bidding on and receiving contracts from the County for that company since the inception of MCC-8-10 in 2011. Neither Calderin nor MCM received permission from MDAD to engage in this outside employment.

A bidder is non-responsible when the bidder violated terms of prior contracts with the agency, specifically contractual prohibitions on taking action without prior written approval. *Leamington Inc. v. Fla. Dep't of Transp.*, 1993 WL 943962 *4 (Fla. Div. Admin Hrgs. 1993) (upholding agency's determination that bidder was not responsible when, on its previous contract, it subcontracted work to a separate entity without the prior written approval required by the contract); see also *Larry Holley Tree and Lawn Spraying, Inc. v. Fla. Dep't of Transp.*, 2003 WL 1154513 (Fla. Div. Admin. Hrgs. 2003) (upholding a determination of non-responsibility when the bidder failed to comply with contractual requirements, was unprofessional, and attempted to evade responsibilities).

Even more, when MCM removed Calderin, they replaced him with Juan Munilla, who was also a qualifier for another company, Falcon 6. There is no evidence that MCM obtained permission for Juan Munilla to engage in outside employment. So, MCM remained in violation of the contract even after they replaced Calderin, meaning that MCM was in violation of its contract for the entirety of the contract. Accordingly, MCM is non-responsible and ineligible for award. See *CPW Enter. Inc. v. Dep't of Transp.*, 2003 WL 22174579 (Fla. Div. Admin. Hrgs. 2003) (upholding determination that bidder was not responsible when agency based it on default in prior contract and performance issues that bidder did not take action to cure).

Not only is MCM non-responsible because it was in constant violation of the contract, MCM is non-responsible of its egregious lack of oversight. Certainly, MCM is charged with knowledge of its contractual obligations and the duty to ensure its personnel are in compliance.

See, e.g., *Allied Van Lines, Inc. v. Bratton*, 351 So. 2d 344, 348 (Fla. 1977) ("It has long been held in Florida that one is bound by his contract. Unless one can show facts and circumstances to demonstrate that he was prevented from reading the contract, or that he was induced by statements of the other party to refrain from reading the contract, it is binding. No party to a written contract in this state can defend against its enforcement on the sole ground that he signed it without reading it."). MCM cannot claim that it was unaware of its contractual obligation to provide a general manager that was not engaged in outside employment.

Similarly, MCM cannot claim that it did not know it was in violation of its contract. See *St. Petersburg Coco-Cola Bottling Co. v. Cuccinello*, 44 So. 2d 670, 676 (Fla. 1950) ("[corporations] are charged with notice of all transactions had by those through whom it does business . . . a failure of one employee to advise another of transactions affecting the corporate business is the fault only of the corporation."). At least as of 2015, an MCM corporate officer knew that Calderin engaged in outside employment. Exhibit "B" at 11. Prior to that, MCM either failed to notice that it was in violation of its contract and that the person responsible for MCC-8-10 was engaged in practices that almost certainly resulted in billing the County for non-MCC-8-10 work, and created an opportunity for conflicts of interest, or knew and did not take any action to fix it. Calderin was a full-time employee, paid by MDAD pursuant to an hourly rate for an annual number of hours worked. Exhibit "B" at 6. However, it is clear through County personnel testimony and Calderin's other contractual obligations that Calderin was running his private business while working full-time hours for the County. According to a County employee responsible for managing one of the contracts The Calderin Group had with the County, Calderin was the primary contact for that contract, and they conducted all business during normal business hours. Exhibit "B" at 12. Calderin also had contracts with the County Public Housing and Community Development department, which do not appear to only have been performed at night. Exhibit "N." Furthermore, MDAD reported that his output on MCC-8-10 was insufficient for the number of hours logged.

Exhibit "B" at 6, 17. It does not take a rocket scientist to determine that the County was paying MCM for work on MCC-8-10 that was really for the benefit of The Calderin Group.

Furthermore, even when Calderin was told he must cease this activity, he simply changed the name of his company to Primecon and continued to set himself up to receive County contracts. Exhibit "B" at 19, Exhibit "H." Even if Primecon did not obtain a County contract, such an arrangement is impermissible because Calderin was the listed qualifier for Primecon. The Commission on Ethics considered a request to engage in outside employment—specifically whether a County employee could act as a qualifier for a construction company. In re Finol, Miami-Dade Comm'n on Ethics & Pub. Trust, INQ 13-57 (March 7, 2013). The Commission on Ethics recommended denial of the request, finding that because qualifiers are required to be on job sites during regular business hours, it could put the employee "in a situation of conflicting loyalties, i.e., whether to benefit your private employer to the detriment of the County." *Id.*

In addition to the clear conflict of interest created by Calderin's acting as qualifier for The Calderin Group and Primecon, his outside employment also created a conflict of interest because on The Calderin Group's contracts, Calderin was utilizing subcontractors that were also receiving contracts under MCC-8-10. Calderin was responsible for selecting and managing firms on behalf of the County with whom he had partnered with through his private company, which clearly puts him into a position to be able to manipulate those subcontractors on his private contracts to curry favor for awards under MCC-8-10. Exhibit "B" at 17. Throughout the term of MCC-8-10, MCM was in violation of its contract and had key management staff engaging in unethical and possibly criminal activity. MCM sanctioned this activity. MCM simply cannot be deemed a responsible proposer.

II. The County's failure to follow its own rules regarding investigation and reporting of contractor responsibility is arbitrary and capricious.

It appears that the County just does not want to apply the rules to MCM. This is also evident in the County's complete failure to follow its own requirements for vetting responsibility and detailing the due diligence in the recommendation for award. Resolution No. 187-12 requires the Mayor to include, together with any recommendation for the award of any contract over \$1 million "a description of the due diligence investigation performed to determine the contractor's responsibility and to report to this Board in connection with those contracts any instance where such research revealed information which may adversely affect a finding of contractor responsibility." Miami-Dade Cty. Bd. of Cty. Commr's Reso. No. 187-12 (Feb. 21, 2012). The Recommendation does not indicate that any responsibility review was done, and does not make any mention of responsibility at all, although it is evident that the administration was aware of an abundance of information "which may adversely affect a finding of Contractor responsibility." Exhibit "A."

Furthermore, pursuant to Resolution No. 63-14, the administration is required to have the recommended contractor disclose litigation, defaults, formal notices of noncompliance or nonperformance, and consider those findings in making a recommendation of responsibility, to be reported to the board together with any recommendation of award. Miami-Dade Cty. Bd. Of Cty. Commr's Reso. No. 63-14 (Jan. 22, 2014). Although MCM certainly had information to disclose for each of those items, the Recommendation is silent with respect to a statement on such items or MCM's responsibility. It goes without saying that the County is required to follow its own rules. *See, e.g., Cleveland Clinic Fla. Hosp. v. Agency for Health Care Admin.*, 679 So. 2d 1237, 1242 (Fla. 1st DCA 1996) (holding that an agency must follow its own rules and an agency may not apply different rules if a party has already relied on announced policies); *Boca Raton Artificial Kidney Ctr. v. Dep't of Health and Rehab. Servs.*, 493 So. 2d 1055, 1057 (Fla. 1st DCA 1986) (holding that agencies must adhere to its established rules and procedures and may not

depart from the plain meaning of the rule even in the interest of expediency). The County is simply not permitted to ignore its own rules and is especially not permitted to do so when it provides a proposer with a competitive advantage.

III. MCM made material misrepresentations in its proposal, and is thus non-responsive, non-responsible, and ineligible for award.

A. MCM's material omissions and misrepresentations render its proposal non-responsive.

MCM is non-responsive to the RFQ because MCM knowingly omitted material information from its proposal that was required by the RFQ in an attempt to hide its gross misconduct and secure the award. MCM did not disclose the OIG investigation in its proposal, and there are at least two places where that information should have been stated. First, the Contractor Due Diligence affidavit requires proposers to list any contract where it has received a notice of noncompliance. Exhibit "F" at 182. While, alarmingly, MCM listed four items under that section, it failed to include MDAD's directives regarding its non-compliance with MCC-8-10. Exhibit "F" at 183.

Additionally, RFQ Proposer Information Section question number four required proposers to list any contracts that have been audited and the result of that audit. Exhibit "F" at 54. MCM responded, "[o]ther than for MCC-8-10, MCM is not entirely sure whether the projects were or are being audited." *Id.* MCM did not detail the status of the results of the audit, which would have disclosed that its general manager was found to have improper outside employment and as a result, MCM was in violation of its current contract with the County. MCM also failed to report an audit that was done of its contract with the County seaport, which would also be disturbing to a selection committee. That audit found that MCM failed to comply with the County's Community Workforce Plan requirements. More specifically, the audit found that MCM promised the County that it was hiring local residents to carry out work on its contract, but did not actually hire those

local residents for the required amount of time. Exhibit "O" at 4–5. It also found the MCM and its subcontractors failed to pay a number of workers the County's Responsible Wages. *Id.*

To establish a disqualifying material misrepresentation in a bid protest, a protestor must establish two elements: (1) whether a proposer made a false statement and (2) whether the agency relied on that false statement in selecting the proposal for award. *Blue & Gold Fleet, LP v. United States*, 70 Fed. Cl. 487, 495 (2006). The protestor need not allege or establish that the proposer knew that the statements were false, although that is plainly evident in the instant case. Further, the protestor need not allege that the decision of the agency was "wrong" because of the false information—the issue is whether the evaluation committee was influenced by false information.

These disclosure requirements are material, as this information certainly affected the scores given to MCM. This was a qualifications-based solicitation, and the RFQ allotted 40 of the 100 points available to "[p]roposer's experience, qualification, capabilities, and past performance in providing the type of services described in this RFQ." Exhibit "D" at 7. The RFQ also allotted 30 points to the experience and qualifications of key management staff. *Id.* MCM received 181 points out of 200 points for the former category, and 137 points out of 150 points for the latter category. Exhibit "P" at 9. Certainly, had the selection committee had the benefit of the knowledge of Calderin and MCM's egregious misconduct on the MCC-8-10 contract or the disturbing results of the audit on MCM's seaport contract, those scores would have been lower. The selection committee's primary task was to evaluate the past performance of MCM and its general manager, and the selection committee did not have extremely relevant and damaging information regarding the same. Accordingly, MCM must be deemed non-responsive. See *Statewide Process Svc. of Fla., Inc. v. Dep't of Transp.*, 1995 WL 1053244 *4 (Fla. Div. Admin Hrgs. 1995) ("to award the bid to AALS! on the basis of its misstatement would encourage other bidders to misstate their qualifications"); *Old Tampa Bay Enterp. v. Dep't of Transp.*, 1999 WL 1486402 *19 (Fla. Div.

Admin. Hrgs. 1999) (upholding agency's rejection of the proposal as non-responsive when the personnel that were included in the proposal and considered in scoring by the evaluation committee were not available to perform).

B. MCM's material misrepresentations render also MCM non-responsible.

Second, Florida law is clear that MCM's misrepresentations require that MCM be disqualified as a non-responsive proposer. In *Little Havana Activities and Nutrition Centers of Dade County, Inc. v. Agency for Health Care Administration*, Case No. 13-0706BID (Fla. Div. Admin. Hrgs. May 15, 2013), for example, the administrative law judge concluded that a proposer was ineligible for award of the contract because it made a misrepresentation in its proposal and is therefore not a responsible vendor. In *Keystone Peer Review Organization, Inc. v. Agency for Healthcare Administration and Eqhealth Solutions*, the administrative law judge explained awarding a contract to a vendor that misrepresented its qualifications "would only encourage other vendors to make misrepresentations in their bids," and "[m]oreover, a vendor who makes admitted misrepresentations to an agency can hardly be considered to have the 'integrity and reliability' necessary to be a responsible bidder." 2010 WL 5581918 (Fla. Div. Admin. Hrgs. 2010).

Federal law is equally clear that MCM must be disqualified for its misrepresentations. See, e.g., *Microdyne Outsourcing, Inc. v. United States of America*, 72 Fed. Cl. 230, 233 (2006) ("Material misrepresentations in a bid disqualify a bidder from competing for the contract award."); *Northrop Grumman Corp. v. United States*, 50 Fed. Cl. 443, 468 (2001) ("A bidder to a government contract who makes material misstatements in its proposal taints the award to such a bidder. Misrepresentations in bid proposal prevent government officials from determining the best value to the government . . ."). The Federal Circuit Court of Appeals stated the rule succinctly:

[T]he submission of a misstatement, as made in the instant procurement, which materially influences consideration of a proposal should disqualify the proposal. The integrity of the system

demands no less. Any further consideration of the proposal in these circumstances would provoke suspicion and mistrust and reduce confidence in the competitive procurement system.

Planning Research Corp. v. United States, 971 F.2d 736, 741 (Fed. Cir.1992). MCM's material misrepresentations render its proposal non-responsive, and render MCM non-responsible. MCM purposefully omitted information that goes to the heart of its qualifications—the only thing that was evaluated by the selection committee. It goes without saying, had the selection committee known that MCM was currently under investigation for misconduct on the incumbent contract, and formerly audited by the County for failing to comply with community workforce and responsible wages requirements, it is extremely likely that it would not want MCM to get this contract again.

C. MCM's misrepresentations render the evaluation of MCM's proposal invalid, and an award to MCM arbitrary and capricious.

The evaluation of MCM's proposal and team simply is not valid, and awarding to MCM with this new information is arbitrary and capricious. Case law is clear that “a public body is not entitled to omit [] material provisions required by the RFP because in doing so the public body fails to ‘inspire public confidence in the fairness of the process.’” *Emerald Corr. Mgmt v. Bd. Of Cty. Commr's*, 955 So. 2d 647, 653 (Fla 1st DCA 2007 (quoting *State Dep't of Lottery v. Gtech Corp.*, 816 So. 2d 648 (Fla 1st DCA 2001)). The County Attorney has recently opined on this issue, specifically with respect to contracting in a manner that does not reflect what was actually evaluated. *DB17-SEA-01*, Cty. Att'y Op. (Nov. 20, 2017). The opinion warned against accepting a project materially different from those ranked by the evaluation committee, which would “invalidate the process,” stating “while the County may seek to improve the quality of the deliverables through negotiation, the law imposes a limitation on the County's ability to make material changes to the evaluated elements. **In essence, government cannot rank one product and contract for another.**” *Id.* (emphasis added.). See also *City of Miami Beach v. Klinger*, 179 So. 2d 864, 867 (Fla. 3d DCA 1965) (holding that city's permitting proposer to extend the length

of contract during negotiations undermined the competitive process because the petitioner would have submitted a proposal had he known the length of the contract could be expanded).

Here, the qualifications that were submitted by MCM and evaluated by the selection committee were simply not true. MCM represented that it did not have any performance issues on MCC-8-10 and had never been audited by the County. Clearly, the scores given to MCM have been undermined and the Recommendation is thus arbitrary and capricious.

It is also worth noting that MCM made a number of misrepresentations to the County after the submission of its proposal, in order to speed up negotiations and secure the award. On May 8, 2021, MCM sent a letter and affidavit to the County affirming the availability of its proposed key management staff. This affidavit included Arturo di Mauro, one of MCM's proposed project managers, and stated that he "does not currently work for MCM" but "has, however, made himself available to work on the MCC-8-10 project in the past on an as-needed basis." Exhibit "L." However, upon learning of this, Arturo di Mauro went out of his way to inform the Mayor that such a statement is extremely misleading, as he has no intention of returning to MCM or participating on the MCC-9-18 contract. Exhibit "M." At MCM's first negotiation meeting, MCM refused to go through its list of key management staff and insisted on sticking by this affidavit. County Negotiation Meeting, July 27, 2021, Audio at 16:45. The County simply acquiesced, undeterred by the implicit confirmation that MCM would utilize a general manager that had to be removed from the last contract for unethical conduct. The Recommendation turns a cheek to these numerous, and quite frankly, disconcerting material misrepresentations, and as a result, cannot stand.

IV. The negotiated contract includes impermissible changes that materially deviate from the RFQ and provide MCM with a competitive advantage.

The RFQ required a letter from a surety acknowledging that the proposer can be bonded for projects with a potential construction cost of \$30 million, and MCM provided such a letter.

However, the agreement only requires a performance and payment bond of \$10 million. This constitutes an unlawful material modification. Exhibit "S" at 95.

The County is prohibited from selecting a winning proposer and then negotiating a contract that contains terms contrary to the RFQ. See *Robert G. Lassiter & Co. v. Taylor*, 99 Fla. 819, 830 (1930) (holding that city council's adopting of a resolution allowing the winning bidder to use a different kind of concrete than what the solicitation had required was impermissible because other competitors may have applied if they knew they could use that kind of pavement); *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 645 (Fla. 1st DCA 2007) ("If the county accepted terms from one party which were not contemplated by the RFP, the County would have engaged in favoritism.").

In *Dep't of Lottery v. Gtech Corp.*, the negotiated contract between the winning proposer and the agency increased the price of the proposer's services and decreased the quantity of services to be provided pursuant to the RFP and the initial proposal. 816 So. 2d 648, 650 (Fla. 1st DCA 2001). The court explained that allowing the agency to enter into a materially different contract "would encourage responders to RFPs to submit non-competitive, unrealistic proposals solely for the purpose of receiving the highest ranking for subsequent negotiations." *Id.* at 652. The court ruled that the agency violated Florida law by utilizing "the RFP process as little more than a ranking tool to determine a preferred provider and then negotiate[ing] a contract with that provider with little or no concern for the original proposal of that preferred provider." *Id.* at 653; see also *MSB v. Miami-Dade Cty.*, Bid Protest re RFQ 753 *32 (Sep. 13, 2010) ("By employing the competitive bid process in a way that fails to consider each bidder's proposal through an even-handed application of established criteria, the public entity engages in impermissible favoritism as a matter of law."); accord *Wester v. Belote*, 103 Fla. 976, 982 (1931) (emphasizing that agency officers are not allowed to "make exceptions, releases, and modifications in the contract after it is

let" because it "will afford opportunities for favoritism, whether any favoritism is actually practiced or not.").

In a recent bid protest opinion, a County hearing examiner stated:

The purpose of competitive bidding is to secure the lowest responsible offer, and this purpose is best served by construing the bid requirements in a way that would give all bidders an opportunity to compete . . . **implicit in that statement is that the 'opportunity' to compete be equal for all bidders.**

Horsepower Elec. Co. v. Miami-Dade Cty., Bid Protest re FB-01058 *14 (Jan. 6, 2020) (emphasis added). The hearing examiner held that it was arbitrary and capricious for the County to allow the recommended bidder to modify the minimum plan review period during contract negotiations because only that bidder was offered the opportunity to do so, stating "this was not a negotiated point, it was merely a concession by the County." *Id.* Similarly, here, no other proposer or potential proposer had the opportunity to submit a proposal that only required a showing of bonding ability for \$10 million. Certainly, a \$20 million difference in the required bonding capacity is material. Performance bonds are issued to guarantee against the failure of the contractor to meet certain obligations, and the amount of bonding capacity a firm has is directly correlated with the size of the firm and its ability to take on certain projects. Had other firms known that a \$10 million bond would be permitted, it is probable that the County would have received more proposals. However, no other proposer or potential proposer was provided with this opportunity, and accordingly, the County's concession on this item is arbitrary and capricious.

V. The County impermissibly disregarded its selection committee regulations, which prohibit the award based on the scores received.

In reviewing the scores of selection committee members, the County is required to determine whether there is a score that unduly affects the outcome, and make a determination as to whether or not that score should be included. County Implementing Order ("IO") 3-34 states:

In solicitations where numerical points are assigned, the County Mayor or **County Mayor's designee shall review the selection committee scores to determine whether a selection committee member's score would unduly affect the outcome. If the County Mayor or County Mayor's designee makes such a determination, the County Mayor or County Mayor's designee shall request a written explanation from that selection committee member.** The County Mayor or County Mayor's designee will determine whether to accept or reject that selection committee member's score, considering the written explanation. If the score is rejected, such information will be provided to the Board of County Commissioners.

(emphasis added). The County Attorney's office has confirmed this requirement and opined that it is the responsibility of the Mayor or designee to address a discrepancy in scoring, make a recommendation regarding the inclusion of the score, and bring it to the attention of the Board to accept or reject. *WOPR No. 1295-01 Redevelopment of County Properties Under the Rental Assistance Demonstration Program*, Cty. Atty. Op., (Oct. 5, 2020); *RFA No. 2015-01-Redevelopment of Lincoln Square and Lincoln Gardens*, Cty. Atty. Op., (Oct. 5, 2015).

MCM received a total of 457 points, and Lemartec received a total of 447 points. Exhibit "P" at 9. Notably, one evaluation committee member's scoring resulted in a 12-point gap between the score given to MCM, which she ranked first with a score of 93 points, and Lemartec, which she ranked fourth with a score of 81 points. Exhibit "P" at 13. The largest gap in scoring between Lemartec and MCM in either direction from any other evaluator was only seven points, making Ms. Pantoja's score a clear outlier. *Id.* Furthermore, removing Ms. Pantoja's scores, Lemartec has a total score of 366 points, and MCM has a total score of 364. Lemartec would have been ranked higher than MCM, thus, Ms. Pantoja's score unduly affected the outcome.

The record is tellingly silent on the County's analysis of Ms. Pantoja's scores. The County did not require Ms. Pantoja to provide a written explanation for her scores. The County did not consider whether to disregard her scores in light of her explanation. The County did not comply with IO 3-34. Once again, the County chose to ignore its own rules to the benefit of MCM. Such

conduct is arbitrary and capricious, and invalidates the selection committee ranking. See, e.g., *Cleveland Clinic Fla. Hosp.*, 679 So. 2d 1237, 1242 (Fla. 1st DCA 1996), *Boca Raton Artificial Kidney Ctr.*, 493 So. 2d 1055, 1057 (Fla. 1st DCA 1986) (holding that agencies must adhere to its established rules and procedures and may not depart from the plain meaning of the rule even in the interest of expediency). Accordingly, the Recommendation is improper and must be overturned.

CONCLUSION

The Recommendation is the definition of arbitrary. The County previously determined that MCM is non-responsible and ineligible for award. This determination was based on evidence and reason. The facts have not changed. MCM is non-responsible and its proposal is non-responsive. Yet, the Recommendation now purports to award the RFQ to MCM. The County has completely ignored its own determinations, rules, and processes in order to award this contract to MCM, a firm that has shown no regard for its contractual obligations and has blatantly misrepresented information it was required to disclose regarding its disreputable past. The Recommendation must be overturned and MCM must be disqualified from consideration for award.

Respectfully submitted,

BILZIN SUMBERG BAENA PRICE &
AXELROD LLP
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Miami, FL 33131
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By: /s/ Albert E. Dotson, Jr.
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adotson@bilzin.com
Florida Bar No. 724203
Elise Holtzman Gerson
egerson@bilzin.com
Florida Bar No. 1002471

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to IO 3-21, a true and correct copy hereof has been furnished this 31st day of August, 2021, via hand-delivery to the Clerk of the Board, 111 N.W. 1st Street, Suite 17-202, Miami, FL 33128 and via U.S. Mail to David Murray, Esquire, Assistant County Attorney, and Oren Rosenthal, Esquire, Assistant County Attorney, Miami-Dade County Attorney's Office, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128, with copies furnished via U.S. mail to the following:

Magnum Construction Management LLC d/b/a MCM
6201 SW 70th Street, 1st Floor
Miami, FL 33143

Suffolk/NV2A A Joint Venture, LLC
2 South Biscayne Blvd., Suite 2700
Miami, FL 33131

CES Construction, LLC
880 SW 145th Ave., Suite 106
Pembroke Pines, FL 33027

Nunez Construction Inc.
6400 SW 62nd Ave.
South Miami, FL 33143

The Whiting-Turner Contracting Company
1901 West Cypress Creek, Suite 101
Fort Lauderdale, FL 33309

Thornton Construction Co. Inc.
13290 NW 42nd Ave.
Opa Locka, FL 33054

Turner Construction
7235 Corporate Center Drive, Suite G
Miami, FL 33126

/s/ Albert E. Dotson, Jr.
Albert E. Dotson, Jr.

BILZIN SUMBERG BAENA PRICE & AXELROD LLP

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

DISBURSEMENT ACCOUNT

1450 BRICKELL AVENUE, 23RD FLOOR • MIAMI, FL 33131-3456
TELEPHONE (305) 374-7580

CITIBANK, N.A. BR #892
MIAMI, FL 33102
63-6655/2660

19155

CK # 19155

DATE

AMOUNT

FIVE THOUSAND AND 00/100 DOLLARS

August 30, 2021

\$\$\$5,000.00

PAY
TO THE
ORDER
OF:

Clerk of the Board

DISBURSEMENT ACCOUNT



AUTHORIZED SIGNATURE

WZ59827-11-16

Security Features Enclosed Details on back



BILZIN SUMBERG BAENA PRICE & AXELROD LLP 1450 BRICKELL AVENUE, 23RD FLOOR • MIAMI, FL 33131-3456

19155

F9001353

Clerk of the Board

August 30, 2021

Invoice No.	Invoice Date	Description	Payment Amount
8/30/21-AED	8/30/2021	Client- 301243	\$ 5,000.00

Exhibit B

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida



CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126

November 2, 2021

Mr. Albert Dotson
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131

Re: RFQ No. MCC- 9-18 General Contractor Miscellaneous Construction Contract

Dear Mr. Dotson,

Forwarded for your information is a copy of the Findings and Recommendation filed by Mr. Marc Douthit, Hearing Examiner, in connection with the Bid Protest Hearings, held on Tuesday, October 12, 2021, and continued Friday, October 22, 2021 for RFQ No. MCC- 9-18 General Contractor Miscellaneous Construction Contract.

Should you have any questions regarding this matter, please do not hesitate to contact Daysha McBride at 305-375-1293.

HARVEY RUVIN, Clerk
Circuit and County Courts

By 
Melissa Adames, Director
Clerk of the Board Division

MA/dmcb

Mr. Albert Dotson
Bilzin Sumberg Baena Price & Axelrod LLP
Page 2
November 2

CC: Honorable Chairman Jose “Pepe” Diaz and Members, Board of County Commissioners (via email)
Honorable Daniella Levine Cava, Mayor, Miami-Dade County (via email)
Jimmy Morales, Chief Operations Office, Office of the Mayor (via email)
Edward Marquez, County’s Chief Financial Officer, Office of the Mayor (via email)
Geri Bonzon-Keenan, County Attorney (via email)
Gerald Sanchez, First Assistant County Attorney (via email)
Eduardo Gonzalez, Assistant County Attorney (via email)
Oren Rosenthal, Assistant County Attorney (via email)
David Murray, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney’s Office (via email)
Elizabeth Alfonso Ruiz, County Attorney’s Office (via email)
Donna Hadeed, County Attorney’s Office (via email)
Rosa Martin, County Attorney’s Office (via email)
Adeyinka Majekodunmi, Commission Auditor (via email)
Terrence Murphy, Contract Oversight Specialist, Office of Inspector General (via email)
Sylvia Novela, Division Director, Aviation Department (via email)
Alex Munoz, Director, Internal Services Department (via email)
Namita Uppal, Chief Procurement Officer, Internal Services Department (via email)
Basia Pruna, Assistant Division Director, ISD Procurement Management (via email)
Hendry Lopez, Procurement Contractor Officer 3, ISD Procurement Management (via email)
egerson@bilzin.com, Bilzin Sumberg Baena Price & Axelrod LLP
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Ralph.Hernandez@whiting-turner.com, The Whiting-Turner Contracting Company (via email)
nguevara@thornton-inc.com, Thornton Construction Company, Inc. (via email)
jaaavedra@tcco.com, Turner Construction Company (via email)
carlos@nunezconstruction.co, Nunez Construction, Inc. (via email)
GNeves@nv2agroup.com, Suffolk/NV2A, A Joint Venture, LLC (via email)
construction@cesconsult.com, CES Construction, LLC (via email)
Maisuarez@lemartec.com, Lemartec Corporation (via email)
laura@mcm-us.com, Magnum Construction Management, LLC d/b/a MCM (via email)
dmunilla@mcm-us.com, Magnum Construction Management, LLC d/b/a MCM (via email)
Alfred@armaslaw.com, Armas Bertran Zincone (via email)
fzincone@armaslaw.com, Armas Bertran Zincone (via email)
EZ@P3MIAMI.COM (via email)

BOARD OF COUNTY COMMISSIONERS
HARVEY RUVIN, CLERK OF THE BOARD

**IN RE: BID PROTEST OF THE
RECOMMENDATION OF
AWARD OF THE REQUEST FOR
QUALIFICATIONS MMCC-9-18 FOR
GENERAL CONTRACTOR
SERVICES**

LEMARTEC CORPORATION,
Petitioner,

V.
MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,
Respondent.

and

MAGNUM CONSTRUCTION
MANAGEMENT, LLC
Intervenor

----- /
**RECOMMENDATION AND ORDER ON THE BID PROTEST OF LEMARTEC
CORPORATION**

This matter was before this Hearing Officer on the Bid Protest of Lemartec Corporation (Lemartec) challenging the Recommendation of Award of Request for Qualifications MMC-9 to Magnum Construction Management, LLC (MCM). MCM sought Intervenor status in these proceedings and was granted such status without opposition from either Lemartec or Miami-Dade County,

Lemartec was represented by Albert Dotson, Esq. and Elise Holtzman Gerson, Esq. of Bilzin, Sumberg, Baena, Price & Axelrod. Miami-Dade County was represented by Oren Rosenthal, Esq. and David Murray, Esq. The Intervenor was represented by Francesco Zincone,

Esq. and J. Alfredo Armas of Armas, Bertran Zincone.

No objections have been raised to the validity or timeliness of the Bid Protest itself. Further, the parties have agreed to the inclusion to all documents of record and those which were provided to the Protestor in response to its Public Records request submitted to the County. This includes the documents which were provided to the Protestor subsequent to the date of the Hearing and were distributed to the parties in supplemental filings. While not considered as a part of these deliberations, they are a part of the Record in this matter.

As in all Bid Protests, the Protestor is limited to the matters and issues raised in its Formal Notice of Intent and Bid Protest. Any matters that were either not raised at the October 12, 2021 Hearing or in subsequent filings from Public records Requests and which were not included in or a part of the Bid Protest itself, are not considered in this opinion. This includes documents and issues referenced in the Parties post-hearing submissions, but were not a part of the hearing itself.

Lemartec suggests that this Bid is flawed in that the County has chosen to overlook significant material shortcomings of MCM as it relates to its response to the RFQ. Something akin to a "death by a thousand cuts". Added to that, the "Great Flip Flop" of the County Mayor and the Office of the Inspector General Report, all of which made the flaws fatal to a fair and open procurement process.

Clearly, this was a somewhat "unusual" procurement process. The original recommendation of the County Manager was not a recommendation of award to either MCM or Lemartec, but rather to the initial highest ranked bidder who was ultimately disqualified.

In July of 2021, the Mayor issued her Report that proposed alternative directions for the

County Commission to pursue with respect to the MCC-9 Contract that the Commission pursue. The Mayor was directed to engage in negotiations with MCM. One of the other alternatives presented to the Commissioners was to award the Bid to Lemartec. The Office of the Inspector General (OIG) from a four (4) year old investigation was released on May 14, 2021. The Mayor was aware of the findings of the OIG report prior to her reporting to the issuance of her Report in July, 2021.

The OIG Report--

There can be no doubt that the timing of the preparation and submission of the Inspector General Report is curious. The Investigation which gave rise to the report was apparently initiated in 2016. During that time, MCM was the contractor performing essentially the same services for the County under county contract MCC-8, the predecessor to this contract,

Lemartec asserts that there were significant issues that arose with MCM and its handling of MCC-8 and many of these items made their way into the substance of the Lemartec protest. MCM presented evidence and testimony during its presentation indicating that the County appeared to be quite satisfied with its work.

Why, at this late date do any of the issues related to the 2016 investigation has any relevance to these proceedings is unclear. Further, why nearly 4 years later, the OIG finalizes and releases a report from an investigation which was apparently closed, regarding these issues when MCM has been performing under the MCC-8 contract the entire time. Without more, I am unclear as to exactly what this Hearing Officer is to do with this information.

There is a procedure in place for the County to take action against a firm who violates the County Code of Ethics or otherwise violates an Ordinance of the County, particularly

when that firm is currently performing services on behalf of the County. .The conclusion of that process generally ends with a determination by the Board of County Commissioners. An Inspector General Report in and of itself, in this procurement process, does not represent proof of anything which would impact on this or any other procurement

Lemartec states in its Post-Hearing Brief that "The actual question before the Hearing Examiner is whether the Mayor's flip-flop from a reasoned, written, and publicly-advocated position and explanation for why MCM is non-responsible, based in part on the OIG Final Report, into a recommendation to award to MCM that does not follow the required responsibility due diligence process is arbitrary or capricious." While not necessarily accepting the parameters of the question,ultimately, the determination of arbitrariness or capriciousness is within this Hearing Officer's jurisdiction and any invitation to expand that jurisdiction is declined.

The final decision on what to do with the information contained in the OIG Report is within the province of the Board of County Commissioners. I will note that the Airport Committee of the County Commission was aware of the OIG Report at the time of its June 9, 2021 meeting and appeared unmoved by its contents. The same is true of the July 13, 2021 meeting.

At the heart of each of these arguments is the question as to whether MCM is a responsible bidder as defined in the context of procurement. Whether a firm is responsible is, at its core, a judgment call. Like all judgment calls in the procurement context, the County is given wide discretion in the lawful exercise that judgment. *Miami-Dade County v. Church and Tower Inc.*, 715 So. 2d 1084, 1089 (Fla. 3rd DCA 1998) (upholding County's judgement that bidder was

not responsible, even though hearing examiner concluded bidder was responsible). This discretion is not unlimited and must be discretion based upon a reasoned analysis of the facts at issue.

Given the broad discretion afforded governmental decisions, In order for me to find that MCM is not responsible there must be a showing that there are *no* set of facts under which the County could conclude that the MCM was a responsible contractor. Lemartec does not meet its burden by merely pointing out the existence of competing facts that would call MCM's responsibility into question it must show that no reasonable agency could possibly find MCM responsible. *See Liberty County v. Baxter Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982); *cf. Membreno*, 188 So. 3d at 27 ("legislative findings...are more akin to value judgments than judicial fact finding" and may only be superseded by a Court if wholly irrational).

The testimony of Daniel Munillo is important in this regard. Each of the issues raised by Lemartec asserting that the bid submission of MCM contained either missing information, false information or misleading information was addressed during his testimony. While not going into the details of each allegation, the information was sufficient to satisfy the County's burden of basing their responsibility determination on a reasonable analysis of competing facts. MCM's performance on the MCC-8 contract is not dispositive of the question of responsibility, however it is appropriately included the County's analysis.

It is entirely legitimate for the County to look at these facts and this record and conclude that MCM is responsible. Weighing these facts is a question of judgment; and, of course, "so long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous." *Church & Tower*, 715

So.2d at 189, citing *Culpepper v. Moore*, 40 So.2d 366 (Fla. 1949).

The Grand Flip Flop

Lemartec asserts that the Mayor's reversal of her decision on the MCM amounts to some sort of change in position without any reasonable explanation. A "flip flop" as it was referred to in the Hearing. While not explicitly stated, there was some undercurrent that there were external forces at play causing the change. No doubt there was. However, I decline to speculate on what those external forces may or may not have been.

Some of those forces are indeed known. After the June 9, 2021 Airport Committee meeting the Mayor was given instructions as to how to proceed with this Bid. The result of the Mayor complying or attempting to comply with those instructions was the issuance of a new recommendation of award.

Certainly, there was a change in the position of the County as evidenced by the change in the Mayor's Recommendation. However there was no evidence presented that the Mayor did not have the right to change her mind on the matter or that changing her position was in and of itself, improper.

Lemartec raised an issue as to whether the Mayor complied with disclosure requirements related to her "due diligence" as required under Miami-Dade County Resolution 187-12. Notably, the Resolution does not specify what disclosure is required nor what kind of due diligence is necessary or required. In this procurement process, there was the insertion of the Report from the Inspector General. This Report was generated in the middle of the procurement process and was a major factor in the Mayor's issuance of the May 14, 2021

recommendation that found MCM non-responsible. Is simply reviewing the OIG report sufficient due diligence?

Lemartec attempts to impose a requirement on the Mayor that is not present in County Resolution 187-12. The County suggests that no specific level of due diligence is required. In this regard, I agree. Based solely on the language of the Resolution, I do not find the Mayor failed in her obligations under the ordinance.

Importantly, nothing has been presented which would support the conclusion that even if the Mayor failed in her obligation to disclose, it would somehow invalidate the Recommendation. The County's interpretation of its own laws is entitled to great deference. *Las Olas Tower v. Ft. auderdale*, 742 So.2 308 (Fla. 4th DCA 1999)("Generally, a reviewing court should defer to the interpretation of a given a statute or ordinance by the agency responsible for its administration."). This is especially true where, as here, the County's interpretation is consistent with the plain language of the resolution. *Lacayo v. Versailles Garden Condo Ass'n*, 2021 WL 3641503, (Fla. 3rdDCA 2021) (where ordinance is "clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction").

The Mayor's subsequent recommendation to award the Bid to MCM appears to have been based on a variety of factors. Significant among those factors is the direction that was given to the Mayor by the members of the County Commission. One of the alternatives given by the Mayor in her initial recommendation was the option to award the contract to MCM and the Report issued by the Mayor showed no preference for one option over another and her direction as to how she was to proceed was made clear by the Commissioners. While

unusual for Commissioners to be quite this involved at this stage of the proceedings none of the parties has raised any objection as to the procedure that was employed was in any way improper.

My understanding of the Mayor's reasons for changing her mind would only be important if it was shown that those reasons rendered the decision to award either arbitrary or capricious. No such showing has been made in this matter. I

The 30 Million Dollar Bond—

Lemartec strongly asserts that MCM has been allowed to modify the amount of the Bond required to meet the conditions set forth in the RFQ. The provisions of the RFQ in Section 1.11 require a bidder to obtain a letter verifying that they have the bonding capacity for projects up to 30 million dollars. There is no dispute that MCM met this requirement. The RFQ further provides in Attachment A that MCM was to deliver to the County a performance bond in the amount of 30 million dollars "within 15 days of days of the Notice of Award". Since no Notice of Award has ever been issued, there can be no violation of this provision.

The problem arises from the proposed contract between the County and MCM. Lemartec points out that the language of the contract provides for only a "10 million dollar bond within 15 days of Notice of Award". This is without question a difference. However, this language alone is not dispositive of whether MCM was provided some competitive advantage.

It is noted that the language in question is language which was negotiated with and by with the Suffolk/NV2A the original selected bidder. The County asserts that it agreed to change this

provision, so long as Suffolk/NV2A agreed to always be able to provide a bond in a minimum value of thirty million dollars. When MCM was subsequently determined to be the highest ranked proposer, MCM simply accepted the terms previously agreed to between Suffolk/NV2A and the County.

The question becomes did this change, which was after all of the bid responses were submitted and after the proposers were tallied and ranked give one proposer an advantage over another thereby rendering the process unfair.. Both Lemartec and MCM passed the initial threshold of the ability to bond 30 million dollars. Both proposals were already evaluated and considered on their own merits. At that point, whatever the respective bid proposals said was left standing on its own merits. I cannot find that the contractually negotiated provision gave MCM an unfair competitive advantage.

In the past, I have held that negotiated changes after the submission of the proposals can be found to give a party a competitive advantage. Those changes related to and had a direct effect on the pricing aspect of the bid. *In Re Bid Protest of Horsepower Electric*, Request for Proposal No. 01058, p. 14 (2020) (“test for when deviation from a public solicitation becomes material is whether the deviation *effects the amount of the bid*”)(*emphasis added*). Said another way, allowing proposers to negotiate away elements which affect price deprives all bidders of the ability to provide pricing on a common basis, and thus implicates the fairness of underlying procurement which determined who was eligible for negotiations.

The difficulty in Horsepower is not present here. Each party bid on equal footing and while the County is certainly not free to negotiate away wholesale changes to the solicitation, it does have latitude to engage in negotiations which may alter some of the provisions of the contract. *AT&T v. Dept of Management Serv's*, 201 So.3d 852 (Fla. 1st DCA 2016) (noting that RFP's and ITN's both permit negotiation of contract terms under Florida law, and “affirm[ing] the Final Order regarding

the Department's ability to make changes to the Statement of Work during negotiations.”); *PayIT v. Dep't of Management Serv's*, 2020 WL 4678870 *19, (Fl. Dept. Admin. Hearings 2020)(changes in contract terms which don't create a competitive advantage are permissible, as “a finding otherwise would fundamentally undermine the very purpose of negotiations.”)

The language of the proposed contractual agreement did not create an unfair competitive environment. A change in contract terms is only material if the change fundamentally impacts the competitive phase of the procurement. *See Dep't of Lottery v. GTech*, 816 So. 2d 648 (Fla. 1st DCA 2001); *Emerald Correctional Institute v. Bay County*, 955 So. 2d 657 (Fla. 1st DCA 2007). The ability to show maximum bonding capacity amount of 30 million dollars was the competitive threshold that all parties had to meet.

Based on the foregoing facts and the application of the law to those facts, I find that the bid process was neither anti-competitive nor was the decisionmaking of the County arbitrary or capricious. All matters not specifically discussed herein shall be deemed to be denied as a basis for upholding the protest of Lemartec. As such the Protest of Lemartec, Corporation is hereby DENIED



Marc Anthony Douthit

Hearing Examiner

Exhibit A

Project Information	Origin / Scope of Work	Awarded SBEs	Remaining Scope of Work
<p>Project No: X11 A Name: Concourse H Restrooms Upgrade Original Contract Amount: \$ 3,048,200 Notice to Proceed: 4/15/19 Remaining Amount Effective 02/28/21: \$1,848,351.13 Percent Complete as of 3/10/21: 4 % Days to complete from 8/28/21: 210 calendar days</p>	<p>Refurbish 10 restrooms in Concourse H to include complete removal and replacement of: fixtures, toilet partitions, wallboard, floor and wall tile, electrical, fire sprinklers and fire alarm devices, ceiling tiles, light fixtures, alarm devices, painting, restroom accessories, door & hardware, soap and paper dispensers.</p>	<p>Conbuild, LLC Chavez South Florida Interiors Inc. Delka Innovo Group, Inc. AAP Construction Group Corp Kesoki Painting, LLC CJ Fire Protection, Inc. RCR Plumbing Services Inc. Thevenin Enterprises Inc. Jador International Corp.</p>	<p>Refurbish 6 restrooms in Concourse H to include complete removal and replacement of: fixtures, toilet partitions, wallboard, floor and wall tile, electrical, fire sprinklers and fire alarm devices, ceiling tiles, light fixtures, painting, restroom accessories, door and hardware, soap and paper dispensers.</p>
<p>Project No: X113A Name: American Airlines Admiral's Club Refurbishment Original Contract Amount: \$2,315,289.83 Notice to Proceed: 7/8/19 Remaining Amount Effective 5/31/21: \$87,295.17 Percent Complete as of 3/10/21: 8% Days to complete from 8/28/21: 210 calendar days</p>	<p>New stair cell and stair with glass railing and terrazzo flooring, replace two rooftop air handler units, recabling to switchgear room, painting, ceiling tiles, light fixtures, new security doors with matrix card readers, fire rated doors, new electric panel breakers, AC damper replacement.</p>	<p>Fleites Construction Group Inc. AAP Construction Group Corp. World of Frameless Glass Paradise Construction Corp. CJ Fire Protection Inc AirZone, Inc. Aro Electric</p>	<p>Work in progress: New cabling to switchgear room, painting, ceiling tiles, light fixtures, new security doors with matrix card readers, fire rated doors, electric panel breakers, new fire doors.</p>
<p>Project No: U10F-7.1 Name: Elevator at E Satellite Original Contract Amount: \$4,006,198.16 Notice to Proceed: 9/16/20 Remaining Amount Effective 5/31/21: \$3,425,146.48 Percent Complete as of 3/10/21: 30% Days to complete from 8/28/21: 150 calendar days</p>	<p>Install fully functional and ADA compliant elevator & refurbish existing escalators in Concourse E Satellite. Refurbishment of 1, 2, 3 & 4 level elevator lobbies, fire sprinklers & fire alarm devices relocation; ceiling tiles and new lighting fixtures. Construction of new machine room, elevator shaft, foundation, structural work, roofing. Elevator and escalator work to be performed by Vendor [SCHINDLER Elevator Corp.] Removal, disposal and replacement of existing elevator and escalator refurbishment.</p>	<p>Ohana Construction Group LLC AAP Construction Group Corp. Massu Infrastructure Coatings, LLC CJ Fire Protection, Inc. Al Hill Plumbing Corp. AirZone, Inc. MAC 195 Engineering Corp, Inc.</p>	<p>Complete the refurbishment of 1, 2, 3 & 4 level elevator lobbies, security doors, fire sprinklers and fire alarm devices relocation, ceiling tiles and new lighting fixtures. Elevator and escalator work to be performed by Vendor [SCHINDLER Elevator Corp.] Removal and disposal of existing components. Furnish, install and test new fully functional and Code compliant elevator unit and escalators.</p>
<p>Project No: V089B Name: Bldg. 716 Restroom Renovations Original Contract Amount: \$1,293,291.94 Notice to Proceed: 1/27/20 Remaining Amount Effective 5/31/21: \$650,786.33 Percent Complete as of 3/10/21: 55% Days to complete from 8/28/21: 30 calendar days</p>	<p>Refurbish 10 restrooms in Bldg. 716 to include complete removal and replacement of: fixtures, toilet partitions, wallboard, floor and all tile, electrical, fire sprinklers and fire alarm devices, ceiling tiles, light fixtures, painting, restroom accessories, door & hardware, soap and paper dispensers.</p>	<p>Delka Innovo Group, Inc. AAP Construction Group Corp CJ Fire Protection, Inc. MAG Construction, Inc. Gamma Air Systems, Inc. PYD Electric Corp.</p>	<p>Work in progress: Refurbish 10 restrooms in Bldg. 716 to include complete removal and replacement of: fixtures, toilet partitions, wallboard, floor and wall tile, electrical, fire sprinklers and fire alarm devices, ceiling tiles, light fixtures, painting, restroom accessories, door & hardware, soap and paper dispensers.</p>

Exhibit B

COUNTY ATTORNEY MIAMI-DADE COUNTY, FLORIDA



David M. Murray
Assistant County Attorney
dmmurray@miami-airport.com

AVIATION DEPARTMENT
P.O. BOX 025504
MIAMI, FLORIDA 33102-5504
Phone: (305) 876-7040
Fax: (305) 876-7294

MEMORANDUM

TO: Basia M. Pruna, CPPB
Assistant Division Director
Miami-Dade County ISD, Strategic Procurement Division

FROM: David M. Murray /s/ *David M. Murray*
Assistant County Attorney

DATE: November 25, 2020

SUBJECT: MCC-9-18 General Contractor for Miscellaneous Construction Contract

You have asked (1) whether the Selection Committee could have, when evaluating the proposal submitted by Suffolk/NV2A, a Joint Venture LLC (the JV), legally considered the qualifications of the JV's corporate owners, Suffolk and the NV2A Group LLC, and also (2) whether or not the JV was required to disclose Suffolk's issues related to small business goals on a prior County project. The Selection Committee could have properly considered the qualifications of Suffolk and the NV2A Group LLC when evaluating the JV, and the JV was not mandated to disclose Suffolk's small business issue. These answers are addressed in more detail below.

As an initial matter, the terms of the solicitation document, where express, control how proposals are treated and scored. *See Sweetwater v. Solo Construction*, 823 So. 2d 798 (Fla. 3rd DCA 2002). However, where a provision of a solicitation document is ambiguous, or is susceptible to more than one interpretation, Courts have generally suggested that the document should be read in the manner that allows for more competition and competitors rather than less. *See Air Support Servs. v. Miami-Dade County*, 614 So. 2d 583 (Fla. 3rd DCA 1994) ("public purpose is best served by construing the bid requirements, if at all reasonable, in a way that would give all bidders an opportunity to compete"). Thus, the initial question is whether or not the solicitation documents in this matter clearly barred the JV from proffering the qualifications

of its corporate parents. Reviewing the documents, there is no such clear bar on consideration of the qualifications of the JV's corporate parents.

As the solicitation do not clearly bar the JV from proffering the qualifications of its parents, the solicitation should be properly read as allowing such proffer. This is consistent with the general rule favoring interpretations of solicitation documents which promote more competition. It is also consistent the specific treatment of this issue given in state procurements. *Compare See AT&T Corp*, 201 So. 3d at 855 (Fla. 1st DCA 2016) (state properly considered experience of proposer's corporate parent when assessing compliance with solicitation and "properly rejected...corporate identity issues," where "both vendors were treated the vendors equally in this regard.") *with TMS Joint Venture v. Comm'n For the Transportation Disadvantaged*, 2010 WL 1217804, (Div. Admin Hearings 2010)(where solicitation specifically barred consideration of corporate parent qualifications, it was error to consider those qualifications.) This is also consistent with the treatment this issue receives in Federal procurements, where there is a robust body of precedent on this issue.¹

For example, in Federal procurements, the Comptroller General has consistently held that, where a proposal indicates the involvement of a corporate parent or affiliate, a selection committee may properly consider that parent or affiliate's qualifications when ranking proposals. *See Matter of Hot Shot Express*, B-290842 (Comp. Gen. 2002)("An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliated company will affect the performance of the offeror"); *Matter of Fluor Daniel Inc.*, B-262051 (Comp Gen 1995)("Where the experience of an affiliated corporation is clearly related to an offeror's proposed contract performance, it may be reasonable for an agency to give credit for the affiliate's related experience"). In determining the propriety of the consideration "the relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon, such that the parent or affiliate will have meaningful involvement in contract performance." *Matter of Hot Shot Express*. Thus, for example, when determining whether or not to award a firm a contract to construct a dam, it was proper to consider the experience of an involved corporate affiliate; the fact that the proposing entity itself lacked experience in dam construction did not preclude award where that experience was possessed by an involved corporate affiliate. *See Matter of Tutor-Saliba Corp.*, B-255756 (Comp. Gen. 1994)("Since the clause here did not provide that bidders could not use the experience of affiliates or subcontractors to comply with the prime contractor experience requirement, the contracting officer could reasonably consider the experience of CBPO America's affiliate to determine if the firm meets this requirement.").

Moreover, in Federal procurements, this is the default rule *unless* there is express language to the contrary barring consideration of corporate relations. *See Hot Shots* ("where, as here, no provision in the solicitation precludes offerors from relying on the resources of their corporate parent or affiliated companies in performing the contract, and an offeror represents in

¹ Where Florida law does not provide good precedent on an issue, the County Attorney's Office has historically looked to Federal Comptroller General opinions for precedent.

its proposal that resources of related company will be committed to the contract the agency properly may consider those resources in evaluating the proposal”); *Matter of Tutor-Saliba Corp* (“where solicitation contains criterion which *by its express language prohibits satisfying a particular experience requirement through the experience of a prospective subcontractor* such provision limits prime contractor from relying on subcontractor to comply with the experience criterion.”) (emphasis added).

Here the solicitation documents do not contain any such express limitation on consideration of qualifications of proposer’s corporate relations. Indeed there are no express binding qualification requirements of any kind in the solicitation. Thus the only question per the Federal precedent, is whether or not the JV’s proposal makes reference to the involvement of Suffolk and VA such that the qualifications of those firms could be considered in evaluating the JV. Turning to the JV proposal itself the involvement of Suffolk and VA in the operations of the JV is obvious and consistent throughout the proposal. Accordingly it was therefore legal for the Selection Committee to consider the qualifications of Suffolk and VA when evaluating the JV.

Turning to the second question whether or not the JV was required to disclose Suffolk’s small business issues turns on the language of the solicitation. *See Solo Construction* 8 3 So.2d at 798. Here the solicitation expressly demands that proposer disclose various types of negative history and where it requires such disclosure it affirmatively provides that this disclosure extends to the proposer’s corporate parent and subcontractors. The solicitation for example, requires that the proposer “list any projects on which the proposer, its parent(s), or any subcontractors” defaulted, were defaulted, or filed for bankruptcy, and additionally requires disclosure of whether “the proposer, its parent(s), its principals, or any subcontractors” were convicted of any crime. *See Request for Qualifications* at p. 14. There is no similar requirement that either the proposer or its corporate parent disclose any failure to meet County small business goal. Nor can such requirement be read in by implication; the fact that the County specifically listed the facts that it demanded be disclosed implies it did not intend to mandate disclosure of any other type of diverse facts.

Accordingly, there is no requirement for the JV to have disclosed Suffolk’s small business utilization issues. The County may take this information into account however in determining whether or not the County believes that the JV is a responsible vendor; additionally, the Board of County Commissioners which is the entity which is ultimately responsible for weighing the relative scoring of the firms under the criteria may take this fact into consideration in determining how it wishes to proceed with any award recommendation provided by the Mayor.

DMM/rm

Date: May 2, 2021

To: Hendry Lopez
Strategic Procurement
Internal Services Department

From: Oren Rosenthal
David Murray
Assistant County Attorneys

Subject: MCC-9 Procurement and the Application of Local Preference in Proposal from
Suffolk/NV2A, A Joint Venture, LLC

You have asked this office to determine whether the proposer Suffolk/NV2A, A Joint Venture, LLC, (“SNV2A”) was properly entitled to a local preference in the RFQ No. MCC-9-18 (“RFQ”) in light of a new finding by the County’s Tax Collector that the Local Business Tax Receipt (“LBTR”) submitted by SNV2A was, at the time of RFQ submittal, invalid for a portion of the one-year period prior to the submittal date. For the reasons set forth below and based upon the facts provided by the administration, we conclude that SNV2A is no longer entitled to a local preference in the evaluation of its proposal.

FACTS

We rely on the information provided in your memorandum to this office dated April 27, 2021, an e-mail to this office on April 23, 2021 and Agenda Item 8F11 deferred by the Board of County Commissioners at the April 20, 2021 meeting of the Board. A copy of the memorandum is attached as Exhibit A, a copy of the e-mail is attached as Exhibit B and Agenda Item 8F11 can be found at: <http://www.miamidade.gov/govaction/matter.asp?matter=210761&file=true&fileAnalysis=false&yearFolder=Y2021>.

On November 5, 2019, the County advertised the RFQ seeking a general contractor to manage the miscellaneous construction program at Miami International Airport for a five-year term and a two-year option to renew. *See*, Exhibit A, Agenda Item 8F11. The awarded vendor will ensure timely completion of all work issued by the vendor on behalf of the County to subcontractors awarded under the program. *Id.* The recommended vendor will not normally self-perform any construction work, but rather, shall provide services to assist awarded subcontractors in completion of the subject construction. *Id.* On January 14, 2020, the proposal submittal date, the County received eight proposals which were evaluated by a competitive selection committee. *Id.*

SNV2A, the top ranked vendor at the completion of evaluation, was initially afforded local preference based on the administration’s determination that SNV2A (1) “had an active local business tax receipt since 2017”; (2) operated from a physical location within Miami-Dade County for a period of more than one year prior to bid submittal; and (3) employed at least three people for a period of more than one year prior to bid submittal. *Id.* The administration made this determination based on the documents submitted along with SNV2A’s proposal, interviews with and documents provided from SNV2A, a review of publicly available documents including documents maintained by the Tax

Collector, and an affidavit provided by SNV2A as well as prior legal advice from our office based on information conveyed from the administration at that time. *Id.*

As a result of this determination, negotiations proceeded with SNV2A and the administration recommended to the Board that SNV2A be awarded a contract. Although all parties timely received notice of the recommended award, no bid protest was filed by any proposer.

At the April 20, 2021 meeting of the Board of County Commissioners, the Board deferred the consideration of the award of the MCC 9 contract at the request of the administration pending further investigations into the claims made by the second ranked proposer, Magnum Construction Management, LLC, regarding SNV2A's entitlement to local preference. Upon inquiry by the Office of the Mayor to the Tax Collector regarding one of these allegations, the validity of SNV2A's LBTR, the Tax Collector has now opined that "Suffolk/NV2A Joint Venture LLC do not possess a LBTR in a category for which they qualified prior to January 22, 2019." *See*, Exhibit A, Exhibit B.

The Tax Collector explained that:

The LBTRs presented a[t] the time of the solicitation and issued by our office for 2017 and 2018 were on June 8, 2020 determined to have been issued in error, since Suffolk/NV2A was not qualified with the Florida Department of Professional Regulation as required for the "General Contractor" LBTR until January 22, 2019. While an initial screen on the DPR website shows an initial licensure year of 2006, we believe our clerk may have relied on that year, 2006, when allowing them to come into compliance for 2017 and 2018.

The fact remains that they could not qualify for this LBTR and held no other LBTR in any other category prior to January 22, 2019.

While Suffolk/NV2A Joint Venture LLC, could have obtained a license in another category and brought that into compliance, based on their organization date is not before us to consider, but they could have applied and been issued a second license in the occupation "construction management." (*sic*)

See, Exhibit B, e-mail from Gerardo Gomez to Jimmy Morales on behalf of Tax Collector Peter Cam dated April 23, 2021.

DISCUSSION

Based on the facts set forth above, SNV2A is not entitled to a local preference. Miami Dade County affords local businesses who meet the requirements of Section 2-8.5 of the Code of Miami-Dade County ("Local Preference Ordinance") a local preference in applicable County solicitations. In order to qualify for local preference, a firm, with few exceptions not relevant to this solicitation, must have: (1) "a valid business tax receipt issued by Miami-Dade County at least one year prior to bid or proposal submission"; (2) "a physical business address located within the limits of Miami-Dade County from which the vendor operates or performs business"; and (3) "serve[] as the place of employment for at least three full time employees of the vendor for the continuous period of one year prior to the bid or proposal submission." Sec. 2-8.5 of the Code of Miami-Dade County.

Here, the Tax Collector has now concluded that SNV2A did not have a valid LBTR at least one year prior to January 22, 2019. Upon a post submission review of the records, the Tax Collector determined that “The LBTRs presented a[t] the time of the solicitation and issued by our office for 2017 and 2018 were on June 8, 2020 determined to have been issued in error, since Suffolk/NV2A was not qualified with the Florida Department of Professional Regulation as required for the ‘General Contractor’ LBTR until January 22, 2019.” Exhibit B. In order to claim Local Preference, SNV2A would have had to have LBTR for the period commencing on January 14, 2019, one year prior to the proposal submittal, and ending with the bid submittal deadline of January 14, 2020. SNV2A did not have a valid LBTR prior to January 22, 2019. While SNV2A may have been entitled to request a LBTR in another category covering a period prior to January 22, 2019, it did not request or obtain a LBTR in another category prior to proposal submittal. The only LBTR requested by SNV2A was for a category to which it was not entitled to under the County Code.¹ As such, based on the analysis performed by the Tax Collector, SNV2A did not possess a valid LBTR for this entire period as required by the County Code.

SNV2A cannot cure the failure to obtain a valid LBTR for one year prior to proposal submittal after the proposal submittal date of January 14, 2020. Although the County Code and the Tax Collector’s practices permits firms to cure defects in their LBTRs, allowing a post proposal submittal cure to a defect in the LBTR at the time of submittal would provide a firm with an impermissible competitive advantage over other proposers in the solicitation process.² Permitting a vendor to cure defects in its LBTR in order to claim local preference *after* proposals are received allows proposers to engage in tactical behavior with respect to claiming local preference. For example, a firm could wait until rankings are final—allowing it to see if claiming local preference would be dispositive—and only then determine whether such a cure would be in its best interest. This is precisely the type of competitive advantage that hearing officers and courts have routinely rejected. *See e.g.*, In re Protest of Pro Energy, LLC to ITQ 6-2016/Contract 3143-9, July 28, 2016 (M. Douthit) (denying bid protest and local preference because “any bidder who was or may be eligible for the local preference could submit its bid wait to see where it was ranked and then cure whatever deficiency that existed with respect to the

¹ *See*, Section 8A-178(5) (“Unless otherwise provided by state law, any person applying for, or renewing, a Miami-Dade County local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation...must exhibit an active state and/or national certificate, registration, or license or proof of copy of the same, before such local business tax receipt may be issued...”)

² This office has previously advised, with one exception, that absent express language to the contrary a vendor is eligible for a local preference if a vendor cures its late payment of the required local business tax in accordance with Article IX, Section 8A of the Code of Miami-Dade County *prior* to bid submittal provided that the local business tax receipt covers a period of at least one year prior to bid submittal and the vendor otherwise meets the requirements of the Local Preference Ordinance. *See, e.g.*, Sec. 8A-176 (“Those receipts not renewed by September 30 shall be considered delinquent and subject to a delinquency penalty of ten (10) percent for the month of October, plus an additional five (5) percent penalty for each month of delinquency thereafter until paid, provided that the total delinquency penalty shall not exceed twenty-five (25) percent of the local business tax fee for the delinquent establishment.”); *but see*, Memorandum from Annery Pulgar Alfonso to Jesus Lee, dated April 26, 2017 (analyzing local preference in the context of Broward County’s local business tax ordinance under previously existing reciprocity agreement).

local preference advantage given to better its ranking ... [t]he directive in the County Code that entities actually have the LBTR at the time of bid submission actually prevents exactly this type of abuse.”); In re Altyus, Inc. bid protest of RFP MDAD-13-03, December 29, 2014 (S.J. Tobin) (“Altyus was therefore required to demonstrate compliance with the [Local Preference] Ordinance on May 23, 2014 when it submitted its proposal.”)

Additionally, SNV2A may assert that SNV2A should have a right to rely on the LBTRs as issued and that the County is estopped from denying SNV2A local preference based on the recent determination by the Tax Collector. Such a claim, however, is difficult to establish based on the facts provided in the request for an opinion, the caselaw regarding estoppel, and the obligations placed upon the applicant in the County Code to ensure that all information provided to the Tax Collector regarding LBTRs is accurate and current. *See, e.g.*, Section 8A-178(1) of the Code of Miami-Dade County (“The Tax Collector, before issuing a local business tax receipt based wholly or in part upon capacity, number of persons employed, or any other contingency, shall require the person applying for such receipt to file, under oath, a statement giving full and complete information relative to the capacity, number of persons employed, or other contingency, as the case may be...It shall be the duty of every receipt holder to notify the Tax Collector in writing of any changes affecting the local business tax receipt during the receipt year.”)

Accordingly, as the new information reflects the administration’s determination that, at the time of proposal submittal, SNV2A did not possess “a valid business tax receipt issued by Miami-Dade County at least one year prior to bid or proposal submission” it is not eligible for local preference in this solicitation, and the rankings should now reflect this occurrence. If any of the facts or information relied upon in this opinion change, or additional facts relevant to this determination are discovered, please let our office know immediately in writing as it may affect the conclusions provided herein.


Oren Rosenthal and David Murray

cc: Jimmy Morales, Chief Operations Officer, Office of the Mayor
Gerardo Gomez, Office of the Miami-Dade County Tax Collector

EXHIBIT A



MEMORANDUM

TO: Oren Rosenthal and David Murray
Assistant County Attorney
County Attorney's Office

DATE: April 27, 2021

FROM: Hendry Lopez, Strategic Procurement, ISD
Gerardo Gomez, Tax Collectors Office

SUBJECT: Request for Legal Opinion on RFQ No. MCC-9-18, General Contractor for Miscellaneous Construction Contract

Information from ISD:

The Internal Services Department, Strategic Procurement Division, issued a Request for Qualifications (RFQ) on November 5, 2019, on behalf of Miami-Dade Aviation Department (MDAD), to solicit qualifications from experienced and licensed General Contractors. Under the resultant contract, the contractor will manage MDAD's Miscellaneous Construction Contract (MCC) 9-18 program. The contractor shall provide services inclusive of conducting preconstruction bidding activities, administering multiple simultaneous construction projects awarded under the MCC, securing permits, entering into subcontractor agreements, general project management, providing education and business training to subcontractors participating in the MCC, and conducting outreach activities to encourage the participation of Small Business Enterprise subcontractors.

The County received eight proposals on January 14, 2020, seven of the eight Proposers claimed local preference. The Competitive Selection Committee (Committee) met on May 14, 2020 and completed the evaluation, ranking, and scoring of the proposals submitted. The Committee determined that Suffolk/NV2A, A Joint Venture, LLC (Suffolk/NV2A), the highest ranked proposer, has the necessary experience to successfully provide the needed services and that the County entered into negotiations with this Proposer.

Concerns regarding Suffolk/NV2A local preference eligibility have surfaced. A legal opinion is being requested to determine this firm's eligibility, based on the details provided by the tax collector's office.

The total estimated value of the award is \$70,000,000.

If you have any questions or if I may provide additional assistance to expedite this request, please contact me at (305) 726-7180. I appreciate your attention to this matter.

Information from Tax Collector's Office:

Tax Collector Chronological Facts Related to Suffolk/NV2A, a Joint Venture, LLC

- January 22, 2019 state license for Suffolk NV2A, a Joint Venture, LLC with a Business Description "General Contractor," with Jose I. Fernandez qualifier is registered with Florida Department of Business and Professional Regulation (DBPR).
- January 22, 2019 initial online Local Business Tax (LBT) application is made for Suffolk/NV2A selecting occupation of "General Building Contractor" and uploading DBPR License for Jose I. Fernandez.

- February 7, 2019 Local Business Tax Receipt (LBTR) 7273813 is cashiered and issued by Tax Collector.
- April 29, 2019 a second state license for Suffolk NV2A, a Joint Venture, LLC with a business description "General Contractor," with Joseph R. Kolb qualifier is registered with DBPR.
- July 19, 2019 Suffolk/NV2A filed second online LBT application selecting occupation of "General Building Contractor" with a different qualifier, Joseph R. Kolb
- July 22, 2019 Suffolk/NV2A visits Tax Collector's Office where it is issued and pays for 2017 and 2018 and renewal for 2020 LBTR 7273813 with Jose I. Fernandez as qualifier.
- July 23, 2019 second account 7287091 in the name of Suffolk/NV2A with Joseph R. Kolb as qualifier is created but no payment is received.
- June 8, 2020 active LBTR 7273813 with Jose I. Fernandez as qualifier is reviewed by Tax Collector LBT Section and it is determined that the 2017 and 2018 LBTRs were issued in error since the required qualifier was not registered with DBPR until January 22, 2019. Account was modified to reflect owner as Suffolk Construction, Inc since Jose I. Fernandez was also listed as qualifier in 2017 for that entity.
- August 28, 2020 payment is received for 2019, 2020 and 2021 LBTR 7287091 with Joseph R. Kolb as qualifier and 2021 LBTR 7273813 with Jose I. Fernandez as qualifier.

EXHIBIT B

Rosenthal, Oren (CAO)

From: Morales, Jimmy (Office of the Mayor)
Sent: Friday, April 23, 2021 3:08 PM
To: Gomez, Gerardo (FIN); Uppal, Namita (ISD); Marquez, Edward (Office of the Mayor); Sola, Lester (Aviation); Smith, Tara C. (ISD)
Cc: Cam, Peter (FIN); Walters, Vivian (Office of the Mayor); Piccardo, Andrea (Office of the Mayor); Cervone, Johanna (Office of the Mayor); Rosenthal, Oren (CAO)
Subject: RE: Local Business Tax Receipts

Jerry,

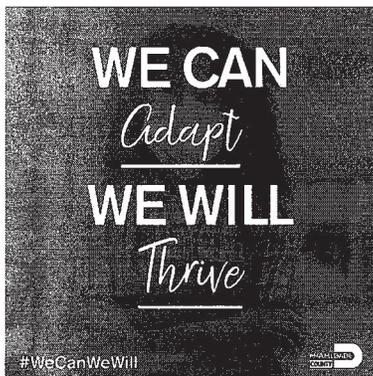
Thank you. I appreciate the prompt and simple response.

Oren, please advise what this means with respect to the local preference analysis for Suffolk/NV2A Joint Venture LLC. Thanks



Jimmy Morales
Chief Operations Officer
Office of Mayor Daniella Levine Cava
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

#WeCanWeWill protect our community during COVID-19. [Join the campaign.](#)



From: Gomez, Gerardo (FIN) <Gerardo.Gomez@miamidade.gov>
Sent: Friday, April 23, 2021 12:18 PM
To: Morales, Jimmy (Office of the Mayor) <Jimmy.Morales2@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Marquez, Edward (Office of the Mayor) <Edward.Marquez@miamidade.gov>; Sola, Lester (Aviation) <LesterSola@miami-airport.com>; Smith, Tara C. (ISD) <Tara.Smith2@miamidade.gov>
Cc: Cam, Peter (FIN) <Peter.Cam@miamidade.gov>; Walters, Vivian (Office of the Mayor) <Vivian.Walters@miamidade.gov>; Piccardo, Andrea (Office of the Mayor) <Andrea.Piccardo@miamidade.gov>; Cervone, Johanna (Office of the Mayor) <Johanna.Cervone@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>
Subject: RE: Local Business Tax Receipts

Good morning,

Answering the question asked, as our records show, the answer is no. Suffolk/NV2A Joint Venture LLC do not possess a LBTR in a category for which they qualified prior to January 22, 2019.

The LBTRs presented at the time of the solicitation and issued by our office for 2017 and 2018 were on June 8, 2020 determined to have been issued in error, since Suffolk/NV2A was not qualified with the Florida Department of Professional Regulation as required for the "General Contractor" LBTR until January 22, 2019. While an initial screen on the DPR website shows an initial licensure year of 2006, we believe our clerk may have relied on that year, 2006, when allowing them to come into compliance for 2017 and 2018.

The fact remains that they could not qualify for this LBTR and held no other LBTR in any other category prior to January 22, 2019.

While Suffolk/NV2A Joint Venture LLC, could have obtained a license in another category and brought that into compliance, based on their organization date is not before us to consider, but they could have applied and been issued a second license in the occupation "construction management."

Peter and Jerry

Gerardo "Jerry" Gomez, CFCA
Miami-Dade County Finance Department
200 NW 2nd Avenue
Miami, Florida 33130
(305) 375-1653
(305) 375-1142 Facsimile

"Delivering Excellence Everyday"

From: Morales, Jimmy (Office of the Mayor) <Jimmy.Morales2@miamidade.gov>
Sent: Friday, April 23, 2021 11:28 AM
To: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Marquez, Edward (Office of the Mayor) <Edward.Marquez@miamidade.gov>; Sola, Lester (Aviation) <LesterSola@miami-airport.com>; Smith, Tara C. (ISD) <Tara.Smith2@miamidade.gov>
Cc: Cam, Peter (FIN) <Peter.Cam@miamidade.gov>; Walters, Vivian (Office of the Mayor) <Vivian.Walters@miamidade.gov>; Piccardo, Andrea (Office of the Mayor) <Andrea.Piccardo@miamidade.gov>; Gomez, Gerardo (FIN) <Gerardo.Gomez@miamidade.gov>; Cervone, Johanna (Office of the Mayor) <Johanna.Cervone@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>
Subject: RE: Local Business Tax Receipts

Peter and Gerry,

Good morning.

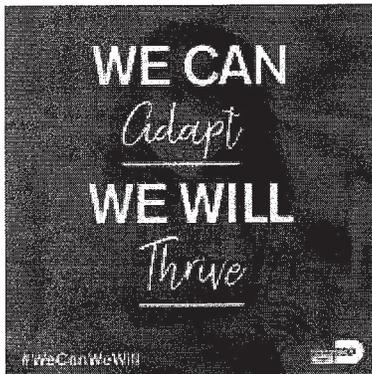
I spoke with Oren Rosenthal yesterday. He reiterated that the local preference rule requires a valid BTR at the time of submitting the proposals which has been valid for one continuous year prior to said submittal. He also clarified that the code no longer requires that the BTR had to be in the same discipline requested by the RFP. As such, the BTR does not have to be for "General contractor" in order to qualify for local preference. It just has to have been validly issued for one continuous year prior to the date of submission of the proposal. The record reflects that the LLC submitted their proposal to the County on January 14, 2020.

So, the question which requires a yes or no answer is the following: At the time of submission of the proposal, did Suffolk NV2A, a joint venture, LLC. have a valid BTR in Miami Dade County for one continuous year prior to January 14, 2020? Please advise. Thanks



Jimmy Morales
Chief Operations Officer
Office of Mayor Daniella Levine Cava
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

#WeCanWeWill protect our community during COVID-19. Join the campaign.



From: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>

Sent: Thursday, April 22, 2021 11:16 AM

To: Marquez, Edward (Office of the Mayor) <Edward.Marquez@miamidade.gov>; Morales, Jimmy (Office of the Mayor) <Jimmy.Morales2@miamidade.gov>; Sola, Lester (Aviation) <LesterSola@miami-airport.com>; Smith, Tara C. (ISD) <Tara.Smith2@miamidade.gov>

Cc: Cam, Peter (FIN) <Peter.Cam@miamidade.gov>; Walters, Vivian (Office of the Mayor) <Vivian.Walters@miamidade.gov>; Piccardo, Andrea (Office of the Mayor) <Andrea.Piccardo@miamidade.gov>; Gomez, Gerardo (FIN) <Gerardo.Gomez@miamidade.gov>

Subject: Local Business Tax Receipts

PDF- My staff has it from May 2020, shows payment history.

Powerpoint- Provided to us by LLC early this week with four receipts.

Word Document- Last night I asked my staff tried to pull receipts from tax collector's office and for 2020 and 2021 the business name is no longer the LLC.

Tax Collector's email with chronology.

Namita

Exhibit D



Miami-Dade County
OFFICE OF THE INSPECTOR GENERAL
Felix Jimenez, Inspector General
Accredited by the State of Florida Commission on Law Enforcement



May 12, 2021

Alberto J. Calderin
2950 SW 109 Ave.
Miami, FL 33165

VIA EMAIL TO: service@projectioncall.com

Re: OIG Final Report – MCC-8-10 Contract – 16-0020-I

Dear Mr. Calderin,

Enclosed please find the Office of the Inspector General's (OIG) final report regarding outside employment and conflicts of interest related to Miami-Dade Aviation Department's MCC-8-10 contract with Munilla Construction Management, Inc.

Sincerely,

Felix Jimenez
Inspector General

Enclosure



Memorandum



Miami-Dade County Office of the Inspector General
A State of Florida Commission on Law Enforcement Accredited Agency
601 NW 1st Court ♦ South Tower, 22nd Floor ♦ Miami, Florida 33136
Phone: (305) 375-1946 ♦ Fax: (305) 579-2656
Visit our website at: www.miamidadelg.org

To: Honorable Daniella Levine Cava, Mayor, Miami-Dade County
Honorable Chairman Jose "Pepe" Diaz, Chair
and Members, Board of County Commissioners, Miami-Dade County

From: Felix Jimenez, Inspector General

Date: May 12, 2021

Subject: *OIG Final Report Outside Employment and Conflicts of Interest Related to Miami-Dade Aviation Department's MCC-8-10 Contract with Munilla Construction Management, Inc., Ref. IG16-0020-I*

Attached please find the OIG's final report involving the Miami-Dade Aviation Department's Miscellaneous Construction Contract (MCC) 8-10. This report, as a draft, was provided to the Miami-Dade Aviation Department (MDAD), Munilla Construction Management, Inc. (MCM), and its associates and subcontractors, Mr. Alberto Calderin and Raciél Ramos. A response was received from MDAD, which is included in Appendix A, and a response was received from MCM including an affidavit by Mr. Calderin, which is included in Appendix B. MDAD concurred with the OIG's recommendations pertaining to the future administration of this contract.

cc: Geri Bonzon-Keenan, County Attorney
Gerald Sanchez, First Assistant County Attorney
Jess McCarty, Executive Assistant County Attorney
Jimmy Morales, Chief Operations Officer
Lester Sola, Director, Miami-Dade Aviation Department
Alex Muñoz, Director, Internal Services Department
Namita Uppal, Chief Procurement Officer, Internal Services Department
Jennifer Moon, Chief, Office of Budget and Policy Affairs
Yinka Majekodunmi, CPA, Commission Auditor
Cathy Jackson, Director, Audit and Management Services
Jose Arrojo, Executive Director, Commission on Ethics and Public Trust
Recipients of the Draft Report (under separate cover)

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
FINAL REPORT OF INVESTIGATION
*Outside Employment and Conflicts of Interest Related to Miami-Dade Aviation
Department's MCC-8-10 Contract with Munilla Construction Management, Inc.*

I. FOREWORD

This report concludes the Office of Inspector General's (OIG) investigation of the Miami-Dade Aviation Department's (MDAD) Miscellaneous Construction Contract (MCC-8-10) held by Munilla Construction Management, Inc. (MCM). The investigation centered on allegations against the MCM General Manager for the MCC-8-10. Since November 2019, the OIG has been actively monitoring the competitive procurement of RFQ No. MCC-9-18 (the successor contract to MCC-8-10). On November 5, 2019, when the bid was advertised, Mr. Calderin was still serving as the General Manager for MCM on MCC-8-10. On January 14, 2020, MCM submitted its bid proposal listing Mr. Calderin as the proposed GM for the MCC-9-18 program. On July 1, 2020, after receiving the OIG's draft report in this matter, MCM replaced Mr. Calderin as the GM for MCC-8-10. The OIG noted this personnel change as appropriate and continued to monitor the solicitation of MCC-9-18. The OIG has not observed any attempt by MCM to amend the key personnel of its bid proposal to remove Mr. Calderin. In fact, as recently as April 27, 2021, MCM has confirmed to the County that all project personnel listed in its response to the RFQ are "are available to fill the 13 required key management staff roles outlined in the RFQ." Despite the clear contract violations by Mr. Calderin documented by the OIG investigators, MCM declares in its email to County Procurement Officers: "It has been over 16 months since MCM submitted its proposal, but we stand by our team with no material changes." Due to the change in the ranking order of firms, in light of facts pertaining to local preference policies, the County will soon begin negotiations with MCM. The OIG stands by its findings and is closing this case in order that the records of this investigation may become public.

II. SYNOPSIS

The OIG investigated the allegation that MCM employee Alberto Calderin steered work to A1 All Florida Painting, Inc. (A1), a subcontractor, in exchange for 20% of the profit.¹ MCC-8-10 is a contract vehicle whereby MCM—as the prime, general contractor—is assigned construction projects (up to \$5 million) by MDAD. The actual construction work required for these projects is then bid out by MCM to firms, with an emphasis on certified Small Business Enterprises. The work of MCM, as the prime, general contractor, includes advertising the project to the trades, conducting subcontractor meetings, receiving and tabulating bids, awarding the subcontracts, paying the subcontractors, and various other construction and project management duties. Pursuant to the contract, MCM designates one of its employees to fulfill the role of General Manager (GM). Mr. Calderin had been the GM for MCC-8-10 since its inception in 2011 until his replacement in July 2020. The contract specifically forbids the GM from engaging in any outside employment unless pre-approved in writing by MDAD.

¹ The OIG notes that this allegation describes a classic kickback scheme.

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The OIG investigation did not substantiate the kickback allegation. The complaint also mentioned that Mr. Calderin had created his own company, The Calderin Group, Corp. (The Calderin Group), and questioned why Raciél Ramos (the owner of A1) had signed into a pre-bid meeting for a County construction project as a representative of The Calderin Group. The OIG substantiated this allegation. Our investigation found that Mr. Calderin, through his company, The Calderin Group, was actively engaged in County construction projects, all while Mr. Calderin was the full-time GM for the MCC-8-10 agreement. Mr. Calderin's outside employment (business activities) was not disclosed to MDAD project managers, and, as such, was not pre-approved by MDAD as required by the contract.

In his personal contracting endeavors, Mr. Calderin utilized the services of A1, a firm that had received several subcontracts under the MCC-8-10 contract. The OIG learned that A1 was a subcontractor to The Calderin Group on a construction project for the United States Coast Guard for which A1 was paid \$7,000 from The Calderin Group. And, in one particularly troubling arrangement, the OIG found that A1—in the midst of performing MCC-8-10 projects as a subcontractor and being supervised by Mr. Calderin—gave The Calderin Group approximately \$50,000. According to both Mr. Calderin and A1, this money was given to fund a required bid bond for an MDAD construction project on which The Calderin Group (as the prime contractor) and A1 (as the subcontractor) unsuccessfully submitted a bid.² The OIG also learned that The Calderin Group had contracts with the County's Water and Sewer Department (WASD)—additional evidence of engaging in outside employment activities not disclosed or approved by MDAD.

In May 2017, the OIG informed MDAD of these preliminary findings (Mr. Calderin's unsanctioned outside employment and his conflict of interest due to his private business relationship with MCC-8-10 subcontractor A1). MDAD responded to the OIG that it would address the situation with MCM and that due to additional performance issues, MDAD would seek Mr. Calderin's removal from the MCC-8-10 contract.

In 2019, the OIG learned that Mr. Calderin remained in his position as the GM of the MCC-8-10 contract. Further review of Mr. Calderin's private contracting activities revealed that The Calderin Group, from 2011 through 2017, bid on at least 24 County construction projects as the prime contractor. The Calderin Group was awarded six County contracts—not MCC-8-10 contracts—and received over \$2.2 million for work on these six projects. Further, we found that The Calderin Group used two other MCC-8-10 subcontractors, Subcontractor 2 and Subcontractor 3, on these other County construction projects. For all three of these firms, their period of performance as a subcontractor to The Calderin Group coincided with their active MCC-8-10 subcontracts, all being overseen by Mr. Calderin.

² As described in further detail in this report, this MDAD construction project was not procured via the MCC-8-10 contract; it was instead procured via the County's MCC-7040 program. After unsuccessfully bidding, the funds were returned to A1.

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As earlier mentioned, the OIG brought this to MDAD's attention in 2017. Yet, The Calderin Group continued work on County construction projects through February 2018—even though in June 2017, The Calderin Group had withdrawn its designation as a certified Small Business Enterprise-Construction (SBE-Construction.) The Calderin Group remained an active corporate entity with the Florida Division of Corporations until February 2019, when it became inactive due to corporate conversion. The corporation was converted into a Florida limited liability company under the name Primecon, LLC (Primecon). The sole member of Primecon is Alberto Calderin, and it remains active today. In November 2019, Primecon successfully obtained certification as an SBE-Construction entity from the County's Division of Small Business Development (a division of the Internal Services Department), and in February 2020, Primecon was added to the County's MCC-7040 pool.

While MDAD officials came to know of Mr. Calderin's outside business activities, and verbally addressed this issue with MCM, MDAD did not require or request that he be removed from the GM position. Beyond his blatant disregard of the contractual obligation to seek written approval for outside employment, the fact that Mr. Calderin employed three MDAD subcontractors, that he managed at the airport, on his own corporate contracts, created a situation fraught with ethical hazards. Mr. Calderin was able to use his position to select vendors for his private enterprise based on their performance on the County contracts he supervised. This business activity is also problematic because the subcontractors contacted by The Calderin Group might offer artificially low prices in order to curry favor with the MCC-8-10 GM who oversees their work at the airport.

As will be explained in this report, the OIG investigators did not discover evidence of manipulation of the MCC-8-10 selection process by Mr. Calderin to favor firms working for him on outside projects. Even without any evidence of bid manipulation, the perception of an unfair competitive advantage among subcontractors was created by Mr. Calderin's conduct. The extensive nature of this misconduct documented by the OIG investigators reveals an egregious lack of managerial oversight by MCM. Going forward, the OIG expects MDAD to be more vigilant in ensuring that the contractual requirement for County pre-approval of outside employment is respected. To protect the integrity of this successful program, we believe that additional requirements and safeguards should be employed and included in any successor miscellaneous construction contract (MCC) to expressly prohibit a GM from engaging in outside business with firms participating in this program.

This report, as a draft, was issued on June 30, 2020 to MDAD and MCM. The next day, on July 1st, MCM requested MDAD's approval to replace Mr. Calderin as the GM of the MCC-8-10 contract. MCM provided the names of three candidates for substitution. MDAD approved the substitution after vetting Mr. Calderin's replacement.

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A response was received from MDAD, on July 15, 2020, stating that it concurs with all of the OIG's recommendations (see Appendix A), without any commentary as to the OIG's factual findings. MCM requested multiple extensions to respond to the draft report. MCM also engaged the OIG in a dialogue that resulted in additional requests for documents by the OIG. MCM and Mr. Calderin provided the requested documents, which were reviewed and considered prior to finalization of this report. The OIG received a written response from MCM, on September 21, 2020, that included a sworn affidavit from Alberto Calderin, the subject of this review (see Appendix B). While MCM addresses the issues raised by the OIG and concedes that Mr. Calderin's utilization of MCC-8-10 subcontractors on the construction projects of The Calderin Group "could needlessly create the appearance of impropriety," MCM throughout its dialogue and written response stresses that it thought this issue had been satisfactorily resolved with MDAD and the OIG with the submission of a March 2018 letter from Mr. Calderin stating that his company "will become inactive effective the close of the current 2017 tax season." While this letter was produced to the OIG and MDAD in July 2020 (after the draft report was issued), neither MDAD nor the OIG had seen it before. The OIG addresses this letter in the last section of the report.

III. OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs; audit, inspect and review past, present, and proposed County programs, accounts, records, contracts, and transactions; conduct reviews, audits, inspections, and investigations of County departments, offices, agencies, and boards; and require reports from County officials and employees, including the Mayor, regarding any matter within the jurisdiction of the Inspector General.

IV. BACKGROUND

MDAD's MCC Program

MDAD has been utilizing MCCs since the mid-1980s as a method to acquire construction services; to efficiently contract for repairs, modifications, renovations; to quickly respond to emergency work; and to enhance contracting opportunities for Small Business Enterprises (SBEs). MDAD's MCC program allows MDAD to delegate the administration of construction projects to a licensed general contractor (the prime), who then subcontracts the projects on a competitive basis to the subcontractors submitting the lowest responsive and responsible bid.³

³ MDAD's MCC program functions differently from the two MCC programs administered by the County's Internal Services Department. Those two programs, MCC-7040 and MCC-7360, function as pool contracts; the former being a pool set aside for certified Small Business Enterprises-Construction, and the latter being an open pool. Firms in the pool respond directly to Requests for Price Quotes (RPQ) solicited by the various County user departments.

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Original Award and Change Orders to the MCC-8-10 Contract

MDAD's current MCC is MCC-8-10, which was awarded to MCM in December 2011. The contract was originally for a 4-year term (with an additional one year to complete all authorized work initiated) and for a maximum contract amount of \$50.125 million.⁴ In March 2015, the BCC approved Change Order 1, which increased the maximum contract amount by \$30 million (new ceiling of \$80.125 million) and increased the maximum dollar amount of each project's work order from \$2 million to \$5 million.⁵

Three additional change orders were approved (Change Orders 2, 3, and 4),⁶ bringing the total contract amount to \$129.9 million and extending the contract term to August 2020. The intended successor contract is MCC-9-18. At present, the procurement process for MCC-9-18 is on-going and still under the Cone of Silence.

Contract Administration, Small Business Goals, Subcontractor Bidding and Compensation Under the MCC

MDAD's Facilities Management Development Division (Facilities) administers the MCC-8-10 contract. Facilities assigns the projects to be managed under the contract. Each project is reviewed by MDAD's Minority Affairs Division (Minority Affairs) to evaluate opportunities for SBE-C participation. Depending on the scope of work required for each project (e.g., what trades may be involved) and the availability of SBE-C firms, Minority Affairs assigns a goal to each project. All totaled, there is an 18% SBE-C participation goal for the subcontracted work under the MCC-8-10 contract. Additionally, there is a specific 18% goal for preconstruction services.

The OIG spoke with Mr. Enrique Perez, Facilities Chief of Construction, about the process that MCM is required to follow for soliciting bids and awarding subcontracts. According to Mr. Perez, the process starts when MDAD sends MCM a Preconstruction Project Order Draft. The Project Order Draft includes the project plans and specifications. It authorizes the GM, with the assistance of a cost estimator (when available) and the accountant (identified as Ms. Mirabal), to initiate a cost estimate, perform a constructability review and maximize SBE-C bidding opportunities as trade set-asides. MCM then submits to MDAD a Project Construction Packaging Plan. This document contains the trade set-aside bidding opportunities, corresponding cost estimates, and the recommended SBE utilization levels. After the MDAD Project Manager's review and approval, the SBE recommendations are submitted to the Small Business Division (SBD) for approval. Upon receipt of the approved Project Order, MCM solicits bids.

⁴ See Miami-Dade County Resolution R-1122-11.

⁵ See Miami-Dade County Resolution R-187-15.

⁶ See Resolutions R-228-16, R-384-17, and R-796-19.

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According to MCM, since the County's implementation of the Business Management Workflow System (BMWS) with LCPTracker, the subcontractors are notified via the BMWS about subcontracting opportunities, in addition to other notices including advertising in periodicals. Bids are submitted directly to MCM and are publicly opened and read aloud in the presence of an MDAD Project Manager. The GM then meets with the apparent low bidders, who are afforded an opportunity to review their bids for accuracy, errors, and omissions. Bidders may recall their bids in the event the bid is determined to be incomplete. After the apparent successful bidder for each trade is identified, MCM staff submits the Project Order Proposal (POP) to MDAD for approval. The POP contains the bid tabulation, copies of all bids, supporting documents and the total project cost, which includes designated allowances and MCM's proposed fee for contractual services rendered. After the MDAD Project Manager's review and approval of the POP, MDAD generates the Project Order authorizing MCM to perform the work upon receipt of a Notice to Proceed. Facilities, through the assigned MDAD Project Managers and its supervisors, is responsible for assuring that MCM adheres to all contractual obligations of MCC-8-10.

MDAD compensates MCM for this preconstruction work, bid management, and construction oversight by paying a percentage of the assigned project cost, which is detailed in the MCC-8-10 contract. The percentage ranges from 7.96% to 8.52%. Designated MCM employees, such as Mr. Calderin, are paid by MDAD pursuant to an hourly rate for an annual number of hours worked. These rates and hours are also detailed in the MCC-8-10 contract.

Key Contract Provision Regarding the Designated General Manager (GM) and Outside Employment

Section 2.11.04 of the MCC-8-10 contract provides:

The Contractor shall assign a GM...having the day-to-day operational responsibility for the competent performance and fulfillment of the duties and responsibilities of the Contractor under this contract and being authorized to accept service of all notices provided for herein and shall have the authority to bind the Contractor to all terms of this Contract. ... The GM shall have no duties or responsibilities other than pursuant to this Contract and shall maintain no office other than within the airport or at such other airport location(s) as shall be provided by the MDAD. **This individual shall not seek additional employment activities outside this contract nor perform any work outside the MCC-8-10 Contract without receiving prior written permission from the Contract Officer.** (*Emphasis added by OIG.*)

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V. ENTITIES AND INDIVIDUALS DISCUSSED IN THIS REPORT

Munilla Construction Management, LLC (MCM)

MCC-8-10 was awarded to MCM in 2011. MCM is a locally headquartered firm with its address at 6201 SW 70th Street, 1st Floor, Miami, FL. On November 13, 2018, the corporate name was amended to Munilla Construction of Florida, LLC. On December 17, 2018, the name was amended again to Magnum Construction Management, LLC.⁷ For the majority of the period under review, Jorge Munilla was MCM's Manager/President. At present, the CEO is listed as Daniel Munilla.

Alberto Calderin, General Manager

Alberto Calderin had been employed by MCM since at least 2011 until his resignation in July 2020. He is a Florida licensed general contractor (GC) and, at all times material to the findings identified in this report, had been assigned to the MCC-8-10 as the full-time GM working out of the MCM offices at space provided by MDAD at Miami International Airport (MIA). Mr. Calderin oversaw the MCC-8-10 subcontracts from pre-construction through the bid process and selection of the subcontractors.

The Calderin Group, Corp. (The Calderin Group)

The Calderin Group was incorporated on September 29, 2008. The company's address was 10866 SW 68th Drive, Miami, FL, which is Mr. Calderin's home address. At all times material hereto, the corporate officers were President Alberto Calderin and Director of Construction Gerardo Sixto Perez-Galceran, S.P.E. The Calderin Group was a registered Florida GC firm that was qualified by Mr. Calderin.

The Calderin Group was a County certified SBE-C and was an authorized vendor eligible to bid on construction projects awarded through the County's MCC-7040 and MCC-7360 pool contracts. As further described in this report, The Calderin Group actively bid on County work and was awarded six projects between December 2014 and October 2016, as the prime contractor—all while Mr. Calderin was the designated GM on MDAD's MCC-8-10 contract.

In June 2017, as the initial findings of this investigation came to light, The Calderin Group withdrew its County certification as an SBE-C. In February 2019, The Calderin Group converted into a Florida limited liability company under the name Primecon, LLC (Primecon). The sole member/officer of Primecon and its licensed general contractor

⁷ MCM was originally registered with the Florida Division of Corporations on November 29, 1983 as Magnum Construction Management Corp. (Magnum), a Florida for-profit corporation. On May 15, 2008, Magnum was converted from a for-profit corporation to a limited liability company and changed its name to Munilla Construction Management, LLC (hereinafter MCM).

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qualifier is Alberto Calderin. In November 2019, Primecon successfully obtained certification as an SBE-Construction, and in February 2020, Primecon was added to the County's MCC-7040 pool.

A1 All Florida Painting, Inc. (A1)

A1 is a Florida for-profit corporation incorporated in October 2006, and headed by Raciél Ramos, who is listed as its Registered Agent and sole corporate officer. Its principal place of business is 7531 NW 54th Street, Miami, FL. Mr. Ramos holds a license with the County's Construction Trades Qualifying Board to perform painting, caulking, and waterproofing, and he qualifies A1 to engage in licensed trade contracting. A1 is a County certified SBE-C. From March 2012 through September 2019, A1 was awarded 16 subcontracts pursuant to the MCC-8-10 contract. A1 is one of three MCM subcontractors that also performed work as a subcontractor for The Calderin Group, as will be described later in this report.

VI. CASE INITIATION & INVESTIGATIVE METHODOLOGY

In 2016, Mr. Milton Collins, then the Associate Director of MDAD Minority Affairs, received an anonymous complaint via fax regarding Mr. Calderin. The anonymous complaint alleged that A1, an MCC-8-10 subcontractor, paid Mr. Calderin for MCC-8-10 subcontracts. The complaint alleged that Mr. Calderin was finding ways not to award the subcontracts to the lowest bidder. The complaint also revealed that Mr. Raciél Ramos (the owner of A1) attended a pre-bid meeting and listed himself on the sign-in log as representing The Calderin Group—a company owned by Mr. Calderin.

The information was reviewed by MDAD's Facilities Management Development and Professional Compliance Divisions. It was subsequently given to the OIG for further investigation.

OIG Special Agents reviewed documents related to relevant MCC-8-10 projects, including advertisements, announcements, bid solicitations, selection and subcontractor awards, payments, invoices, and other project-related records. OIG Special Agents also reviewed bank records, corporate documents, and the licensing records of The Calderin Group and A1, and of their principals. The OIG reviewed documents related to the six County contracts awarded to The Calderin Group. Lastly, OIG Special Agents interviewed MDAD staff; MCM staff including but not limited to Messrs. Jorge and Pedro Munilla and Mr. Calderin; Mr. Raciél Ramos, Jr. of A1; and a principal of Subcontractor 3.

This investigation was conducted in accordance with *the Principles and Standards for Offices of the Inspector General* as promulgated by the Association of Inspectors General.

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VII. INVESTIGATIVE FINDINGS

The two sections below address Mr. Calderin's unsanctioned outside business activities, which includes working on County contracts while at the same time managing the MCC-8-10 contract for MDAD, and Mr. Calderin's use of three MCC-8-10 subcontractors on his own outside projects, thus giving rise to a conflict of interest.⁸

A. Unsanctioned Outside Employment

As early as December 2011 (when the MCC-8-10 was awarded to MCM), Mr. Calderin, through his company, The Calderin Group, was already bidding on County projects and, thus, engaged in work outside of the MCC-8-10 contract. The Calderin Group was a certified SBE-C, pre-approved to participate on the County's miscellaneous construction contracts—the MCC-7040 and MCC-7360.

From April 2011 through April 2017, The Calderin Group bid on 24 County projects advertised via the County's MCC-7040 and MCC-7360 pool contracts. The projects varied across several County departments. The Calderin Group was awarded six projects as shown in Table 1. Of the 18 unsuccessful bids, one involved a project for the Aviation Department, which, notably, was the same project identified in the anonymous complaint where Mr. Ramos (A1) signed the pre-bid meeting sign-in form as being affiliated with The Calderin Group. (Exhibit 1) Their collaboration will be explained more fully in the sections that follow.

⁸ Two other issues initially explored by the OIG in the draft report involved Ms. Virginia Mirabal, another MCM employee whose duties on the MCC-8-10 contract involved accounting, program management, project administration, and compliance. One issue involved her assisting Mr. Calderin in his external business ventures by reviewing The Calderin Group's bid documents prior to submittal, and notarizing documents for him. We found modest compensation, two checks totaling \$300, to her from The Calderin Group. The second issue involved Ms. Mirabel's business activities external to her employment with MCM. We noted that Ms. Mirabel was listed as a corporate officer on three companies (two of which were not-for profit corporations), where other subcontractors in the MCC-8-10 program were also corporate officers. Because Ms. Mirabel's duties involve overseeing the work of the subcontractors, we initially questioned whether this could be a conflict or give rise to the appearance of a conflict. We recognize that Ms. Mirabel was not required to obtain MDAD approval prior to engaging in any outside employment; further, we recognize that her association with two of these companies—the two non-profits—is related to her work in promoting small businesses and increasing contracting opportunities for SBEs.

The OIG received a preliminary response from MCM specific to Ms. Mirabel that caused us to re-evaluate the inclusion of this information in the report as "findings." MCM provided a letter from Ismailia Rashid, on behalf of the three corporate entities identified in the draft report. The letter describes that two of the entities have never been active (no income, no bank account, etc.) and the third as an all-volunteer, non-profit advocacy group supporting small construction businesses where Ms. Mirabel volunteers her time and has not received any compensation. Upon further evaluation, which includes Ms. Mirabel's work history with the MCC program since MCC-3, we determined that these two issues did not rise to the level of a finding and detracted from the focus of the report, which is Mr. Calderin's outside employment activities. As such, these two issues have been removed from this final report.

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Table 1: The Calderin Group - Awarded County Projects

County Dept.	Contract RPQ No.	Project Name	Award Amount	Award Date	Last Status	Percent Complete	Amount Paid*
Parks and Rec and Open Spaces	7360: 90073	Blackpoint Marina Dock Fender	\$59,038	1/30/2012	10/31/2012	100%	\$60,349
Public Housing and Community Development	7360: 156791	Site Lighting and Fencing – Various Sites	\$561,256	1/27/2015	3/9/2017	100%	\$464,144**
Parks and Rec and Open Spaces	7360: 118600-A	Pelican Harbor Marina-Fender System Replace/Repair – ReBid	\$111,995	12/10/2014	5/17/2015	100%	\$81,466
Water and Sewer	7040: T1941	LeJeune Road Office Records Center Rehab	\$452,606	6/10/2015	6/1/2017	100%	\$367,305
Parks and Rec and Open Spaces	7040: 147646	Homestead Bayfront Park Marina – Wet Slips Renovation	\$233,264	5/9/2016	10/3/2016	100%	\$209,331
Water and Sewer	7040: T2176R	CDWWTP Administration Building	\$1,522,064	10/16/2016	2/15/2019*** 2/26/2018 (substantial completion)	100%	\$1,513,251
Total Amount Paid:							\$2,231,702

*Paid amounts obtained from the County's Capital Improvement Information System (CIIS). Final amounts paid include change orders, both adding and deducting work.

**Because the amount paid to The Calderin Group for this project was not posted in CIIS or obtainable through the County's main financial ledger, FAMIS, the amount paid for this project was determined through an OIG analysis of The Calderin Group's invoices, which were submitted to the Public Housing and Community Development Department and paid.

*** While the last status in CIIS shows February 2019, the OIG has confirmed that the revised contract completion date was February 26, 2018 (the Certificate of Completion from the City of Miami was issued on January 17, 2018). Final payment was made on or about June 14, 2018.

As shown above, from February 2012 through February 2018, The Calderin Group was actively engaged on six County construction projects as the prime contractor and was paid over \$2.2 million. Alberto Calderin simultaneously worked on these projects and his full-time GM job. At no time did Mr. Calderin—nor MCM—seek prior approval for his outside employment from MDAD, in violation of Section 2.11.04 of the MCC-8-10 contract.

MDAD's knowledge and approval is a crucial check to ensure that the designated GM is fully committed to the job responsibilities required of the contract. The MCC-8-10 contractor (MCM) is performing a function akin to the work that would normally be performed by MDAD's own staff—bidding and awarding construction work for various projects required of the department. Requiring disclosure and pre-approval, pursuant to this contract, is no different than the requirements placed on County employees seeking to engage in employment activities outside of their County job. Approval is granted when

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management is assured that the outside employment does not conflict with one's job duties, i.e., it does not conflict with one's work schedule and it does not create inappropriate conflicts of interest.

Mr. Calderin's Statement Regarding his Outside Employment

OIG Special Agents interviewed Mr. Calderin in June 2017. Mr. Calderin admitted to investigators that he worked on bids on behalf of The Calderin Group for County projects. He claimed the company's revenues in 2016 totaled \$740,000. Mr. Calderin stated that he only worked on his private business at night, in his home. He stated that his partner, Mr. Perez-Galceran, was the qualifier for the business.⁹ Further, Mr. Calderin stated that The Calderin Group employs approximately ten to eleven employees, one of whom was a construction manager, the person in charge of the construction sites.

MCM's Statement Regarding Mr. Calderin's Outside Employment

OIG Special Agents interviewed Jorge Munilla, President of MCM, in June 2017. Mr. Munilla was already informed by Mr. Calderin of the OIG's concerns at the time of the statement. Mr. Jorge Munilla stated that in approximately 2015, Mr. Calderin told him he was going to set up his own business.¹⁰ Mr. Munilla says he told Mr. Calderin there would be no problem as long as it did not conflict with his job at MCM and ordered that Mr. Calderin conduct no business while on MCM's clock. Mr. Jorge Munilla admitted he never discussed Mr. Calderin's outside employment with anyone at MDAD. Mr. Munilla claimed he had no idea how much Mr. Calderin earned in his outside employment but understood it to be "a little moonlighting job."

On the same date, Mr. Pedro Munilla, Vice President of MCM, spoke to OIG agents. Mr. Pedro Munilla stated that Mr. Calderin informed him of his [Calderin's] outside employment only after the OIG had confronted him. Although he would ordinarily not permit such outside employment, Mr. Pedro Munilla stated that he was comfortable with the situation as long as Mr. Calderin obtained no airport contracts.

Interview with Water and Sewer Department Contract Manager

The OIG also spoke with Mr. Miguel Hernandez of the Miami-Dade County Water and Sewer Department (WASD). Mr. Hernandez confirmed that The Calderin Group was awarded two WASD projects (referenced in Table 1). At the time of the interview, the LeJeune Road Records Center contract was on-going and involved the removal of records from the WASD office and HVAC structural work. The Central District Wastewater Treatment Plant (CDWWTP) Administrative Building project had yet to be

⁹ The OIG notes that Mr. Calderin was the qualifier for The Calderin Group.

¹⁰ The OIG notes that The Calderin Group began bidding on County contracts in 2011.

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started. At the time of the interview, the existing building had been gutted, and The Calderin Group was contracted to renovate the building.

Mr. Hernandez stated that, occasionally, Mr. Calderin's wife (Mrs. Calderin) dropped off paperwork at WASD, but his main point of contact for The Calderin Group was Alberto Calderin. This contact occurred during normal business hours. Mr. Hernandez acknowledged that there is a third person who works with Mr. Calderin, but he could not recall his name. (The OIG notes that Mr. Hernandez's statement is in direct opposition to Mr. Calderin's statement of only performing The Calderin Group work at night.)

WASD and SBD records show that Mr. Calderin's general contractor's license is listed as the qualifier for The Calderin Group. Mr. Perez-Galceran's license was also listed as a qualifier, but only for specific trades: mechanical, electrical, and plumbing. Again, this is in opposition to what Mr. Calderin told the OIG in his statement.

B. MCC-8-10 Subcontractors Working Simultaneously for The Calderin Group

The OIG compared the subcontractors that were awarded subcontracts pursuant to the MCC-8-10 to the subcontractors listed on the six aforementioned projects awarded to The Calderin Group. The OIG's review of bank records found checks paid to MCC-8-10 subcontractors from The Calderin Group account. These comparisons revealed three MCC-8-10 subcontractors (A1, Subcontractor 2, and Subcontractor 3) that were working simultaneously under the MCC-8-10 contract and with The Calderin Group.¹¹

Mr. Calderin's Relationship with A1 All Florida Painting, Inc. (A1)

Due to the original allegation of 20% profits paid by A1 for MCC-8-10 subcontracts, the OIG focused on the relationship between A1 and Mr. Calderin. MDAD's Professional Compliance Division (Professional Compliance) reported that A1 received 87% of all MCC-8-10 painting subcontracts during the last quarter of 2015. Based upon this information, the OIG reviewed each MCC-8-10 subcontract awarded to A1 for the entire period under review.

¹¹ A fourth subcontractor was used by both The Calderin Group and MCC-8-10, but not simultaneous with its MCC-8-10 work. The one subcontract on an MCC-8-10 project began in 2012. It did not receive work as a subcontractor to The Calderin Group until 2016.

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According to documents received from SBD in 2019, A1 was awarded 16 subcontracts and received approximately \$2.8 million as shown in Table 2 on the next page.¹²

Table 2: MCC-8-10 Subcontracts Awarded to A1

Project	Project Name	Bid Open Date	SBE-C Award	Amount Paid
D022A	MIA-Central Marketplace - Phase II & III	01/08/12	\$12,195.00	\$12,195.00
P046A	MIA-Cent Chiller Plant Refurb & Modif. - PO #3	07/10/12	\$186,300.00	\$144,284.53
P046A	MIA-Cent Chiller Plant Refurb & Modif. - PO #3	07/10/12	\$618,247.00	\$598,734.65
R044A	MIA-Hotel Lobby/Public Space Renov	02/20/13	\$105,286.30	\$105,286.30
R044A	MIA-Hotel Lobby/Public Space Renov	02/20/13	\$13,821.29	\$13,821.29
T044A	OPF-Bldg 40 & 41 Repairs/Renov Emergency Job - no CSBE meas	05/23/13	\$78,125.00	\$78,125.00
S089A	MIA-NTD FIS Re-Check MCC-779Y	05/30/13	\$29,250.00	\$29,250.00
S089A	MIA-NTD FIS Re-Check MCC-778Y	05/30/13	\$575,753.89	\$575,753.89
Q043A	Building 861, 862, & 864	08/06/13	\$9,425.00	\$9,425.00
D105C	MIA-Dolphin & Flamingo Parking Garages Rep	09/24/13	\$847,480.15	\$847,480.15
SAO #37	MIA-Quick Response Proj Order	04/17/15	\$2,725.00	\$2,725.00
SAO #43	MIA-Quick Response Proj Order MIA Hotel Bus Ctr Steel Retrofit	09/03/15	\$197,800.00	\$197,800.00
V-075-A	MIA-Structural Bridge Repairs No. 3111	10/27/15	\$122,750.00	\$122,750.00
U-055-A	MIA-Int. Renov. Reloc. of ID Sec/Drivers	11/24/15	\$28,079.40	\$28,079.40
T-072-D	Lower Concourse E APM Station 4th Fl	12/15/15	\$18,600.00	\$18,600.00
T074-T	E-FIS Emergency Renov. 1st Level	02/02/17	\$36,797.90	\$36,797.90
			Total Paid to A1:	\$2,821,108.11

The OIG found that all 16 of these subcontracts were properly advertised and awarded.

- In 16 of 16 files, there was evidence that the RFP was advertised to the certified pool of subcontractors and/or in the Daily Business Review.
- In 13 of 16 files, A1 was awarded the subcontract as the lowest of at least three bidders.
- In 1 of 16 files, A1 was awarded the subcontract as the sole bidder. This was awarded on an emergency basis.
- In 2 of 16 files, A1 was not the lowest bidder, but was awarded the subcontract after the lowest bidder was disqualified.

Outside of their work pursuant to the MCC-8-10 contract, the OIG found that Mr. Calderin and Mr. Ramos worked together on other projects. A review of The Calderin Group bank records revealed that The Calderin Group paid A1 \$7,000 in October 2013 for subcontract

¹² These 16 subcontracts related to twelve MCC-8-10 projects. In four of the projects, A1 was awarded two subcontracts for different types of work.

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work performed on a United States Coast Guard project.¹³ As seen in Table 2, A1 was working on numerous MCC-8-10 projects in 2013.

The OIG also reviewed the bank records of A1 because of the allegation that A1 was compensating Mr. Calderin for its projects. The bank records review revealed a \$49,570 check from A1 to The Calderin Group, dated February 1, 2016, which warranted further investigation. (Exhibit 2) The investigation determined that these monies—from A1 to The Calderin Group—were converted into a cashier's check that was used as a bid bond to bid on MDAD RPQ 10052813, *MIA Cargo Buildings 700-701-702 & Ramps – Ext. Renovation & Painting Project*, a project procured under the County's MCC-7040 pool contract. The Calderin Group's bid was unsuccessful, and the monies were returned to A1 in April 2016. (Exhibit 3)

The OIG determined that this transaction aligned with the allegation in the complaint that Raciél Ramos (owner of A1) attended a pre-bid meeting and signed in under the firm name of The Calderin Group. A review of The Calderin Group's failed bid documents for this project show Mr. Calderin's and Mr. Ramos' close working relationship. The Calderin Group submitted the bid as the prime contractor responsible for 40% of the scope of work related to stucco repairs. A1 is listed as the SBE-C subcontractor responsible for 60% of the scope of work related to exterior painting. The document is signed by both Mr. Calderin and Raciél Ramos, Jr. (Exhibit 4)

MCC-8-10 project records show that in January and February of 2016, around the same time that A1 gave The Calderin Group \$49,570, A1 was working on two active projects through the MCC-8-10 (MIA Dolphin & Flamingo Garages Structural Repairs and the MIA Hotel Business Center). Mr. Calderin was supervising both MCC-8-10 projects and A1's performance thereon. This undisclosed business relationship between Mr. Calderin and A1 presented a conflict of interest in Mr. Calderin's management of A1 relative to the MCC-8-10 contract.

Statement of Raciél Ramos, Jr.

On January 29, 2020, the OIG obtained a voluntary sworn statement from Mr. Raciél Ramos Jr. According to Mr. Ramos, Jr., A1 is a family company. Mr. Ramos Jr. began working for the company in 2008, as a painter. Since 2015, he has been the Project Manager. His father, Raciél Ramos, Sr., has always been the company President.

¹³ The memo line of the check reads: "USCG – Epoxy"

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Mr. Ramos, Jr. acknowledged that he has known Mr. Calderin since 2008 from doing work at the airport. He also acknowledged that his father had a long-standing relationship with MCM and Mr. Calderin. He admitted that A1 had conducted business with The Calderin Group outside of the MCC-08-10 contract.

Mr. Ramos, Jr. could not confirm why The Calderin Group paid A1 a \$7,000 check in 2013, as it was prior to his taking over the function of the Project Manager. He did, however, recall the collaboration between A1 and The Calderin Group to bid on an Aviation Contract, *MIA Cargo Buildings 700-701-702 & Ramps – Ext. Renovation & Painting Project*, in February 2016 (one of the 18 unsuccessful bids on the County's MCC-7040 and MCC-7360 contracts.)

According to Mr. Ramos, Jr., Mr. Calderin likely approached his father to be a subcontractor on the above project. Mr. Ramos, Jr. stated that he was not privy to the initial arrangements of this agreement to collaborate on this project. He did acknowledge that he prepared, signed, and provided the check to Mr. Calderin to put up the bid bond as required by Miami-Dade County. He also acknowledged that he attended the pre-bid meeting on behalf of The Calderin Group. Ultimately, this project was awarded to another contractor and the funds were returned to A1. Mr. Ramos, Jr. confirmed that this collaboration was on-going, while A1 was also a subcontractor on MCC-08-10 projects. Mr. Ramos, Jr. denied that A1 ever paid 20% profits or any other type of kickback to anyone in exchange for MCC-08-10 subcontracts.

Statement of Alberto Calderin Regarding his Relationship with A1

Mr. Calderin stated that he knows Raciél Ramos, Sr. and his son Raciél Ramos, Jr. well. He met them through airport projects dating back to 2008. He admitted that he worked frequently with both father and son at the airport. Lately, Mr. Calderin works mostly with Ramos Jr., and that theirs is a business relationship.

Mr. Calderin acknowledged that A1 worked on a project for The Calderin Group outside of the airport—the Coast Guard station in Opa-Locka. Mr. Calderin was shown the A1 \$49,570 check payable to The Calderin Group. Mr. Calderin explained that The Calderin Group and A1 had collaborated to obtain a non-MCC-8-10 contract at MIA. He explained that the money was used to support a bid bond for that project. Mr. Calderin emphasized that the money was returned when their bid failed. The OIG notes that during the interview, Mr. Calderin failed to mention his hiring of other MCC-8-10 subcontractors in his private business.

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Statement of MCM: Relationship Between A1 and The Calderin Group

During the OIG's interview of the Munilla brothers, Jorge and Pedro, A1's work under the MCC-8-10 contract and A1's work with Mr. Calderin in his private business were discussed. Mr. Jorge Munilla stated that he is very familiar with A1 and its owners for over 15 years.¹⁴ He stated that he is very proud of Racial Ramos, Sr. and considers him a success story. Mr. Jorge Munilla admitted that A1 does about 50 – 60% of MCM's painting jobs. He described the bidding process and said that there was no way to rig it.

The OIG showed them the check for \$49,570 from A1 to The Calderin Group and explained that it was used to obtain the bid bond for an airport construction contract that they were pursuing. Mr. Jorge Munilla was unaware of the matter and stated only that he was surprised they had bid on an airport contract together.

Mr. Calderin's Relationship with Subcontractor 2 and Subcontractor 3

The OIG's review of The Calderin Group's bank records revealed two additional contractors that were doing projects for The Calderin Group at the same time they were performing work for MCM pursuant to the MCC-8-10 under the supervision of Mr. Calderin. These two additional firms were not disclosed by Mr. Calderin during our interview of him regarding A1.

Subcontractor 2 was awarded 11 subcontracts under MCC-8-10 between 2013 and 2019 and was paid approximately \$975,000. The OIG randomly selected 5 project files for further review. No exceptions were found. In all 5 of the files sampled, there was evidence that requests for price quotes were properly advertised to the certified pool of subcontractors and/or in the Daily Business Review. For all 5 projects, Subcontractor 2 was awarded the subcontract as the lowest of at least three bidders.

Outside of the MCC-8-10 contract, however, the OIG found two payments made to Subcontractor 2 through The Calderin Group.

Table 3: Payments from The Calderin Group to Subcontractor 2

CHECK NO	CHECK DATE	PAYEE	AMOUNT	MEMO*
1216	10/2/2015	Subcontractor 2	\$14,223.33	Edison Plaza Req #1
1283	9/14/2016	Subcontractor 2	\$8,927.24	Elderly Plaza - fence final
			\$23,150.57	

*Edison Plaza Project referenced in memo portion of the check is part of the Public Housing Site Lighting and Fencing project that was awarded to The Calderin Group under the County's MCC-7360 pool contract. However, Subcontractor 2 is not listed as a subcontractor in the PHCD project documents.

¹⁴ The OIG found evidence that in addition to MCM awarding A1 subcontracts pursuant to MCC-8-10, MCM also used A1 as a subcontractor on other, non-MCC-8-10 projects. A1 was an MCM subcontractor on the collapsed FIU Bridge project and is listed as a defendant in MCM's bankruptcy proceeding.

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Subcontractor 3 was awarded 12 subcontracts under MCC-8-10 between 2012 and 2019 and was paid almost \$4 million. The OIG randomly selected five project files for further review. No exceptions were found. In all five of the files sampled, there was evidence that requests for price quotes were properly advertised to the certified pool of subcontractors and/or in the Daily Business Review. For all five projects, Subcontractor 3 was awarded the subcontract as the lowest of at least three bidders.

Outside of the MCC-8-10 contract, however, the OIG found three payments made to Subcontractor 3 through The Calderin Group.

Table 4: Payments from The Calderin Group to Subcontractor 3

CHECK NO	CHECK DATE	PAYEE	AMOUNT	MEMO*
1320	10/16/16	Subcontractor 3	\$10,000.00	T1941 Advance payment
1332	12/07/16	Subcontractor 3	\$31,080.50	T1941 - 10/25/2016
1342	01/26/17	Subcontractor 3	\$7,249.50	T1941 - pay Add #2
			\$48,330.00	

*T1941 referenced in the memo portion of the check is the WASD Lejeune Road Office Records Rehab project that was awarded to The Calderin Group under the County's MCC-7040 pool contract.

Based on the dates of the checks to both Subcontractor 2 and Subcontractor 3, Mr. Calderin was utilizing these firms as subcontractors in his private business via The Calderin Group at or around the same time that he was supervising their work under the MCC-8-10 contract, giving rise to additional undisclosed conflicts of interest.

Each one of these subcontracting engagements is tainted by possible conflicts. The fact that Mr. Calderin employed these three subcontractors—that he managed at the airport—on his own corporate contracts created a situation fraught with ethical hazards. Mr. Calderin was able to use his position to select subcontractors for his private enterprise based on their performance on the MCC-8-10 contracts that he supervised. Even the perception of a conflict of interest erodes confidence in the integrity and fairness of the miscellaneous construction contracting program at MDAD.

VII. MDAD'S EXPLANATION OF THE OUTSIDE EMPLOYMENT ISSUE

The OIG, on May 31, 2017, met with Mr. Enrique Perez, Chief of Construction, Facilities to discuss our preliminary findings. Mr. Perez stated that he has overseen the MCC-8-10 contract since approximately November 2016. Mr. Perez stated that four MDAD Project Managers are assigned to oversee MCC-8-10. Mr. Perez remarked that Mr. Calderin worked long hours yet had insufficient output for the number of hours logged. It was mentioned that Mr. Calderin exhibited "poor performance" and lacked "problem resolution."

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Mr. Perez stated that he checked online, and it appeared as if Mr. Calderin was working outside the airport, which was a violation of the MCC-8-10 contract. Mr. Perez verified that neither MCM, nor Mr. Calderin, ever formally requested approval for outside employment, as required by the contract.

In 2017, a representative of Facilities told the OIG that MDAD was going to request that MCM reassign Mr. Calderin, and a new GM be assigned to the MCC-8-10 contract. The OIG investigation remained open. A 2019 OIG follow-up inquiry revealed that this reassignment never occurred. The follow-up inquiry produced conflicting statements as to how or to what extent MDAD addressed the issues detailed in this report with MCM.

After the OIG draft report was issued, on July 21, 2020, we received information from MDAD offering an explanation as to why Mr. Calderin was not removed from the GM position.¹⁵ This explanation was provided by email and was not a supplemental response to MDAD's official response to the draft report. MDAD suggested that because Mr. Calderin's last pending county construction project—the WASD Administration Building—would be completed shortly, the outside employment violation would cure itself. MDAD further explains that due to unforeseeable time extensions and change orders on the WASD project, Mr. Calderin's outside employment violation continued longer than expected. From the OIG's perspective, MDAD never held MCM accountable for Mr. Calderin's years long violation of the MCC-8-10 contract.

VIII. RESPONSE TO THE DRAFT REPORT BY MCM AND MR. CALDERIN

The OIG received one response from MCM, which includes an affidavit provided by Mr. Calderin (see Appendix A). (A draft report was provided to Mr. Ramos, but no response was received from him.) A response was also received from MDAD that addressed OIG recommendations (Appendix B), which will be discussed in the next section.

MCM states that it believed this matter was resolved two years ago when Mr. Calderin agreed that he (The Calderin Group) would stop taking on new work. MCM also expressed relief that the investigation cleared Mr. Calderin of the allegations concerning kickbacks, but also acknowledges that Mr. Calderin's utilization of MCC-8-10 subcontractors on The Calderin Group's other projects "could needlessly create the appearance of impropriety."

MCM highlights that the day after receiving the draft report, it sought Mr. Calderin's replacement as the GM on the MCC-8-10 contract. However, MCM maintains that an MDAD project manager, Ms. Aida Bao-Garciga, verbally approved Mr. Calderin's outside

¹⁵ Email from Enrique Perez (MDAD) to Jennifer Chirolis (OIG), cc: Pedro Hernandez (MDAD), subject: MCC 8 – Letter, July 21, 2020, 4:43 pm.

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business activities so long as he did not bid on MCC-8-10 work. Mr. Calderin, in his affidavit to the OIG, confirmed the same noting that he acknowledges he failed to get Ms. Bao-Garciga's approval in writing.

Separate from its written response to the OIG, MCM provided the OIG with Mr. Calderin's and The Calderin Group's bank statements and tax returns to demonstrate that he stopped bidding on new projects in 2017 and that the last project (the WASD Administration Building) was wrapped up in January/February 2018 when the City of Miami issued the Certificate of Completion on January 17, 2018.

The OIG has confirmed that the aforementioned WASD project was completed in February 2018, even though the last payment was issued in June 2018 and the project remained open in the CIIS until February 2019. As such, this final report (see Table 1) has been revised to reflect the substantial completion dates.

As to Mr. Calderin's successor company, Primecon, MCM asserts that "...owning a company alone does not run contrary to the terms of the MCC-8-10 contract." Even if Primecon had not pursued or been awarded contracts, the fact of it applying and obtaining SBE-Con certification from the County is indicative of its desire to pursue contracting opportunities. As noted earlier in this report, Primecon was added to the MCC-7040 contract in February 2020.

After receiving Mr. Calderin's affidavit, the OIG re-interviewed Ms. Bao-Garciga, who has since retired. First, we note that when Mr. Calderin was first interviewed, he did not mention that he had received verbal approval from Ms. Bao-Garciga or any other MDAD project manager. Also, when the OIG interviewed Ms. Bao-Garciga, at the initiation of this investigation, Mr. Calderin's outside employment was not mentioned. Upon re-contacting Ms. Bao-Garciga, the OIG specifically inquired about her knowledge and possible verbal approval of Mr. Calderin's private business. Ms. Bao-Garciga stated that she has no recollection of ever discussing the issue of outside employment with Mr. Calderin. She further stated that "in fact [she] had no idea that he was operating his own company" and that regardless she would not have had the authority to approve of this activity and that it would have needed to be presented in writing and approved by upper management. When asked if there could have been a possible conversation between her and Mr. Calderin regarding this subject, she repeatedly stated that she had no recollection of this at all.

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IX. OTHER LEGAL PROVISIONS AVAILABLE

Notwithstanding, Section 2.11.04 of the MCC-8-10 contract, the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance provides a mechanism to designate contracted personnel as being subject to key provisions of the Ethics Code, by designating them as "contract staff." Section 2-11.1(b)(13) of the Code of Miami-Dade County (County Code) provides:

The term 'contract staff' shall mean any employee and/or principal of an independent contractor [or] subcontractor, ... designated in a contract with the County as a person who shall be required to comply with the provisions of Subsections 2-11.1(g) [Exploitation of Official Position], (h) [prohibiting the use of confidential information], (j) [prohibiting conflicting outside employment], (l) [prohibiting certain investments], (m) [prohibiting certain appearances and payments], (n) [prohibiting certain actions when financial interests are involved], and (o) [prohibiting the acquisition of certain financial interests] of the Conflict of Interest and Code of Ethics Ordinance. Prior to determining whether to designate a person as a contract staff in a RFP, RFQ, bid or contract, the Mayor or his or her designees shall seek a recommendation from the Executive Director of the Ethics Commission."

By designating certain contracted personnel pursuant to this subsection, many of the same rules that apply to County employees would be extended to contracted personnel. Clearly, it does not make sense to designate personnel in all, or even most, County contracts under this County Code provision, but more and more, the County outsources many functions traditionally performed by County personnel. The phrase "extension of staff" is commonly used to describe consultants and other managerial personnel that are retained via contracts.

This is especially true for some MDAD contracts where some individuals have been performing in a full-time capacity as an extension of staff for several years. Some of the contract types where this designation is appropriate include professional services agreements for consultancy staff, management agreements, and the MCC-8-10 contract (and its successors). Here, County contract administrators thought it important enough to add the requirement that any work outside of the MCC-8-10 contract by the GM must be approved in advance by MDAD. The work of this particular contract, and specifically that of the GM, is to procure and oversee the work of subcontractors on these smaller construction projects on behalf of MDAD. Although officially MCM is the prime, general contractor, the work it performs and how it is compensated resembles an outsourced County function.¹⁶

¹⁶ The OIG notes that MCM in its response to the draft report specifically disagrees with the OIG's assessment that MDAD's MCC Program functions as a delegation of MDAD's administrative function. MCM points out that as the

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The OIG recently inquired about the frequency wherein Section 2-11.1(b)(13) of the County Code has been invoked. We could not find any cases. Commission on Ethics staff also advised that they could not recall being contacted by County staff to review any contracts for designation.¹⁷

Here, it just makes sense that the GM of the MCC-8-10 contract is designated as "contract staff" pursuant to Section 2-11.1(b)(13) of the County Code. It is a logical extension of the contract's existing provision requiring that the GM obtain MDAD's approval prior to engaging in outside employment or other work outside of the MCC contract. The prime contractor's employees essentially perform the same work that would have been performed by MDAD procurement and project staff but for the MCC-8-10 contract. MCM is paid a fee to manage the construction projects, including the procurement of subcontractors. These contracted individuals should be subject to key ethics provisions applicable to County procurement officers and contract managers.

The provisions found in Section 2-11.1 of the County Code clearly prohibit entering into contracts if the employee's (or "contract staff's") independence of judgment in the performance of his duties would be impaired. It is clear that the GM is responsible for procuring and overseeing the performance of the MCC-8-10 subcontractors. Overseeing and supervising the performance of subcontractors that are simultaneously functioning as business partners would certainly create an impairment to independent judgment.

X. OIG RECOMMENDATIONS & SUBSEQUENT ACTIONS TAKEN

The OIG's original recommendation number 1 to determine if Mr. Calderin was continuing to engage in outside employment through his new company, Primecon, became moot with Mr. Calderin's departure in July 2020. MDAD, in its responses to the other OIG recommendations, has pledged to require MCC-9-18 key management personnel to disclose their personal business interests. The OIG's original recommendation number 2 has been effectively addressed by the new disclosures being required by MDAD of all

General Contractor, it pulls permits and puts up a performance bond for each construction activity, it is held responsible for any defaults by subcontractors, and is subject to liquidated damages, etc. The OIG acknowledges these as key differences between the County's MCC-7040 and MCC-7360 programs and MDAD's MCC Program. Although there are differences, it remains a fact that the GM is also responsible for the procurement of the subcontractors, which would otherwise be performed by MDAD procurement staff. Moreover, MDAD, in its response to the OIG has concurred with the OIG's assessment and has already begun implementing our recommendations. MCM, in its replacement of Mr. Calderin as the GM, abided by MDAD's requirement that the new GM disclose his business ventures to be evaluated for any conflicts of interest.

¹⁷ This is not the only OIG investigation involving contracted personnel in which the application of Section 2-11.1(b)(13) might be desired. The OIG will further explore the application of this provision with the County's procurement and contracting officers.

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
FINAL REPORT OF INVESTIGATION
***Outside Employment and Conflicts of Interest Related to Miami-Dade Aviation
Department's MCC-8-10 Contract with Munilla Construction Management, Inc.***

key management personnel. The remaining recommendations (renumbered) and MDAD's responses thereto follow below:

1. Going forward, MDAD should expand the provision (currently contained in Section 2.11.04 of the MCC-8-10 contract) that requires MDAD pre-approval of outside employment and other outside work to additional full-time personnel of the General Contractor. For the MCC-9-18 contract, MDAD should assess each of the key full-time positions for inclusion in this contract requirement. MDAD should also consider adding a requirement that the designated staff certify on an annual basis whether or not he/she has outside employment as a reminder of the person's responsibilities.

MDAD's Response: *The Department concurs and will require future General Contractors under this type of Agreement to require all key management positions to disclose other owned or vested business interests and current construction projects. Department staff has discussed this with MCM to evaluate requiring the recommended disclosures from key management personnel, to be attested as accurate by each responding employee, and then forwarded to Department staff for review and approval.*

2. Going forward, MDAD should designate the MCC-9-18 contract as one where certain personnel are designated as "contract staff" pursuant to Section 2-11.1(b)(13) of the County Code. These individuals should but may not necessarily be the same positions identified by contract as requiring approval for engaging in outside employment.

MDAD's Response: *The Department concurs. As indicated above, the Department will require annual attestations from the General Contractor's key management staff to disclose ownership and vested interests in other business ventures, as well as recent construction projects for review and approval.*

3. MDAD should examine its portfolio of contracts, including professional services agreements and management agreements, to assess whether contracted personnel are performing functions as an extension of County staff and, if so,
 - a. determine whether these contracts should include a similar provision requiring disclosure and approval of outside employment, and
 - b. determine whether to designate personnel as "contract staff" pursuant to Section 2-11.1(b)(13) of the County Code.

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
FINAL REPORT OF INVESTIGATION
Outside Employment and Conflicts of Interest Related to Miami-Dade Aviation
Department's MCC-8-10 Contract with Munilla Construction Management, Inc.

MDAD's Response: The Department concurs. The inclusion of a requirement from contracted personnel performing as an extension to staff to disclose ownership and vested interests in other business ventures will be evaluated for future contracts.

4. To the extent that contracted personnel are designated pursuant to Section 2-11.1(b)(13) of the County Code, MDAD, in conjunction with the Ethics Commission, should develop a training program for contract staff that addresses the specific provisions of the Code of Ethics and Conflict of Interest Ordinance applicable to them.

MDAD's Response: The Department concurs. We have contacted the Ethics Commission to provide ethics and conflict of interest training to MCM staff and they have graciously agreed to assist us in fulfilling this recommendation.

XI. CONCLUSION

The OIG investigated two allegations of misconduct leveled against Mr. Calderin by an anonymous complainant. It was alleged that Mr. Calderin received 20% of the profits for awarding MCC-8-10 subcontracts to a painting subcontractor, A1. It was further alleged that A1 was representing The Calderin Group, a firm owned by Mr. Calderin, at pre-bid meeting. In the course of this investigation, the legality and ethics of Mr. Calderin's outside employment and the pursuit of business in partnership with MCC-8-10 subcontractors was questioned by the OIG.

While the OIG did not substantiate the allegation of kickbacks to Mr. Calderin, the OIG found evidence of a wanton violation of the MCC-8-10 contract's provision pertaining to unauthorized outside employment, and conflict of interest issues related to his business pursuits with subcontractors under his supervision as the General Manager of MCC-8-10. Mr. Calderin exacerbated his unauthorized outside employment by failing to keep his unsanctioned personal business separate and apart from his MCC-8-10 contract responsibilities.

Even after MDAD and MCM were apprised of Mr. Calderin's contract violations, neither party took action. MDAD did not demand Mr. Calderin's removal. MCM allowed Mr. Calderin to continue his outside employment without written authorization, relying on MDAD's leniency and tolerance for this contract violation. It should also be noted that it was only after the OIG draft report was released to the subject parties that MCM took action to replace Mr. Calderin. This report concludes the OIG's investigation of MDAD's MCC-8-10 and the activities of its General Manager.

* * * * *

**Miami-Dade County
Office of the Inspector General**

Exhibit 1

**MDAD RPQ 10052813 Pre-Bid Meeting Sign-in Log
Raciel Ramos on Behalf of The Calderin Group**

(2 pages)

OIG Case No. 16-0020-I

PRE-BID MEETING SIGN-IN SHEET
 MDAD Cargo Buildings 700, 701 and 702 Exterior Renovation and Painting
 RPQ# 10052813
 January 8, 2015 - 2016

COMPANY	NAME	PHONE NUMBER	E-Mail Address
Stone Concept Miami	Ali Sarrafi	786-337-3425	hamid@soniami.com
Allied Contractors	George Gonzalez	(305) 819-4549	george@allied-contractors.com
George MNGC Construction	Jenel Rodriguez	786-385-0964	precon3@mngcconstruction.com
GECKO GROUP	JIM ZADE	305 443 8482	JZADE@GECKOGROUP.US
TRINTEC CONSTRUCTION	PETULA SCHWARTZ	305 685 3001	PSCHWARTZ@TRINTECINC.COM
JCM Development	JC Mens Jr	305 205 2222	JCMDev@bellsouth.net
JCM Development	JC Mens	(3) 895-3731	JCMDev@bellsouth.net
SBK Quality Contractors	Jack Para	716 606 7225	jackskcontractor@gmail.com
BUSCALL	Evan Busto	712 915 3000	OPERATIONS@BUSCALL.COM
Li	Evan Busto	713 959 7773	" "
Small Business Development Corp	Cesar Suarez	305-275-3115	CesarS@miamidade.gov
MDAD - West Cargo	Gary Pender		G.Pender@miami-airport.com
MDAD	Paul Pender	31876-0740	penderer@miami-airport.com

**Miami-Dade County
Office of the Inspector General**

Exhibit 2

A1 Check to The Calderin Group - \$49,570

(1 page)

OIG Case No. 16-0020-I

COPY

AT ALL FLORIDA PAINTING INC.		2678 83-8419 41737 2870
PAY TO THE ORDER OF <u>The Calderin Group -</u>	\$ <u>49,570.00</u>	DATE <u>2/01/2016</u>
<u>Forty Nine Thousand Five Hundred Seventy Dollars</u>	DOLLARS	
CHASE JPMorgan Chase Bank, N.A. www.Chase.com	FOR <u>MIA CAGO Bldg</u>	#00267811

The following information is provided to you as required by the
 Securities and Exchange Commission (SEC) and the
 Federal Reserve Board of Governors (FRB).
 This information is provided to you for informational purposes only.
 It is not intended to be used for any other purpose.
 If you have any questions, please contact your broker.
 * FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

3685160060

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 EXCEPT FOR FINANCIAL INSTITUTION USE
 ENDORSE HERE
TO BE DEPOSITED ONLY

REQUEST 00006750653000000 49570.00
 ROLL ECIA 20160201 000003685168060+
 JOB ECIA E ACCT [REDACTED]
 REQUESTOR U006748
 17595476 02/28/2017 Research 17595647
 Summons and Subpoenas Department
 D1111-016
 Charlotte NC 28201

**Miami-Dade County
Office of the Inspector General**

Exhibit 3

The Calderin Group Check to Return Funds to A1 - \$49,570

(1 page)

OIG Case No. 16-0020-I



THE CALDERIN GROUP, CORP.
10806 S.W. 88 DRIVE
MIAMI, FL 33173

1256

63-751/691 10022
2000054087460

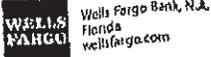
4/28/16

DATE

PAY TO THE ORDER OF

AI ALL FLORIDA PRINTING \$ 49,570.50

FORTY-NINE THOUSAND FIVE-HUNDRED SEVENTY DOLLARS



Wells Fargo Bank, N.A.
Florida
wellsfargo.com

FOR BID BOND DEPOSIT

[Handwritten signature]

⑆ [REDACTED] ⑆ 01256

Harold Clark

JP Morgan Chase Bank, NA
CREDITED TO ACCOUNT OF
[REDACTED]
FOR DEPOSIT ONLY

A-I Florida Printers

REQUEST 00006750655000000 49570.00
ROLL ECIA 20160513 000008823980126
JOB ECIA E ACCT [REDACTED]
REQUESTOR U006748
17595476 02/28/2017 Research 17596111

Summons and Subpoenas Department
D1111-016
Charlotte NC 28201

**Miami-Dade County
Office of the Inspector General**

Exhibit 4

**The Calderin Group Bid Documents submitted to MDAD
Regarding Revised Bid Package ref:**

***MIA Cargo Bldg. 700, 701 &702, Exterior Restoration and Painting,
Contract No. MCC-7040 Plan – CICC7040-0/07, RPQ No. 10052813***

(15 pages)

OIG Case No. 16-0020-I

Aviation
 Maintenance Department
 4200 NW 22 Street, Bldg 3030
 Miami, FL 33122



MIAMI-DADE COUNTY, FLORIDA
 REQUEST FOR PRICE QUOTATION (RPQ)
 Contract No: MCC 7040 Plan - CICC 7040-0/07
 RPQ No: 10052813

REVISED RPQ BID FORM – ATTACHMENT 5A

RPQ Project Name: MIA Cargo Bldg. 700, 701 & 702 Exterior Restoration and Painting

Item No.	Estimated Quantity	Description	Total
1	LS	Furnish all labor, equipment and material required to perform the work specified in the Scope of Work, the sum of	\$ <u>874,000.-</u>

Base Bid Price Proposal (Cost to Perform the work (Item No.1) must be stated here. State 'No Bid' if not submitting a price proposal) EIGHT-HUNDRED SEVENTY-FOUR THOUSAND AND 00/100

2	Contingency Allowance	For unforeseen conditions, for construction changes and for quantity adjustments, if ordered by the owner, the sum of (10% of item 1 above)	\$ <u>87,400.-</u>
3	Dedicated Allowance	Costs for stucco repair beyond the area included in the base bid (50,000 SF), reimbursement of Security and Badging fees, any other unforeseen conditions if applicable, the sum of:	\$ <u>30,000.00</u>

TOTAL BID (Items 1 through 3) \$ 991,400.00
NINE-HUNDRED NINETY-ONE THOUSAND
FOUR-HUNDRED AND 00/100 Dollars
 and _____ cents

4 Unit price per SF for additional stucco repair to be paid under allowance account \$ 6.80 per SF

Bidder's Company Name: THE CALDERIN GROUP, CORP.

Company Address: 10866 SW 68 DR.

City: MIAMI

State: FL Zip: 33173

Telephone No: 3-910-3341 Fax No: _____ Email: SEIRVICE@PROTECTONCALL.COM

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BELOW BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE COUNTY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS OFFER

Name of Person Submitting Quote (Print): ALBERTO CALDERIN

Number of Addendums received: 6 (if none' write "None")

Signature: _____ Date: 2/1/16

Note: Quotes must be submitted on this form. Quote envelope must state RPQ Number, date and time due and the Bidder's Name. Use of any other form for submission of the price quotation shall result in the rejection of the price quotation. Late bids will not be opened. Low bidder will be notified, in the Recommendation of Award, of the requirements to submit current copies of Insurance certificates in accordance with the Contract Documents. By signature, the CONTRACTOR agrees to be bound by the terms set forth in the MCC 7040 Plan.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Appendix 5A



**SCHEDULE OF INTENT AFFIDAVIT (SOI)
SMALL BUSINESS ENTERPRISE - CONSTRUCTION (SBE/CONS) PROGRAM**

Name of Prime Contractor THE CALDERIN GRP, COMP. Contact Person ALBERTO CALDERIN
 Address 10866 SW 68 DL. MIAMI FL 33173 Phone 3-910-3341 Fax _____
 Project Name MIA CALGO BLDGS 700-701-702 AND PAYS BOSTING Project Number RPO 10052813
 SBE/Cons Contract Measure 100%

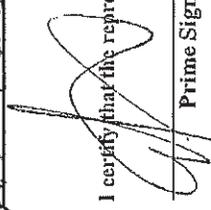
This form must be completed by the Prime Contractor and the Small Business Enterprise-Construction (SBE/Cons) Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form with bid documents at the time of bid submission. This form must also include the SBE/Cons goal make-up percentage, if applicable.

Name of Prime Contractor	(if applicable) SBE/Cons Certification	(if applicable) Certification Expiration Date	Scope of Construction work to be performed by Prime Contractor	Prime Contractor % of Bid	(if applicable) SBE/Cons Prime % of Bid
<u>THE CALDERIN GRP</u>	<u>14710</u>	<u>2/28/18</u>	<u>STUCCO REPAIRS</u>	<u>40%</u>	
				Prime Contractor Total Percentage:	

The undersigned intends to perform the following work in connection with the above contract:

Name of SBE/Cons Subcontractor	SBE/Cons Certification No.	Certification Expiration Date	Scope of Construction work to be performed by SBE/Cons Subcontractor	(if applicable) SBE/Cons Subcontractor % of Bid	(if applicable) SBE/Cons Trade Set Aside %	(if applicable) Construction Goal Make-Up %
<u>AL FLORIDA PAINTING</u>	<u>12311</u>	<u>08/30/2016</u>	<u>Ext. Paintings</u>	<u>60%</u>		
				Subcontractor Total Percentage:		

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

 Prime Signature ALBERTO CALDERIN Prime Print Name ALBERTO CALDERIN Prime Print Title PRESIDENT Date 2/1/16

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

 SBE/Cons Subcontractor Signature Rachel Ramos SBE/Cons Subcontractor Print Name Rachel Ramos SBE/Cons Subcontractor Print Title President Date 2/01/2016

<input type="checkbox"/>	Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.
<input type="checkbox"/>	Check this box if Form SBD 305A and Form SBD 305B have been submitted in your pricing envelope.
<input type="checkbox"/>	Check this box if Form SBD 303 has been submitted in your pricing envelope.

List of Certified Firms: <http://www.miamidade.gov/smallbusiness/certification-list.asp>
 SBD's Website: <http://www.miamidade.gov/smallbusiness/>



Small Business Development
 Certified SBE/CONS Firms as of
 March 25, 2015

FIRM NAME	CONTACT	ADDRESS	PHONE FAX	CERT NO.	EXP. DATE	CERTIFIED BUSINESS ENTERPRISE TRADE CATEGORIES
RRECON DESIGN & CONSTRUCTION, INC. 11/04/2008	DONOVAN TERRELONGE	7515 SW 168th St Palmetto Bay, FL 33157-0000	305-256-9005 N/A	13870	04/30/2015	SBE/CONS LEVEL 1 236115 New Single-Family Housing Construction (Except Operative Builders) 236116 New Multifamily Housing Construction (Except Operative Builders) 236117 New Housing Operative Builders 236118 Residential Remodelers 236210 Industrial Building Construction 236220 Commercial And Institutional Building Construction 237110 Water And Sewer Line And Related Structures Construction 238110 Poured Concrete Foundation And Structure Contractors 238120 Structural Steel And Precast Concrete Contractors 238910 Site Preparation Contractors SBE/CONS LEVEL 1 238210 Electrical Contractors And Other Wiring Installation Contractors SBE/CONS LEVEL 1 238210 Electrical Contractors And Other Wiring Installation Contractors SBE/CONS LEVEL 1 236115 New Single-Family Housing Construction (Except Operative Builders) 236116 New Multifamily Housing Construction (Except Operative Builders) 236117 New Housing Operative Builders 236118 Residential Remodelers 236210 Industrial Building Construction 236220 Commercial And Institutional Building Construction 237110 Water And Sewer Line And Related Structures Construction 238110 Poured Concrete Foundation And Structure Contractors 238120 Structural Steel And Precast Concrete Contractors 238910 Site Preparation Contractors SBE/CONS LEVEL 1
SLA ELECTRIC INC. 11/01/2002	JAVIER BEJARANO	11621 SW 117th Ct Miami, FL 33186-0000	305-302-8883 305-232-5641	9483	03/31/2015	
SLA ENGINEERING INC 08/17/2009	JOSEPH PADRON	17910 SW 137th Ct Miami, FL 33177-0000	305-252-0076 N/A	15695	07/31/2017	
B CALDERIN GROUP, CORP 09/29/2008	ALBERTO CALDERIN	10866 SW 68th Dr Miami, FL 33173-0000	305-910-3341 305-596-9514	14110	02/28/2018	
E CHESTER GROUP, INC.	WALLACE B. CHESTER	1441 NW 137th St	786-586-3941	8717	11/30/2017	

firms that have timely submitted re-certification applications which are "Under Review" are listed in red. Firms listed in red with "Under Review" designation in the Expiration Date column have not received final approval. You may contact the firm or SBD for approval status.

firms with "Under Review" designations may request an expedited certification review by submitting documentation relative to their participation on an upcoming project. Contact SBD (305-375-2378) for more information.

BID NO.:
BID TITLE:

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-33.1) (Ordinance No. 08-113)

BEFORE ME, A NOTARY PUBLIC, personally appeared ALBERTO CALDERIN
who being duly sworn states: (insert name of affiant)

I am over 18 years of age, have personal knowledge of the facts stated in this affidavit and I am an owner, officer, director, principal shareholder and/or I am otherwise authorized to bind the bidder of this contract.

I state that the bidder of this contract:

is not related to any of the other parties bidding in the competitive solicitation, and that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer.

OR
 is related to the following parties who bid in the solicitation which are identified and listed below:

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

By: [Signature] Date 2/11 2016

Signature of Affiant

Date

ALBERTO CALDERIN, PRESIDENT 318-37941700
Printed Name of Affiant and Title Federal Employer Identification Number

THE CALDERIN GROUP, CORP.
Printed Name of Firm

10866 SW 68 DR. MIAMI, FL 33173
Address of Firm

BID NO.:
BID TITLE:

SUBSCRIBED AND SWORN TO (or affirmed) before me this 1 day of Feb,
2016

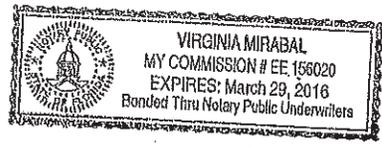
He/She is personally known to me or has presented _____
as identification.

Virginia Mirabal
Signature of Notary
Virginia Mirabal
Print or Stamp Name of Notary

Type of identification
EE 156020
Serial Number
3/29/2016
Expiration Date

Notary Public – State of Florida

Notary Seal



Aviation
Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami Fl 33159



MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan
RPQ No: 10052813

RPQ ADDENDUM

(Attachment 9)

Addendum No:	1	Date	1/6/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	1/21/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior Renovation and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:00 AM
Project Duration:	60 Days		

The Location of the Mandatory Pre-bid meeting has been changed, the new location is:
2461 NW 66th Ave.
2nd fl. Suite 208
Miami, FL. 33122
Bldg. 702

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return this document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDERIN GROUP, COMP.

Name of Individual Authorized to Sign: LIBERTO CALDERIN

Title: PRESIDENT

Signature: _____

Date: 2/1/2016

Aviation

Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami Fl 33159



MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan

RPQ No: 10052813

RPQ ADDENDUM

(Attachment 9)

Addendum No:	2	Date	1/14/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	1/28/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior Renovation and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:30 AM
Project Duration:	120 Days		

This Addendum serves to respond to the Request for Information (RFI) submitted by:

- Mr. De Armas, of Allied Contractors on 01/11/16:

Question 1.1 Please provide the mandatory pre-bid attendance sheet.

Answer 1.1 See attached

Question 1.2 Could you please indicate if the owner will provide water for the pressure cleaning?

Answer 1.2 Water to be supplied by MDAD using available hose bibs.

Question 1.3 Could you please indicate if the owner will provide power for all the equipment to perform this job?

Answer 1.3 110 V power will be supplied where available. Contractor shall be responsible for securing all extension cords in a safe manner.

Question 1.4 Could you please indicate if the expenses to obtain the IDs for project manager, superintendent and labors will be reimbursable, or it should be included in the base bid?

Answer 1.4 The cost for the MDAD Badges will be reimbursable.

Question 1.5 Could you please indicate if the GC will have access to parking spots?

Answer 1.5 Vehicle parking is available on roof tops. Some truck or container parking is available at Bldg. 702 north end.

Question 1.6 For bidding purpose, could you please indicate the total stucco area in SF for each building and ramps?

Answer 1.6 Stucco repairs will be made only to all visual cracks and faults as per walk thru.

Question 1.7 For bidding purpose, could you please indicate the total filling cracks linear foot for each building and ramps?

Answer 1.7 As visible per walk thru, same as above.

Question 1.8 Could you please indicate if the caulking for windows and storefronts are included in the base bid? If so, could you please provide details of what caulking the owner want?

Answer 1.8 Yes, as per Item 1.1 of the RPQ, contractor shall remove and re-caulk around all windows and doors. Please refer to Item 1.10 of the RPQ for caulking specifications.

Question 1.9 Could you indicate hours of operation for this project?

Answer 1.9 24/7 as coordinated with tenants.

- Mr. Moran of Epic Consultants on 01/12/16:

Question 2.1 Please confirm that contractors are only required to paint the exterior fire sprinkler pipes.

Answer 2.1 Confirmed.

Question 2.2 Please allow for more frequent invoicing.

Answer 2.2 Contractor will be allowed to submit by-weekly progress payment as long as there is a substantial work progress.

Question 2.3 Please confirm who will be provide water and electricity and where are the utility connection located

Answer 2.3 Refer to answer 1.2 and 1.3.

Question 2.4 Confirm that the contractors are not required to paint and/or replace any of the signage

Answer 2.4 Confirmed.

Responses to the rest of the RFIs questions are currently being prepared.

Page 1 of the RPQ; change the Calendar Days for Project Completion: 60 for 120.

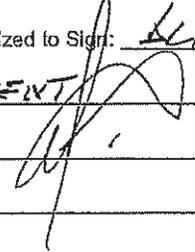
THE BID DUE DATE HAS BEEN POSTPONED; THE NEW BID DUE DATE WILL BE THURSDAY, JANUARY 28, 2016; AT 2:00 PM.

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return this document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDERIN GROUP, CORP.

Name of Individual Authorized to Sign: LIBERTO CALDERIN

Title: PRESIDENT

Signature: 

Date: 2/1/12

Aviation

Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami Fl 33159



**MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)**

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan
RPQ No: 10052813

RPQ ADDENDUM

(Attachment 9)

Addendum No:	3	Date	1/15/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	1/28/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior Renovation and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:30 AM
Project Duration:	120 Days		

This Addendum serves to respond to the Request for Information (RFI) submitted by:

- Mr. De Armas, of Allied Contractors on 01/11/16:

Question 1.1 For bidding purpose, could you please indicate the total painting area in SF for each building and ramps?
Answer 1.1 See attached plans for the buildings. No available plans for the ramps.

Question 1.2 For bidding purposes, could you please provide how many doors, rolling doors, louvers and windows has each building?
Answer 1.2 See attached plans.

Question 1.3 For bidding purpose, could you please provide the linear foot of railing of each ramp to be painted?
Answer 1.3 Plans are not available for the ramps. Contractor must perform field measurements

Question 1.4 For bidding purpose, could you please indicate the linear foot of piping of each building to be painted?
Answer 1.4 Contractor must perform field measurements.

- Mr. Moran of Epic Consultants on 01/12/16:

Question 2.1 Provide building plans/drawings for accurate measurements.
Answer 2.1 See attached plans.

- Mr. Busto of Buslam on 01/15/16:

Question 3.1 This project is practically a single trade project and our firm with our own workforce can perform all of the work included in this project, our firm is also CSBE level 1 certified and has experience and the capacity to perform all of the work. During the pre-bid meeting it was stated that we could only comply with 50% of the CSBE requirements for the project. Considering the fact that we do not need to subcontract in order to perform this project, and we are certified as a CSBE Level 1, can we be considered to meet 100% of the CSBE requirements with our own company without the need to subcontract?

Answer 3.1 The CSBE level 1 contractor can perform one hundred percent (100%) of the scope of services with its own force on a single trade project. When there are auxiliary trades that required subcontracting the sub-contractors must be CSBE certified.

Question 3.2 During the pre-bid meeting it was stated that a set of plans and elevations would be provided in order for us to calculate the areas. And have an accurate bid. Can you please confirm if this plans will in fact be provided, or if we are expected to walk through and take our measurements in person

Answer 3.2 See attached plans.

Responses to the rest of the RFIs questions are currently being prepared.

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return this document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDENIN GROUP, CORP.

Name of Individual Authorized to Sign: RUBEN CALDENIN

Title: PRESIDENT

Signature: _____

Date: 2/1/16

Aviation
Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami Fl 33159



MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan

RPQ No: 10052813

RPQ ADDENDUM
(Attachment 9)

Addendum No:	4	Date	1/21/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	1/28/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior Renova and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:30 AM
Project Duration:	120 Days		

Please delete RPQ Bid Form – Attachment 5A and replace it with the attached REVISED RPQ Bid Form – Attachment 5A

RPQ Item 1.1: Delete Chiller enclosure from the scope of work.

This Addendum serves to respond to the Request for Information (RFI) submitted by:

- Mr. Zade, of Gecko Group on 01/19/16:

Question 4.1 Have you determined the Stucco repair area so that every contractor can bid on the same amount?

Answer 4.1 For bidding purposes, contractor shall consider a maximum area of 50,000 SF for Stucco repair. Contractor shall provide a unit price per SF for additional stucco repair to be paid under the dedicated allowance. Please refer to the REVISED RPQ Bid Form.

Question 4.2 Can the surety use their own form for the Bid Bond?

Answer 4.2 Any Bid Bond form approved by the State of Florida will be accepted. Contractor shall submit a certified check or a cashier's check payable to the Board of County Commissioners of Miami-Dade County in lieu of a Bid Bond.

- Mr. De Armas, of Allied Contractors on 01/19/16:

Question 5.1 Please provide the area of stucco repairs for each building?

Answer 5.1 Refer to Answer 4.1 above.

Question 5.2 Please confirm that the existing rolling doors of each building will be painted ONLY in the exterior side

Answer 5.2 Confirmed, only the rolling doors at Landside shall be painted. Doors at Airside shall be pressure cleaned only.

Question 5.3 Please confirm that the existing bollards and the existing metal barriers/metal bumpers next to each building are not included in the scope of work.

Answer 5.3 Confirmed.

Question 5.4 Please confirm that the plants and trees next to each building will be cut in half by OWNER to perform the painting job easier.

Answer 5.4 Confirmed.

- Mr. Moran of Epic Consultants on 01/19/16:

Question 6.1 Please provide a quantity of stucco repair.

Answer 6.1 Refer to Answer 4.1 above.

Responses to the rest of the RFIs questions are currently being prepared.

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return this document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDERIN GROUP, COMP.

Name of Individual Authorized to Sign: AUBERTO CALDERIN

Title: PRESIDENT

Signature: _____

Date: 2/1/16

Aviation

Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami FL 33159



MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan
RPQ No: 10052813

RPQ ADDENDUM

(Attachment 9)

Addendum No:	5	Date	1/26/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	2/1/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior R and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:30 AM
Project Duration:	120 Days		

Add the following to RPQ Item 1.13:

- Any and all chemicals used must be biodegradable and fully EPA approved.
- Pressure cleaning work shall be in compliance with applicable local environmental protection regulations set for the pressure washing industry. Prevent any illegal dumping of wash water discharge to avoid fines and environmental problems related to the exterior cleaning.
- Storm drainage inlets that may receive wash water runoff during pressure cleaning activities must be temporarily protected in accordance with the MDAD Best Management Practices available from the MDAD Environmental and Civil Engineering Section. To a minimum, all inlets shall be temporarily protected with straw bales, booms or sandbags to create barriers to sediments and/or pollutants. In addition, a wire mesh must be installed over all openings to prevent sediments from entering the system while allowing water flow into the storm drain. The contractor shall be responsible for installation and removal of all control devices subsequent to completion of the construction activities.

This Addendum serves to respond to the Request for Information (RFI) submitted by:

- Mr. Moran of Epic Consultants on 01/19/16:

Question 2.1 Please specify the requirements for MOT and its location..

Answer 2.1 MOT and Staging Plans: The contractor shall prepare and submit a staging/storage plan for all material and equipment to be used on the project for review and approval by the MDAD property manager, representative from the MDAD Landside and/or Airside Operations as well as the MDAD project manager. The plan shall include drawings depicting the staging/storage area as well as an explanation regarding how the proposed area will be secured and protected. All materials and/or equipment shall be stored and secured within the staging/storage area pre-approved by the MDAD.

Maintenance of Traffic Plans shall conform to the Florida Department of Transportation (FOOT) Roadway and Traffic Design Standards, latest issue and the FHWA Manual on Uniform Traffic Control Devices (MUTCD), latest issue. Meetings with representatives from MDAD Properties, Landside and Airside Operations may be required. Bidders shall carefully account for all costs to meet this requirement on the bid.

- Ms. Schvarts of Trintec construction on 01/21/16:

Question 6.2 What is the warranty for this project?

Answer 6.2 As per MDD 7040, workmanship warranty is 1 year form final acceptance. Material warranty is 12 years as per Sherwin William's Specifications.

- Mr. Busto of Buslam on 01/22/16:

Question 7.1 Please confirm if the building adjacent to Building 702, at the Northeast Corner, behind the parking lot ramp, will or will not be included in the scope of work

Answer 7.1 The Chiller enclosure is not part of the scope of work

- Mr. Zade of Gecko Group on 01/19/16:

Question 4.3 As noted during the site visit, the structural steel of soffits at parking level are deteriorated. These will require the review of an engineer to determine their integrity. Will MDAD provide an independent engineer to inspect and provide plans or details for repair? Given the unknown condition of these soffits, and without a set of plans, it is impossible to determine the scope of work for soffit repair. We suggest that this item be treated as a contingency and

not included in the base bid.

Answer 4.3 Contractor to replace all soffits at parking level. Please see plans attached.

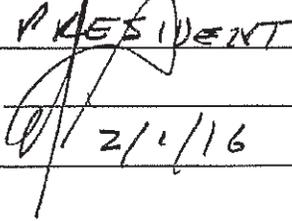
THE BID DUE DATE HAS BEEN POSTPONED; THE NEW BID DUE DATE WILL BE MONDAY, FEBRUARY 1, 2016;
AT 2:00 PM.

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return th
document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDERIN GROUP CORP.

Name of Individual Authorized to Sign: ALBERTO CALDERIN

Title: PRESIDENT

Signature: 

Date: 2/1/16

Aviation
Maintenance Department
4200 NW 22 Street, Bldg 3030
Miami FI 33159



MIAMI-DADE COUNTY, FLORIDA
REQUEST FOR PRICE QUOTATION (RPQ)

Contract No: MCC 7040 Plan - CICC 7040-0/07
Plan
RPQ No: 10052813

RPQ ADDENDUM
(Attachment 9)

Addendum No:	6	Date	1/28/2016
RPQ No:	AV 7040: 10052813	Bid Due Date	2/1/2016
Project No:	10052813	Project Title	MIA Cargo Bldgs. 700 - 701 - 702 and ramps Exterior R and Painting
Project Location:	Bldgs. 700, 701 and 702	Project Manager	Vivian Forhat-Diaz
Site Meeting Date:	1/8/2016	Site Meeting Time:	09:30 AM
Project Duration:	120 Days		

This Addendum serves to respond to the Request for Information (RFI) submitted by:

- Mr. Pinzon of Epic Consultants on 01/26/16:

Question 8.1 Field conditions shows there is a fire alarm device installed in the parking soffits wall, please indicate if these fire alarm devices are to be removed, stored, reinstalled, tested and re-certified.

Answer 8.1 The contractor is responsible for completing a Shut-down request form (see Supporting Documents Attachment #16) listing the start and end dates. Once approved, MDAD fire techs shall remove the device and reinstall upon completion.

Question 8.2 Please indicate the existing fire alarm contractor in buildings 700, 702 and 703.

Answer 8.2 Fire alarm issues are handled by MDAD Fire Protection Division.

All else remains the same. This document must be signed and returned as part of your RPQ response. Failure to return the document signed may result in your RPQ Response being rejected as non-responsive.

Name of Contractor: THE CALDERIN GROUP, CORP.

Name of Individual Authorized to Sign: ALBERTO CALDERIN

Title: PRESIDENT

Signature: [Handwritten Signature]

Date: 2/1/16



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD
1940 NORTH MONROE STREET
TALLAHASSEE FL 32399-0783

(850) 487-1395

CALDERIN, ALBERTO J
(THE) CALDERIN GROUP CORP
10866 SW 68 DR
MIAMI FL 33173

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CGC1518163 ISSUED: 07/16/2014

CERTIFIED GENERAL CONTRACTOR
CALDERIN, ALBERTO J
(THE) CALDERIN GROUP CORP

IS CERTIFIED under the provisions of CH 489 FS
Expiration date AUG 31 2016 L1407160001255

DETACH HERE

RICK SCOTT, GOVERNOR

KEN LAWSON, SECRETARY

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD

LICENSE NUMBER	
CGC1518163	

The GENERAL CONTRACTOR
Named below IS CERTIFIED
Under the provisions of Chapter 489 FS.
Expiration date: AUG 31, 2016



CALDERIN, ALBERTO J
(THE) CALDERIN GROUP CORP
10866 SW 68 DR
MIAMI FL 33173



ISSUED: 07/16/2014

DISPLAY AS REQUIRED BY LAW

SEQ # L1407160001255

006286 11-24
Office AU # 1210(8)

CASHIER'S CHECK

SERIAL #: 6629601542
ACCOUNT# [REDACTED]

Remitter: ALBERTO J CALDERIN
Purchaser: ALBERTO J CALDERIN
Purchaser Account: [REDACTED]
Operator I.D.: 0002763 0002763
Funding Source: Paper Items(s)

February 01, 2016

PAY TO THE ORDER OF ***BOARD OF COUNTY COMMISSIONERS***

Forty-nine thousand five hundred seventy dollars and no cents

\$49,570.00

Payee Address:
Memo: RPQ AV 7040-10062813

WELLS FARGO BANK, N.A.
900 SW 57TH AVE
MIAMI, FL 33144
FOR INQUIRIES CALL (408) 394-3122

NOTICE TO PURCHASER - IF THIS INSTRUMENT IS LOST,
STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION
AND REISSUANCE. AS A CONDITION TO CANCELLATION AND
REISSUANCE, WELLS FARGO BANK MAY IMPOSE A FEE AND
REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 49,570.00

NON-NEGOTIABLE

Purchaser Copy

*B004 Mmes 40327338

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VOID VOID VOID VOID
006286 11-24 6629601542
Office AU # 1210(8) CASHIER'S CHECK
Remitter: ALBERTO J CALDERIN
Operator I.D.: 0002763 0002763
February 01, 2016

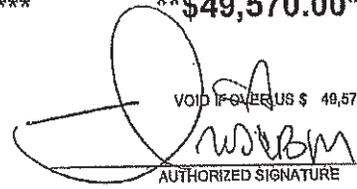
PAY TO THE ORDER OF ***BOARD OF COUNTY COMMISSIONERS***

Forty-nine thousand five hundred seventy dollars and no cents

\$49,570.00

Payee Address:
Memo: RPQ AV 7040-10062813

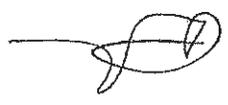
WELLS FARGO BANK, N.A.
900 SW 57TH AVE
MIAMI, FL 33144
FOR INQUIRIES CALL (408) 394-3122

VOID IF OVER US \$ 49,570.00

AUTHORIZED SIGNATURE

⑆6629601542⑆ ⑆121000248⑆486⑆ 513265⑆

Check returned to Lucia Calderin
on April 26, 2016.

LUCIA CALDERIN



**Miami-Dade County
Office of the Inspector General**

Appendix A

MDAD's Response to the Draft Report

(3 pages)

OIG Case No. 16-0020-I

Memorandum



Date: July 15, 2020
To: Mary Cagle
Inspector General
From: Lester Sola
Aviation Director
Subject: Response to Draft Report – MCC-8-10 Contract – 16-0020-1

This memorandum is in response to the Office of the Inspector General's (OIG) referenced draft report, dated June 30, 2020, regarding outside employment and conflicts of interest related to the Miami-Dade Aviation Department's MCC-8-10 Contract with Munilla Construction Management, Inc. (MCM). The Department's response to the OIG's recommendations (bolded and italicized) precede our course of actions, as follows:

OIG RECOMMENDATIONS and MDAD RESPONSES

- 1) ***As mentioned earlier in this report, Mr. Calderin currently has a new company, Primecon, LLC, that recently obtained County certification as an SBE-C. While MDAD did eventually become aware of Mr. Calderin's outside activities with The Calderin Group, MDAD has not approved of his outside work with Primecon. MCM and Mr. Calderin should be required to officially disclose this to MDAD for approval, and MDAD should seriously consider whether to approve.***

Department Response:

The Department concurs. In 2017, Department staff verbally advised MCM of Mr. Calderin's activities under The Calderin Group and mandated no additional outside activity was to occur. As reported by the OIG, The Calderin Group continued to actively engage in other County Department construction projects after 2017 despite the Department's edict. The Department requested MCM remove Mr. Calderin as the Project Manager for all MDAD construction projects and they have agreed. Additionally, the Department has asked MCM to evaluate requiring its key staff to disclose business ventures they own or have a vested interest for review of conflicts of interest.

- 2) ***While Section 2.11.04 of the MCC-8-10 contract only designates the General Manager whose outside work activities require MDAD approval, MDAD should closely examine the corporate relationships between MCM employee Ms. Mirabal and Subcontractor 3 to determine whether they pose actual conflicts of interest in the administration of the MCC-8-10.***

Department Response:

The Department concurs. MCM staff has been asked to formally respond to the results of this report and to provide clarity as to the business relationships identified by the OIG. Resulting information will be reviewed and evaluated for conflicts of interest and should any be found corrective actions from MCM will be required.

- 3) ***Going forward, MDAD should expand the provision (currently contained in Section 2.11.04 of the MCC-8-10 contract) that requires MDAD pre-approval of outside employment and other outside work to additional full-time personnel of the General Contractor. For the MCC-9 contract, MDAD should assess each of the key full-time positions for inclusion in this contract requirement. MDAD should also consider adding a requirement that the designated staff certify on an annual basis whether or not he/she has outside employment as a reminder of the person's responsibilities.***

Department Response:

The Department concurs and will require future General Contractors under this type of Agreement to require all key management positions to disclose other owned or vested business interests and current construction projects. Department staff has discussed with MCM to evaluate requiring the recommended disclosures from key management personnel, to be attested as accurate by each responding employee, and then forwarded to Department staff for review and approval.

- 4) ***Going forward, MDA should designate the MCC-9 contract as one where certain personnel are designated as "contract staff" pursuant to Section 2-11.1(b)(13) of the County Code. These individuals should but may not necessarily be the same positions identified by contract as requiring approval for engaging in outside employment.***

Department Response:

The Department concurs. As indicated above, the Department will require annual attestations from the General Contractor's key management staff to disclose ownership and vested interests in other business ventures, as well as recent construction projects, for review and approval.

- 5) ***MDAD should examine its portfolio of contracts, including professional services agreements and management agreements, to assess whether contracted personnel are performing functions as an extension of County staff and if so,***
- a. ***determine whether these contracts should include a similar provision requiring disclosure and approval of outside employment, and***
 - b. ***determine whether to designate personnel as "contract staff" pursuant to Section 2-11.1(b)(13) of the County Code.***

Department Response:

The Department concurs. The inclusion of a requirement from contracted personnel performing as an extension to staff to disclose ownership and vested interests in other business ventures will be evaluated for future contracts.

- 6) ***To the extent that contracted personnel are designated pursuant to Section 2-11.1(b)(13) of the County Code, MDAD, in conjunction with the Ethics Commission, should develop a training program for contract staff that addresses the specific provisions of the Code of Ethics and Conflict of Interest Ordinance applicable to them.***

Department Response:

The Department concurs. We have contacted the Ethics Commission to provide ethics and conflict of interest training to MCM staff and they have graciously agreed to assist us in fulfilling this recommendation. To comply with social distancing requirements, online or webinar training is being established. The success of this training endeavor will allow us to provide the training to other designated contract staff, where applicable.

Should you have any questions regarding our response, please contact Pedro Hernandez, MDAD Assistant Director, Facilities Development Management at 305-876-7928.

c: Jose Arrojo, Executive Director, Commission on Ethics and Public Trust

**Miami-Dade County
Office of the Inspector General**

Appendix B

**MCM's Response to the Draft Report
Includes MCM's Exhibits 1 and 2**

(7 pages)

OIG Case No. 16-0020-I



September 21, 2020

General Mary Cagle
Office of the Inspector General
601 NW 1st Court, 22nd Floor
Miami, FL 33136

EMAIL

Mary.Cagle@miamidade.gov

RE: MCM Response to MCC-8-10 Draft Report of Investigation

Dear General Cagle,

This letter serves as MCM's response to the Office of Inspector General's ("OIG") draft report ("Draft Report") of the Miami-Dade Aviation Department's ("MDAD") Miscellaneous Construction Contract ("MCC-8-10 Contract") investigation.

We should first point out that MCM understood this investigation had been closed for over two (2) years, when it was agreed that Mr. Calderin's company would stop taking on new work, and Mr. Calderin would not perform any work outside of MCM and, more specifically, the MCC-8-10 Contract. In this regard, MCM was surprised when it found out a Report of the investigation was going to be issued.

As you know, MCM is in the midst of a procurement dispute for the follow-on contract to the MCC-8-10 Contract. If the OIG is satisfied with the results and cure which was implemented over two (2) years ago, we respectfully request the matter be closed without the issuance of a report to eliminate the OIG's report being used as weapon by MCM's competition and avoid undue slanted media reporting. Alternatively, if the OIG decides a report must be issued, I request it publish the report after the award of the MCC-9 contract to eliminate the perception that the timing of the report may be due to behind the scenes political pressure from our opponents in that procurement.

I should say, I became MCM's president at the beginning of this year; at the time of receipt of the Draft Report, most of the allegations and issues raised therein were news to me. The Draft Report shows the OIG's investigation arose from allegations the OIG received that Mr. Calderin, MCM's at the time General Manager for MCC-8-10, , was steering work to A1 All Florida Painting, Inc. ("A1") in exchange of kick back(s). We're glad the OIG report clears him of such allegations. As part of its investigation, the OIG findings further disclosed that Mr. Calderin utilized MCC 8-10 subcontractors and MCM personnel on projects not associated with either MCM or the MCC-8-10 Project. Even though the OIG found all these to be arms' length transactions, I agree these actions could needlessly create the appearance of impropriety.

BUILDING EXCELLENCE

6201 SW 70TH STREET 1ST FLOOR MIAMI, FL 33143
PHONE 305.541.0000 www.mcm-us.com FAX 305.541.9771

Upon receipt of the Draft Report, MCM immediately sought the County's approval for Mr. Calderin's replacement, affording MCM time to conduct its own investigation. See email of July 1, 2020 at Exhibit 1. Thereafter, I met with Mr. Calderin and he agreed to resign and no longer serves as our General Manager. Mr. Calderin has since been replaced and MCM remains in full compliance with all the MCC-8-10 requirements, and MCM has implemented new measures to ensure the absence of all appearances of impropriety from ever happening again.

As far as allegations of Mr. Calderin's poor performance in the OIG report, I can only speak for his work while I have been MCM's President, and he has done a great job as the General Manager during my tenure. Prior to my time as MCM's President, I rely on the Project report cards, and the high scores speak for themselves and are a testament to how the MCC-8-10 Project was run.

Since my involvement, I have helped the OIG gather additional information showing the appearance of impropriety concerns were all addressed and cured without damage. I also shared with the OIG that Mr. Calderin verbally received the County's consent, via Aida Bao-Garcia, for his company to continue to work while he was the MCC-8-10 General Manger, as long as his company was not bidding on MCC-8-10 projects.

We provided evidence of that agreement and provided the OIG evidence that all extra MCC-8-10 contract(s) Mr. Calderin was involved with were completed by January 2018 (see Mr. Calderin's affidavit at Exhibit 2); moreover, since my taking over as MCM's president, and in light of the facts brought to my attention by the OIG report, Mr. Calderin was expeditiously replaced with the full consent of the MDAD.

We must note the Draft Report got some material facts wrong. Most importantly, MDAD did pre-approve Mr. Calderin to continue working for his company, The Calderin Group Corp., as long as it did not bid on MCC projects. See Id. This was approved by Ms. Aida Bao-Garcia at one of the initial MCC-8-10 Contract meetings. Unfortunately, the consent was never issued in writing, but the facts show Mr. Calderin believed he was in compliance with the general manager requirements imposed by the MCC-8-10 Contract, evidenced by Miami Dade Aviation's permitting The Calderin Group Corp. to bid on MIA contracts outside of MCC8-10.

Contrary to the assertions made in the Draft Report, the facts also show that after this matter was brought to MCM's attention in 2017, Mr. Calderin was required to stop, and did stop, the operations of The Calderin Group Corp. By January 17th 2018, Calderin Group had finished all its Projects. See Id. Moreover, The Calderin Group Corp. and its successor company has not bid or pursued any work since then. See Id. Even though Mr. Calderin would not have been allowed to personally dedicate time to pursuits outside of MCC-8-10 without written approval, we believe Mr. Calderin owning a company alone does not run contrary to the terms of the MCC-8-10 contract; furthermore, as per Mr. Calderin, his ownership was disclosed and approved by MDAD. Accordingly, we do not see any value in adding that part to the report.

We further disagree with the OIG assertions that the MCC-8-10 is a delegation of MDAD administrative functions. MCM is a General Contractor, acting as a General Contractor, ready to perform any construction project awarded to it by MDAD for the contractual period of MCC-8-10. Yes, MCM's contract has very stringent requirements concerning the use of SBE-CONs, which are out of the ordinary. But setting that apart, the entire MCC-8-10 contract is equivalent to a standard Miscellaneous Construction Contract, not the performance of an administrative function for the County. For example: if this was merely an administrative function, MCM (a) would not be providing a Bond, (b) would not be subject to liquidated damages, (c) would not be contracting with subcontractors to perform the work; (c) would not be responsible for the defaults of its subcontractors; (d) would not be pulling permits for all the work; (e) would not be paying subcontractors directly, (f) would not warrant the work for one year after completion, and (g) would not indemnify the County from the injury or death due to the negligence of its subcontractors. Significantly, as stated in the Draft Report: The County continues to perform the administrative function through FMDD which, "through assigned MDAD Project Managers and their supervisors, are responsible for assuring that MCM adheres to all contractual obligations of MCC-8-10."

We must note, the Draft Report's description of the Contract Administration Process is no longer accurate. The Draft Report describes our practice of two years ago, when we assume the majority of the Draft Report was originally prepared. Now, after the County's implementation of the Business Management Workforce System (BMWS) with LCPtracker, the subcontractors are notified via the BMWS in addition to other notices including the advertisement on Periodicals.

Regarding OIG's conclusions, we are glad the OIG determined the anonymous allegations that Mr Calderin was receiving kickbacks were not substantiated. We addressed Mr Calderin's alleged use of other MCM personnel in our earlier preliminary response and for the reasons cited therein, we most respectfully repeat our objection to these becoming part of the report. We do agree that The Calderin Group's use of subcontractors that were working on MCC-8-10 contracts and more significantly, its having an implied joint venture agreement with the owner of one of the MCC-8-10 subs to bid on a project, which even though not successful, were causes for major concern as these actions could create the appearance of impropriety and should never have transpired. MCM was not aware of such arrangements, and the proper steps have been taken to make sure these do not ever happen again.

MCM's new General Manager has been made fully aware of the draft report and this response and has agreed to comply with all the MCC-8-10 requirements.

Once again and most respectfully, I suggest the OIG report need not be published since this matter was cured over two years ago and publishing the report now could unjustly affect the County's bidding process since the current MCC-9 Procurement is under the County's review, and MCM believes it is the responsive/responsible bidder with the highest score. A report such as this could wrongly tilt the scales. Amongst other reasons, we are concerned publishing the

General Cagle
MCM's Response to Draft OIG Report
September 21, 2020
Page 4 of 4

report at this critical time may be interpreted to be a political hit job, and the good work performed by your Office is much too important to be comprised.

Most Respectfully Submitted,



Daniel Munilla
MCM- President

cc: Patra Liu, OIG
Eric Zichella, P3 Miami

BUILDING EXCELLENCE

6201 SW 70TH STREET 1st FLOOR MIAMI, FL 33143
PHONE 305.541.0000 www.mcm-us.com FAX 305.541.9771

Daniel F. Munilla

From: Daniel F. Munilla
Sent: Wednesday, July 1, 2020 9:32 PM
To: eperez@miami-airport.com
Subject: MCC 8
Attachments: Letter to Jorge Munilla07032018.pdf

Dear Enrique,

As you may know, MCM is in receipt of a draft OIG report concerning outside employment and conflicts of interests. Most of the allegations raised in the report are news to me, and all predate my tenure as President of MCM. From my preliminary investigation, I found that MCM understood this matter was closed in 2018 when Mr. Calderin sent the attached letter.

In light of the draft report, I will be conducting a thorough investigation and will respond to the OIG. In the interim, we would request MDAD approve the following alternates for MCM's General Manager position: Juan Munilla, John Perez-Gurri and/or Alejandro Munilla. Note that John may request leave to work remotely due to his concerns associated with COVID 19. I will provide you with their CV's tomorrow.

Best Regards

DANIEL F. MUNILLA
PRESIDENT



PH: 305-541-0000 | M: (786)299-2359 | FAX: 305-541-9771
6201 SW 70 ST, Miami, FL 33143 www.mcm-us.com



Please consider the environment before printing.
A reminder from MCM, Building Excellence.

Follow us!



EXHIBIT " 1 "

EXHIBIT " 2 "

20-0920 AFFIDAVIT OF ALBERTO CALDERIN

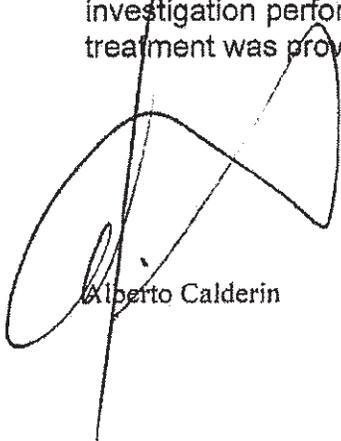
I, Alberto Calderin, hereby declare as follows:

I have read that certain Draft Report Of Investigation from the Miami-Dade County Office Of The Inspector General regarding Outside Employment and Conflicts of Interest Related to Miami-Dade Aviation Department's MCC-8-10 Contract with Munilla Construction Management, and wish to clarify the following:

1. Shortly after taking the position of the General Manager for MCM for the MCC-8-10 contract, I approached Aida Bao-Garcia , who was the person in charge for the program for Miami Dade Aviation Department (MDAD) and sought her approval for The Calderin Group Corp. (The Calderin Group), to bid and contract work outside the MCC-8-10 Contract.
2. At the time I explained to Aida Bao-Garcia that I had an interest in The Calderin Group together with my partner who would primarily handle the work for The Calderin Group.
3. Ms. Aida Bao-Garcia was OK with my request and approved The Calderin Group undertaking work on the condition that
 - a. The Calderin Group would under no conditions be permitted to bid or work on MCC-8-10 contracts; and,
 - b. My responsibilities as General Manager for MCM for the MCC-8-10 contract could not be impacted.
4. I realize I should have obtained that approval in writing, but I failed to do so. However, I request that the OIG confirm that Ms. Aida Bao-Garcia approved the aforementioned.
5. When the OIG opened its investigation, based on allegations which the OIG has since disproven, I met with MDAD and with Jorge Munilla of MCM.
6. Jorge Munilla and I agreed that certain of the matters mentioned in the report gave the appearance of impropriety and should not have transpired, but we were lead to believe that so long as The Calderin Group immediately stopped all further bidding and expedited Project close outs, , the investigation would be closed.
7. Contrary to the statements of the draft report that The Calderin Group Corp. continued its operations during 2019, The Calderin Group stopped all bidding in 2017 and obtained the certificate of Completion of its last project on January 17, 2018. Subsequently, The Calderin Group has not performed any other work and I have not worked for anyone other than MCM and specifically the MCC-8-10 contract.
8. On or about March 2018, I confirmed my compliance to Jorge Munilla, the president of MCM at the time.
9. At the time I received the OIG Draft report, I met with Daniel Munilla, the new MCM president and we both agreed it would be best for me to resign from MCM.
10. In furtherance of that conversation, I submitted my resignation and Juan Munilla became the General Manager of the MCC-8-10 contract, with MDAD's approval.
11. To evidence the above I have delivered to Daniel Munilla the following:
 - Cease and Decease letter provided to JORGE Munilla in March 2018

- City of Miami's Building Certificate of project completion of last job bid and performed by The CALDERIN Group dated 1/17/2018.
- Bank proof of The CALDERIN Group's bank account closing on 12/29/2018.
- The CALDERIN Group's FS at the end of 2018 showing the bank reconciliation at 12/31/2018.
- The CALDERIN Group's FS at the end of 2019 showing zero activity in the fiscal year.
- The CALDERIN Group's 2019 Tax Return filed as "final return"
- Document # P08000088746 resignation of my partner dated 6/27/2018.
- Executed contracts of contractors 1 and 2 mentioned in the Report.

I hereby declare that the information above is true and correct; I appreciate the thorough investigation performed by the OIG and that the Draft Report's finding that no preferred treatment was provided by Alberto Calderin to certain MCM subcontractors.



Alberto Calderin

Exhibit E

Appendix A -Price Schedule

General Contractor for Miscellaneous Construction Contract

INSTRUCTIONS:

The Contractor's price shall be submitted on this Appendix A "Price Schedule." Contractor is requested to fill in the applicable blanks on this document.

A. PART 1 - PRICE BREAKDOWN FOR PRE-CONSTRUCTION SERVICES

Positions	Hourly Rate
General Manager	\$ 137.56
Scheduler	\$ 96.15
Safety Coordinator	\$ 101.59
Estimator	\$ 100.96
CSBE Program Manager	\$ 86.54
Accountant	\$ 84.26
Project/Construction Manager	\$ 100.96
Clerical	\$ 44.10

B. PART 2 - CONSTRUCTION FEES

Estimated Project Value	Type of Contractor	Percentage Fee
Up to \$200,000	General Contractor/Multi-Trade Contractor	9.27%
\$200,001 - \$1,000,000	General Contractor/Multi-Trade Contractor	9.27%
Over \$1,000,000	General Contractor/Multi-Trade Contractor	9.27%

FIRM: Magnum Construction Management, LLC d/b/a MCM

By:



Daniel Munilla, President

Exhibit E

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FIRM: Magnum Construction Management, LLC d/b/a MCM

By:



Daniel Munilla, President



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: December 1, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(10)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(10)
12-1-21

RESOLUTION NO. _____ R-1161-21

RESOLUTION APPROVING CONTRACT RFQ NO. MCC-9-18 FOR THE PURCHASE OF GENERAL CONTRACTOR FOR MISCELLANEOUS CONSTRUCTION CONTRACT FOR MIAMI-DADE AVIATION DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$70,000,000.00 FOR AN INITIAL FIVE-YEAR TERM AND ONE, TWO-YEAR OPTION TO RENEW TERM TO MAGNUM CONSTRUCTION MANAGEMENT, LLC DBA MCM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION, RENEWAL AND EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE MIAMI-DADE COUNTY CODE AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Contract RFQ No. MCC-9-18, in substantially the form attached hereto and made a part hereof, for the purchase of general contractor for miscellaneous construction contract for the Miami-Dade Aviation Department in an amount not to exceed \$70,000,000.00 for an initial five-year and one, two-year option to renew term to Magnum Construction Management, LLC dba MCM, and authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract, including any cancellation, renewal and extension provisions, pursuant to section 2-8.1 of the County Code and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner **Jean Monestime**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

	Jose "Pepe" Diaz, Chairman	nay	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	nay	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	nay
Eileen Higgins	nay	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	nay	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of December, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Melissa Adames

By: _____
Deputy Clerk



Approved by County Attorney as to form and legal sufficiency.

David M. Murray

Request For Qualifications (RFQ) No. MCC-9-18 General Contractor for Miscellaneous Construction Contract

This AGREEMENT made as of the _____ day of _____ in the year 2021, between

the Owner: Miami-Dade County Florida, a political subdivision of the State of Florida, acting by and through its **Board of County Commissioners**, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.

and the Contractor: Magnum Construction Management, LLC d/b/a MCM
6201 SW 70th Street
First Floor
Miami, FL 33143

which term shall include its officials, successors, legal representatives, and assigns.

For the Project(s): The Scope of Services to be provided by the Contractor includes but is not limited to the successful and timely completion of work as may be issued under this agreement, but shall not normally self-perform any construction work, and instead, shall provide Services such that any such work can be performed by subcontractors to the Contractor. Such Services shall include, but are not limited to, conducting preconstruction bidding activities, administering multiple simultaneous construction projects awarded under the MCC, securing permits for any construction activities, entering into subcontractor agreements for the completion of MCC project, general project management for MCC projects prior to and post project award, providing education and business training to subcontractors participating in the MCC, and conducting outreach activities to encourage the participation of Small Business Enterprise subcontractors.

The Owner and Contractor agree as set forth herein:

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EXHIBIT 1: CONTRACTOR AND SUBCONTRACTORS FORMS

EXHIBIT 2: FACILITIES - ORIENTATION MAPS

ARTICLE 1
DEFINITIONS

1.0 **DEFINITIONS AND ACRONYMS**

When used in these Contract Documents (defined below), or in related documents, the following terms, or pronouns are used in place of them, shall have the meanings given below:

1.01 **Addendum**: A modification of the Plans, Specifications or other Contract Documents distributed to prospective Project Bidders prior to the opening of Project Bids.

1.02 **Advertisement for Project Bids**: The public notice inviting the submission of Project Bids for Work.

1.03 **AIP**: The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration. No requirement of the AIP Act, the rules and regulations implementing the Act, or this Contract shall be construed as making the Federal Government a party to the Contract, nor will any such requirement interfere, in any way, with the right of either party to the Contract.

1.04 **Air Operations Area**: The Air Operations Area (AOA) shall mean any area of the airport used or intended to be used for landing, taking off or surface maneuvering of aircraft. An air operation area shall include paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway or apron.

1.05 **Allowance Account(s)**: Account(s) in which stated dollar amount(s) are included in the Project Order for the purpose of funding portions of the Work which are unforeseeable at the time of execution of the Project Order, or for construction changes, for adjustments of quantities, for unit price work items or for special work deemed desirable by the County to be incorporated into the Project Order. Performance of work, if any, under Allowance Account(s) will be authorized by written Work Order(s).

1.06 **Architect/Engineer (A/E)**: The Architectural or Engineering firm which will prepare the Contract and Project Order Documents and which acts as the County's agent in administration of the Contract and Project Order. The Contract Officer may assume the duties of the A/E.

1.07 **Beneficial Occupancy**: The County may, in its sole discretion, occupy any portion of the Work prior to Substantial Completion of the Work. This will not relieve the Contractor of its obligation to fully complete the Work in accordance with the Contract and Project Order Documents.

1.08 **BMWS or Business Management & Workforce System**: The County's web-based system used to report all Miami-Dade County contracts awarded and payments to Prime(s) and Subconsultants/Subcontractors.

1.09 **COA or Certificate of Assurance Form**: The County departmental form submitted with proposal documents whereby the Proposers acknowledges: (i) Small Business Enterprise ("SBE") measures applied to the project; and (ii) Proposer will submit its list of certified

SBEs to satisfy the measures via Miami-Dade County's web-based system, within the specified time frame requested by SBD .

- 1.10 Bulletin:** Any written document initiated by the Architect/Engineer, advising the Contractor of proposed alterations, revisions, additions and deletions in the work and requesting itemized price quotations for such proposed changes.
- 1.11 Calendar Day:** Every day shown on the calendar.
- 1.12 Change Order:** A written agreement executed by the County, the Contractor and the Contractor's Surety, covering modifications to the MCC-9-18 Contract, recommended by the Architect/Engineer and approved by the consulting engineers.
- 1.13 Consulting Engineers:** The Consulting Engineer/Supervising Architect for MDAD pursuant to the Trust Agreement. By the Trust Agreement, the Consulting Engineer authorizes payments to the Contractor from appropriate bond funds for amounts approved by the Department.
- 1.14 Contract and Project Order Documents:** The Instructions to Project Bidders, Project Order, Project Order Proposal, Project Order Draft, Project Bid Bond, Condition of Award Requirements, Contract Summary, Performance and Payment Bond, General Conditions, Special Provisions, Supplementary Provisions, Technical Specifications and Plans, together with all Addenda, Change Orders, Work Orders, Project Order Modification, Schedules and shop drawings, collectively known as Contract No. MCC-9-18. Some or all of these documents or any other written information will accompany the PO during the competitive bidding process.
- 1.15 Contractor:** Magnum Construction Management, LLCd/b/a MCM who has entered into this Contract No. MCC-9-18 with the County and who is liable for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work. The term Contractor and General Contractor are used interchangeably and shall be understood to mean Contractor awarded this Contract or as defined in the Code of Miami-Dade County. The Contractor is responsible for all Work awarded to him under Contract No. MCC-9-18, including all construction administration and management. The Contractor is responsible for all labor, equipment, and materials as necessary to perform such duties and construct projects as identified in this program, and that he/she is awarded under this program. The General Contractor shall coordinate, schedule, manage, administrate, and supervise the Work of the Subcontractors.
- 1.16 Contract Measures:** The preferences or goals established by SBD for the purpose of enhancing opportunities for certified firms to perform contracts for the County. A twenty-two percent (22%) SBE-Con subcontractor goal is applicable to this agreement.
- 1.17 Contract Officer:** The Aviation Director or designee, who will act as the chief authority in administering the Contract and competitive bidding process. The Contract Officer may perform in the capacity of A/E, and/or Field Representative.
- 1.18 Contract Summary:** The executed document between the County and the Contractor, summarizing the performance of the Work in accordance with the requirements of this

Contract and Project Order Documents for all authorized Work under this Contract and for the payment of the agreed consideration.

- 1.19 Contract Time:** The Contract Time shall start from the date of the Notice to Proceed and continue as stated in the Section 2.1.09 of this Contract. The Contract Time for individual Project Orders shall start with a Notice to Proceed until Project construction is completed and the Certificate of Completion is obtained.
- 1.20 County:** A political subdivision of the State of Florida, whose governing body is the Board of County Commissioners of Miami-Dade County, Florida.
- 1.21 Days:** Consecutive calendar days.
- 1.22 Delays:** The postponement of an action resulting in a later time of completion, which may be Excusable or Non-Excusable as further defined in Section 7.5.
- 1.23 Direct Costs:** Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental for any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the drawings and specifications and materials approved by the Architect/Engineer as necessary to install the permanent materials in an efficient and workmanlike manner. Rental for Special Equipment and Machinery, not already mobilized on the airport, shall be an amount equal to the appropriate daily, weekly, or monthly rental rate for such equipment, in accordance with the current issue of Associated Equipment Distributor (AED) "Compilation of Nationally Averaged Rental Rates and Model Specifications for Construction Equipment" (not withstanding) the caveats contained therein that such rental rates are not for use by government agencies) for each and every rental period (in weeks, days, or months as applicable) that the Special Equipment or Machinery is in use on the work plus any required mobilization. Payment for Special Equipment and Machinery already mobilized on the airport shall not exceed the monthly rate stated in the AED divided by one hundred and seventy six (176) to establish a per hour rate that the Special Equipment and Machinery is in use on the work, plus any required re-mobilization. For Special Equipment or Machinery not listed in said document the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Architect/Engineer. No additional payment shall be made to the Contractor for fuel, lubricants, fair wear and tear, transportation, insurance or depreciation. Any equipment or machinery not designated by the Architect/Engineer as Special Equipment and Machinery shall be considered Overhead.
- 1.24 Director:** The Director of the Miami-Dade Aviation Department, or his/her Designee. The Director's mailing address is: Post Office Box 025504, Miami, Florida 33102-5504.
- 1.25 Disadvantaged Business Enterprise (DBE):** DBEs are for profit small business concerns where socially and economically disadvantaged individuals own at least 51% interest and also control management and daily business operations.
- 1.26 Employer's Payroll Burden:** The Contractor's cost of employees, which shall include,

but is not limited to, the following items: costs of workers' compensation insurance, applicable fringe benefits and liability insurance, employer social security contribution, employer pension contributions, unemployment insurance and health insurance.

- 1.27 Extra Work:** An item of work not provided for in the awarded Contract and Project Order as previously modified by Project Order Modification, Change Order or Work Order, but which is found by the Architect/Engineer or Contract Officer to be necessary to complete the work within the intended scope of the Contract and Project Order.
- 1.28 Field Representative:** An authorized representative of the Owner providing administrative and construction inspection services during the pre-construction, construction, and closeout phases of the Contract and Project Orders.
- 1.29 Final Acceptance:** The time at which the County has determined that the Contractor has completed all the Work and furnished all documents required by the Contract and/or associated documents for an identified Project. Final Acceptance shall also denote the beginning of any warranty period associated with a Project.
- 1.30 General Manager:** An individual employed by the Contractor to manage this Contract and Project Orders and available to the Contract Officer within One (1) hour, 24-hours, 7-Days a week. This individual shall be the contact party for the Contractor, and correspondence concerning this Contract and Project Orders shall be directed to the General Manager. This individual shall have the authority to sign on behalf of and bind the Contractor for all matters connected with this Contract and Project Orders. This individual shall have previous experience in managing multiple projects simultaneously and must possess an active State of Florida General Contractor's license. The General Manager shall have, at a minimum, the same qualifications as those proposed to the County in response to Request for Qualifications No. MCC-9-18.
- 1.31 Green Building Certification Institute (GBCI):** The designated organization responsible for administering the LEED certification program.
- 1.32 Indirect Costs:** Includes any costs other than Direct Costs, as defined herein, incurred by the Contractor and all its Subcontractors of any tier in the performance of the Contract and Project Orders as may be required for the efficient operations of this Contract. Indirect Costs may include, but are not limited to all costs associated with: project insurance premiums, costs of supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery not designated by the Architect/Engineer as Special Equipment or Machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, cost of transportation of Subcontractors to and from the work site(s), deliveries and pick-up of shop drawings, pay estimates, and revised drawings to and from the A/E's offices, mail, courier service, permit expeditors, profit, extended jobsite general conditions, interest on monies retained by the County, escalated costs of materials and labor, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the Contractor or any of its Subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a

quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.

- 1.33 Laborers:** Workers, under the employ and supervision of the Contractor or a Subcontractor, used in the direct performance of construction work under an individual Project.
- 1.34 LEED (Leadership in Energy and Environmental Design):** An ecology-oriented building certification program run under the auspices of the United States Green Building Council (USGBC).
- 1.35 LEED AP:** A person(s) that is an employee of the A/E or is a Sub-consultant to the A/E that is certified by the GBCI or successor entity in the specialty specified in the Request for Qualifications/Proposals for this Project. The LEED AP shall (1) assist the Owner in the Project LEED registration, application and certification process; (2) coordinate and otherwise guide the A/E in the design of the Project in order to achieve the points needed for the desired LEED certification; and (3) monitor the Contractor for the documentation required to meet the Contractor's obligations to achieve the LEED credit points stipulated in the Contract Documents.
- 1.36 LEED Certification Documents:** Reports, documents, or other supporting data required to apply for and obtain the desired LEED certification.
- 1.37 LEED Certification Plan:** Plan developed by the LEED AP and the Contractor to develop and monitor the documentation required during design and construction for the LEED certification application process. The LEED Certification Plan shall include project LEED certification phases and milestones and shall be approved by the Project Manager.
- 1.38 LEED Status Report:** A periodic report produced by the LEED AP to inform the Owner and other stakeholders in the Project on the status of the design and construction relative to earning LEED credit points for the Project.
- 1.39 Lessee:** Any individual, partnership or corporation having a tenant relationship with the County.
- 1.40 Liquidated Damages:** The amount that the Contractor accepts, as stipulated in the Project Order Draft that will be deducted from the Contract and Project Order Sum for each Calendar day of delay due to a Non-excusable Delay. In no instance shall the Contractor assess liquidated damages on Subcontractors that are SBEs.
- 1.41 Liquidated Indirect Costs:** The amount stipulated in the Project Order Draft that will be added to the Contract and Project Order sum for each calendar Day of delay due to a Compensable Excusable Delay. The Contractor accepts this sum as full compensation for the Contractor's and all its Subcontractors' Indirect Costs, for each day of Compensable Excusable Delays.
- 1.42 Local Certified Veteran Business Enterprise:** A firm that is (a) a local business pursuant to Section 2.8.5 of the Code of Miami-Dade County and (b) prior to Project Bid submittal,

is certified by the State of Florida Department of Management Services as a veteran business enterprise pursuant to Section 295.187 of the Florida Statutes.

- 1.43 Major and Minor Unit Price Items:** A Major unit price item shall be any item that is listed in the Project Bid, the total cost of which is equal to or greater than twenty percent (20%) of the total amount of the awarded contract, less the Allowance and audit accounts. All other items shall be considered Minor unit price items.
- 1.44 Miami-Dade Aviation Department (MDAD) or Department:** A Department of Miami-Dade County government.
- 1.45 Notice To Proceed (NTP):** The Notice to Proceed for this Contract shall be the initial authorized starting date for the Contractor to commence Work under this Non-Exclusive Contract. Project Orders NTP(s) for construction projects authorized by Project Orders, will establish the date of commencement of the Work of each Project Order.
- 1.46 Owner:** The term Owner as used in this Non-Exclusive Contract and Project Order shall mean the Miami-Dade County Board of County Commissioners or the Aviation Department, but it excludes the regulatory departments of Regulatory and Economic Resources, Transportation and Public Works, Water and Sewer, and Fire Rescue or their successors.
- 1.47 Performance and Payment Bond:** Bond executed by the Contractor and its Surety, on the attached form, assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents for each Contract and Project Order and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work.
- 1.48 Plans:** The drawings or reproductions thereof, prepared by the Architect/Engineer, which show the locations, character, dimensions and details of the work to be done and which are part of the Contract and Project Order Documents.
- 1.49 Project:** The construction and services required by the Contract and Project Order Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's obligations. Work authorized and signed by MDAD under a Contract and Project Order to the Contractor.
- 1.50 Project Bid:** The written offer of a Project Bidder(s) to perform the Work of the Contract and Project Order.
- 1.51 Project Bid Bond:** A Bond submitted at the time of the Project Bid (POP) by the Subcontractor from their surety guaranteeing that the Subcontractor, if awarded the Project, will execute same and will timely furnish the required Performance and Payment Bond for Projects over \$200,000, as bid and also evidence of Insurance.
- 1.52 Project Bid Documents:** The Advertisement for Project Bids, Instructions to Project Bidders, Project Bid Form, Project Bid Bond, Performance and Payment Bond, General Conditions, Special Provisions, Technical Specifications and Plans, together with all Addenda.

- 1.53** **Project Bid Form**: The form in which the Project Bids are submitted.
- 1.54** **Project Bidder**: Any individual, firm, partnership or corporation submitting a Project Bid in accordance with the Instructions to Project Bidders.
- 1.55** **Project Construction Cost**: The Project Construction Cost is the approved amount determined in the Project Order for specific work and includes the applicable Contractors Part II Fee. Project construction costs shall include costs related to construction materials, supplies, and labor used in the performance of construction work authorized for specific Project Orders.
- 1.56** **Project Construction Packaging Plan (PCPP)**: The document created by the Contractor describing each trade item of work to be subcontracted, and the time required for completing the bidding and awarding of each item or groups of items to be subcontracted, including a proposed list of Subcontractors to be solicited for Project Bids for all items of Work to be subcontracted.
- 1.57** **Pre-Construction Project Order Draft (PCPOD)**: The document created by MDAD outlining the scope of work, the start date, the project time allotted for bidding and construction, and authorization for the Contractor to prepare a Project Construction Package Plan (PCPP).
- 1.58** **Project Manual**: The portion of the Contract Documents, prepared by the Architect/Engineer, other than the Plans.
- 1.59** **Project Order (PO)**: The written agreement initiated by the Contract Officer directing the Contractor to perform work for a specific Project in accordance with the provisions of the Contract Documents and the requirements of the PO. The PO as used herein shall also refer to this Contract and shall include all terms and requirements as set forth in this Contract, POD, and POP which may include Technical Specifications, Plans, and other documents, together with all Project Order Modifications (POM's), and Work Orders.
- 1.60** **Project Order Draft (POD)**: An order to the Contractor issued and approved by the Contract Officer describing the scope of work to be performed, Project Time, Contract Measures, DBE measures when applicable, wage rates, and other conditions applicable to a proposed Project. The POD initiates the Contractor's pre-construction services estimating/proposal Project Bid process.
- 1.61** **Project Order Modification (POM)**: A written agreement executed by the Contractor and the Contract Officer covering changes in the design, materials, methods or other conditions of a PO. All changed or added work ordered shall be performed by the Contractor at the time specified in the POM, and progress payment for such work shall be made based upon cost estimates prepared by the Contractor and reviewed and approved by the Architect/Engineer.
- 1.62** **Project Order Proposal (POP)**: The response of the Contractor to the POD to be provided to the Department for review and approval to proceed. Included in the POP are the Contractor's recommended Project Bid(s) and the correspondent Part II fees, reimbursable and/or self-performance costs (including Contractor(s) overhead and profit) and Subcontractor's cost (if any).

- 1.63 Project Staff:** An employee of the Contractor who reports directly to the General Manager.
- 1.64 Project Testing Laboratory:** The laboratory employed by the County to perform under the direction of the Architect/Engineer all quality assurance testing.
- 1.65 Punch List:** A document identified all Work not conforming to Contract and Project Order Documents that the Contractor must complete prior to Final Acceptance.
- 1.66 Reimbursable Expenses:** Those costs which are project related costs and not part of Subcontractor(s) Project Bid or Part II fees. Reimbursable Expenses shall include but not be limited to blueprints and the cost of applicable regulatory permits, certificates, inspections including any impact fees for any Project completed under this Contract. All Reimbursable Expenses must have prior written approval.
- 1.67 Runway:** The area on any MDAD operated airport prepared for the landing and takeoff of aircraft.
- 1.68 Safety Plan:** A plan prepared by the A/E for an individual Project (when necessary) and approved by the MDAD depicting key elements and/or landmarks of the AOA and the relationship of the Contractor's marshaling/work area to these elements.
- 1.69 Site, Project Site, Work Site, Construction Site, Job Site:** The location(s) at which the work under this Contract and Project Orders is to be accomplished, as shown on the Plans or P.O.
- 1.70 Small Business Development (SBD):** The Small Business Development Division of the Miami-Dade County Internal Services Department.
- 1.71 Small Business Enterprise (SBE):** A firm certified by SBD in accordance with any available certification program established under the Code of Miami-Dade County, which may include Small Business Enterprise – Construction Services providers.
- 1.72 Small Business Enterprise – Construction Services (SBE-CONS) Firms:** SBE-CONS means a construction related enterprise including a design-build firm, and any firm providing trades and/or services for the completion of a construction project, as defined in Chapter 10 of the Code of Miami-Dade County, which has been certified by SBD in accordance with Section 10-33.02 of the Code of Miami-Dade County and Implementing Order 3-22, as may be amended during the term of the Contract.
- 1.73 Special Equipment or Machinery:** Equipment or machinery such as power driven rollers, tractors, backhoes, bulldozers, excavators, trucks (excluding "pickup" trucks), cranes, industrial railroad equipment, or any other such equipment approved by the Architect/Engineer as necessary to complete the Project in an efficient and workmanlike manner. This equipment or machinery must be a requirement for the economical performance of the work to be accomplished by the Contractor or by a Subcontractor (of any tier). Special Equipment or Machinery shall not include small tools or pieces of equipment considered to be standard equipment included in the basic inventory of a General Contractor or a Subcontractor (of any tier).

- 1.74 Subcontractor:** Any individual, firm, partnership, joint venture or corporation supplying the Contractor with labor, materials, supplies and equipment used directly or indirectly by the Contractor in the prosecution of the Work. All Subcontractors performing work under this program must recognize that the various site locations occur at 24-hour, 7-day a week active airports.
- 1.75 Substantial Completion:** Substantial Completion of the Work shall occur when the Architect/Engineer certifies that the Work is sufficiently complete, in accordance with the Contract and Project Order Documents, so that the County may use the Work for the use for which it is intended or for such other use which the County in its sole discretion may determine to be appropriate under the circumstances, and after receipt of a temporary or final certificate of occupancy or completion.
- 1.76 Surety:** The bonding company furnishing the Bonds required of a Project Bidder and of the Contractor.
- 1.77 Taxiway:** For the purpose of this document, the term taxiway means the portion of the air operations area of an airport that has been designated by MDAD for movement of aircraft to and from the airport's runways or aircraft parking areas.
- 1.78 Technical Specifications:** The general term comprising all the written directions, provisions and requirements contained herein, entitled "Technical Specifications," those portions of Standard Specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Project Order Modifications that may be issued for the Project Order, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed.
- 1.79 Unit Prices:** Unit prices shall include all labor, materials, tolls, and equipment: All other direct and indirect costs necessary to complete the item of Work and to coordinate the unit price Work with adjacent work; and shall include all overhead and profit. Contractor shall accept compensation computed in accordance with the unit prices as full compensation for furnishing such Work.
- 1.80 Vendor:** An individual or corporation who supplies materials, goods or services used in conjunction with the Contractor and subsequent PO's.
- 1.81 Work:** The construction and services required by the Contract and Project Order Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract and Project Order Documents.
- 1.82 Work Order:** A written order, authorized by the Contract Officer directing the Contractor to perform work and drawn against Allowance Accounts as established in a Project Order.

ARTICLE 2

ADMINISTRATION OF THE CONTRACT

2.1 CONTRACT AND PROJECT ORDER

2.1.01 Work of the Contract shall be assigned via Project Order. Each Project Order is to include all necessary items for the proper completion of the Project Order Work by the Contractor so the Owner may have a functioning facility which it may use as intended. The Contractor shall perform, without additional compensation, such incidental work as necessary to complete the Project Order Work, so that it will meet the requirements for which the Project was intended, in a satisfactory and workmanlike manner.

2.1.02 It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract, nor shall any Project Order. Without limitation, a Subcontractor on a Project Order shall not be deemed to contractual rights as against the County. The parties further agree that the requirement to bid work to Subcontractors is a policy choice of the County and not a requirement of state law or of the Miami-Dade County Code.

2.1.03 No acceptance, order, measurement, payment, or certificate of or by the Owner or its employees or agents shall either estop the Owner from asserting any rights or operate as a waiver of any provision hereof or of any power or right herein reserved to the Owner or of any rights to damages herein provided.

2.1.04 Upon award of the Contract, and thereafter, updated quarterly, the Contractor shall provide to the Contract Officer for acceptance the names and qualifications of the personnel providing Part I Pre-Construction Services as defined in Article 2.03 of Instructions to Project Bidders. Any changes to the personnel from the original personnel submitted above shall be transmitted in writing to the Contract Officer for acceptance. The functions that these personnel are to provide shall also be identified. Upon Notice to Proceed, the Contract Officer will then issue a Project Order which will authorize the minimum initial staffing. A separate Project Order will include the reimbursement of the premium for the Performance and Payment Bond.

2.1.05 The Contractor shall not assign this Contract, or any part thereof.

2.1.06 Upon NTP the Contractor shall provide a list of office equipment to be brought on site.

2.1.07 Within the first day from issuance of the P.O. for minimum staff, the Contractor shall submit to the MDAD, for approval by the County, the Contractor's proposed terms and conditions for Subcontractor agreements, which will form the basis of any subcontract between the Contractor and any Subcontractor for all subsequent Project Orders.

2.1.08 The Contractor shall abide by any mentoring program for Construction Companies which the Miami-Dade County adopts during the term of the Contract.

2.1.09 The Contract shall become effective as defined in the Contract Time, and shall continue through the last day of the sixtieth (60) month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for one (1), two (2) year term. The parties agree that if the Contractor is providing services related to a specific Project that has been initiated prior to the expiration of the Contract term, such services will continue under the terms of the Contract until completion. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one

hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

2.1.10 The County shall not materially change the terms of this Contract without a change order or amendment executed by the County Mayor or designee, as authorized by the Board of County Commissioners.

2.2 OTHER CONTRACTS

2.2.01 The Owner may award other contracts for other work on the Site. The Contractor shall fully cooperate with such other contractors and shall carefully fit his own work to that provided under other contracts as may be directed by the A/E or the Field Representative. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractors, or fail to perform such acts as required to avoid interference with the performance of work by any other Contractor.

2.2.02 In the event of interference between the work of the Contractor and other contractor(s) working concurrently at the site, the MDAD Project manager and the A/E or the Field Representative will instruct the Contractor as to which Work has priority in performance and such instructions shall be binding upon the Contractor. The Contractor shall not have any claim against the Owner, the Consulting Engineers, the Architect/Engineer, or the Field Representative for any additional compensation whatsoever in connection therewith.

2.2.03 The Contractor shall conduct its operations so as not to interfere with or hinder the progress of completion of the work being performed by other contractors.

2.3 PLANS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS

2.3.01 Plans showing general outlines and details necessary for a comprehensive understanding of the work, form a part of a Project Order. The total number and the titles of the drawings constituting the Plans are given in Division 1 of the Project Manual. All work under the Project Order shall be performed in all respects in compliance with the requirements of the Contract and the Project Order Documents.

2.3.02 The Contract and the Project Order Documents provide for a complete work, and may have been prepared in divisions of various crafts, trades and other categories of work. The Contractor is responsible for the performance of all work under the Contract and the Project Order regardless of any such divisions, and shall ensure that all of the work is performed and completed.

2.3.03 The Owner will provide the Contractor three copies of the Plans and three copies of the Project Manual for the Contractor's use during the execution of the Contract and/or upon issuance of any Project Order. The Contractor may obtain documents at its own expense for its use during the performance of the work under this Contract.

2.3.04 The Contractor shall maintain at the Site at all times at least one (1) copy of Plans, Technical Specifications and all other Contract and Project Order Documents, together with at least one (1) complete set of approved Shop Drawings and approved samples. The Contractor shall also maintain on site the job copy of the construction documents approved and permitted by the Agencies having jurisdiction.

2.3.05 The Contractor shall make available at the job site one copy of each referenced standards and/or specifications for the Contractor's and the Field Representative's or the A/E's use during the time that work covered by the standards and/or specifications is underway.

2.3.06 The Contract, Project Order, Plans, Specifications, and all referenced standards cited are essential parts of the requirements for the Contract and all Project Order work. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

2.3.07 In the event of any conflicts, ambiguities, or discrepancies among the Contract and Project Order Documents, the precedence in resolving such conflicts, ambiguities, or discrepancies shall be as follows:

- A. Special Provisions shall govern over General Conditions, Division 1, and Technical Specifications.
- B. General Conditions shall govern over the Contractor's proposal, Division 1, Technical Specifications, and Plans.
- C. The Contractor's proposal shall govern over Division 1, Technical Specifications, and Plans.
- C. Division 1 shall govern over Technical Specifications and Plans.
- D. Technical Specifications shall govern over Plans and over Standard Specifications and over standards for testing and materials and over cited FAA Advisory Circulars.
- E. Plans shall govern over Standard Specifications and over standards for testing and materials and over cited FAA Advisory Circulars.
- F. On the Plans, calculated or figured dimensions shall govern over scaled dimensions.

Notwithstanding the preceding, all applicable building, life, or safety codes shall take precedence over any term to the contrary in this Contract or any Project Order. The Contractor represents that is familiar with and has knowledge of all applicable building, life, and safety codes.

2.3.08 The Contractor shall not take advantage of any apparent error, omission, discrepancy or ambiguity on the Plans or Specifications. If any error, omission, discrepancy or ambiguity is found by the Contractor in the Plans or Technical Specifications, the Contractor shall refer the same to the A/E for an interpretation in a timely manner to allow sufficient time for an interpretation and decision by the Architect Engineer prior to any related work delay. The Architect Engineer's decision shall be final. The Contractor shall not be entitled to compensation for extra work occasioned by any error, omission, discrepancy, or ambiguity which is patent on the face of the Contract or Project Order, and shall perform such extra work as directed by the County at its sole cost and expense.

2.3.09 The Architect/Engineer shall have the right to correct apparent errors or omissions in the Plans and Technical Specifications and to make such interpretations as he may deem necessary for the proper fulfillment of the Contract and Project Order Documents. During the course of the work, should any conflicts, ambiguities, or discrepancies be found that are not addressed or any discrepancies between the Plans and the Technical Specifications to which the Contractor has failed to call attention before submitting the Project Bid, then the Architect/Engineer will interpret the intent of the Plans and Technical Specifications and the Contractor hereby agrees to abide by the Architect/Engineer's interpretation and agrees to carry out the work in accordance with the

decision of the Architect/Engineer. In such event the Contractor will be held to have included in the Project Bid the most expensive material and/or method of construction.

2.3.10 When a material, article, or equipment is designated by a brand name, and more than one brand name is listed, it will be understood that the design is based on one of the brand name listed products. The Contractor will be responsible for all coordination necessary to accommodate the material, article or equipment actually being provided without additional cost to the Owner.

2.3.11 The organization of the Contract or Project Order into divisions, sections and articles, and the arrangement of Drawings does not restrict or limit the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

2.3.12 Product and Reference Standards:

- A. When descriptive catalog designations including manufacturer's name, product brand name, or model number are referred to in the Contract and Project Order documents, such designations shall be considered as being those found in industry publications of current issue on the date of the first announcement for Project Bids.
- B. When standards of the Federal Government, Florida Department of Transportation, Standards Organization such as ASTM, AASHTO, AWS or ANSI, trade societies, or trade associations are referred in the Contract and Project Order Documents by specific date of issue, these shall be considered a part of this Contract and Project Order. When such references do not bear a date of issue, the current published edition on the date of the first announcement for Project Bids shall be considered as part of the Contract and Project Order.

2.3.13 Where in the Contract and Project Order Documents an item is identified by a particular manufacturer's name, model or other code it shall be interpreted to include other manufacturers' product of like and equal quality whether the words "or equal" are included or not.

2.3.14 Wherever a particular manufacturer's product is required, to the exclusion of all others, appropriate language is included in the Contract and Project Order Documents.

2.3.15 Wherever the terms, "as directed", "ordered", "permitted", "designated", "as approved", "approved equal", "or equal", "acceptable" and other words of similar meaning which authorize an exercise of judgment are used in the Contract and Project Order Documents, such judgment shall be vested only in the Architect/Engineer and/or the Owner.

2.4 CONFORMITY WITH PLANS AND SPECIFICATIONS

2.4.01 The entire work and each part thereof shall be constructed at the location, elevation, grade and gradient specified, and in proper alignment and adjustment. The Contractor shall provide all frames, forms, false work, shoring, guides, anchors, trench support equipment and structures, and temporary structures required to ensure these results.

2.4.02 No deviation from the approved Plans, Technical Specifications and other Contract Documents shall be permitted without the prior written approval of the Architect/Engineer, which approved deviation, shall be documented to the extent required by the Contract or Project Order Documents.

2.5 AUTHORITY OF THE ARCHITECT/ENGINEER

2.5.01 The Architect/Engineer shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work. The Architect/Engineer shall decide all questions which may arise as to the interpretation of the Specifications or Plans relating to the work, and the fulfillment of the Contract or Project Order on the part of the Contractor to the extent that the County concurs in this interpretation.

2.5.02 The Architect/Engineer is not authorized to revoke, alter, or waive any requirement of the Contract or Project Order.

2.5.03 Where the Contract and Project Order Documents provide for decisions or other actions by the Architect/Engineer, the same shall be final and binding upon the Contractor, unless revoked in writing by the County without prejudice to Contractor's rights under Article 8 and 25.

2.5.04 The Architect/Engineer shall have free access to the work and materials at all times to facilitate the performance of his duties.

2.5.05 The Architect/Engineer shall have the right to reject any material or work performed which does not meet the requirements of the Contract or Project Order Documents. When the Architect/Engineer discovers any work in progress that does not meet the requirements of the Contract or Project Order Documents, the Architect/Engineer shall reject that portion of the work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Architect/Engineer will not be paid for.

2.5.06 The fact that the Architect/Engineer has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract and Project Order Documents, shall not bar the Architect/Engineer from subsequently rejecting said materials or work.

2.5.07 The observation of the work and actions by the Architect/ Engineer, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Architect/Engineer to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

2.6 AUTHORITY AND DUTIES OF THE FIELD REPRESENTATIVE

If there is no Field Representative, the A/E will assume the responsibilities of the Field Representative as described in this Article.

2.6.01 The Field Representative will administer the Contract and Project Order and the orders of the Owner are to be given through the Field Representative. The Field Representative shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract.

2.6.02 The Field Representative will observe the Contractor's work for compliance with the

Contract and Project Order Documents. Such observation shall extend to all or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used.

2.6.03 The Field Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract and Project Order Documents.

2.6.04 When any work in progress does not meet the requirements of the Contract and Project Order Documents, the Field Representative shall have the authority to order the Contractor to shut down that portion of the work affected and shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Field Representative's order to shutdown will not be accepted or paid for.

2.6.05 The Field Representative is not authorized to revoke, alter, or waive any requirements of the Contract and Project Order.

2.6.06 When any portion of the work is to be performed away from the site, the Contractor shall notify the Field Representative, in reasonable time, where and when such work is to be done, and shall make arrangements for access thereto by the Field Representative in order that same may be inspected by him.

2.6.07 The Field Representative shall have the right to reject any material or work performed which does not meet the requirements of the Contract and Project Order Documents. When the Field Representative discovers any work in progress that does not meet the requirements of the Contract and Project Order Documents, the Field Representative shall reject that portion of the work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Field Representative will not be paid for.

2.6.08 The fact that the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract and Project Order Documents, shall not bar the Field Representative from subsequently rejecting said materials or work.

2.6.09 The Field Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor except as specified herein.

2.6.10 The administration, observation of the work, and actions by the Field Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract or Project Order; the Contractor shall not request or attempt to require the Field Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

2.6.11 The Field Representative shall decide all questions relating to the rights of different contractors on the Project.

2.7 OBSERVATION OF THE WORK

2.7.01 All materials and each part or detail of the work shall be subject to observation by the Field Representative and/or the Architect/Engineer. The Architect/Engineer and the Field Representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.

2.7.02 If either the Architect/Engineer or the Field Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract and Project Order Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.

2.8 OTHER AUTHORIZED INSPECTION

2.8.01 The Owner, the Lessee(s) and other agencies having jurisdiction over the work hereunder shall be afforded free access to the Site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract and Project Order Documents. Inspection by MDAD shall not estop another agency of Miami Dade County from inspecting the work and or enforcing compliance with any applicable building, zoning, or life/safety code.

2.8.02 For AIP Projects, the work may be subject to inspection and approval by the FAA.

2.9 ASSIGNING PROJECT WORK - PROJECT ORDER

2.9.01 The preparation, bid, and award of each Project Order (PO) will be in accordance with the following requirements, procedures, and conditions:

Each Project Bidder or their authorized representative shall sign a Confidentiality Affidavit, which will be provided and notarized, certifying that the company and each employee agrees, that in accordance with Florida Statutes § 119.07(3)(ee), to maintain the exempt status of the information contained in the Documents. Each Project Bidder shall also furnish an address, telephone and fax numbers for the purpose of contact during bidding.

- (A) A pre-construction Project Order Draft (POD) will be prepared and executed by the Contract Officer which describes the scope of work to be performed, the start date, the project time allotted for bidding and construction, project duration. The Contractor shall prepare a POP identifying the tasks, hours and all services necessary to complete the process outlined below.
- (B) A construction Project Order Draft (POD) will be prepared and executed by the Contract Officer which describes the scope of work to be performed, the start date, the project time allotted for bidding and construction, project duration, the SBE Contract Measures or DBE Goals required for the Project, Liquidated Damages and Indirect Costs, if applicable, and other specific project information as deemed necessary by the MDAD, and authorizes the Contractor to solicit Project Bids from Subcontractors that will perform the Work and fulfill all the requirements outlined in the Project Order Draft (POD). The Contractor shall provide daily reports for each Project Order and Service Order Authorization.

1. Prior to the issuance of each Project Order Draft, or in the event of an emergency, as soon thereafter as practicable, each Project Order Draft will be reviewed for the establishment of independent Contract Measures or DBE Goals in the work to be performed, and each Project Order Draft will set forth the Contract Measures. The Contract Measures established will be included with each Project Order Draft as it is transmitted to the Contractor. The Contractor shall comply with the requirements of Resolution No. 1386-09 with respect to each Project Order.
2. Each Project Order that describes the scope of work to be performed will include the SBE-CONS or other SBD assigned (as applicable) Contract Measures or DBE Goals for the Project.
3. The County will monitor compliance with Contract Measure throughout the term of the Contract.
4. The Contractor is required to comply with the applicable SBE-CONS or other Contract Measures and/or DBE Goals prior to the Project Order being awarded.
5. The Contractor shall ensure the Project Order shall include an invitation to all SBE firms included in the BMWS.
6. The Contractor shall submit to MDAD, as required, the status of projects awarded, format to be provided by MDAD and shall include at least the following information:
 - a) Project Order number, date awarded, contract amount earned to date, original SBE-CONS or other Contract Measures, SBEs utilized on each Project Order, original contract amount and scope of work, and total disbursements to each SBE firm.
 - b) Before soliciting Project Bids, the Contractor shall prepare and submit, for the approval of the Contract Officer, a project construction packaging plan. This plan shall describe each trade item of work to be subcontracted, and the time required for completing the bidding and awarding of each item or groups of items to be subcontracted. The Contractor shall also issue a proposed list of Subcontractors to be solicited for Project Bids for all items of Work to be subcontracted which shall be the Contractor's proposed method of meeting the Project SBE-CONS or other Contract Measure or DBE Goals.
 - c) The Contractor and all Project Bidders must confirm SBE Certification (at the time of Contract/Project Order Proposal submittal) in complying with these Provisions. In order to participate as a SBE-CONS and/or SBE-G/S on this contract, a SBE-CONS and SBE-G/S must have a valid certification at the time of Project Bid submittal, Project Bid award, and throughout the duration of the contract in which the SBE-CONS and SBE-G/S participate as a Small Business Enterprises. The Contractor will be solely responsible for confirming the SBE-CONS and SBE G/S are certified by reviewing the BMWS.
 - d) The MCC-9-18 Contractor shall advertise the Work publically to both general contractors and trade contractors, as appropriate, and notify the Internal Service Department, Small Business Development Division on a project by project basis of all scheduled Pre-bid and Project Bid opening meetings. The Project Bids shall be

received in a bound/sealed envelope and include the Project Bid price with the required Certificate of Assurance (COA). On the scheduled Project Bid opening date, a signed, completed Certificate of Assurance (COA) Affidavit is required to be submitted by each Project Bidder acknowledging the project SBE measure. The Contractor shall submit each COA for review by the Internal Service Department, Small Business Development Division. Project Bidders that fail to submit the required COA will be found non-compliant and not eligible for award. The Contractor shall then forward the lowest responsive, responsible Project Bid(s) to the Internal Service Department, Small Business Development Division for contract measure compliance review.

Subsequent to the compliance review, the Contractor shall, within the time specified in the POD, prepare and submit to the MDAD a Project Order Proposal (POP) in response to the Project Order Draft. The Contractor shall review each Subcontractor's Project Bid for each Project Bid package for each Project, for accuracy, errors, and omissions, prior to formulating the Project Order Proposal. The Project Order Proposal shall state the proposed price of the Contractor to perform the Project work and shall include a written narrative describing in detail the results of the Subcontractor(s) bidding and shall incorporate a schedule of values depicting the dollar value of all Subcontractors who will perform work under the Project Order.

- e) All Work is to be performed by Subcontractors unless otherwise directed, in writing, by the Contract Officer. Additionally, when it is in the best interest of the County, the Contract Officer will direct the Contractor, in writing, to perform urgently needed work, and to obtain three (3) Project Bids, lump sum, time and material, unit prices, as applicable. The Contractor shall submit all back-up documentation to verify costs being billed.
- f) The Contractor shall prepare a Project Order Proposal utilizing the lowest responsive and responsible Project Bidders. The Contractor may perform work only when the Subcontractor is declared by the Contract Officer to be in default and/or the Contract Officer determines that it serves the best interest of MDAD. The Project Order Proposal (POP) shall include sufficient detail to permit analysis of the Subcontractor Project Bids and the schedule logic. Subcontractor bidding shall be in accordance with this Article 2.0 of the General Conditions. The Contractor agrees to furnish its services and perform all work expeditiously with due care and in a manner consistent with the interest of MDAD.
- g) MDAD will review the Project Order Proposal and approve same or return it to the Contractor for revision. If the Project Order Proposal is accepted, the MDAD will prepare a Project Order which shall incorporate the terms of the Project Order Draft and the accepted Project Order Proposal. The Contractor shall sign the Project Order and return it to MDAD for further execution.
- h) The issuance of each Project Order shall be made to the Contractor based on his Project Order Proposal which incorporates the lowest responsive and responsible Project Bidders necessary to complete the scope of work outlined in the POD.
- i) It is the responsibility of the Contractor to include within his cost estimate all work

that is necessary to construct projects as identified in each Project Order. This cost estimate encompasses, but is not limited to, such duties as daily cleaning of the Project and adjacent areas as required, phasing of work as well as storage of material/equipment (Article 4.0 of the General Conditions). The Contractor is to review the Project Bid documents at their 100% completion or at an earlier stage of completion or whenever the last project design review takes place. MDAD will invite the Contractor to participate in the design review of the project. The Contractor is to review for project completeness, project phasing, storage, maintenance of traffic, conflicts, omissions, unclear drawings and/or specifications, additional information and requirements, and required changes in order to ensure a Project Order with no changes during construction due to the above mentioned items. The Contractor shall be responsible for any additional costs that are necessary to complete the work in accordance with the Project Order due to his/her failure to properly and accurately bid the Work; to clearly identify the scope and the physical limits of the scope of work to the various subcontractors particularly in those areas where the scope of work for subcontractors overlap, and for not identifying conflicts, unclear and incomplete drawings and/or specifications prior to bidding. Notwithstanding anything herein, the Contractor shall only be responsible for review of design documents and provision of all other services hereunder based on the level of skill and understanding expected of a reasonable Contractor, not a Design Professional, as the Contractor is not the Engineer of Record or Designer of the Project.

- j) The County reserves the right to reject all Project Order Proposals and not to issue any Project Order. The County, by choosing to exercise its right of rejection, does so without the imposition of any liability against the County by the Contractor, Subcontractors, or Project Bidders.
- k) Individual costs for each assigned Project Order shall not exceed \$5,000,000 in construction costs excluding allowance accounts and/or applicable management fees.
- l) Where Federal funds support the work of the project order in whole or in part, the Contractor shall include in such Project Order Proposal all provisions required as a condition of such funding by the Federal entity providing such funds, using the language as mandated by such Federal entity. Where such conditions conflict with the terms of this Contract, and solely with respect performed under such Project Order, those conditions shall control and take precedence over the terms of this Contract.

2.9.02 The response to a Project Order Draft by the Contractor, i.e., Project Order Proposal, shall be in accordance with the following requirements:

- a) Pricing - The POP shall reflect the pricing methods outlined in the POD. The POD may specify different methods of payment: lump sum, unit price, or cost plus, or any combination of these three. The POD will clearly identify work to be paid for under the lump sum, unit price, or cost plus methods and the charges applicable to each pricing method. The POP shall also include an evaluation and recommendation for SBE-CONS or Contract Measure and/or DBE contract measures/goals.

- b) Scheduling - The POP schedule proposal shall conform to the time requirements specified in the POD and the methods described in Article 4 - Construction Schedule of these General Conditions.

2.9.03 In the event that MDAD and the Contractor fail to reach agreement on the terms of the POP, the MDAD may, in its sole discretion, issue a Project Order directing the Contractor to Perform the Work on a time and materials basis. A reasonable amount of time will be specified for completion of the Work. The Contractor will then be obligated to have the Work completed in accordance with the requirements of the Project Order as issued. The Contractor shall submit back-up documentation to validate the time and materials costs being billed to MDAD.

2.9.04 Upon execution of the Project Order, the Contractor shall not change any Subcontractor(s) and/or Vendor(s) without the prior written consent of the Contract Officer.

2.9.05 Within seven (7) calendar days after a Project Order is issued to the Contractor, the Contractor shall prepare and submit to the Architect/Engineer the following items for approval:

- 1) Cost Breakdown (Schedule of Values)

Note: In accordance with Resolution R-138-10, all County contracts for construction requiring use of a schedule of values to determine progress payments, to require as a condition subsequent to award and prior to the issuance of a notice to proceed, that the scope of work to be performed by any SBE-CONS utilized to satisfy any SBE-CONS goal in the contract be separately identified in such schedule of values. Payment requisitions for the scope of work of such SBE-CONS shall be accompanied by appropriate documentation including invoicing and checks reflecting payment of the SBE-CONS for the previous construction draw.

- 2) Schedule of estimated monthly partial payments (to be included on project schedules per the methods described in Articles 4 and 10 in these General Conditions).

The Cost Breakdown (Schedule of Values) shall be prepared in an acceptable form for each of the major items of the work and shall be revised when requested by the Architect/Engineer if any of the values in the Cost Breakdown appears to be incorrect or unbalanced. No such revision shall in any manner affect the total Project Order amount. Supporting data acceptable to the Architect/Engineer may be required to substantiate the Schedule of Values.

No payments will be made to the Contractor without complying with the before-mentioned requirements.

2.10 SUBCONTRACTING PROJECT ORDERS

2.10.01 The Contractor shall subcontract the work to subcontractors holding appropriate certificates of competency from the State of Florida or Miami-Dade County for the work to be subcontracted. Notice is given that, according to the SBE-CONS Provisions, acting as a Broker is not considered a Commercially Useful Function and shall be a violation of the Provisions. Notice is given to Subcontractors bidding on and performing work under this Contract, that assignment of any portions of their work is limited, providing that those firms consenting to assignment have the right license, right SBE-CONS certification and bonding, and the work is done for the same price, Project Time, and terms of the Contract and Project Order. This notice shall be incorporated

into all bidding documents and all subcontracts.

2.10.02 The Contractor shall incorporate the terms and conditions of this Contract accordingly into each Subcontract by reference, and shall bind accordingly each Subcontractor to the extent that the terms and conditions of this Contract apply to the Subcontract work. All Subcontractors shall be bound by and of the provisions of the individual Project Orders. In no instance shall the Contractor assess any Liquidated Damages against any SBE Subcontractor. Any Subcontractor that was previously put on notice by the Contractor and continues to be in default shall be declared in Default of the Project Order. Notice of the Subcontractor's Default shall be reported to the Internal Service Department, Small Business Development Division.

2.10.03 Prospective Project Bidders for each Project shall be required to attend a mandatory pre-bid conference conducted by the Contractor in conjunction with the A/E and MDAD, at which time the Project site shall be toured. Such pre-bid conferences shall be held at the job site, or as determined by the Contractor, approximately mid-way through the Project Bid period or before, and not less than five days before Project Bids are due, or as determined by the Contract Officer.

2.10.04 Bidding of the POD construction packages by the Contractor shall be done on a competitive basis with sealed Project Bids to be publicly opened as specified in this Article 2 of the General Conditions. The Contractor shall review all Project Bids, by any and all subcontractor(s) and/or vendor(s) wishing to do so, with the respective sub-contractor(s) and/or vendor(s), to determine any irregularities, errors or omissions by the subcontractor(s) and/or vendor(s) which would cause the said subcontractor(s) and/or vendor(s) Project Bid to be considered irregular, non-responsive, and/or unsuccessful. The Contractor shall allow SBE Subcontractors to withdraw a Project Bids, without penalty prior to award of the applicable Project Bid for any reason.

2.10.05 Appeals relating to Project Bidder compliance with SBE-CONS Project requirements are addressed in the SBE-CONS Sections of the Special Provisions. Protests by Project Bidders shall be limited to only those Project Bidders whose protests, if successful, would become the lowest responsible and responsive Project Bid. Protests for any reason unrelated to SBE-CONS compliance, must protest the recommendation within two (2) business days after the Contractor submits to the MDAD his POP, by requesting, in writing, a hearing before an Evaluation Committee designated by the Contract Officer who shall conduct the hearing. Such hearing shall be scheduled not later than ten (10) calendar days after the request. Upon hearing arguments and receiving documentation from all interested parties, the Evaluation Committee will make a finding and issue their recommendations within five (5) calendar days of such hearing. The hearing results may be to deny the protest of the protesting Project Bidder and to support the Contractor's award recommendation and to issue the Project Order based on the Contractor's initial Project Order Proposal. However, the hearing results may allow the Contractor to reject the Project Bids and re-bid the project or, at its sole discretion, may revise its initial recommendation and recommend award to the protesting Project Bidder. If the Contractor chooses, by its sole discretion, to recommend award to the protesting Project Bidder, the Contractor and protestor are obligated to all the terms and conditions of the Contract and the ensuing Project Order. The appeal process resulting in a finding or recommendation shall not create any obligation, liability, or contractual relationship between the protestor and the County or between the recommended Project Bidder and the County.

2.10.06 Nothing contained herein shall create any contractual relationship between the County and any level of Subcontractor, materialmen, or supplier. At all times, the Contractor, who has

been awarded this Contract via a competitive bidding process compliant with Section 255.05, Florida Statutes, remains the sole party contracting with the County with respect to work. The requirements of this Article 2.10 solely reflect the policy choices of Miami-Dade County, and the parties agree that there is no requirement under state law or the Miami-Dade County Code to for the Contractor to bid out subcontracts or otherwise award subcontracts through a competitive process.

2.10.07 All work performed for the Contractor by a Subcontractor shall contain provisions that:

- A. Preserve and protect the rights of the Owner, the Architect/Engineer, and the Field Representative under the Contract/Project Order with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- B. Require that such Work be performed in accordance with the requirements of the Contract and Project Order Documents;
- C. Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment;
- D. Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor or Vendor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract and Project Order Documents for like claims by the Contractor upon the Owner; and
- E. Require specific consent to the provisions of the Contract and Project Order Documents.

2.10.08 In the event that the Contractor fails to strictly follow the project order award process outlined above, the County shall not be required to invalidate, bar, or overturn the award of a proposed project order, where the Contractor has made good faith efforts to comply with the requirements of this Contract regarding the issuance or award of a project order, or where invalidating or overturning such award or issuance is not in the best interests of Miami-Dade County. This Contract does not create in any third party the right to demand strict compliance by the Contractor with the provisions of Article 2 of this Contract.

2.11 CONTRACT TEAM/CONTRACTOR PERSONNEL

2.11.01 Key Management Staff: The Contractor shall assign, and make available on an on-call basis 24 hours per day, seven days per week the minimum required key management staff as identified herein:

- a) This staff and its performance shall be responsible for the timely completion of assigned or required tasks to permit the Project(s) to proceed without interruptions or delays.
- b) Key Management Staff, as may be further defined in this Article 2.11, shall include One (1) General Manager, One (1) Scheduler, One (1) Safety Coordinator, One (1) Estimator, One (1) SBE Program Manager, One (1) Accountant, Four (4) Project/Construction Managers, and Three (3) Clerical personnel. This key management staff will be available to the Department within One (1) hour notice, 24-hours, seven days a week, so that the Department can address emergencies. These services shall be authorized thru a PO. Any interruption or delays to the Project(s)

caused by a lack of performance by the Contractor, for those listed functions or services, shall be grounds for default with any applicable liquidated damages being assessed by MDAD.

- c) Key Management Staff shall not seek additional employment activities outside this Contract nor perform any work outside of this Contract without receiving prior written permission from the Contract Officer.
- d) For the purposes of this Contract, the following Key Management Staff “General Manager”, “SBE Program Manager”, and “Project/Construction Managers” shall:
 1. Not use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners;
 2. Not accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason of his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit.
 3. Not accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.
 4. Other than interests in MCM, MCO and/or Gammax, the aforementioned key management staff members shall not have personal investments in any enterprise, either himself, herself, or through a member of his or her immediate family, which will create a substantial conflict between his or her private interests and the public interest.
 5. Excluding the representation of Contractor and/or a Subcontractor, the aforementioned key management staff member shall not appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person; nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person; nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the County or a County agency through the suit in question.
 6. Excluding actions taken with respect to the Contractor and/or a Subcontractor, none of the aforementioned Key Management Staff members shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. A financial interest is defined as a special financial interest, direct or indirect, as that term is used

in Section 4.03 of the County's Charter; or as a financial interest as defined in Section 769 of the Restatement of the Law of Torts as an investment or something in the nature of an investment.

7. None of the aforementioned key management staff members shall acquire a financial interest in a project, business entity or property at a time when he or she believes or has reason to believe that the said financial interest will be directly affected by his or her official actions.
8. The Commission on Ethics shall have concurrent jurisdiction to determine compliance with this Subsection 2.11.1(d).

2.11.02 Pre-Construction Services Part I: The Contractor's Key Management Staff shall perform pre-construction service.

In the event that the Contract Officer determines, through the course of the actual work progress, that the Contractor's staff are uncooperative or otherwise fail to perform the work in a fully satisfactory manner, or lacks the knowledge, ability, experience, or expertise necessary to execute the work in an efficient and competent manner, in full conformance with all current codes and best industry practices, the Contract Officer will notify the Contractor in writing. The Contractor shall take immediate action and provide a qualified replacement, acceptable to the Contract Officer within five (5) working days.

2.11.03 Construction Phase Staffing

- A. **Prosecution of Work:** The Contractor shall give the work the attention and supervision necessary to ensure its progress according to the approved schedule in conformance with all codes and requirements and to a level satisfactory to the County. The Contractor shall coordinate the work and cooperate fully with the County Project Manager/Architect/Engineer and with other contractors at the work site.
- B. **Contractor's Supervision:** The Contractor shall maintain a project manager and/or superintendent who are competent in the type of work being performed and are at the site at all times while work is in progress to act as the Contractor's agent. The Contractor shall give that Project Manager/Superintendent full authority to receive instructions from the County Project Manager/Architect/Engineer and to execute the orders or directions of the County Project Manager/Architect/Engineer. This shall include the prompt supply of all materials, tools, equipment, labor, and incidentals that are necessary to carry out the work under the Contract. The Contractor shall furnish such project manager/superintendent regardless of the amount of work subcontracted. The Contractor shall maintain control of the work at the site during project working hours.
- C. In the event that the Contract Officer determines, through the course of the actual work progress, that the project manager or superintendent are uncooperative or otherwise fails to perform the work in a fully satisfactory manner, or lacks the knowledge, ability, experience, or expertise necessary to execute the work in an efficient and competent manner, in full conformance with all current codes and best industry practices, the Contract Officer will notify the Contractor in writing. The Contractor shall take immediate action and provide a qualified replacement, acceptable to the Contract Officer within five (5) working days.

2.11.04 General Manager: The Contractor shall assign a General Manager (who shall be fluent

in written and spoken English) having the day-to-day operational responsibility for the competent performance and fulfillment of the duties and responsibilities of the Contractor under this Contract and being authorized to accept service of all notices provided for herein and shall have the authority to bind the Contractor to all terms of this Contract. The General Manager shall have no duties or responsibilities other than pursuant to this Contract and shall maintain no office other than within the airport or at such other airport location(s) as shall be provided by MDAD. This individual shall not seek additional employment activities outside this Contract nor perform any work outside of this Contract without receiving prior written permission from the Contract Officer. During all absences, the Contractor will provide a replacement for the General Manager.

2.11.05 SBE Program Manager: The SBE Program Manager shall be an individual who is knowledgeable and experienced in all current applicable County, State and Federal Ordinances and Laws and is familiar with the implementation of these Ordinances and Laws, particularly as it relates to the SBE-CONS and DBE program. This individual shall be able to perform, but not be limited to, the following functions:

- a) Coordinate and schedule all educational seminars, including ensuring that appropriate trainers are in attendance;
- b) Work with the Contractor's schedules/estimates and the SBE Subcontractors to identify and recommend trade set asides on an individual Project basis;
- c) Monitor and report the actual levels of SBE and DBE subcontractor and vendor participation in this Contract;
- d) Develop strategies and marketing activities for the purpose of increasing SBE participation under this Contract.
- e) Develop training and educational seminars for the preparation of certified payroll and pay requisitions via BMWS as well as any other training required by the County.
- f) Develop educational seminars for Occupational Safety & Health Administration (OSHA) classes and to maintain contractor licenses at no cost to SBE firms. Such costs may be included in a Project Order in accordance with Section 2.12.02.

2.11.06 Personnel Standards: The Contractor shall properly control his employees, who shall present a clean, neat, and professional appearance at all times and discharge their duties in a cooperative, courteous, and efficient manner. The Contractor shall require all personnel to comply with MDAD ID badge, safety, and vehicle registration requirements.

2.11.07 Contractor/Project Managers and superintendents: The Contractor/Project Manager shall provide, experienced (in the Construction Industry), competent superintendents for the work, who shall be fully authorized as its agent on the work, and who shall be capable of reading and thoroughly understanding the Plans, Technical Specifications and other Contract Documents and shall be fluent in the English language. The Project Manager(s) and superintendent(s) shall speak, read, write, and understand English to a degree satisfactory to the County and with fluency that precludes any possible misunderstanding of plans, specifications, or any verbal or written instructions issued by any governing authority relative to the Project. The competency of the Project Manager(s) and superintendent(s) shall be demonstrated through licensure examination or on-site expertise in installations of similar scope or complexity of the work being performed. Proof of licensure examination or on-site expertise of the project manager/superintendent must be

provided at the pre-construction conference and is subject to the approval of the Contract Officer/Architect/Engineer whose decision shall be final.

2.11.08 The Contractor is encouraged to employ individuals who qualify in the capacity of Project/Construction Managers, Assistant Project/Construction Manager, Construction Field Superintendents, Assistant Construction Field Superintendents, support personnel, and management personnel that would allow the Contractor to achieve the minority and female employment participation expressed as a percentage for the Contractor's aggregate work force in each trade on all construction work in the covered area.

2.11.09 Management Programs: The Contractor shall develop/provide a current organization chart or table of the Contractor's staff and titles when requested by the Department. This Contract requires a rapid response to critical, time-sensitive Projects, many of which can and will occur simultaneously.

The following programs shall be developed and submitted to the Contract Officer within thirty (30) Days of contract NTP for acceptance and updated when requested by the Department:

- a) Programs for planning and organizing the Contract and Project Order work including scheduling of Projects, coordination of Subcontractors, and maintenance of airport vehicular traffic.
- b) Programs for safety on the construction sites for these projects within this Contract.
- c) Programs for cost effective purchasing and the coordination of construction materials and equipment.
- d) Programs for estimating Project construction costs and exercising cost control over the projects.
- e) Programs for quality control of construction work.
- f) Programs for including and increasing SBEs and DBEs participation in this Contract and the monitoring of the participation of said entities within the Contract
- g) Program with specific methods, procedures, and time frames to employ individuals as part of its Key Management Staff, needed in order to achieve the minority and female employment participation expressed as a percentage for the Contractor's aggregate work force in each trade on all construction work in the covered area. These individuals shall have the appropriate experience within the specific job titles.
- h) Monthly Management reports to be provided to MDAD which would: demonstrate progress and budget compliance for individual projects; and identify SBE firms invited to submit Project Bids, subcontract amounts awarded to SBE firms, and percentage amount of subcontracts awarded to SBE firms. The format for these reports shall be submitted by the Contractor to the MDAD for review and approval before use and shall be modified as required by MDAD.
- i) Budgetary, accounting, and internal control procedures for the cost and payment methods and other administrative considerations included in these Contract and Project Order Documents.
- j) Descriptions of home office support shall be provided as part of the Management Program(s) provided hereunder.
- k) Description of other programs and services applicable to the Management Program(s) of the

Contractor, particularly to the education and training of the Subcontractors in regard to the daily operation at the job site and their office management, including but not limited to, obtaining I.D. badges, fingerprint appointments, and security training classes.

- l) Programs to distribute electronic plans and specifications for Project Bids. If paper plans are used, collect a refundable deposit for said paper documents. Further, create a process for refunding the deposit after the Project Bid is awarded.

2.12 COMPENSATION AND FEES

2.12.01 The Owner will pay the Contractor for its work under this Contract based on the following:

- a) **Part I: Contractor's Fees on Services:** Key Management Staff services will be compensated as an hourly fee by position. Contractor Staff not included in Key Management Staff shall be compensated as a reimbursable expense, which must be approved by Department prior to services being performed. These hourly fees are intended to cover the direct and indirect labor costs and profits including all overhead (includes home office expenses, seminars, training, equipment, supplies, etc., and for the following positions and/or functions: General Manager, Scheduler, Safety Coordinator, Estimator, SBE Program Manager, Accountant, Project/Construction Manager and all other clerical personnel. Included in these fees shall be the cost of labor burden (including but not limited to FICA, MICA, taxes, health insurance, benefits, incentive payments, annual/merit/sick leave and any other non-direct remuneration), insurance, office equipment (including but not limited to photocopier, computers, printers, calculators, and facsimile machines), general office supplies (including but not limited to desk accessories, computer supplies, photocopier supplies, and filing systems), computer programs including miscellaneous software and operating systems, long distance calls, portable phones, beepers, construction tools, and other equipment as required for the Part I. All work will be paid for as straight time, with no premium for overtime, after hours, or holiday work. Training and educational seminar for subcontractors including the SBE training program shall be reimbursed without markups.

The County, however, will provide the office space and furniture (does not include finishes, interior partitions and space planning) at MDAD's facilities for the Contractor's staff. Electricity, local telephone service (does not include long distance calls or internet access), toilet facilities, and air conditioning will also be provided by the County.

- b) **Part II: Contractor's Fee on Construction:** These fees will be expressed as a percentage of the value of the satisfactorily completed authorized Project construction cost. It is intended that these Part II Fees cover the Contractor's Indirect Costs (see sub-article 1.32 for scope of these costs) associated with the construction phase of each project. These fees are subject to retainage. It shall be a fixed percentage. This fee is to be added to the Subcontractors' costs, and shown by the Contractor in the Project Order Proposal submittal to MDAD.

2.12.02 Educational seminars: Educational seminars will be part of the Project Order under Pre-Construction. Fees related to seminars will be negotiated and authorized independently through Project Orders.

2.13 CHANGES TO THE CONTRACT

The County reserves the right to change the terms and conditions of the Contract without invalidating the Contract. All such changes shall be accomplished by Change Orders executed by the County, the Contractor, and his Surety.

2.14 AUTHORITY OF THE CONTRACT OFFICER

For those responsibilities of the County, the administration of Projects assigned under the Contract is vested wholly in the Contract Officer and the orders of the County are to be given through the Contract Officer. The instructions of the Contract Officer shall be strictly and promptly followed by the Contractor and Subcontractors in every case. When required, the Contract Officer will direct the Contractor, in writing, to perform urgently needed work which is in the best interest of the County, and to obtain three (3) Project Bids, lump sum, time and material, or unit prices, as applicable. The Contract Officer shall have free access to the work, materials, and all job management and accounting records at all times.

2.14.01 Irrespective of any prior decision by the A/E, the Contract Officer shall have the right to reject all materials furnished, installations, and work performed which, in the judgment of the Contract Officer, does meet the requirements of this Contract or the Project Order. When any work in progress does not meet the requirements of the Contract Documents or the Project Order, the Contract Officer may order the Contractor to shut down that portion of the work affected and will confirm this order in writing, as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the order of the Contract Officer to shut down will not be accepted or paid for.

2.14.02 The administration, construction observation, inspection, assistance, and other actions by the Contract Officer, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of the means and methods employed by the Contractor or his Subcontractors; and such actions shall not relieve the Contractor from any responsibilities or obligations under the Contract; nor shall the Contractor request or require the Contract Officer to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

2.14.03 The fact that the Contract Officer has not made early discovery of faulty materials furnished, faulty work or of work omitted, or of work performed which is not in accordance with the Contract Documents or Project Order, shall not bar the Contract Officer from subsequently rejecting such defective work.

2.14.04 Where the Contract Documents or Project Order provide for decisions, determinations, orders, certifications, directions, or other actions by the Contract Officer, the same shall be final and binding upon the Contractor, irrespective of any prior decision by the A/E without prejudice to Contractor's rights under Article 8 and 25.

2.14.05 When any portion of the work is to be performed away from the Site, the Contractor shall notify the Contract Officer in reasonable time, where and when such work is to be done, and shall make arrangements for access thereto by the Contract Officer in order that the same may be inspected by any of them.

2.14.06 The Contract Officer is not authorized to revoke, alter, or waive any requirement of the Contract.

ARTICLE 3
OWNER

3.1 OWNER PROVIDED INFORMATION

3.1.01 The records of borings, test excavations and other subsurface investigations, if any, are offered as information only and solely for the convenience of the Contractor. The Owner does not warrant or guarantee either that said records are complete or that the said records will disclose the actual subsurface conditions. The interpretation of the records and the conclusions drawn therefrom as to the actual existing subsurface conditions are the sole responsibility of the Contractor.

3.1.02 Any estimates of quantities of work or materials, based on said borings, test excavations and other subsurface investigations are not warranted to indicate the true quantities or distribution of quantities.

3.2 INTEREST OF PUBLIC OFFICIALS

No officer or employee of Miami-Dade County during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

3.3 OWNER RIGHTS IN THE CORRECTION OF DEFECTIVE OR NON-CONFORMING WORK

3.3.01 If the Contractor is notified by the Owner to correct defective or nonconforming work, and the Contractor fails to proceed with corrective action in a reasonable time, the Owner may, upon written notice, accomplish the redesign, repair, rework or replacement of nonconforming work by the most expeditious means available and back charge the Contractor for the cost incurred. The cost of back charge work shall include all reasonable costs associated with the corrective action.

3.3.02 The Owner shall separately invoice or deduct from payments, otherwise due to the Contractor, the costs as provided herein. The Owner's right to back charge is in addition to any or all other rights and remedies provided in this Contract, or by law. The performance of back charge work, on behalf of the Owner, shall not relieve the Contractor of any of its responsibilities under this Contract including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and the Contract Time.

3.4 OWNER RIGHTS IN A CONTRACTOR DEFAULT AND TERMINATION

In the event of Termination for Default and failure of Surety to prosecute in an expeditious manner, the Owner will have the right to take possession of and use any or all the materials, plant, tools, equipment and property of any kind onsite provided by or on behalf of the Contractor, the Surety, or the Surety's Contractor for the purpose of the work, or a portion of them, without being responsible to the Contractor, the Surety, or the Surety's Contractor, for fair wear and tear. The Contractor, the Surety, the Surety's Contractor, shall have no rights in such property during their use by the Owner. The Owner will not be required to obtain the lowest prices for completing the work but shall make such expenditures as, in the Owner's sole judgment, best accomplish such completion. The expense of completing the work, together with a reasonable charge for engineering, managerial and administrative services, as certified by the Owner, will be deducted by the Owner out of such monies as may be due or may at any time thereafter become due to the Surety. In case such expense is in excess of the sum which otherwise would have been payable to

the Surety under the Contract, then the Surety shall promptly pay the amount of such excess to the Owner upon notice from the Owner of the excess so due. The Owner may, in its sole discretion, withhold all or any part of any payments otherwise due the Contractor or Surety until completion and final settlement of the work covered by the Notice of Termination of Contractor.

ARTICLE 4 **CONTRACTOR**

4.1 CONSTRUCTION CONFERENCES

4.1.01 A Pre-construction Conference will be held prior to the issuance of the Notice to Proceed to discuss the work to be performed under this Contract. The Contractor shall be required to attend this meeting. The Contractor will be advised of the time, date and location of the meeting(s).

4.1.02 A Pre-construction Conference will be held prior to the issuance of the Project Order to discuss the work to be performed per Project Order. The Contractor and its major subcontractors shall be required to attend this meeting. The Contractor will be advised of the time, date and location of the meeting(s). MDAD will coordinate pre-construction Meetings.

4.2 NOTICES TO PROCEED

4.2.01 Contract Notice to Proceed: Within ninety (90) days after the receipt of an acceptable Performance and Payment Bond, proof of the required insurance, and the condition of award documents, the Owner will issue a written Contract Notice to Proceed (NTP) to the Contractor to proceed with the work, which said Notice to Proceed shall direct the Contractor to commence work on a certain day. The Contract Notice to Proceed shall be accompanied by a POD for the Key Management Staff. The Contractor is not authorized to perform work under the Contract until the effective date of the Notice to Proceed. The Contract time commences on the effective date shown on the Notice to Proceed. Any work performed by the Contractor prior to the effective date of the Notice to Proceed shall be at the Contractor's own risk and shall not be considered as the basis for any claim resulting from this pre-NTP work.

4.2.02 Project Notice to Proceed: Within a reasonable time after the execution of the Project Order, the Owner will issue a written Project Order notice to proceed to the Contractor to proceed with the work, which said Notice to Proceed (NTP) shall direct the Contractor to commence work on a certain day. The time within which all of the work is to be completed following the giving of the Notice to Proceed shall be as stipulated in the Project Order of these Contract and Project Order Documents.

The Contractor shall commence the work on the day stated in the Notice to Proceed and shall prosecute the work in a manner that will insure completion within the specified time.

4.3 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

4.3.01 The Contractor shall prosecute the work so as not to interfere with normal airport operations or as may be further detailed in Division 1 of the Project Manual. If the Contractor desires to prosecute the work at other than the days and times set forth herein, it shall notify the Architect/Engineer at least forty-eight (48) hours in advance, so that the Architect/Engineer may make arrangements for access to the job site and to be present. Any work performed without such advance notice having been given to the Architect/Engineer or without having the

Architect/Engineer being present may be rejected, if in the sole judgment of the Architect/Engineer, such work is not susceptible to its observation after the fact to determine compliance with the Contract and Project Order Documents.

4.3.02 The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract and Project Order Documents. All workers shall have sufficient skill and experience to properly perform the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience, certificate or licenses in such work and in the operation of the equipment required to perform the work satisfactorily.

4.3.03 All proposed equipment shall be of sufficient size and in such mechanical condition as to meet requirements of the work, producing a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

4.3.04 When the Contract and Project Order Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the Architect/Engineer. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request permission from the Architect/Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with Contract and Project Order requirements. If, after trial use of the substituted methods or equipment, the Architect/Engineer determines that the work produced does not meet Contract and Project Order requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Architect/Engineer may direct, at no additional cost to the Owner. No change will be made to the Project Order price(s) or in Project Order Time as a result of authorizing a change in methods or equipment under this Article.

4.3.05 The Contractor shall be responsible for taking steps necessary to ascertain the nature and location of the Work, and the general and local conditions which can affect the Work or the cost thereof. Failure by the Contractor to do so will not relieve it from responsibility for successfully performing work without additional expense to Owner. Owner will not be responsible for any understanding or representations concerning conditions, unless such understanding or representations are expressly stated in the Contract.

4.3.06 The Contractor shall be responsible for the complete performance for all of the Work under the Contract and Project Order, and for the methods, means, and equipment used in performing the Contract and Project Order and for all materials, tools, apparatus and property of every description used in connection therewith.

4.3.07 The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Architect/Engineer and its Field Representatives and with other contractors in every way possible.

4.3.08 The Contractor shall maintain the Work during construction and until the work is accepted.

4.3.09 Until Substantial Completion or Beneficial Occupancy by the Owner of any part or all of the work as provided in the Project Order Documents, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution to protect against loss or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good at its own expense all loss or damage to any portion of the work occasioned by any of the foregoing causes before its completion and acceptance.

4.3.10 The Contractor shall be responsible for scheduling and coordinating the work of all crafts and trades, Subcontractors and suppliers, required to perform the Work and to complete the Work within the prescribed time. Any inefficiency or loss of productivity in the labor, materials, or Special Equipment of the Contractor or its Subcontractors of any tier, from any cause, shall be the responsibility of the Contractor. No reimbursement of these or any Direct Costs can be requested by or granted to the Contractor or any of its Subcontractors of any tier for inefficiency or loss of productivity in labor, materials, or Special Equipment. Additional Direct Costs may only be paid to the Contractor as a result of additional Work added to the Project Order scope of work.

4.3.11 The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment. The operation of equipment of such weight or so loaded to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed or as specified in the Technical Specifications. The Contractor shall be responsible for all damage done by its hauling equipment and shall correct such damage at its own expense.

4.3.12 The Contractor shall protect from damage utilities, foundations, walls or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures, surface and subsurface structures at or near the site of the Work and shall repair or restore any damage to such facilities, resulting from failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, as determined by Owner, the Owner may have the necessary work performed and charge the cost thereof to the Contractor.

4.4 CONTRACTOR'S SUPERINTENDENT AND EQUIPMENT

4.4.01 The Contractor shall provide a competent English-speaking Superintendent on the work at all times, who shall be fully authorized as the Contractor's agent on the work. The Superintendent shall be capable of reading and thoroughly understanding the Plans, Technical Specifications and other Contract and Project Order Documents.

4.4.02 The Contractor shall furnish all labor, materials, services and equipment sufficient for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress.

4.4.03 All equipment, tools, and machinery used in the prosecution of the work shall be maintained in a safe working condition and shall be appropriate for the work to be performed.

4.4.04 The Contractor shall submit to the Architect/Engineer the daily manpower count, by trade and position, no later than noon of the day following the day covered.

4.5 ENVIRONMENTAL PROTECTION

The Contractor shall comply with all Federal, state, and local laws and regulations controlling pollution of the environment. It shall take necessary precautions to prevent pollution of streams, lakes, ponds, underground waters, aquifers and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

Miami International Airport is certified ISO 14001 an Environmental Management System (EMS). ISO 14000 is a series of environmental management standards developed and published by the International Organization for Standardization (ISO). The ISO 14000 standards provide a guideline or framework for organizations to systematize, improve and maintain their environmental management system.

A Notice to Proceed (NTP) will not be issued by MDAD, and no contracted Work will be authorized by MDAD until the EMS training module has been completed by current and projected employees, suppliers and subcontractors. The Contractor's failure to provide the Contractor Supplier ISO 14001 Awareness Form and Contractor/Supplier General ISO Awareness Information Handout (Appendix), or to comply with the terms, shall constitute a default of the Contract and may be cause for suspension or termination, in accordance with the terms of the Contract.

4.6 WEEKLY CONSTRUCTION COORDINATION MEETINGS

The Contractor, MDAD Project Manager (PM), the Architect/Engineer or other staff as requested by the Department shall attend weekly Construction Coordination Meetings at a time and place to be designated by the Contract Officer. These meetings are intended to determine job progress, identify job problems, assist in solving and preventing job problems, and promote coordination with all entities involved in the Contract and Project Order and with other Owner contractors. The Contractor shall cause Subcontractors and suppliers to attend as he deems advisable, or as requested by the Architect/Engineer. The Contractor shall review the Subcontractor's requisitions for payment with the A/E and the Contract Officer at these meetings in order to process them expeditiously when they are submitted to MDAD for payment.

4.7 SHOP DRAWINGS

The Contractor is responsible for the preparation of detailed shop drawings necessary for the fabrication, erection and construction of all parts of the Work in conformity with the Contract and Project Order Documents and requirements of Division 1 of the Project Manual.

4.8 SUBSTITUTION

4.8.01 For convenience in designation in the Project Order Documents, certain materials, articles, or equipment may be designated by a brand or a trade name or the name of the manufacturer, together with catalog designation or other identifying information. When Project Order Documents specifically disallow substitution, the specified product shall be provided. Substitutions, or alternate material, article, or equipment which is of equal quality and of the required characteristics for the purpose intended to be approved in the PO. The Contractor shall submit any substitution requests along with the POP.

After the Project Order NTP has been issued, substitutions will be entertained only if the designated product, article, material, or equipment is no longer commercially available. A/E

review, Owner review, and written approval are required for all substitutions. The Contractor shall bear all increased costs resulting from use of any substitute goods.

4.8.02 No request for substitution will be considered unless accompanied by complete information and descriptive data necessary to determine the quality of the proposed materials, articles or equipment. Samples shall be provided when requested by the Architect/Engineer. The burden of proof as to the comparative quality or suitability of the proposed materials, articles or equipment shall be upon the Contractor. The Architect/Engineer and the Owner's decision in such matters shall be final. In the event that the Architect/Engineer rejects the use of such substitute materials, articles or equipment, then one of the particular products designated by brand name shall be provided.

4.8.03 The Architect/Engineer will examine and review the Substitution request with the Owner and return it, within the time requested, to the Contractor noted with the final decision. If the final decision approves either an equal or a substitution, the approval must also contain the Owner's written approval. When requested by the Architect/Engineer, the Contractor shall resubmit such Shop Drawings, descriptive data and samples as may be required.

4.8.04 If any mechanical, electrical, structural, or other changes are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Project Order Documents, such changes, if approved, shall be shown in the substitution request and such changes shall be made without additional cost to the Owner.

4.8.05 Acceptance on another project, by the Owner, of a product other than that specified for this Project does not constitute evidence of its equality with the product specified, or its suitability for this Project.

4.9 APPROVAL OF SOURCES OF SUPPLY OF MATERIALS

The Contractor shall submit a complete list of the sources of supply and the manufacturers of all items of materials, equipment and machinery requested by the Architect/Engineer for approval prior to the commencement of any work.

4.10 APPROVAL AND ACCEPTANCE OF MATERIALS AND SALVAGE OF MATERIALS

4.10.01 The materials used on the work shall conform to the requirements of the Contract and Project Order Documents and may be subject to inspection, testing and approval by the Architect/Engineer before incorporation in the work. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

4.10.02 In order to expedite the acceptance of materials, the Architect/Engineer may require the Contractor to furnish complete statements as to the origin, composition, and manufacture of all materials to be used in the work. Such statements shall be furnished sufficiently in advance of the delivery of such materials.

4.10.03 At the Architect/Engineer's option, materials may be approved at the source of supply before delivery is slated. If it is found that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

4.10.04 Any work in which untested materials are used without approval or written permission of the Architect/Engineer shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the Architect/Engineer, shall be removed at the Contractor's expense. Unless otherwise designated, Quality Assurance tests performed in accordance with the requirements of Contract and Project Order Documents will be made by the Architect/Engineer or the Project Testing Laboratory at the expense of the Owner. Samples will be taken by the Architect/Engineer or the Project Testing Laboratory. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work and until Final Acceptance of the Work. Copies of all tests will be furnished to the Contractor's representative at his/her request.

4.10.05 The Contractor shall furnish airport lighting equipment that conforms to the requirements of cited specifications. In addition, where an FAA specification for airport lighting equipment is cited in the Plans or Specifications, the Contractor shall furnish such equipment that is produced in accordance with FAA Advisory Circular (AC) 150/5345-53B by a manufacturer qualified (by FAA) to produce such specified and listed equipment.

4.10.06 Samples of all materials to be tested, upon which the acceptance or rejection thereof is to be based, shall be taken by the Architect/Engineer or the Project Testing Laboratory. Materials may be sampled either prior to shipment or after being received at the Site.

4.10.07 The Contractor shall provide such facilities as the Architect/Engineer or the Project Testing Laboratory may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the work any materials represented by the samples until tests have been made and the materials found to be acceptable. Only materials conforming to the requirements of the Contract and Project Order Documents shall be used in the work.

4.10.08 Materials or assemblies not conforming to the requirements of the Contract and Project Order Documents shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the Architect/Engineer. Rejected material or assemblies, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the Architect/Engineer has approved its use, in writing, in the work.

4.10.09 Ownership of all salvaged equipment and materials, surplus excavation, etc., shall remain with the Contractor, unless stated otherwise in the Project Order Documents, who shall legally dispose of such equipment, materials and surplus excavation, etc. at a legal disposal site(s) provided by and at the expense of the Contractor, away from the airport site. All equipment and materials to be salvaged for the Owner's use, shall be transported by the Contractor and delivered to the location called for in the Project Order Documents.

4.10.10 The Contractor shall exercise due caution in the removal, dismantling and handling of equipment and materials to be salvaged for the Owner's use. The Contractor shall prepare inventory lists for all such salvaged equipment and materials before removal and such lists shall be receipted by the Architect/Engineer and the Owner at the time such equipment and materials are delivered to the Owner.

4.10.11 The Contractor shall be liable for losses or damage resulting from the Contractor's handling of equipment and materials to be salvaged for the Owner's use.

4.10.12 The Architect/Engineer may direct the Contractor to dispose of all or any class of salvage material to a fill or storage site on or adjacent to the work area, at no additional cost to the Owner.

4.11 CERTIFICATES OF COMPLIANCE

4.11.01 The Architect/Engineer may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's certificates of compliance stating that such materials or assemblies fully comply with the requirements of the Project Order Documents. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified.

4.11.02 Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with the requirements of the Contract and Project Order Documents will be subject to rejection whether in place or not.

4.11.03 When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "brand name", the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- A. Conformance to the specified performance, testing, quality or dimensional requirements; and,
- B. Suitability of the material or assembly for the use intended in the Work.

4.11.04 If the Contractor proposes to furnish an "or equal" material or assembly, he shall furnish the manufacturer's certificates of compliance as hereinbefore described for the specified brand name material or assembly. However, the Architect/Engineer shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

4.11.05 The Architect/Engineer reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

4.12 STORAGE OF MATERIALS AND EQUIPMENT

4.12.01 Before commencing work, the Contractor shall consult with the Architect/Engineer and/or assigned MDAD Project Manager as to available space for temporary storage of materials, location of temporary structures, if any, equipment and other property of the Contractor. Locations determined for such storage of materials, temporary structures, equipment and other property shall be temporary, and the Contractor shall be required to relocate the same as directed by the Architect/Engineer to avoid interference with operations of the Owner or with the work of other contractors on the job site. Temporary structures shall be neat in appearance, shall not constitute a fire hazard and shall be properly maintained.

4.12.02 Any space that the Contractor may require for plant, equipment, storage or other purposes, in addition to that set forth above, shall be procured by the Contractor and the cost thereof shall be included in the price(s) Project Bid for the work. Stored materials, structures, equipment and other property shall remain the property of the Contractor and he shall be solely responsible for the protection of such property from theft, and damage of any sort. To this end,

the Contractor shall provide at no additional cost to the Owner all secured enclosures, security personnel, material inventory programs and any other means necessary for the protection of its property. The granting of rights of storage on Owner property shall in no way obligate the Owner for protection or replacement of loss of such stored property.

4.12.03 Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Architect/Engineer. Materials shall be stored on Owner property or in approved bonded warehouse(s); materials stored within the airport limits shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft, vehicles, or airport operations. Unless otherwise shown on the Plans, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Architect/Engineer.

4.12.04 Unless otherwise specified or directed by the Architect/Engineer, all storage sites shall be restored to their original condition by the Contractor at no additional cost to the Owner.

4.13 CONSTRUCTION SCHEDULES AND CONSTRUCTION COST ESTIMATES

4.13.01 The Construction of each project will be planned and recorded with a Computerized Project Planner Format (Primavera) or, only when so specified in Division 1 (Standard Technical Specifications) of the Project Manual, conventional Critical Path Method (CPM) Format as specified in Division 1 (Standard Technical Specifications) of the Project Manual. All work shall be done in accordance with the approved schedule or the most recently approved schedule update, as applicable. The Construction Schedules shall be used for coordination, monitoring, and payment of all work under the Contract and Project Order including all activities of Subcontractors, Vendors, and suppliers. The Contractor's submission of the final baseline construction schedule and subsequent revisions confirms that its Subcontractors and suppliers have reviewed the schedule and concur with the sequence of events, activity durations and rates of production implied therein. The Contractor shall be solely responsible for the preparation, revisions and updating of the Construction Schedules.

The Contractor shall be solely responsible for the preparation, revisions, and updating, and bi-weekly submittals to the Contract Officer, of an overall Project Construction schedule and near term schedules for all Projects in the form and within the content prescribed herein:

- A. All schedules prepared by the Contractor shall be subject to review and approval by the Contract Officer or designee. The Contractor's timely execution or performance of all construction related activities and the duration and sequencing of those activities shall be in strict compliance with the agreed upon Project schedules. Means, methods, techniques, and sequences of construction in accordance with the Contract/Project Order Documents shall remain the sole responsibility of the Contractor.
- B. All work performed pursuant to this Contract and Project Order shall be planned and recorded with conventional Critical Path Method (CPM) schedules. The schedules shall be used for coordination, monitoring, and payment of all work under the Contract and Project Order, including all activities of the Contractor, Sub-contractors, Vendors, special equipment, and suppliers.
- C. The Contractor, at the time of the Project Order award, shall have a revised final

construction schedule based on the proposed POD schedule, detailing all required activities with completion dates highlighted for any milestone date(s), and project completion. Once the Project Order is executed, the contractor's schedule shall become the basis for evaluating the progress of the work and for making payments to the Contractor and Subcontractors, per the methods described in Article 10 of these General Conditions, Payments to the Contractor/Wage Rates/Subcontractor's Affidavits.

4.13.02 The overall Project Order schedule shall consist of detailed activities and their restraining relationships, including the milestones and restraints of separate MDAD awarded contracts, if any, as required to complete the Project through site, structural, rough-in, and finish activities. Detailed schedule information, including manpower requirements necessary to complete each element of the Project, must be shown. The overall Project Order schedule shall also reflect scheduling of shop drawing submittals, samples, and approvals (if necessary) as well as fabrication and delivery activities for material and equipment items significant to the scheduling process, including long lead items. The detailed activities shall include appropriate sub-activities with durations and committed crew sizes specified, including all inspections, testing, etc.

4.13.03 Each near term schedule (which shall be updated bi-weekly) shall depict those activities and their duration which must be accomplished during the upcoming two-to-three-week period in order to maintain a rate of progress consistent with the overall Project Order schedule or as directed by the Contract Officer.

4.13.04 The initial overall Project Order schedule and all other project-related schedules shall be prepared using Primavera Project Planning Software Version 8.3, or subsequent version as approved by the Department, in the form of a time-scaled network and associated computer analysis, and shall consist of detailed activities and their restraining relationships as required to complete the Project from initial mobilization through installation of final finishes, equipment, and systems, including all testing and balancing, and shall indicate the following:

- A. Beginning and end date(s) and total duration in calendar days for each activity.
- B. Beginning and end date(s) and total duration in calendar days for each area and significant interrelationships.
- C. Significant milestones, including but not limited to those activities interfacing with activities of other Contractors, MDAD, or others as noted on the consultant schedule or as determined by MDAD.
- D. Identity of each trade contractor, subcontractor, and Project Bid package for each work activity.
- E. Specific location of each work activity.
- F. Detailed schedule of all "Utility Shut-downs" which would impact FAA, MDAD, Customs, F.I.S., airlines, Airport tenants, passengers, including but not limited to: power (Florida Power & Light), telephone (Bell South and/or NextiraOne, LLC), airline computers, communication systems, A/C systems, fire sprinkler and alarm systems, domestic water systems, and sanitary sewer systems.
- G. Sequence and interdependence of all activities required for complete performance of all items of work under this Contract, with special designations for critical path items for each Project.
- H. All network restraints (restraining ties between activities which restrict the start or finish

of another activity). The use of “negative lags” in the restrictions between activities of the overall Project Order Schedule is expressly forbidden.

- I. Significant equipment involved for each work activity. (Including, but not limited to, cranes and similar equipment required to be provided to accomplish the work outlined in the Project Order.)
- J. Shop drawing, samples, and submittals and review dates.
- K. Fabrication and delivery activities for significant material and equipment items with the dates.
- L. Dates for ordering fabrication and delivery of long lead items (materials, equipment, or specialty shop fabricated work).
- M. The dates for the preparation and delivery of Guarantees, Warranties, Operating Manuals, etc.
- N. Dates for testing, balancing, and MDAD maintenance training of equipment and operations.
- O. Equipment or Machinery to be used to perform the activity. Data required includes type of equipment, hours required and hourly rate for each piece of equipment and dollar value per piece of equipment for each activity.
- P. Specific phase of the work (as defined by the Architect/Engineer) (if applicable) using activity codes approved by the Owner.
- Q. Notice to tenant(s) prior to start of the work in occupied or used tenant spaces.

The Contractor shall also provide the following information: work days per week, holidays, number of shifts per day, nighttime work, number of hours per shift, and major equipment to be used.

The Project Order schedule shall be sufficiently detailed to track the progress of each activity and the Project(s), as a whole, on a daily basis. The activities are to be described so that the work is readily identifiable and the progress of each activity can be readily measured. The Contractor shall allocate the total price of each Project Order among the scheduled activities so that each of the Contractor's activities shall be assigned a price and the sum of the prices of the activities shall equal the price of the Project Orders. MDAD will review the price allocations to determine that such allocations are made in accordance with the Contract Documents and that each allocation reasonably reflects the value of each activity. The Contractor shall revise its activity price allocation if required to do so by MDAD, and once the allocations are accepted by MDAD, they shall not be changed without prior written approval of the Contract Officer.

4.13.05 The Architect/Engineer will review the Project schedules for compliance with the Project Order requirements as to staging, phasing, and time of completion. Such review of these schedules does not imply the Architect/Engineer's or MDAD's endorsement of or acceptance of responsibility for each and every activity duration or sequence of activities.

4.13.06 The then currently-approved overall Project Order schedule shall be the basis for interpreting any and all time-associated provisions of the Project Orders.

4.13.07 The Project Order schedule shall be updated once or twice a month by the Contractor, depending on the Project duration. This update shall result in a report that will indicate the

remaining duration, and percent complete for each activity. This report together with the other required reports will be the basis for the Contractor's Requisition for Payment.

The Contractor is responsible for having information and data at each schedule meeting (or on dates established by MDAD) to verify the status of all activities. The Contractor shall prepare and provide at each scheduled meeting five copies, or as required, of a network plot of the overall and near term schedule indicating the physical status of all activities as of the date of the update and preliminary copies of the information specified in this Article 4 for each Project.

4.13.08 The Contractor shall also prepare a narrative progress summary describing the following:

- A. Physical progress during the report period,
- B. Plans for the forthcoming report period,
- C. Potential delays and problems and their estimated effect on performance schedule and overall completion and an explanation of corrective action taken or proposed and its expected effect,
- D. Identity of current Critical Path items and those items of work with less than 15 days of float, listed by early completion,
- E. Current projected start and completion dates,
- F. Percentage progress during the last period of major activity,
- G. Percentage of Project Order completion,
- H. Percentage of total schedule period consumed,
- I. Whether on, ahead of or behind schedule,
- J. Amount of remaining schedule contingency,
- K. Goals for next reporting period (such as progress on activities, or problems),
- L. Proposed revisions to logic and relationships of noncritical activities, and
- M. A financial report with cash expenditure curves and other appropriate graphics. The Contractor shall submit four copies of the narrative progress report to MDAD once a month.

4.13.09 Each Contractor's Requisition for Payment must be accompanied by the updated report stated in Article 10 of these General Conditions, which shall be based on the update of the approved Contract overall and near term schedule as necessary. Requisitions for Payment will not be processed unless properly submitted as indicated.

4.13.10 The overall Project Order schedule may be revised from time to time as conditions may require and as accepted by the A/E and MDAD Contract Officer provided, however, that nothing in this Article shall be construed to authorize or approve any extension of time or increase in Project Order price. It shall be expressly understood and agreed that time extensions, and increase in Project Order price, if any, may only be granted in accordance with Articles 7, 8, and 11 of these General Conditions.

4.13.11 The Contractor serves in the role of both general contractor and Contractor. It is, therefore, incumbent upon the Contractor to be solely responsible for maintaining the approved Project Order schedule. Any delays as a result of Subcontractor's lack of performance or the faulty

or untimely fabrication and delivery of equipment or materials is the Contractor's sole responsibility and shall be used as a basis for any compensatory damages incurred by the County.

4.13.12 In the event any activity is behind schedule and, unless a time extension is claimed and granted in accordance with the applicable requirements of the General Conditions, the Contractor shall reschedule each such activity so as not to delay the Project Order completion. If such rescheduling is not accomplished within a reasonable time, the Contractor, the A/E, the Field Representative, and the Owner's representative (if other than the Field Representative) shall meet to develop a program to bring each such activity back on schedule. Said program may include any or all of the following:

- A. Carrying out the activity with the crew size shown on the overall Project Schedule, using overtime/prime time work to complete or bring current the activity;
- B. Increasing the crew size(s) and/or number of shifts to a level sufficient to complete or bring current the activity;
- C. Any combination of activities which will complete or bring current the activity.

4.13.13 Construction Cost Estimate: The Contractor has the responsibility to develop a construction cost estimate/proposal for any proposed work which includes an addition to or deletion from the Project Order as awarded. The cost estimate/proposal will define the cost/time to perform the additional or modified scope of work and is to be in sufficient detail to permit analysis of the Contractor's or Subcontractors' proposals and to allocate prices to scheduled activities.

4.14 SAFETY, FIRE PREVENTION, AND ENVIRONMENTAL CONSIDERATIONS

4.14.01 Contractor shall comply with the rules and regulations of the Florida Department of Commerce regarding Industrial Safety under Section 440.56 Florida Statutes, Safety Rules Workers Compensation Laws and with United States Williams Steiger Occupational Safety and Health Act of 1970 commonly referred to as "OSHA", as applicable, and other national consensus standards of safety pertaining to particular trades.

The Contractor shall be solely responsible for developing and implementing a "Site-Specific" Safety and Health Plan ("S&H Plan") pursuant to the terms of this Contract, and shall at a minimum, conform and comply with all Laws governing safety and health in the work place.

Prior to commencing any work at the work site, the Contractor shall submit its S&H Plan which shall include, but is not limited to, the following:

- Hurricane Plan
- Identification of competent person
- Safety statistical data, which will include severity and lost-time frequencies
- Contractor daily project safety inspections
- Project Emergency Notification List (updated as needed)
- Equipment certification and daily inspection
- Trenching inspection
- Confined Space Entry Permitting and coordination

- Maintenance of Traffic Inspection
- Hazard Communication
- Work zone safety and flagging
- Lockout/Tagout Coordination
- Fire prevention, hotwork permitting, and Fire Watch

4.14.02 The Contractor shall not endanger, by cutting, digging, loading or otherwise, the structural integrity or overall safety of any structure, installation, facility, work in progress or work completed.

4.14.03 Materials stored upon the Site or along the route of the work shall be so placed and the work shall be so conducted as to cause no obstruction to traffic other than as provided in these Contract Documents.

4.14.04 The Contractor shall mark all equipment with three foot square orange and white flags whenever such equipment is operating on the Air Operations Area (AOA) or in proximity to flight zones. Equipment employed on the AOA shall be withdrawn from work areas at the close of the work day. Equipment shall not be parked in any location where it will constitute a hazard to aircraft or aircraft operations. Equipment shall be night marked and lighted as required by the Technical Specifications and FAA Advisory Circular 150/5210-5 "Painting, Marking and Lighting of Vehicles Used on an Airport" latest edition.

4.14.05 Equipment will not be allowed on the airfield which is not properly equipped to contain all material, debris, etc. Constant inspections will be performed by the Contractor to insure a continuous, clean and safe aircraft operating area at all times.

4.14.06 The Contractor shall obtain from MDAD Airside Operations, for work at Miami International Airport, or from the airport manager for work at other MDAD General Aviation Airports, all equipment height limitations. Approval for use of cranes and other high equipment may be given, provided that the Contractor submits full data and scheduling to MDAD for approval by the FAA. Contractors are cautioned that the FAA processing of this request may take eight (8) weeks from the time of application.

4.14.07 The Contractor is cautioned to allow for such conditions as having to drop crane boom(s) at times required by the FAA (nighttime and inclement weather), providing 2-way radio communications with the FAA control tower, and possible disruption of crane use to accommodate special airport operations requirements.

4.14.08 The Contractor shall furnish and erect signs, barricades, lights, flags and other protective devices as may be required, to protect aircraft, pedestrian and vehicular traffic and the work. All such signs, barricades, lights, flags and other protective devices shall be in accordance with the requirements of the Contract and Project Order Documents.

4.14.09 The Contractor shall furnish flaggers in sufficient numbers to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new work. Such flaggers shall be furnished on a twenty-four (24) hour basis when conditions and/or airport operations require.

4.14.10 The Contractor and all Subcontractors shall be governed by the provisions of the Miami-Dade County, Florida, Fire Prevention and Safety Code, and shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private, particularly when gas or arc welding and torch cutting is taking place. Open flames (except approved torch cutting equipment), including the use of flambeaux, are strictly prohibited.

4.14.11 The Contractor shall not use explosives on the Site, nor allow explosives of any type or nature to be brought upon the Site of the construction, without the prior express written approval of the Miami-Dade Aviation Department. Any such authorized use of explosives shall be governed by the provisions of Chapter 13, Code of Miami-Dade County, and other governing agencies in their use or storage. Subject to conditions outlined below, the Owner will permit the use of powder actuated fasteners and tools in connection with airport construction:

- A. Permission to use powder actuated fasteners and tools will in no way relieve the Contractor or its Subcontractors from responsibilities under its Contract relating to liability for damages arising out of the use of such equipment.
- B. Architect/Engineer approval must be given specifically, and in writing, for the use of such fasteners for each and every application for which the Contractor desires to use this type of fastener. The Contractor shall submit to the Architect/Engineer for approval all structural and operational data pertinent to each and every application, such data to include, but not be limited to the following:
 - (1) Make and model number of the powder actuated tool(s).
 - (2) Manufacturer's brochure completely describing the proposed fastening system.
 - (3) Sufficient drawings, cross-sections, and/or descriptive specification data to fully define the location(s) where powder actuated fasteners are intended for use. This information shall include the type and thickness of material into which the fasteners are to be driven, and the penetration of the proposed fasteners.
 - (4) The name, address and social security number of each operator of the powder actuated tool(s) who has been certified by the manufacturer as a qualified operator of the equipment. The Contractor's submittal shall include an affidavit stating that only the certified operator(s) named shall be permitted to use the powder-actuated tool(s).
- C. Only powder actuated tools of a safe, low-velocity, piston type which comply with all the requirements of OSHA regulations shall be allowed.
- D. An operator of powder-actuated tools shall have on his/her person at all times the manufacturer's card certifying that he is a qualified operator. The Architect/Engineer shall immediately suspend any work being conducted by operators not having such certification on his/her person.
- E. The Architect/Engineer the County or the Owner may suspend any work in progress using powder actuated fasteners and tools, if such powder actuated work is deemed to be unsafe, or is considered to be detrimental to the operation of the airport. Failure of the Architect/Engineer, or the Owner to suspend any such work shall not impose any liability on the Architect/Engineer, or the Owner.
- F. Powder actuated fasteners are specifically prohibited from use in pre-stressed concrete

structural members. The Architect/Engineer may approve same after reviewing submittal data and after being satisfied as to procedures to be used to locate pre-stressed tendons.

- G. Powder actuated fasteners will be disallowed when, in the opinion of the Architect/Engineer, or the Owner, the noise from the powder-actuated tool would create disruption of airport operations.
- H. This specification is intended to encourage the use of economical, efficient, structurally sound fastening systems, and to use them in a manner that is safe for the operators, other workmen, the public, and the structure.

4.14.12 Environmental Considerations:

- A. Air pollution: The Contractor shall use emissions control devices on gasoline or diesel powered construction equipment and minimize idling and unnecessary operation of equipment to prevent and control air pollution in accordance with criteria issued by Federal, State and local agencies having relevant jurisdiction.
- B. Dust Control: The Contractor shall employ appropriate measures to control the generation and accumulation of dust at the site. Sprinkling with water or other suitable means shall be used to prevent the dispersal of substantial amounts of dust produced by demolition and other work generating dust. Collection and removal measures shall be employed to prevent accumulation of dust deposits.
- C. Asbestos: When asbestos materials are encountered or are suspected to be present in the area of the work, the Contractor shall immediately shut down all work in the area and notify the Architect/ Engineer of the asbestos discovery. The Contractor may be required to prepare and execute a program for asbestos disposal, abatement or encapsulation with the guidance and approval of the County's asbestos consultant. The program shall meet all applicable Federal, State and County regulations relating to asbestos removal, encapsulation, protection of workers and public and any other relevant procedures. Unless otherwise provided in the Contract and Project Order Documents, all such work will be authorized by an appropriate Work Order or Project Order Modification.
- D. Flammable Materials: The Contractor shall store petroleum products, paint and other flammable materials in designated locations and in compliance with fire safety regulations. Spillages shall be collected and legally disposed of promptly and in a manner consistent with fire safety regulations and environmental protection regulations issued by Federal, State and local agencies having relevant jurisdiction.
- E. Noise Controls: The Contractor shall minimize noise caused by work operations. The Contractor shall provide machinery and equipment fitted with efficient noise-suppression devices for protection of employees and public and he shall schedule working hours and operations to minimize public disturbance in vicinity of work. The Contractor shall employ sound barriers as directed by the Architect/Engineer.
- F. Fumes: The Contractor shall not conduct operations that will result in the production of noxious, flammable, explosive or odoriferous fumes in locations or in quantities that constitute a hazard to health or safety or an objectionable environment for workers or public.
- G. Hydrocarbons: The Contractor is hereby forewarned of a potential hazard peculiar to the working conditions on airport property consisting of the presence of hydrocarbon gas and its fumes in, on, or about the ground water table when exposed by open trench or pit

excavation. Should the Contractor encounter the presence of hydrocarbon liquid or gas in an open excavation, it shall immediately cease all work in and about the excavation, notify the Architect/ Engineer of the presence of the hydrocarbon and await further instructions before proceeding with its operations in the affected area. The Contractor shall not perform any open-flame operations (such as torch-cutting, or electric welding, etc.) in or about any such open excavation without first having received approval of the Airport Fire Division, which shall have the authority to require the Contractor to provide, on a standby basis, such fire extinguishing apparatus and personnel as it deems appropriate. The Airport Fire Division shall have the authority to direct the Contractor to cease such operations and take whatever remedial actions are deemed appropriate and necessary, when, in its representative's opinion, continuing the work would jeopardize airport property, facilities, equipment or personnel.

H. Clean Air and Water Pollution Control Requirements for all Construction Contracts and Subcontracts exceeding \$100,000.00:

All contracts/projects requiring excavation are required to abide by MDAD specification P-160.

The Contractor and all its Subcontractors agree:

- (1) That any facility to be used in the performance of the Contract or subcontract or to benefit from the Contract is not listed on the Environmental Protection Agency (EPA) list of violating facilities;
- (2) To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereof.
- (3) That, as a condition for the award of this Contract, the Contractor or Subcontractor will notify the Owner of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract and Project Order is under consideration to be listed on the EPA List of Violating Facilities;
- (4) To include or cause to be included in any construction Contract or Subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

4.14.13 Unless otherwise provided for in Division 1 or in the Technical Specifications, no additional payment will be made to the Contractor for signs, barricades, lights, flags, watch persons, flaggers, fire extinguishing apparatus and personnel, and other protective devices.

4.14.14 Florida Trench Act: The Contractor and all its Subcontractors performing trench excavation on this Contract shall comply with the Florida Trench Safety Act (Sections 553.60-553.64, Florida Statutes) and the Occupational Safety and Health Administrations' (OSHA) trench excavation safety standards, 29 C.F.R., s.1926.650, Subpart P, including all subsequent revisions or updates to these standards as adopted by the Department of Labor and Employment Security (DLES). The Contractor shall consider all available geotechnical information in its design of the trench excavation safety system. Inspections required by OSHA trench excavation safety standards shall be provided by the Contractor.

4.14.15 Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed. The Contractor shall replace in kind the vegetation, shrubs and grass damaged at its own expense.

4.15 AS-BUILT INFORMATION

4.15.01 A complete set of Project Order Documents will be supplied to the Contractor for recording As-Built information. These Project Order Documents shall be kept on the job site at all times and all changes marked in red as the work progresses. The Contractor shall submit two (2) hard copies and two (2) Computer-Aided Design and Drafting (CADD) copies on Compact Disc (CD) for As-Built Drawings. The Contractor shall use the latest version of CADD compiled format; External Reference (X-REF) files are not acceptable. The Field Representative or the A/E will coordinate the review of As-Built Drawings/Specifications at least weekly by the responsible architectural or engineering discipline(s). An As-Built Drawings/Specifications Review Log will be signed by each architectural or engineering discipline representative attesting to its review of the As-Built Drawings/Specifications. A copy of the log will be attached to the minutes of the Weekly Construction Meeting. The Field Representative or the A/E shall report on the status of As-Built Drawings/Specifications at the Weekly Construction Meeting. Upon completion of the work and prior to approval of the Application for Final Payment, the complete set of As-Built Drawings/Specifications will be delivered to the Field Representative or the A/E.

4.15.02 Unless the Architect/Engineer certifies that the status of the As-Built Drawings/Specifications is current as of the date of the Contractor's Monthly Requisition for Payment, an amount equal to the Architect/Engineer's estimated cost to the Owner to make them current will be deducted from the Monthly Requisition for Payment. Certification by the Architect/Engineer of the current status does not certify that the information contained in the As-Built Drawings/Specifications is accurate.

4.15.03 The Contractor shall provide complete and accurate As-Built information to the same degree of detail as the Project Order Documents. Dimensioned features shall be re-dimensioned as necessary in As-Built submittals and unaltered design dimensions clearly verified. Work requiring survey layout will be recorded by submission of a Florida Registered Land Surveyor's certified survey.

4.15.04 Incomplete or incorrect As-Built information shall constitute "faulty workmanship" subject to the remedies set forth in the Contract and Project Order Documents including those provided under the Performance and Payment Bond.

4.15.05 The Contractor shall submit, as a part of its monthly pay request, its certification that As-Built drawings/Specifications have been brought up to date as specified in this Article, that supplemental data, surveys, etc. have been recorded and that records are transmitted to the Architect/Engineer or available for review. The maintenance and updating of As-Built records shall constitute an essential step in the completion of the various items of work under the Project Order which shall be reflected in the payment to be made for such items of work.

4.16 QUALITY OF WORK AND MATERIALS

The Contractor warrants to the Owner, and the Architect/Engineer that all materials and equipment furnished under this Contract and Project Order will be new unless otherwise specified, and that the work will be of good quality, free from faults and defects in materials and workmanship for a

period of one year from the date of Substantial Completion, unless otherwise required under this Contract and Project Order. Work not conforming to these standards may be considered defective. If required by the Architect/Engineer, or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.17 SIGNS

4.17.01 Contractor sign or other advertising material shall require the approval of the Department prior to installation.

4.17.02 The Contractor shall provide a construction sign as called for in the Contract and Project Order Documents, unless directed otherwise by the MDAD Project Manager.

4.18 EMPLOYEE FOOD SERVICE

The Contractor and its Subcontractors shall not bring on to the airport any food or beverage catering trucks, vending machines, or other serving facilities.

4.19 PAYMENT OF WAGE RATES AND BENEFITS / LIVING WAGE

The Contractor and each Subcontractor under him shall pay or cause to be paid, to all employees under them, the wages and benefits as reflected in the Wage and Benefits Schedules incorporated into the Project Bid Forms and Special Provisions of these Contract /Project Order Documents. The Contractor and each Subcontractor under him shall comply with all of the requirements of the Miami-Dade County Wage Rates and Benefits Requirements, including those Living Wage Requirements which may be established under Section 2-8.9 of the Code of Miami-Dade County, as applicable, and which may be found at: <http://www.miamidade.gov/smallbusiness/living-wage-reports.asp>.

4.20 LEED & SUSTAINABLE BUILDINGS

4.20.01 If this project has been assigned a LEED category, the Contractor shall meet the required LEED Green Building Rating System, established by the U.S. Green Building Council (USGBC) including but not limited to:

- (1) Credit Responsibilities must be documented during construction (record keeping, decision making, calculations, submit documentation to USGBC)
- (2) Construction Waste Management
- (3) Construction IAQ – (meet or exceed during construction and occupancy the “SMACNA IAQ Guidelines for Occupied Buildings Under Construction”, flush out, air quality testing)
- (4) Comply with Division 1 and Technical Specifications with regard to Sustainability and/or LEED certification.
- (5) Erosion/Sedimentation Control
- (6) Local Procurement Efforts

4.20.02 Contractor shall inform the Owner of any other/additional opportunities in the project elements to meet LEED certification requirements and/or create other opportunities associated with green building practices.

4.21 CONTRACTOR QUARTERS:

The MDAD shall furnish office space for the Contractor for Part I services only within the limits of MIA or other airports as necessary. If Contractor desires additional locations or office space, Contractor shall be solely responsible for all costs associated with this space.

4.22 JOB OPPORTUNITY CLEARINGHOUSE

The Contractor is hereby advised of Resolution Nos. R-937-98, R-1145-99 and R-1395-05, Clearinghouse for Posting Notice of Job Opportunities Resulting from the Construction of Improvements on County Property. The procedures direct the Contractor to deliver a notice of job vacancy(ies) created as a result of this construction work to the Internal Service Department, Small Business Development Division, 111 NW 1st Street, Suite 1900, Miami, FL 33128. The job vacancy notices should be delivered within ten (10) working days following award of the Contract and throughout the duration of the Contract as vacancies may arise. Internal Service Department, Small Business Development Division will in turn distribute said job announcements to all Miami-Dade County facilities participating in the notification requirements of Resolution Nos. R-937-98 and R-1145-99.

4.23 TELEPHONE LOGS

Pursuant to Section 11A-43(4) of the Code, Contractor must maintain telephone logs of all telephone calls to and from Subcontractors and suppliers. These logs shall contain the name of the Subcontractor or supplier, the time and date of the call, the names of the persons contacted, a description of the work to be subcontracted or of the material to be furnished, and the dollar amount of the quotation. Telephone logs shall be made available to County personnel upon request.

4.24 EMPLOY MIAMI-DADE PROGRAM

Contractor is hereby notified that the County will consider whether the Contractor made its best reasonable efforts to promote Employ Miami-Dade on this Contract, as defined in AO 3-63, as a part of the County's evaluation and responsibility review of the Contractor for new County contract awards.

ARTICLE 5
SUBCONTRACTOR**5.1 SUBCONTRACTING PORTIONS OF THE WORK**

5.1.01 The Contractor shall subcontract the Work to competent Subcontractors. Such Subcontractors shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in Chapter 489 of the Florida Statutes and Chapter 10 of the Code of Miami- Dade County.

5.1.02 Nothing contained herein shall create any contractual relationship between the Owner and any level of Subcontractor, of materialman or of supplier.

5.1.03 All Work performed for the Contractor by a Subcontractor shall be pursuant to an

appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that:

- A. Preserve and protect the rights of the Owner, the Architect/Engineer and the Field Representative under the Contract and Project Order with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- B. Require that such Work be performed in accordance with the requirements of the Contract and Project Order Documents;
- C. Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment;
- D. Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor or Supplier where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract and Project Order Documents for like claims by the Contractor upon the Owner; and
- E. Require specific consent to the provisions of the Contract and Project Order Document.

5.1.04 Contractor shall not require bonding from Subcontractors for projects under \$200,000.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.1 METHODS OF SAMPLING AND TESTING

6.1.01 Sampling and testing of all materials shall be as set forth in the Contract and Project Order Documents. The Owner will only perform quality assurance testing. All quality control testing and analysis shall be the sole responsibility of the Contractor, at its own expense, and any other testing that may be the direct responsibility of the Contractor as set forth in the Contract and Project Order Documents.. The Contractor shall furnish the required samples without charge. The Contractor shall give sufficient notification to the Field Representative or the A/E of the placing of orders for or receipt of materials to permit testing. The cost of any failed test shall be borne by the Contractor.

6.1.02 The Field Representative or A/E may inspect, at its source, any specified material or assembly to be used in the Work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the Work and to obtain samples required for its acceptance of the material or assembly

Should the Field Representative or A/E conduct plant inspections, the following shall exist:

- A. The Field Representative or the A/E shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.
- B. The Field Representative or the A/E shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of materials being furnished.
- C. If required by the Field Representative, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or

working space should be conveniently located with respect to the plant.

6.1.03 It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Field Representative or the A/E shall have the right to reject only material which, when retested, does not meet the requirements of the Contract and Project Order, Plans, or Specifications.

6.1.04 All inspections and testing of materials, assemblies and equipment will be performed in Miami-Dade County. If the Contractor's material or manufacturing sources are such that inspections or tests cannot be made in Miami-Dade County, all traveling and lodging expenses in connections with such inspections and testing shall be borne by the Contractor.

6.2 INTERFERENCE WITH EXISTING UTILITIES, CONTROLS, FAA NAVAIDS, AND NOAA (WEATHER BUREAU) FACILITIES

6.2.01 Attention of the Contractor is specifically directed to the need for careful control of all aspects of his work to prevent damage to cables, ducts, water mains, sewers, fire mains, telephone cables, fuel lines, radar cables, and any other underground utilities and structures.

6.2.02 Before commencing work in any given area, the Contractor shall carefully review the Plans, survey and search the site for utility locations, and determine possible utility conflicts. All known above and underground utilities, including, but not limited to, electrical, telephone, communications, lighting cables, fuel lines, sewer, drainage and water pipes, and other existing structures, etc., are shown on the Plans, but no guarantee is implied that the information is accurate. It shall be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such utilities or structures. The Contractor shall, in conjunction with the Field Representative, or the A/E make a thorough search of the particular location for underground utilities, structures, etc., whether or not shown on the drawings, before excavation work is commenced in any particular location. To this end the Contractor shall provide and maintain throughout the term of the Contract, electronic and magnetic detecting devices capable of locating underground utilities, etc. The Contractor shall, after locating primary and critical existing utilities, mark their location with indelible material or other means satisfactory to the Field Representative or the A/E and maintain above ground physical identification during the work.

6.2.03 In the event of damage to, or accidental disruption of utilities or other facilities as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services. Further, the Contractor shall engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until services are restored. The Contractor shall also provide and operate any supplemental temporary services to maintain uninterrupted use of the facilities. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.

6.2.04 The Contractor is hereby informed that there are installed on the Airport, and within the site, FAA NAVAIDS, including without limitations, FAA NAVAIDS such as ASR, IHF, and VHF receivers and transmitters, U.S. Weather Bureau Facilities, and electronic cables and controls relating to such NAVAIDS and facilities. Such NAVAIDS, Weather Bureau, and other facilities

and electric cables are vital to the operation of the Airport and must be fully protected during the entire Contract. Work under this Contract and Project Order can be accomplished in the vicinity of these facilities and cables only at approved periods of time. Approval is subject to withdrawal at any time because of changes in the weather, emergency conditions, and for any other reason determined by the Field Representative or the A/E. Any instructions to the Contractor to clear any given area, at any time, given by the Field Representative or the A/E or by any authority designated by the Field Representative or the A/E such as the Federal Aviation Administration by any means including radio, shall be immediately executed. Construction work will resume in the cleared area only when such instructions are issued by the Field Representative or the A/E.

6.2.05 Power and control cables leading to and from any FAA NAVAIDS, Weather Bureau, or other facilities will be protected from any possible damage from the elements or due to any crossing of these facilities by equipment.

6.2.06 The Contractor is hereby notified that he shall be required to immediately repair, at his own expense, with identical material by skilled workers, any underground cables serving FAA NAVAIDS, Weather Bureau and other existing FAA facilities which are damaged by his workers, equipment or work, and that prior approval of the FAA must be obtained for materials, workers, time of day or night, method of repairs, and for any temporary or permanent repairs the Contractor proposes to make to any FAA NAVAIDS and facilities damaged by the Contractor.

6.2.07 Damaged FAA cables (controls, NAVAIDS and NOAA) shall be repaired in accordance with the requirements of FAA-SO-STD-71 Specifications "Installation and Splicing of Underground Cables". Prior approval of the Field Representative or the A/E must be obtained for the materials, workers, time of day or night, and for the method of repairs for any temporary or permanent repairs the Contractor proposes to make to any Airport facilities, cables, or existing utilities damaged by the Contractor. The FAA Airways Facilities Sector Field Office (AFSFO) Manager shall have the discretion of determining who shall perform repairs of damaged cables.

6.2.08 NAVAIDS shall be removed from service when construction activities occur within any NAVAIDS critical area, when the runways are closed or when the runway threshold is displaced. If a NAVAID must be removed from service for more than eight hours or for any period of time for three consecutive days, a minimum of fifty (50) day advance notice is required for coordinating the extended facility shutdown with the FAA. Facility shutdown coordination shall be initiated by the Contractor with the Field Representative; the Owner and the Field Representative or the A/E will coordinate the facility shutdown with the FAA AFSFO Manager responsible for this facility.

6.3 EXISTING UTILITIES AND STRUCTURES

6.3.01 The Contractor shall not purposefully disrupt or disconnect any type of utility whatsoever without first obtaining the written permission of the Field Representative or the A/E. If a suitable bypass of such utility cannot be provided, then the Field Representative or the A/E may direct the Contractor to proceed with the work on a twenty-four (24) hour per day basis until such interrupted utility services are completely restored. Requests for disconnection shall be submitted on a fully completed copy of the MDAD "Shut Down Form" delivered to the Owner, through the Field Representative for processing and approval at least fourteen (14) calendar days prior to the time of the requested interruption, and shall state:

- A. The identity of the utility involved.
- B. Justification of the requested disconnect.

- C. The location of the requested disconnect.
- D. The exact date and time at which the disconnect is requested.
- E. The duration of the proposed disconnect.

6.3.02 The Contractor shall take all necessary precautions when using steel treaded equipment or vehicles to protect the pavement surface from damage. Rubber tires or treads shall be used whenever possible. Any damage to pavement caused by Contractor's or Subcontractor's equipment or vehicles shall be repaired by the Contractor in a manner acceptable to the Field Representative or the A/E at no additional cost to the Owner.

6.3.03 The Contractor shall provide protective shoring and sheet piling, as required, at all existing structures, etc., where they may be affected by installation of new work.

6.3.04 During the construction of new structures, and other foundation work, conflicts may occur with existing underground utilities or structures. The Contractor shall call these conflicts to the attention of the Field Representative or the A/E, in writing, immediately. The Field Representative will issue instructions regarding a solution to the conflict. The Contractor shall be responsible for all methods, means, materials, and processes necessary to protect all existing facilities, property, structures, equipment or finishes damaged in any manner through its negligence during execution of the work.

6.3.05 In the event of damage to existing facilities or structures, proposed to remain, relocated or otherwise reused by the Owner as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services at its sole expense. Further, the Contractor shall, when directed by the Field Representative or the A/E, engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until facilities or structures are restored. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.

6.4 AIRFIELD OPERATIONS AREA (AOA) SECURITY

6.4.01 Contractor acknowledges and accepts full responsibility for compliance with all applicable laws, rules and regulations including those of the Transportation Security Administration (TSA), Department of Homeland Security (DHS), Federal Aviation Administration (FAA), Customs and Border Protection (CBP) and MDAD as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

6.4.02 In order to maintain high levels of security at MIA, Contractor must obtain MDAD photo identification badges for all Contractor employees working in the Secured/AOA/Security Identification Display Area (SIDA)/Sterile Areas or any other restricted areas of the Airport. MDAD issues two types of identification badges: photo identification badges and non-photo passes. All employees, except temporary workers (working less than two weeks), will be required to obtain photo identification badges and will be subject to Federal Bureau of Investigation (FBI) fingerprint-based Criminal History Records Check (CHRC). Temporary workers (working less than two weeks) will be issued non-photo passes. At no time will an employee bearing a non-

photo identification badge be authorized in a secured MIA location without being escorted by an MDAD authorized Escort Authority that has been issued a badge with an escort seal by the MDAD ID Section. No other individuals are allowed to escort under any circumstances.

6.4.03 The Contractor shall be responsible for requesting MDAD to issue identification badges to all employees the Contractor requests be authorized access to the Secured/AOA/SIDA/Sterile Areas or any other restricted areas of the Airport and shall be responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Contractor or upon Final Acceptance of the Work or termination of this Contract and Project Order. Contractor will be responsible for all fees associated with lost and unaccounted for badges or passes as well as the fee(s) for fingerprinting and ID issuance.

6.4.04 All employees of the Contractor, Subcontractors, or Trade Contractors who must work within MDAD Secured/AOA/SIDA/Sterile Areas or any other restricted areas at Miami International Airport shall be able to obtain a MDAD identification badges as specified above, which must be worn at all times while within the referenced areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular contractor. MDAD issues the non-photo passes on a daily basis, not to exceed two weeks. In order to obtain a non-photo pass the Contractor must submit a 48 Hour Advance Notification form with required information to the MDAD Security Division, ID Section for all temporary workers requiring access to the MDAD Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport. Non-photo passes will not be issued to temporary workers who have failed a criminal history records check, are in possession of an expired work permit and/or have an expired MDAD ID badge. Each employee must complete the SIDA training program conducted by MDAD and comply with all other TSA, DHS, CBP, FAA or MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. MDAD Security and Safety ID Section regularly provides SIDA Training.

6.4.05 Contractor Ramp Permits will be issued to the Contractor authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any project. These permits will be issued only for those vehicles (including vehicles belonging to the Subcontractor) that must have access to the site during the performance of the Work. These permits will be only issued to company owned vehicles or to company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the Secured/AOA/SIDA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the Secured/AOA/SIDA must have conspicuous company identification signs (minimum of three (3) inch lettering) displayed on both sides of the vehicle.

All vehicles operating within the Secured/AOA/SIDA must be provided with the Automobile Liability Insurance required elsewhere in these General Conditions. Proof of such insurance shall be provided to MDAD Airside Operations Division upon request.

6.4.06 Vehicles delivering materials to the site will be given temporary passes at the appropriate guard gate. Such vehicles shall not be permitted to operate within the Secured/AOA/SIDA without MDAD escort to be provided by MDAD's Operations Division. To obtain an escort, the Contractor shall notify MDAD Airside Operations Division in writing twenty-four (24) hours in advance of such need. These passes shall be surrendered upon leaving the Secured/AOA/SIDA. All vehicles shall be marked with company name to ensure positive identification at all times while in the Secured/AOA/SIDA.

6.4.07 Only Contractor management level staff, supervisors and foremen with pictured MDAD I.D. badges shall be allowed to operate a motor vehicle on the Secured/AOA/SIDA without MDAD escort except when operating a vehicle that requires a specialized license to operate (CDL). Such vehicles must be under MDAD Airside Operations escort when moving on the AOA unless said vehicle is operating in an approved MOT. The Contractor shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the Secured/AOA/SIDA may be withdrawn by the Department due to violation of AOA driving rules or loss of Florida driver's license, or other good causes.

6.4.08 The Contractor agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Contractor or Subcontractor from entering the Secured/AOA/SIDA/Sterile Areas or other restricted areas, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities, including failure to comply with TSA, DHS,, FAA, CBP and MDAD SIDA/access control policies, rules and regulations. Any person denied access to the Secured/AOA/SIDA/Sterile areas or other restricted areas of the airport or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport shall be advised, in writing, of the reasons for such denial.

The Contractor acknowledges and understands that these provisions are for the protection of all users of the Secured/AOA/SIDA/Sterile Areas and are intended to reduce the incidence of terrorism, thefts, cargo tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, DHS, CBP, FAA, and MDAD access control policies and procedures.

6.4.09 The Contractor understands and agrees that vehicle and equipment shall not be parked/stored on the Secured/AOA/SIDA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

6.4.10 The Contractor understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Contractor in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Contractor.

6.4.11 Prior to Substantial Completion of any facility that will permit access to the Secured/AOA/SIDA/Sterile Areas via doors or gates, the Contractor shall either (a) keep all such doors and/or gates locked at all times or (b) position a security guard or designated employee to monitor any door and/or gate that must remain open. Keys to such doors and gates shall be limited and issued only to company employees with a current MDAD picture ID. Door/gate keys shall be numbered and stamped "Do Not Duplicate." The Contractor shall keep a log of all keys issued

and to whom. The log is subject to audit by the Owner. Employees must have their assigned key in their possession at the time of audit. Failure to comply with these requirements can result in monetary fines, loss of access to the Secured/AOA/SIDA/Sterile Areas, and/or termination of this Contract.

6.4.12 Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/DHS/ CBP/FAA.

6.4.13 The Contractor shall ensure that all employees so required participate in such safety, security, and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

6.4.14 Contractor agrees that it will include in all contracts and subcontracts with its MIA Subcontractors, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. Contractor agrees that in addition to all remedies, penalties, and sanctions that may be imposed by TSA, DHS, CBP, FAA or the MDAD upon Contractor's Subcontractors, suppliers, and their individual employees for a violation of applicable security provisions, Contractor shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and penalties arising therefrom, such costs to include reasonable attorneys' fees.

6.4.15 In addition to the foregoing, the Contractor shall be required to comply with the U.S. Customs and Border Protection (CBP) requirements for obtaining CBP seals for those Contractor employees that will be involved within the CBP/FIS environment at MIA. The Vendor shall be responsible for all related fees for required bonding, fingerprinting and background investigations of Contractor personnel.

6.4.16 The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the County or any of its departments. The Contractor shall provide employee(s) competent and physically capable of performing the Work as required. The County may require the Contractor to remove any employee it deems unacceptable.

6.5 MAINTENANCE OF AIRPORT OPERATIONS

6.5.01 The Contractor shall control its operations and the operations of its Subcontractors and suppliers so as not to compromise the airport's security, interfere with airport operations or with aircraft, vehicular or pedestrian traffic, except as may be provided for in the Contract and Project Order Documents.

6.5.02 The Contract is explicitly intended to provide for the maximum degree of safety to aircraft, the general public, airport personnel, equipment and associated facilities, and to the Contractor's personnel and equipment and suppliers, etc., but shall also provide for the minimum interference to the free and unobstructed movement of vehicles and/or personnel engaged in the day to day operation of the Airport and the general public. To this end the Contractor, its Subcontractors and suppliers shall observe all Airport rules and regulations, all other operational limitations which may be imposed from time to time by the MDAD, and shall provide whatever markings, lighting and/or various types of barricades, or other measures which are required to properly identify Contractor personnel, equipment, vehicles, storage areas and any Contractor's work areas or conditions which may be hazardous to the uninterrupted operation of aircraft, airport equipment,

including but not limited to maintenance vehicles and fire rescue vehicles, other vehicles, or personnel or vehicles from any source operating on the Airport. In order to provide the maximum degree of safety on airports during construction, the Contractor shall comply with the provisions of FAA Advisory Circular AC 150/5370-2.

6.5.03 The Contractor shall protect, and shall not interfere with, the operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and within the AOA.

6.5.04 When the Work requires the Contractor to work within the AOA, the Contractor shall coordinate its work with MDAD (through the Field Representative) at least 48 hours prior to the commencement of such work. The Contractor shall not close an AOA until so authorized by the Field Representative or the A/E, or the MDAD PM and until all necessary temporary markings and associated lighting are in place, as specified hereinafter.

6.5.05 When the Work requires the Contractor to work within the AOA on an intermittent basis (intermittent opening and closing of the AOA), the Contractor shall maintain constant communications with the Field Representative and MDAD; obey all instructions to vacate the AOA; obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations within the AOA until the satisfactory conditions are provided.

6.5.06 When the Project Order requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of work, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance of traffic as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flaggers, and other traffic control devices (to protect the public and the work) in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (MUTCD) published by the Florida Department of Transportation. When used during periods of darkness, such barricades, warning signs, and hazard markings shall be suitably illuminated.

6.5.07 When the work requires closing an air operations area of the airport or portion of such area, the Contractor shall furnish, erect, and maintain temporary markings and associated lighting conforming to the requirements of AC 150/5340-1, Standards for Airport Markings.

6.5.08 The Contractor shall furnish, erect, and maintain markings and associated lighting of open trenches, excavations, temporary stockpiles, and its parked construction equipment that may be hazardous to the operation of emergency fire-rescue or maintenance vehicles on the airport in reasonable conformance to AC 150/5370-2, Operational Safety on Airports During Construction, current edition.

6.5.09 The Contractor shall identify each motorized vehicle or piece of construction in reasonable conformance to AC 150/5370-2, current edition.

6.5.10 The Contractor shall furnish and erect all barricades, warnings signs, and markings for hazards prior to commencing work which requires such erection and shall maintain the barricades, warning signs, and markings for hazards until their dismantling is directed by the Field Representative, all as specified in Division 1 of the Project Manual.

6.5.11 Open-flame type lights are not permitted.

6.5.12 If the Contractor fails to maintain the markings, lighting and barricades as required above, the Owner shall cause such safety measures to be installed by others. The cost for such service by others in this regard shall be borne by the Contractor.

6.5.13 The Contractor's responsibility for Maintenance of Traffic shall begin on the day the Contractor starts work on the Project, or on the effective date of the Notice to Proceed, whichever comes first.

6.6 TEMPORARY UTILITIES, DRAINAGE, ETC.

6.6.01 Any temporary utilities, drainage, etc., which may be required to maintain operations of the Owner's or County's facilities, other affected facilities, or the Work in progress during the construction period, shall be furnished, installed and maintained by the Contractor. No such utilities, drainage, etc., shall be installed or operated without the prior approval of the Field Representative or the A/E. At the completion of the Work, all temporary utilities, drainage, etc., shall be removed.

6.6.02 All fees, charges, and cost for labor and materials, including the furnishing of temporary equipment and the connection(s) thereof, required for the maintenance of temporary utility services in lieu of existing utilities services disrupted by the work shall be furnished by the Contractor at his expense, except where otherwise specified. When such temporary services are no longer required, the Contractor shall remove all temporary equipment and connections and leave the facilities and existing permanent apparatus in as good condition as existed prior to making such temporary connections.

6.6.03 The Contractor shall furnish temporary heat or air-conditioning wherever required to prevent injury to work and materials through dampness and cold. Use of open salamanders or any temporary heating devices which may be fire hazards or may cause smoke damage to finished work will not be permitted. Minimum and maximum temperature requirements specified for various materials shall be strictly observed by the Contractor.

6.6.04 Unless otherwise specified in the Contract Documents, the Contractor shall provide all utility services (e.g. telephone, power, lighting, water, sewer), necessary for the performance of its work, in accordance with the requirements of Division 1 of the Project Manual

6.7 PERMITS, LAWS, TAXES, ROYALTIES AND REGULATIONS

6.7.01 The Contractor shall apply for and procure all permits, certificates, inspections and licenses, pay all charges, taxes, royalties and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work, except that the Contractor will be reimbursed by the Owner for the actual costs of permit fees including the Planning, Development, and Regulation Permit Fees, Miami-Dade Regulatory and Economic Resources (RER), Miami-Dade Water and Sewer Department (WASD), Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP), South Florida Water Management District (SFWMD) United States Army Core of Engineers (USACE) or any successor agencies or additional entities permit fees, license fees, impact fees, and Inspection Fees paid to any governmental entity in connection with the construction of the project; reimbursement will be made from funds available under the applicable Allowance Account for Projects.

6.7.02 The Owner will not pay or reimburse the Contractor for any penalty(ies) relating to permits or fees as a result of the Contractor's failure to timely obtain all permits, inspections, approvals, etc.

6.7.03 The Contractor shall observe and comply with all applicable Federal, State, County and other laws, codes, ordinances, rules and regulations of the Federal, State and County governments, and any and all programs developed in compliance therewith, in any manner affecting the conduct of the Work.

6.7.04 Dewatering of excavation shall be performed in accordance with the applicable provisions of RER, Florida FDEP, and SFWMD Dewatering Permits and the requirements of Division 1 (Standard Technical Specifications) of the Project Manual.

6.7.05 All construction activities shall be subject to the pollution prevention requirements established under the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act regulating storm water discharges from construction sites.

6.7.06 If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, the County, the A/E, the Field Representative, and the Consulting Engineers from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.

6.7.07 Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior. Should the Contractor encounter, during its operations, any building, part of a building, structure, or object that is incongruous with its surroundings, he shall immediately cease operations in that location and notify the Field Representative or the A/E. The Field Representative or the A/E will immediately investigate the Contractor's finding and will direct the Contractor to either resume its operations or to suspend operations as directed.

Should the A/E or the Field Representative order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such extra work shall be covered by an appropriate Work Order or Project Order Modification. If appropriate, the delay shall be considered a Compensable Excusable Delay.

6.7.08 Upon completion of all of the work contemplated under the Contract and Project Order Documents, the Contractor shall obtain and deliver to the A/E or Field Representative such Certificate(s) of Occupancy or Certificate of Completion as required by the Florida Building Code.

6.7.09 The Contractor shall be subject to and comply with all the provisions of Miami-Dade County Code Sections 2-8.4.1 and 10-38. A breach of the clauses contained in the Contract and Project Order adversely affecting the performance of the Contractor on this project may be grounds for the initiation of debarment proceedings.

6.7.10 The Contractor shall protect the manatees whenever work is being performed within

waterways. Manatees are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973 and the Florida Manatee Sanctuary Act of 1978 and that any harming, harassing or killing manatees will subject the Contractor and his personnel to civil and criminal penalties established under the above listed acts. The following are some of the provisions to be undertaken by the Contractor during the work in waterways:

- A. Turbidity curtains shall be made of material in which manatees cannot become entangled. Said curtains shall be properly secured, and shall be regularly monitored to avoid manatee entrapment. Curtains shall not block manatee entry to or exit from essential habitat.
- B. All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in water adjacent to the property where the draft of the vessel provides less than a four foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- C. All in-water construction activities shall cease upon the sighting of a manatee(s) within one hundred (100) yards of the Project area. Construction activities will not resume until the manatee(s) has departed the Project area.
- D. Any collision with and/or injury to a manatee shall be reported immediately to the "Manatee Hotline" 1-888-404-FWCC and to the U.S. Fish and Wildlife Service, Vero Beach Office (772) 562-3909, and to RER (786-315-2000).
- E. The Contractor shall maintain a log detailing sightings, collisions, or injuries to manatees should they occur during the Contract and Project Order period.
- F. Following Project completion, a report summarizing the above incidents and sightings shall be submitted to the Florida Department of Natural Resources (FDNR), Marine Research Institute Office of Protected Species Research, 100 Eighth Avenue, Southeast, St. Petersburg, Florida 33701-5095, to the U.S. Fish and Wildlife Service, 3100 University Blvd., Jacksonville, Florida 32216, and to DERM within sixty (60) days of Project completion.
- G. Prior to commencement of construction within a waterway, each vessel involved in the construction shall display in a prominent location, visible to the operator an 8 1/2" x 11" temporary placard reading, "MANATEE HABITAT/IDLE SPEED IN CONSTRUCTION AREA". In the absence of a vessel the placard will be located prominently adjacent to the issued construction permit. A second temporary 8 1/2" x 11" placard reading, "WARNING MANATEE AREA", shall be posted in a location prominently visible to water related construction crews. Temporary notices shall be removed upon completion of construction work.

6.7.11 The Owner may, at its option, issue the Contractor Authorization to Pull a Planning, Development, and Regulation Permit prior to the Notice to Proceed. Authorization to Pull a Planning, Development, and Regulation Permit is not a Notice to Proceed.

6.8 AUDIT RIGHTS AND REVIEW OF RECORDS

6.8.01 The Contractor shall, during the term of this Contract and for a period of five years thereafter, allow the Owner and its duly authorized representatives to inspect all payroll records, invoices for materials, books of account, project correspondence and project-related files and all relevant records pertinent to the Contract and Project Orders.

6.8.02 The Owner retains the right to audit accounts and access all files, correspondence and documents in reference to all work performed under this Contract. The Owner shall be provided full access upon request to all documents, including those in possession of Subcontractors or suppliers during the work and for a period of five years after the completion of the Work. In case of any litigation regarding this project, such rights shall extend until final settlement of such litigation. Failure to allow the Owner access shall be deemed a waiver of Contractor's claims.

6.8.03 The Contractor shall maintain a banking account within Miami-Dade County for all payments to Laborers, Subcontractors and Vendors furnishing labor and materials under this Contract. All records shall be maintained in Miami-Dade County for the term of this Contract and Project Orders.

6.8.04 Office of the Inspector General.

- A. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all, on any County/Trust contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless this Contract is federally or state funded where federal or state law or regulations preclude such a charge or where such a charge is otherwise precluded by Special Condition.
- B. The Miami-Dade Office of Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, Project Bid specifications, (Project Bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.
- C. Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, Project Bid specifications, (Project Bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.
- D. The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and

with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (Project Bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

- E. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition, Project Bid preparation, and performance of this Contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:
- (1) If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- F. The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this contract.
- G. Nothing in this section shall impair any independent right to the County to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Contractor or third parties.
- H. Exception: The deduction of one quarter (1/4) of one (1) percent from each progress payment to pay for the functions of the Office of Inspector General is inapplicable because this Contract is either funded by aviation revenue or financed by aviation revenue bonds. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above.

6.8.05 PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including but not limited to: (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (County) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the

information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement.

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 MIAMI DADE AVIATION RECORDS CUSTODIAN, JORGE MIHAIC (305) 876-0933; JMIHAIC@MIAMI-AIRPORT.COM; MIAMI-DADE AVIATION DEPARTMENT, RISK MANAGEMENT & SUPPORT SERVICES, P.O. BOX 025504, MIAMI, FLORIDA 33102-5504.

6.9 GOVERNING LAWS

The Contractor shall, during the term of this Contract and Project Orders, be governed by the statutes, regulatory orders, ordinances and procedures of the United States of America, the State of Florida, Miami- Dade County, and MDAD. In addition the Contractor agrees to abide by all federal, state, and County procedures, as may be amended from time to time, regarding how documents to which the Consultant has access are handled, copied, and distributed, particularly documents that contain sensitive security information that are controlled under the provisions of 49 CFR PART 1520 et al.

6.10 SUCCESSORS AND ASSIGNS

The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract and in the Project Order Documents. The Contractor shall not assign the Contract or Project Order(s) or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due the Contractor hereunder, without the previous written notice to the Owner.

6.11 WRITTEN NOTICE

6.11.01 Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to those who give the notice.

6.11.02 Written notice to the Owner shall be deemed to have been duly served if delivered in person, delivered at or sent by registered or certified mail to the Aviation Department, Miami International Airport, Facilities, in care of Assistant Aviation Director of Facilities Management, P.O. Box 025504, Miami, Florida 33102-5504.

6.12 NON-DISCRIMINATION - EQUAL EMPLOYMENT OPPORTUNITY

6.12.01 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex national origin, religion, ancestry, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as

victim of domestic violence, dating violence or stalking. The Contractor shall take affirmative action to ensure that Applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post notices setting forth the provisions of this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.

6.12.02 The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

6.12.03 The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.12.04 The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended and with the rules, regulations and relevant orders of the Secretary of Labor.

6.12.05 The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended and the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records and accounts by the County, the Federal Aviation Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6.12.06 In the event of the Contractor's non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, as amended or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law.

6.12.07 The Contractor shall include the provision of Paragraphs 6.12.01 through 6.12.07 in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the United States may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the United States, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6.13 FAA SPECIAL PROVISIONS – AVIATION CONTRACTS

A). Compliance with Nondiscrimination Requirements: During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contact Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by

a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123 (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

B). All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The [contractor | consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [contractor | consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

C). All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

6.14 NON-DISCRIMINATORY ACCESS TO PREMISES AND SERVICES

The Contractor, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking shall be excluded from participating in, denied benefits of, or be otherwise subjected to discrimination in the use of the premises, including the construction of any improvements, or services provided by the Contractor; (2) the Contractor shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (3) the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation as amended from time to time; and (4) the Contractor shall obligate their Subcontractors and sub-consultants to the same nondiscrimination requirements imposed on the Contractor and assure said requirements are included in those sub-agreements.

6.15 COMPLIANCE WITH LEGISLATIVE REQUIREMENTS AND PROCEDURES

The Contractor agrees to comply with all applicable legislation, as may be amended, through the term of the Contract, including any extensions or renewal thereof, including but not limited to the following:

1. Miami-Dade County Responsible Wages & Benefits
 - a. Miami-Dade County Code Section 2-11.16
2. Community Workforce Program Provisions
 - a. Implementing Order 3-37
 - b. Miami-Dade County Code Section 2-1701
3. Residents First Training and Employment Program
 - a. Miami-Dade County Code 2-11.17

- b. Implementing Order 3-61
4. Employ Miami-Dade Program
 - a. Administrative Order 3-63
5. Procedures for Requesting Construction Related Records from MDAD
6. Disadvantaged Business Enterprise (DBE) Federal Requirements and DBE Participation Provisions
7. Small Business Enterprise (SBE) Program
 - a. Miami-Dade County Code Sections 2-8.1.1.1.1, 2-8.1.1.1.2, 10-33.2, 2-10.4.01, 2-11.16, 2-8.1, 2-8.8, 2-8.9, and 10.34 as amended through Ordinance No. 18-33.
 - b. Implementing Order 3-41
 - c. Implementing Order 3-22

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES IN THE WORK

7.1.01 The Owner reserves the right to delete work from any Project Order, to add work to any Project Order, and to change work to be accomplished under any Project Order without invalidating the Contract and Project Order.

7.1.02 In the event the Owner exercises its right to change, delete or add work under the Contract and Project Order, such work will be ordered and paid or credited for as provided in the Contract and Project Order Documents.

7.1.03 Changes in the work may be initiated by the issuance of a Bulletin by the Architect/Engineer. The Contractor shall submit a price quote to the Architect/Engineer and the Owner for their review, within twenty-one (21) calendar days of receipt of a Bulletin. The Contractor shall maintain this price, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract and Project Order Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes.

7.1.04 Changes in the work covered by Unit Prices, as stated in the Contract and Project Order Documents shall be all inclusive. These prices will include all Direct and Indirect Costs, remobilization and demobilization associated with the change, means and methods of execution, engineering and any associated work necessary. To be compensable, units must be measured daily by the Contractor and approved in writing by the Architect/Engineer. All final measurement for unit price work shall be performed by the Architect/Engineer who shall afford the Contractor an opportunity to witness or to participate in the measurements and to review all calculations relating to final measurement.

7.2 ALLOWANCE ACCOUNTS FOR PROJECT ORDERS

7.2.01 Certain portions of Work which may be required to be performed by the Contractor under a Project Order are either unforeseeable or have not yet been designed, and the value of such Work, if any, is included in the Project Order as a specific line item(s) entitled "Allowance Account(s)."

- A. The Allowance Account shall be used to reimburse the Contractor for the actual costs of

permit fees, license fees, impact fees and inspection fees paid to any governmental entity in connection with the construction of the Project; for furnishing all labor, materials, equipment and services necessary for modifications or Extra Work required to complete the Project because of unforeseeable conditions; for performing minor construction changes required to resolve: oversight in design, Owner oversight, unforeseen conditions, revised regulations, technological and product development, operational changes, schedule requirements, program interface, emergencies and delays; and for making final adjustment to estimated quantities shown on the Schedule of Prices Project Bid in the Project Bid Form to conform to actual quantities installed.

B. Other allowance account(s) may be used as specified in the Project Order Documents.

These values, if any, are to be included in the Total Project Order Amount, but are not chargeable against the Total Project Order Amount unless and until the Contractor is directed to perform work contemplated in the Allowance Account(s) by a written Work Order(s) issued by the Architect/Engineer.

7.2.02 At such time as work is to be performed under the Allowance Account(s), if any, the work shall be incorporated into the Construction Schedule and the Schedule of Values, and shall in all respects be integrated into the construction as a part of the Project Order as awarded.

7.2.03 The Work Order for the required work will be issued by the Contract Officer upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the Architect/Engineer and the Owner. If the nature of the work is such that a Unit Price or Lump Sum price is not economically practical, the Work Order may be issued to perform the work on a force account basis.

7.2.04 The Contractor shall solicit not less than three (3) competitive Project Bids from appropriate Subcontractors and materials suppliers when so directed by the Architect/Engineer, for performance of the work in accordance with such Plans and Specifications as may be required and as may be furnished by the Architect/Engineer. The Contractor shall submit the solicited Project Bids to the Architect/Engineer for approval or rejection. If the Project Bids are rejected by the Architect/Engineer, the Contractor shall solicit additional Project Bids for submittal.

7.2.05 No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account provided, however, that such excess may be authorized by appropriate Project Order Modification.

7.2.06 At Final Acceptance, the Project Order Amount shall be decreased to reflect unexpended amounts under the Allowance Accounts.

7.3 DELETION OF WORK

7.3.01 All deleted Work shall be authorized by Work Order(s) or Project Order Modification(s) POM:

A. The Project Order Modification shall include, at a minimum:

- (1) Scope of work to be deleted;
- (2) Any associated cost with the work to be deleted;
- (3) The Contract time reduction or extension resulting from the work to be deleted;

- (4) Full release of claims associated with the Project Order through the date of the POM, or a reservation of claims identified as to each claim reserved, the scope of the work, the credit for cost of the work deleted, and the number of days of-Project Order time reduction, shall be specified.

B. The Work Order shall include, at a minimum:

- (1) Scope of work to be deleted;
- (2) Any associated cost with the work to be deleted;
- (3) The Contract time reduction or extension resulting from the work to be delete
- (4) Full release of claims associated with the Work Order work, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the number of days of Project Order time reduction, shall be specified.

7.3.02 All final measurement for unit price work shall be performed by the Architect/Engineer who shall afford the Contractor an opportunity to witness or to participate in the measurements and to review all calculations relating to final measurement.

7.3.03 In the event the Owner exercises its right to delete any portion(s) of the work contemplated herein, such deletion will be ordered and the Contract Total Amount and Time will be adjusted as provided for in these Contract/Project Documents by Project Order Modification or by Work Order, as appropriate.

A. **Deleted Work - Lump Sum Item(s)**

The Contractor shall credit the Owner for the reasonable value of the deleted work determined from the approved Schedule of Values, subject to approval by the Architect/Engineer. If the reasonable value of the deleted work cannot be readily ascertained from the Schedule of Values submitted in accordance with these General Conditions, or if requested by the Architect/Engineer, the Contractor shall supply all data required by the Architect/Engineer to substantiate the amount of the credit to be given the Owner.

B. **Deleted Work - Major Unit Price Item(s)**

- (1) If 100% of the work under any Major unit price item is deleted, then the Contractor will not receive any payment for the value of the deleted work.
- (2) If a quantity not greater than twenty-five percent (25%) of the work under a Major unit price item is deleted, the Contractor shall be paid only for the quantity of such items completed times the Contract Unit Price.
- (3) If less than one hundred percent (100%), but more than twenty-five percent (25%) of the work under any Major unit price item is deleted, then the Contractor and the Owner may negotiate a new equitable unit price for such item and the Contractor shall be paid for the actual quantity of such item of work performed at such negotiated unit price.
- (4) If the Owner and the Contractor cannot reach agreement for an equitable Unit Price, for any item, then the entire work shall be performed as Work not covered by Unit Prices.

C. **Deleted Work - Minor Unit Price Item(s)**

If work under any Minor unit price item is deleted, then the Contractor shall be paid only

for the quantity of the work completed times the original Project Order Unit Price. The Contractor shall not be entitled to any additional compensation if actual quantities of work performed are less than the estimated quantities shown on the Schedule of Prices Bid in the Project Bid Form.

7.3.04 The Contractor shall be reimbursed for any actual reasonable expenses incurred prior to the notice of deletion of work as a result of preparing to perform the work deleted. The Contractor shall submit to the Architect/Engineer all data required to substantiate the amount of compensation requested therefore. In no event shall the Contractor be entitled to compensation greater than the aggregate amount of the Unit Price times the original bid quantity of Work shown on the Schedule of Prices Bid in the Project Order Draft.

7.3.05 No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

7.4 EXTRA WORK

7.4.01 All Extra Work ordered, or work changed shall be authorized by Work Order(s) or Project Order Modification(s). All changed or Extra Work so authorized shall be performed by the Contractor at the time and in the manner specified.

A. The POM shall include, at a minimum:

- (1) Scope of the Extra or changed work;
- (2) Cost of the Extra or changed work ;
- (3) The Contract time extension required to perform the Extra or changed work;
- (4) Full release of claims associated with the Contract through the date of the Change Order, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

B. The Work Order shall include, at a minimum:

- (1) Scope of work to be added, or modified;
- (2) Cost of work to be added, or modified;
- (3) The Contract time extension required to perform the Extra or changed work
- (4) Full release of claims associated with the Work Order work, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

7.4.02 In the event the Owner exercises its right to authorize Extra Work or to change any portion of the work contemplated herein, such Extra Work will be ordered and the Project Order Total Amount and Project Order Time will be adjusted as provided for in these Contract/Project Documents, by Project Order Modification or by Work Order as appropriate. In the event of a dispute between Owner and Contractor as to the adjustment to the Amount or the Time, the dispute shall be handled in accordance with these General Conditions.

A. Extra Major Unit Price Work

- (1) If any Extra or changed work is ordered that does not change the original Project

quantity of any Major unit price item(s) by more than twenty-five percent (25%), the Contractor shall perform the work as ordered and shall be paid for the actual quantity of such item of work performed at the appropriate original Project Order Unit Price.

- (2) If Extra or changed work is ordered that changes the original Project Order quantity of any Major unit price item by more than twenty-five percent (25%) then the Owner and the Contractor shall negotiate a new equitable unit price for such item, and the Contractor shall be paid for the actual quantity of such item of work performed at such negotiated unit price. The negotiated unit price shall not exceed the original unit price.
- (3) If the Owner and the Contractor cannot reach agreement on an equitable Unit Price for any such item, then the entire work to be performed under such item shall be paid at the original Unit Price.

B. Extra Minor Unit Price Work

If Extra unit price work is ordered under any Minor Unit price item(s), then the Contractor shall perform the work as directed and shall be paid for the actual quantity of such item(s) of work performed at the appropriate original Project Order Unit Price(s).

C AIP Funded Projects

For AIP funded projects, all Project Order Modification and Work Orders shall be subject to approval by the FAA and shall include valid wage determination of the U.S Secretary of Labor when the Project Order Modification exceeds \$2,000.00.

7.4.03 If Extra or changed work is ordered, that is not covered by Unit Prices, then, the Owner and the Contractor shall negotiate an equitable adjustment to the Project Order Price for the Direct and Indirect Costs for the performance of such work. Direct Costs, as described in Article 1, are limited to site labor costs, permanent materials costs and Special Equipment Costs. Indirect Costs for Extra or changed work ordered, may be reimbursed for Compensable Excusable Delay as defined in these Contract and Project Order Documents.

- A. In order to reimburse the Contractor for additional Direct Costs, either by Work Order, Project Order Modification or any other means, the Contractor must have additional work added to the Contract Scope of Work. The additional cost of idle or inefficient labor, from any cause, or the additional cost of labor made idle or inefficient from any cause will not be considered a reimbursable additional Direct Cost. Special Equipment or Machinery, which is made idle or inefficient by the Extra or changed work ordered, may be reimbursable if approved by the Architect/Engineer as an unavoidable cost to the Contractor, caused by the Owner.
- B. Costs of Special Equipment or Machinery, not already mobilized on the airport, approved by the Architect/Engineer, shall be calculated using the current issue of the AED Manual plus any required mobilization. The selection of which of the AED rates (daily, weekly, monthly) to be used to calculate these costs shall be as follows:
 - (1) Between one (1) day and seven (7) days, use the daily rate.
 - (2) Between seven (7) days and thirty (30) days, use the weekly rate.
 - (3) Greater than thirty (30) days, use the monthly rate.
- C. For less than one (1) day hourly rates, use the daily rate divided by eight (8).
- D. For overtime hourly rates use the daily rate divided by eight (8), the weekly rate divided

by forty (40), or the monthly rate divided by one hundred seventy-six (176) as appropriate.

- E. Costs for Special Equipment and Machinery already mobilized on the airport, shall not exceed the monthly rate stated in the AED Manual, divided by one hundred seventy-six (176), per hour that the Special Equipment and Machinery is in use on the work plus any required re-mobilization.
- F. The cost calculation shall not combine rates within the range of a time extension. It shall use decimals of the time extension rate that the extension falls under. For example, the cost calculation for a piece of Special Equipment with an approved delay of forty five (45) days shall be one and one-half (1.5) months times the monthly rate, **not** one (1) month at the monthly rate, plus two (2) weeks at the weekly rate, plus one (1) day at the daily rate.

7.4.04 If the Owner and the Contractor cannot reach agreement on an equitable adjustment to the Project Order Price as prescribed above or cannot reach agreement on an equitable adjustment to the Project Order Price for work not covered by Unit Price Items, or cannot reach an agreement on an equitable Unit Price for additional Major Unit Price work, as specified above, then the Extra Work will be performed on a force account basis as directed by the Architect/Engineer and paid for as specified below.

7.4.05 The following percentages will be allowed as mark-ups over Direct Costs for all negotiated adjustments to the Project Order Amount or for work performed on either a negotiated lump sum basis or a force account basis (time and materials work):

A. Extra Work Performed by Contractor's Own Forces

The Contractor shall be paid fifteen percent (15%) times the actual direct cost as direct compensation for Overhead, profit and all other costs associated with the Work.

B. Extra Work Performed by a Subcontractor or any Subtler Subcontractor

The Contractor shall be paid the Bid Percentage Fee times the Subcontractor's actual Direct Cost as direct compensation for the Contractor Overhead, profit and all other costs associated with the Work at all tiers.

C. Extra Work Involving Compensable Time Extensions

If a compensable time extension is approved, the Contractor will be paid the daily rate stipulated in the Project Order.

7.4.06 In the event Extra Work is performed on a force account basis, then the Contractor and the Subcontractor(s), as appropriate, shall maintain itemized daily records of costs, quantities, labor and the use of authorized Special Equipment or Machinery. Copies of such records, maintained as follows, shall be furnished to the Architect/Engineer daily for approval, subject to audit.

A. Comparison of Record. The Contractor, including its Sub-contractor(s) of any tier performing the work, and the Architect/Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor, the Subcontractor performing the work, and the Architect/Engineer or their duly authorized representatives.

B. Statement. No payment will be made for work performed on a force account basis until the Contractor has furnished the Architect/Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

(1) Name, classification, date, daily hours, total hours, rate and extension for each laborer,

tradesman, and foreman.

- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of special machinery and equipment.
- (3) Quantities of materials, prices, and extensions.
- (4) Transportation of materials.

The statements shall be accompanied and supported by a receipted invoice of all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

C. Authorization of Special Equipment and Machinery

No compensation for Special Equipment or Machinery shall be made without written authorization from the Architect/Engineer. The Architect/Engineer shall review and evaluate any Special Equipment or Machinery proposed by the Contractor for use on a force account basis. As part of its evaluation, the Architect/Engineer shall determine whether any of the Special Equipment or Machinery being proposed by the Contractor will be concurrently used on the Project, including approved changes, or on other force account work on the Project. If the Architect/Engineer determines that such a concurrent use of Special Equipment or Machinery is being proposed by the Contractor, prior to the authorization of such Special Equipment or Machinery, the Architect/Engineer and the Contractor shall establish a straight-line prorated billing mechanism based on the actual percentage of time that the equipment or machinery is required to be used on the force account work(s).

Special Equipment or Machinery which is approved for use by the Architect/Engineer shall be reviewed and accounted for on a daily basis as provided in the Comparison of Record and Statement paragraphs of this Section of the Contract.

D. Inefficiency in the Prosecution of the Work

If in the Owner's opinion, the Contractor or any of its Subcontractors, in performing force account Work, is not making efficient use of labor, materials or equipment or is proceeding in a manner which makes force account Work unnecessarily more expensive to the Owner, the Owner may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways: (1) the timing of the Work, (2) the use of unnecessary labor or equipment, (3) the use of a higher percentage of journeymen than in non-force account Work, (4) the failure to procure materials at lowest price, or (5) using materials of quality higher than necessary.

7.4.07 Increases to the Contract value and term originally approved by the Board shall be authorized by a Change Order executed by the County and Contractor, and consented to by the Contractor's Surety.

Increases to the Project Order Amount shall be authorized by a Project Order Modification executed by the Contractor, and the Owner.

Decreases to the Project Order amount shall be by Project Order Modification or Work Order as

determined by the Owner.

7.4.08 Any claim for payment of Extra Work that is not covered by a Project Order Modification or Work Order will be rejected by the Owner.

7.5 NON-EXCUSABLE AND EXCUSABLE DELAYS

7.5.01 A Non-Excusable Delay is any delay which extends the completion of the Work or portion of the Work beyond the Project Order Time and which is caused by the act, fault or omission of the Contractor or any Subcontractor, materialmen, supplier or Vendor to the Contractor. Delays in obtaining permits caused by the Contractor's actions or lack of actions are Non-Excusable Delays. A Non-Excusable Delay shall not be cause for granting a Project Order Time extension and shall subject the Contractor to Liquidated Damages. In no instance shall the Contractor assess such Liquidated Damages against any SBE Subcontractor.

7.5.02 An Excusable Delay is any delay which extends the completion of the Work and which is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or Vendors. The Contractor may be entitled to a Project Order Time extension for each day the Work is delayed beyond the Project Order Time due to an Excusable Delay.

7.5.03 The Contractor shall document its claim for any time extension in accordance with the requirements of Article 8 "CLAIMS FOR ADDITIONAL COMPENSATION" of these General Conditions. Failure of the Contractor to comply with all requirements as to any particular event of Project delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of Project delay.

7.5.04 An Excusable Delay may be Compensable or Non-Compensable. The Contractor shall be entitled to Liquidated Indirect Costs for Compensable Excusable Delay, in accordance with the Contract and Project Order Documents.

7.5.05 An Excusable Delay is Compensable when;

- A. The delay causes the Work to extend beyond the Project Order Time, and
- B. The delay is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or Vendors, and
- C. The delay is caused by an act or omission of the Owner, or of the Architect/Engineer, provided however, delays caused by permitting agencies, whether or not part of Miami-Dade County, are non-compensable excusable delays to the extent that such delays were not caused by the Contractor; permitting delays caused by the Contractor are non-excusable delays.

7.5.06 An Excusable Delay is Non-Compensable when:

- A. It is caused by circumstances beyond the control of the Contractor, its Subcontractors, materialmen, suppliers and Vendors, and is also caused by circumstances beyond the control of the Owner, and the Architect/Engineer, such as delay(s) caused by the permitting agencies, whether or not part of Miami-Dade County, to the extent that such delays were not caused by the Contractor, or
- B. It is caused jointly or concurrently by the Contractor or its subcontractors, materialmen, suppliers or Vendors and by the Owner, or the Architect/Engineer, then the Contractor shall

be entitled only to a time extension and no further compensation for the delay, or

C. The delay does not cause the Work to extend beyond the Project Order Time.

7.5.07 Weather may be grounds for Non-Compensable Excusable Delay if the inclement weather is unusually frequent or unusually severe, occurs when no inside Work is being performed, and delays the completion of the Work. Weather more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Contractor, as determined by the Field Representative. Weather more severe than the norm is defined as any situation exceeding the mean data as recorded by The National Climatic Data Center, Asheville, North Carolina and published by the National Oceanic and Atmospheric Administration. (This data is taken from the table of normals, means, and extremes in the 1992 Local Climatological Data, Annual Summary with Comparative Data, Miami, Florida.) The effects of weather less severe than the norm may be taken into account in granting time extensions at the Owner's sole discretion.

7.5.08 In no event shall the Contractor be compensated for interim delays which do not extend the Project Order Time.

7.5.09 In no event shall Contractor be compensated for delays except for delays exceeding the Project Order time.

7.5.10 The Owner will reimburse the Contractor for reasonable and necessary costs related to hurricane preparation where such preparation is other than normal maintenance of the work site, and provided that the Contractor adequately substantiates the additional cost of such hurricane preparation. Such substantiation shall include, but is not limited to, copies of invoices for hurricane preparation related supplies, and copies of payroll records for labor performed outside of the normal duty hours and directly related to hurricane preparation, or for additional labor specifically hired for the hurricane preparation.

7.6 LIQUIDATED DAMAGES AND LIQUIDATED INDIRECT COSTS

7.6.01 The parties to the Project Order agree that time, in the completion of the Work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and Completion of the Work is impossible to determine as of the date of execution of the Project Order and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day the Project Order Time is exceeded due to a Non-Excusable Delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. In no instance shall the Contractor assess such Liquidated Damages against any SBE Subcontractor. The amount of liquidated damages assessed shall be an amount, as stipulated in the Project Order Draft, per day for each calendar day which the Project is delayed due to a Non-Excusable Delay.

7.6.02 The Owner and the Contractor recognize and agree that the precise amount of the Contractor's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Project Order, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the Contractor shall be assessed on a daily basis for each Day the Project Order Time is delayed due to Compensable Delay. These Liquidated Indirect Costs shall be paid to compensate the Contractor for all indirect expenses caused by the Compensable Excusable Delay and shall include, but not be limited to, all

profit, interest, home office overhead, field office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor or its Subcontractors, materialmen, suppliers and Vendors. The amount of liquidated Indirect Costs recoverable shall be an amount, as stipulated in the Project Order, per day for each day the Project Order is delayed due to Compensable Excusable Delay.

7.6.03 In the event the Contractor fails to perform any other covenant or condition of this Project Order relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor.

7.6.04 Nothing in this Article shall be construed as limiting the right of the Owner to terminate the Project Order, to require the Surety to complete said Project, and to claim damages for the failure of the Contractor to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract and Project Order Documents.

7.7 TEMPORARY SUSPENSION OF WORK

7.7.01 The Architect/Engineer shall have the authority to suspend the Work wholly, or in part, for such period or periods as may be deemed necessary, because of unsuitable weather, for failure of surety, or other conditions unfavorable for the prosecution of the Work, or for failure on the part of the Contractor to carry out the instructions of the Architect/Engineer as provided for in the Contract and Project Order Documents.

7.7.02 If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not become an obstruction, nor become damaged in any way, and it shall take every precaution to prevent damage or deterioration of the Work performed. The Contractor shall construct temporary structures where necessary to provide for traffic on, to, or from the airport.

7.7.03 The Contractor shall not suspend the Work without written order from the Architect/Engineer.

7.7.04 In the event that the Contractor is ordered by the Architect/Engineer, in writing, to suspend work for some unforeseen cause not otherwise provided for in the Contract and Project Order Documents and over which the Contractor, its Subcontractors, suppliers or materialmen have no control, the period of such shutdown, if it causes delay in the completion time, may be considered Compensable Excusable delay as provided elsewhere in the Contract and Project Order Documents. The period of shutdown shall be computed from the effective date of the Architect/Engineer's order to suspend work to the effective date of the Architect/Engineer's order to resume the work. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract and Project Order Documents.

7.7.05 Nothing in this Contract shall be construed as entitling the Contractor to compensation for delays due to failure of Surety, suspensions ordered as a result of the Contractor's nonconformance with the Contract and Project Order Documents, as a result of the Contractor's failure to carry out the instructions of the Architect/Engineer or for any other delays not specifically deemed to be Compensable Excusable Delay, as provided for elsewhere in the Contract and Project Order Documents.

7.8 NON-COMPENSABLE COSTS

7.8.1 The Contractor and/or Subcontractor shall receive no compensation under this Contract and Project Orders for the following costs:

- a) Corporate legal and accounting fees;
- b) Claims preparations costs;
- c) Charitable and political contributions;
- d) Corporate public relations expenses, dues, and memberships;
- e) Penalties, assessments, or fines issued by any court or authorized government entity or agency;
- f) Loss of bonding capacity or capability losses;
- g) Loss of business opportunities;
- h) Loss of productivity on this or any other project;
- i) Loss of interest income on funds not paid;
- j) Costs to prepare, negotiate, or prosecute claims;
- k) Costs spent to achieve compliance with applicable laws and ordinances.

ARTICLE 8 **CLAIMS FOR ADDITIONAL COMPENSATION**

8.1 CLAIMS AND DAMAGES

8.1.01 Claims by Contractor for Damages

Should the Contractor suffer injury or damage to person or property because of any act or omission of Owner or of any of its employees, agents or others for whose acts the Owner is legally liable, a claim shall be made in writing to the Owner within ten (10) days after the first observance of such injury or damage.

8.1.02 Claims for Additional Compensation by Contractor

A Claim, as used herein, is any assertion or demand made against the Owner, whether arising out of the Contract or not, by which the Contractor asserts it is entitled to additional contract time or compensation. Each claim must be certified by the Contractor as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by a certified final quote tabulation in accordance with Miami-Dade County Code Section 21-257. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:

- A. The claim is made in good faith;
- B. The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- C. The amount of the claim accurately reflects the amount that the claimant believes is due from the County; and

D. The certifying person is duly authorized by the claimant to certify the claim.

8.1.03 No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

8.1.04 Each and every claim shall be made in writing and delivered to the Field Representative as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than ten (10) days after the event or occurrence, or in the case of non-occurrence, within ten (10) days after the time when performance should have occurred. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than ten (10) days after the event causing the claim, by written confirmation of the claim information.

8.1.05 Each and every claim shall state:

- A. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.
- B. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as drawing numbers, specification sections, job site location, affected trades, Contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim.
- C. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.
- D. The dollar value associated with the claim, along with all supporting documentation, shall be delivered within thirty (30) days after completion of the work that is subject of the claim. It shall be broken down into Direct and Indirect Costs. The Direct Costs shall be calculated as Changes in the Work. Indirect Costs shall be as stipulated in a Work Package or as reflected in the Guaranteed Maximum Price (GMP).
- E. Any claim for additional monies that also involve a request for a Contract time extension, or any claim for a non-compensable time extension, shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim.

Scheduling references shall include a month-by-month time impact analysis (TIA) using the approved monthly progress schedules and demonstrating the effect of the delay or change on the Contract completion date for each monthly update period that the change or delay affects. If, with the exercise of reasonable care, the Contractor is unable to provide a TIA at the moment a claim arises, the Contractor shall provide a narrative explanation of its inability to provide a TIA, and shall instead provide a narrative description of the expected potential schedule impacts, which shall include the likely schedule impact and all assumptions utilized in generating such impact. In such event, the Contractor shall at its earliest opportunity provide a TIA, and in the event that the Contractor fails to provide such TIA the Contractor's claims shall be deemed waived.

8.1.06 The currently approved overall project schedule(s) shall be the basis for interpreting any and all time-associated provisions of the Contract including proposed time extensions. Except as authorized in Section 8.1.05(e), proposed time extensions must include a time impact analysis (TIA), clearly showing the impact on the current schedule, and conclusively proving the validity of the proposed extension.

In order to request additional time or compensation associated with changes or delays, the Contractor shall submit a written request for time extension with its request for Change Order and a time impact analysis (TIA). The TIA shall demonstrate the time impact of each change or delay based on the date of the change or start of delay on the Manager's current construction schedule. Each TIA shall include how the Contractor proposes to incorporate the changes or delays into its construction schedule. Contractor's failure to submit the TIA in accordance with this paragraph shall constitute a waiver and abandonment by Contractor of any claims for time related issues.

- A. The Contractor shall submit the time impact proposal used in the TIA within ten (10) days after a delay commences.
- B. Where the Contractor does not submit a TIA for a specific change or delay within the period of time specified herein, then it is expressly understood that the particular change or delay has no time impact on the Contract completion date and no time extension is required or shall be subsequently granted.
- C. Payment for delays shall be in accordance with the General Conditions.

Proposed Contract time extensions shall not be approved unless the time extension will cause the Contract completion date to be extended.

8.1.07 The Architect/Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within sixty (60) days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within sixty (60) days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay

to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim.

Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts in the body of the change order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said change order, however, once the Contractor has properly reserved rights to any claim, no further reservations of rights shall be required until the final payment under the Contract. Such reservations will comply with Section 7.8 herein. Failure to so reserve any particular claim shall be constructed as a waiver, abandonment, or relinquishment of such claim.

8.1.08 Notwithstanding, no reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of these Contract Documents. Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts on the Contractor's Affidavit and Release of Claim for each pay application and on the Contractor's Affidavit and Release of All Claims, within the Request for Final Payment, shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim.

8.1.09 The Contractor shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.

8.1.10 With regard to any and all claims for additional compensation resulting from delays to the Work, it is expressly understood and agreed as follows:

- A. The claimed delay shall not result from a cause specified in the Contract Documents as a Non-excusable Delay.
- B. Notice of the claim shall have been provided in accordance with and within the time specified in this Article.
- C. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs.
 - (1) Home office expenses or any direct costs incurred allocated from the headquarters of the Contractor.
 - (2) Loss of anticipated profits on unperformed work on this or any other project.
 - (3) Loss of bonding capacity or capability.
 - (4) Losses due to other projects not bid upon.
 - (5) Loss of business opportunities.
 - (6) Loss of productivity on any other project.
 - (7) Loss of interest income on funds not paid.
 - (8) Costs to prepare, negotiate, or prosecute claims.

- D. All claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.
- E. No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

ARTICLE 9 **CONFORMITY WITH CONTRACT DOCUMENTS**

9.1 CONFORMITY WITH PLANS AND SPECIFICATIONS

9.1.01 All Work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Contract and Project Order Documents.

9.1.02 If the Architect/Engineer finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the Contract and Project Order Documents but that the portion of the affected work will, in its opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, it will advise the Owner of its determination that the affected work be accepted and remain in place. In this event, the Architect/Engineer will document its determination and recommend to the Owner a basis of acceptance which will provide for an adjustment in the contract price for the affected portion of the work. The Architect/Engineer's determination and recommended Project Order price adjustments will be based on the requirements of the Technical Specifications, good professional judgment and such tests or retests of the affected work as are, in its opinion, needed. Changes in the Project Order price will be made in a Project Order Modification, as applicable.

If the Architect/Engineer finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the Contract and Project Order Documents and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Architect/Engineer's written orders.

For the purpose of this Article, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the requirements of the Contract Documents. The term "reasonably close conformity" shall not be construed as waiving the Architect/Engineer's or the Owner's right to insist on strict compliance with the requirements of the Contract Documents during the Contractor's prosecution of the work, when, in the Architect/Engineer's or the Owner's opinion, such compliance is essential to provide an acceptable finished portion of the work.

For the purpose of this Article, the term "reasonably close conformity" is also intended to provide the Architect/Engineer with the authority to use good professional judgment in his/her determinations as to acceptance of work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the Contract and Project Order Documents.

9.2 REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK

9.2.01 All Work which has been rejected by either the Architect/Engineer or the Field Representative shall be satisfactorily repaired or if it cannot be satisfactorily repaired, it shall be removed and replaced all at no additional cost to the Owner. Materials not conforming to the requirements of the Contract and Project Order Documents shall be removed immediately from the site of the Work and replaced with satisfactory material by the Contractor at no additional cost to the Owner.

9.2.02 Work done without control lines and grades having been furnished by either the Architect/Engineer or the Field Representative, work done beyond the scope of the Contract, Work done without proper inspections, or any Extra Work done without written authority, will be at the Contractor's risk, and such work shall not be paid for unless written authorization in the form of a Project Order Modification or Work Order is obtained. In the event written authorization is not obtained, such work shall be removed or replaced by the Contractor, at no additional cost to the Owner, upon the directions of the Field Representative.

9.2.03 Work that is defective or Work that fails to conform with the Contract and Project Order Documents will be at the Contractor's risk, and no payment shall be made for such Work. As specified in the Technical Specifications or at the option of the Owner, an agreed equitable amount may be deducted from the Project Order amount in lieu of replacement or repair of work not fully meeting the requirements of the Contract and Project Order Documents. Acceptance by the Owner of such deduction shall not modify the requirements of any guarantees called for by the Contract and Project Order Documents. Written authorization for such work must be obtained in the form of a Work Order or Project Order Modification with the appropriate credit to the Owner. In the event written authorization is not obtained, and upon the directions of the Field Representative or the A/E such work shall be removed or replaced by the Contractor at no additional cost to the Owner.

9.2.04 If either the Architect/Engineer or the Field Representative so requests, the Contractor shall at any time before Final Acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examinations, the Contractor shall restore said portions of the Work to the standard required by the Contract Documents. If the Work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of parts removed shall be at the Owner's expense; but if the Work so exposed or examined proves unacceptable, the uncovering or removing and the replacing of the covering or making good of the defective Work shall be at the Contractor's expense.

9.2.05 No extension of time will be allowed the Contractor in connection with the correction of Work that fails to conform with the Contract and Project Order Documents.

9.3 CORRECTION OF WORK

9.3.01 The Contractor shall promptly correct all Work rejected by either the Architect/Engineer or the Field Representative as defective or as failing to conform to the Contract and Project Order Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting rejected Work, including the cost of the Architect/Engineer's services, the Field Representative and the Owner's additional services.

9.3.02 After being notified in writing by the Field Representative, the A/E or the Owner, of work that is not in accordance with the requirements of the Contract Project Order Documents, or of any

defects in the Work, the Contractor shall promptly commence and prosecute with due diligence all work necessary to fulfill the terms of the Contract/Project Order and to complete the Work within a reasonable period of time.

9.3.03 In the event of an emergency, constituting an immediate hazard to the health or safety of personnel and/or property, the Owner, without prior notice, has the right but not the obligation to undertake at the Contractor's expense, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of the Contract and Project Order Documents.

9.3.04 If, within one (1) year after the date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Project Order Documents, any of the Work is found to be defective or not in accordance with the Contract and Project Order Documents, the Contractor shall correct such work within ten (10) days after receipt of a written notice from the Owner to do so. In the event the Contractor fails to comply, the Owner may proceed to have such work done at the Contractor's expense and the Contractor and/or its surety will pay the cost thereof upon demand. The Owner shall be entitled to all costs, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

9.3.05 All such defective or non-conforming work shall be removed from the site if necessary, and the work shall be corrected to comply with the Contract and Project Order Documents without cost to the Owner.

9.3.06 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

9.3.07 Upon failure on the part of the Contractor to comply forthwith with any order of the Field Representative made under the provisions of this Article, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.

9.3.08 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract and Project Order Documents.

ARTICLE 10 **PAYMENTS**

10.1 SCOPE OF PAYMENT

10.1.01 The Contractor shall receive and accept compensation provided for in the Project Order as full payment for furnishing all materials, for performing all work under the Project Order in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, to the provisions of the Contract and Project Order Documents.

10.1.02 When the "Basis of Payment" Article of a Technical Specification requires that the Project Order Price (price bid) include compensation for certain work or material essential to the

item, this same work or material will not also be measured for payment under any other Project Order item which may appear elsewhere in the Project Order, Plans, or Specifications.

10.1.03 When the accepted quantities of work vary from the quantities in the Project Order the Contractor shall accept as payment in full, so far as Project Order items are concerned, payment at the original Project Order bid price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in subsection titled "Deletion of Work," will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from its unbalanced allocation of overhead and profit among the Contract/Project Order items, or from any other cause.

10.1.04 It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 10-33.02, 2-8.1.1.1.1, and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

10.1.05 A pencil draft walkthrough inspection shall be coordinated and implemented to verify quantities being billed before submittal of invoices for processing and payment. The pencil draft inspection shall include the assigned MDAD project manager, the A/E of Record, the HNTB assigned representative (i.e., if applicable), the construction inspector (i.e., project CIS if applicable) and/or any other authorized MDAD representative. The contractor shall revise the pay application quantities based on the walk-through results and obtain signatures from the A/E of Records, the CIS (i.e., if applicable) and the HNTB representative before submitting the invoice to the MDAD project manager for final review, approval and processing for payment. Invoices missing required approval signatures from the A/E of Records, the CIS (i.e., if applicable) and/or the HNTB representative (i.e., if applicable) will be rejected by the MDAD project manager. All AIA invoice forms shall include spaces for execution/approval by the A/E of Record, the CIS (i.e., if applicable), the HNTB representative (i.e., if applicable). A separate invoice cover page reflecting the project number, name, general information the invoiced amount and a distinctive sequential invoice number must be included with all invoice packages to avoid confusion among invoices related to various simultaneously assigned projects.

10.2 PARTIAL PAYMENTS TO THE CONTRACTOR

10.2.01 As requested, the successful Project Bidder shall prepare and submit to the Field

Representative the following items for approval by the Architect/Engineer and the Owner.

- A. Preliminary Schedule of Values;
- B. Schedule of Estimated Monthly Partial Payments.
- C. Preliminary LEED/Sustainability Certification Plan (if applicable)

10.2.02 Submit the Construction Progress Schedules within the time frames specified in Division 1.

10.2.03 No payments will be made until the preliminary Schedule of Values, Schedule of Estimated Monthly Partial Payments and the Construction Progress Schedules required as specified above are received and approved by the Architect/Engineer and the Owner.

10.2.04 Within ten (10) days from approval of the Overall Construction Progress Schedule, as specified in Division 1, the Contractor shall prepare and submit to the Field Representative the finalized Schedule of Values and LEED/Sustainability Certification Plan. No further Partial Payments will be made until the Overall Construction Schedule, Schedule of Values, and LEED Certification Plan are received and approved by Architect and the Owner.

10.2.05 The Schedule of Values shall be prepared on the form provided by the Owner and shall relate to the activities and monetary values shown in the approved Overall Construction Progress Schedule. It will include a complete breakdown of all project costs by the Specification Sections and Subsections for each of the major items of the work. It shall be revised when requested by the Field Representative if any of the values of items of work in the Schedule of Values appear to be incorrect or unbalanced. No such revisions shall in any manner affect the Total Project Order Amount. Supporting data acceptable to the A/E or Field Representative will be required to substantiate the Schedule of Values. The approved Schedule of Values shall be used in the preparation of the Partial Payments and shall be used in determining the equitable value of Work to be deleted from a lump sum Project Order or a lump sum item.

10.2.06 The Schedule of Estimated Monthly Partial Payments shall be realistic, and shall conform to the construction schedules. The Schedule of Estimated Monthly Partial Payments may be adjusted, from time to time, to reflect changes, if any, in the Overall Project Schedule.

10.2.07 Payments shall be based on prepared Applications for Payment showing the value of work performed each month including work completed and materials delivered and properly stored on the Site. Pay Estimates shall be submitted monthly or bi-weekly for review on specified days (to be determined for each payment period as set by the MDAD). Separate pay estimates shall be submitted by the Contractor for each Project on work performed under each Project Order in any pay period. The Project Order will be identified on each pay estimate. Pay estimates shall be numbered consecutively under each Project Order. The Contractor shall provide a monthly report of Project construction cost incurred for the month and the year-to-date. The MCC-9-18 Contractor shall maintain a banking account within Miami-Dade County for all payments to subcontractors under this Contract. All records shall be maintained in Miami-Dade County for the term of the Contract.

10.2.08 The Contractor shall prepare each Application for Payment and submit same to the Field Representative for approval by the Architect/Engineer. All payments to the Contractor shall be payable at the office of the Controller of the Miami-Dade Aviation Department, Miami International Airport, Miami, Florida.

10.2.09 The Contractor shall submit as attachments to each Application for Payment, a currently updated and approved project schedule, LEED Certification Status report, three (3) copies of a properly executed Contractor's affidavit, and Subcontractors' affidavit(s) in the forms as bound herein, Certified Payroll forms for all employees on the job at every tier, and proof that As-Built Information is being maintained up to date. Failure to provide this information will cause the Field Representative to reject the invoice until such time as the Contractor properly submits the information. The data on the Certified Payroll forms will be checked against the required wages and benefits prescribed at Special Provision 2. Form RFTE-3 [Occupational Safety & Health Administration (OSHA) Ten (10) Hours Safety Training Affidavit] shall also be included with the Certified Payroll. No monthly estimate will be approved for payment without certification from the Field Representative and or A/E that the Contractor's As-Built drawings have been updated and are current as of the date of the monthly Application for Payment. Reserved claims shall be identified in accordance with General Conditions, Article 8.

10.2.10 Payment for work represented by monthly Applications for Payment will be made approximately thirty (30) days after approval by the Architect/Engineer of the Application for Payment. In case of a dispute in one or more of the amounts in an Application for Payment, only the amounts not being disputed will be paid.

10.2.11 The quantity of work performed and its value will be determined based on field measurement made by the Field Representative or the A/E and from the approved Schedule of Values, and any changes in the work as may be authorized by the Owner.

10.2.12 The value of materials on hand but not incorporated in the work will be determined by the Field Representative or the A/E, based on actual invoice costs to the Contractor, and such value will be included in the monthly Applications for Payment only if the materials have been properly stored on the Site, provided that such materials meet the requirements of the Contract and Project Order, Plans, and Specifications and are delivered to acceptable sites on the airport property or in bonded warehouses that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- A. The material has been stored and stockpiled in a manner acceptable to the Field Representative or A/E at or on the approved site.
- B. The Contractor has furnished the Field Representative or the A/E with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- C. The Contractor has furnished the Field Representative or A/E with satisfactory evidence that the material and transportation costs have been paid.
- D. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored and stockpiled.
- E. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work. It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract and Project Order, Plans, and Specifications and does not waive Owner's claim to reject defective materials when it is delivered to the job site.
- F. In no case will the amount of partial payments for materials on hand exceed the Project

Order price for such materials or the Project Order price for the Project Order item in which the material is intended to be used, or the value for such materials established in the approved Schedule of Values. If, in the Schedule of Values, the cost for materials is listed separately from labor/installation costs, the Owner will pay one hundred percent (100%) of the stored materials cost. If, in the Schedule of Values, the material and labor/installation costs are combined, the Owner will pay eighty percent (80%) of the cost, except in the event that the Contractor provides the Owner with an invoice(s) clearly delineating the cost of the materials. In such instances where the Contractor provides an invoice(s) clearly delineating the cost of the materials, the Owner will pay one hundred percent (100%) of the materials payments made by Contractor as reflected on such invoices, in lieu of the eighty percent (80%) of the combined cost.

G. No partial payment will be made for stored or stockpiled living or perishable plant materials.

H. The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this Article.

10.2.13 Except as provided hereafter, the Owner shall retain ten percent (10%) of the value of such work and materials, including approved Project Order Modification(s), until fifty percent (50%) completion has been achieved, at which time retainage shall be reduced to equal five percent (5%) of the value of such work and materials, which will continue at the five percent (5%) level until Substantial Completion is achieved. This reduction in retainage shall occur without any required or specific actions on the part of the Owner or the Contractor. With the next pay application after Substantial Completion the Owner shall release all retainage except for an amount equal to one and one-half (1.5) times the estimated cost to the Owner of completing the punch list items, as provided by the Architect/Engineer. At Final Acceptance all remaining retainage will be released with the final payment. For the purpose of identifying the point at which the retention amount is changed from ten percent (10%) to five (5%), fifty percent (50%) completion is defined as having occurred when the total of all Contract payments made to the Contractor equal, or exceed, the sum of the current Total Contract Amount (including approved Change Orders), minus the amount in any Inspector General Account, divided by two (2).

Early Release of, and Substitution of Securities for, retainage amounts - The Contractor agrees (i) that no substitution of securities for retainage amounts will be permitted under the Contract and Project Order, and (ii) that no early release of retainage amounts shall be permitted under the Contract and Project Order except for such early release permitted pursuant to Florida State Statute 218.735.

10.2.14 The Owner shall pay the Contractor the balance not retained as aforesaid, after deducting therefrom all previous payments. The estimates will be approximate only and all partial or monthly estimates and payments shall be subject to correction in the Application for Payment rendered following discovery of an error in any previous Application for Payment.

10.2.15 In the event the Contractor's monthly Pay Estimates vary substantially from the approved Schedule of Estimated Partial Monthly Payments, the Contractor shall submit a revised Schedule of Estimated Monthly Partial Payments to the Architect/Engineer for approval.

10.2.16 In the event the Surety on the Performance and Payment Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Florida suspended or revoked as provided by law, the Owner shall withhold payment of any

Application(s) for Payment filed and certified by the Architect/Engineer until the Contractor shall give a good and sufficient Bond(s) as required by the Contract and Project Order Documents, in lieu of the Bond(s) so executed by such Surety.

10.2.17 If any work or material is discovered, which in the opinion of either the Architect/Engineer or the Field Representative is defective, or should a reasonable doubt arise on the part of either the Architect/Engineer or the Field Representative as to the integrity of any part of the work completed previous to the Final Acceptance and payment, there will be deducted from the first Application for Payment rendered after the discovery of such work, an amount equal in value to the defective or questioned work, and this work will not be included in any subsequent Applications for Payment until the defects have been remedied or the causes for doubt removed.

10.2.18 If the Contractor fails to complete the Work, prior to or on the Project Order completion date, no further Payments will be made after the date of Contract completion date until the Contractor delivers to the Owner a written consent of the Contractor's Surety covering all payments to be made thereafter, without affecting the validity of the Performance and Payment Bond. In addition, payment may also be withheld proportionately because of:

- A. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum,
- B. Reasonable indication that the Work will not be completed within the Contract Time,
- C. Damage to another contractor, or to other third parties, or to property of the Owner,
- D. Unsatisfactory prosecution of the Work by the Contractor,
- E. Failure of the Contractor or its Subcontractors to pay wage rates, when applicable as required by the Contract,
- F. Any outstanding item of dispute.

10.2.19 In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

10.3 SUBCONTRACTOR'S AFFIDAVITS FOR PAYMENTS

10.3.01 Every request by the Contractor for payment of work performed, except the first draw, shall be accompanied by affidavits as required by Section 10-35 of the Code of Miami-Dade County, such affidavits to be in substantially the form as bound herein.

10.3.02 In accordance with Sections 2-8.8 of the County Code (as amended by Ordinance No. 11-90), any entity contracting with the County as a condition of final payment under a contract, the Contractor shall identify all subcontractors used in the work, the amount of each subcontract, and the amount paid to each subcontractor. In the event that the contractor intends to pay less than the subcontract amount, the Contractor shall deliver to the County a statement explaining the discrepancy or any disputed amount.

10.4 FINAL PAYMENT

10.4.01 After Final Acceptance of the Work, a request for Final Payment prepared by the Contractor shall be submitted to the Field Representative for approval by the Architect/Engineer and the Owner and subsequent payment to the Contractor.

10.4.02 Except as may be noted on the Contractor's Affidavit and Release of All Claims, the Contractor hereby agrees to accept Final Payment as full payment for performing and completing the Work, for furnishing all labor, materials, services, equipment and everything necessary for or incidental to, and for all incidental expenses in connection with, for all loss by damage to or destruction of the Work due to any cause whatsoever, for any additional expenses because of delays or unforeseen difficulties encountered, for settlement of claims, agreed upon deductions in lieu of removal and replacement of defective work, and for replacement of defective work and materials. Except as may be noted on the Contractor's Affidavit and Release of All Claims, acceptance of the Final Payment shall constitute an accord and satisfaction between the Owner and the Contractor. In case of unresolved Subcontractor claims against the Contractor, the Owner will withhold all disputed amounts unless the Contractor provides a fully executed Consent of Surety in a form acceptable to the Owner.

ARTICLE 11 **CONTRACT AND PROJECT ORDER COMPLETION**

11.1 DETERMINATION AND EXTENSION OF CONTRACT AND PROJECT ORDER TIME

11.1.01 All work under this Contract and Project Order shall be completed within the number of calendar days stipulated in the Project Order counting from the effective date of the Project Order Notice-to-Proceed and including all Saturdays, Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of the A/E or Field Representative's orders to suspend and resume all work, due to causes not the fault of the Contractor, its Subcontractors or Suppliers, as specified in these General Conditions, shall be considered as Excusable Delays; request(s) for time extension shall be in accordance with the requirements of these General Conditions.

11.1.02 If the Contractor finds it impossible for reasons beyond its control to complete the Work within the specified Project Order Time, or as extended in accordance with the provisions of these General Conditions, it may, at any time prior to the expiration of the Project Order Time as extended, make a written request to the Field Representative or the A/E for an extension of time setting forth the reasons which it believes will justify the granting of its request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Field Representative or the A/E finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Field Representative or A/E may recommend to the Owner to extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be extended in the form of a Project Order Modification or a Work Order that will be in full force and effect, the same as though it were the original time for completion. This Project Order Modification or Work Order may be executed prior to or after the expiration of the Project Order Time as extended.

11.2 BENEFICIAL OCCUPANCY AND SUBSTANTIAL COMPLETION

11.2.01 Beneficial Occupancy shall occur when the Owner in its sole discretion determines that a portion of the Work may be occupied. The Owner may take Beneficial Occupancy in accordance with the provisions of the Contract and Project Order Documents. If known that the Owner intends to take Beneficial Occupancy of any portion of the Work, such will be stated in the Project Order Documents. If not known prior to the time of receipt of Project Bids, the Owner will give written notice to the Contractor through the Field Representative or the A/E or the Contract Officer within a reasonable time of taking any such Beneficial Occupancy.

11.2.02 Substantial Completion shall occur when the Architect/Engineer issues a certificate of Substantial Completion. The Contractor is entitled to Substantial Completion when only minor Punch List items are pending, and when the Work can fully be used for the use for which it was intended.

11.2.03 Beneficial Occupancy or issuance of a Certificate of Substantial Completion shall not constitute Final Acceptance of the Work, nor shall it relieve the Contractor of any responsibility for the correction of work or for the performance of Work not complete at the time of Beneficial Occupancy or Substantial Completion.

11.2.04 Prior to Beneficial Occupancy or Substantial Completion, the Contractor shall obtain a Certificate of Occupancy from the Building and Zoning Department.

11.2.05 Prior to Beneficial Occupancy or Substantial Completion, the Contractor shall deliver to the Field Representative or the A/E complete As-Built, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, all applicable warranties and guarantees, and the appropriate Certificate of Occupancy.

11.2.06 As provided in Division 1, prior to the anticipated date of Beneficial Occupancy or Substantial Completion, the Contractor shall instruct Owner personnel as necessary for the proper operation and maintenance of all equipment and machinery that will serve the Work.

11.2.07 As provided in Division 1, prior to the date of Beneficial Occupancy or Substantial Completion, the Architect/Engineer and the Field Representative will inspect the Work and begin the preparation of a Punch List covering those items of incomplete or defective work which the Contractor shall complete and correct prior to Final Acceptance.

11.2.08 The Contractor shall not be responsible for normal wear resulting from the Owner's use of the Work after Beneficial Occupancy or Substantial Completion. However, any damage to the work not attributable to normal wear resulting from the Owner's use shall be repaired by the Contractor at no additional cost to the Owner.

11.2.09 When the Contractor notifies the Architect/Engineer and the Field Representative that the Project or a Phase of the Project is ready for Substantial Completion inspection, the Architect/Engineer, the Field Representative, any other Owner representatives as designated by the Owner, representatives of regulatory agencies as appropriate, and the Contractor shall inspect the work jointly to ascertain if that phase of the Project is substantially complete. A Punch List of deficiencies shall be drafted by the Architect/Engineer during the inspection, and the Architect/Engineer shall disseminate a draft Punch List to the Contractor and all other attendees within twenty-four (24) hours of the inspection. If that phase of the Project is determined by the Architect/Engineer to be substantially complete (with input from the Field Representative and

others) in accordance with the Contract Documents, and including equipment and systems commissioning, then the Contractor shall prepare a Certificate Of Acceptance for Substantial Completion for that phase to be executed by the Contractor, Architect/Engineer, Field Representative and the Owner. Concurrently, the Contractor shall take action to remedy the deficiencies noted on the Punch List, as amended by the comments of the Field Representative and others. A date shall be negotiated with the Contractor for the completion of the Punch List items that shall not be greater than sixty (60) days from the date of issuance of the Certificate of Acceptance for Substantial Completion for each phase of the Project within which to remedy such deficiencies. At the end of the said period, the Architect/Engineer and Field Representative shall conduct a final inspection and ascertain if the deficiencies have been remedied and the work is complete.

11.2.10 If any of the conditions listed in this Article are not met and/or commissioning of equipment and systems has not been completed, or the Contractor determines that the final Punch List cannot be completed within sixty (60) days, a Certificate of Acceptance for Substantial Completion shall not be issued. The Contractor shall continue work, reducing the number of items on the Punch List that were not met. Additional inspections shall be scheduled as necessary until Substantial Completion is declared. However, costs incurred by the Owner for any inspections beyond a second inspection will be charged back to the Contractor and the Contract Amount will be reduced accordingly.

11.2.11 In the event the Contractor refuses or fails to complete any item on the Punch List by the specified time, the Contractor is liable for Liquidated Damages, and the Owner has, as its option, the right to, after ten (10) Days notice to the Contractor, have the work performed by others and back charge the Contractor for all Direct and Indirect Costs relating to performing this work. The applicable Liquidated Damages would continue until the expiration of the ten (10) calendar day notice to the Contractor that the Owner will have the work performed by others. The Punch List and the Contract shall remain open until all work is complete and accepted. The current retainage will be used to offset Liquidated Damages and any back charge, after which, any surplus retainage will be released to the Contractor. If the retainage is insufficient to cover the Liquidated Damages and any back charge, the Owner will bill the Contractor for the balance and the Contractor shall promptly remit to the Owner an amount equal to the billing. In no instance shall the Contractor assess such Liquidated Damages against any SBE Subcontractor.

11.3 CONTRACTOR'S RESPONSIBILITY FOR WORK

11.3.01 Until the Final Acceptance of the Work, excepting only those portions of the work declared Substantially Completed, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before Final Acceptance and shall bear the expense thereof.

11.3.02 If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall protect the work from erosion, provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities as necessary to protect the work.

11.4 GUARANTEES AND WARRANTIES

11.4.01 The guaranty period for the entire Work covered by the Performance and Payment Bond shall not begin until Substantial Completion of all work under the Contract and Project Orders and will be for a period of one (1) year unless otherwise stipulated in the Project Order Documents.

11.4.02 The guaranty period for equipment covered by Contractor's and Subcontractors' guarantees shall start at the time of Beneficial Occupancy for any portion of the Work which is occupied by the Owner prior to Substantial Completion, or at Substantial Completion, whichever occurs first, and will be for a period of one (1) year unless otherwise stipulated in the Project Order Documents.

11.4.03 The Contractor hereby warrants and guarantees that all work shall be in accordance with the Contract and Project Order Documents. The Contractor will submit a written guarantee in the form found in the Contract and Project Order Documents prior to Substantial Completion. The Contractor further agrees that it will correct all defects discovered within one (1) year (or longer if a longer period is stipulated in the Contract and Project Order Documents,) of the date of Substantial Completion and that it will commence work on such repairs within ten (10) days after being notified by the Owner of the need for this work.

11.4.04 If the Contractor fails to act within this time period, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

11.4.05 The Contractor will correct all latent defects discovered within ten (10) years after Substantial Completion provided that the Owner shall notify the Contractor of each latent defect within the time specified by law. The Contractor, without prejudice to the terms of the Contract and Project Order, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within ten (10) days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

11.4.06 Required Guarantees:

A. Subcontractor's Guarantees

The Contractor shall furnish a written guaranty from each Subcontractor in the form found in the Contract and Project Order Documents.

B. Manufacturer's Guarantees

The Contractor shall furnish an original guaranty or warranty from each of the manufacturers of equipment or materials supplied and installed under this Contract. Each guaranty or warranty shall be in accordance with the respective manufacturer's association Standard Guaranty and shall be in favor of the Contractor and the Owner.

C. Special Guaranty and Warranty Requirements

The Contractor shall also furnish any special guaranty or warranty called for in the Contract and Project Order Documents.

11.4.07 All guarantees and warranties shall be delivered to the Field Representative prior to Beneficial Occupancy or Substantial Completion, whichever is applicable.

11.4.08 Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to the health or safety of employees, property, Lessees, or the general public, the Owner may undertake, at the Contractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of this Contract.

11.5 FINAL ACCEPTANCE

11.5.01 Upon due notice from the Contractor of presumptive completion of the Work, the, Architect/Engineer, the Field Representative, and the Owner will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Project Order Documents, such inspection shall constitute the final inspection. The Field Representative will notify the Contractor in writing of Final Acceptance as of the date of final inspection.

11.5.02 If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Field Representative will give the Contractor the instructions for correction of same (Punch List) and the Contractor shall immediately comply with and execute the work listed in the Punch List. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided that work has been satisfactorily completed. In such event, the Field Representative will notify the Contractor in writing of Final Acceptance as of the date of this final inspection.

11.5.03 Upon notification of Final Acceptance, the Contractor shall furnish to the Field Representative or the A/E the final Contractor's Affidavit and Release of All Claims.

11.5.04 Final Acceptance of the Work does not preclude or estop the Field Representative or the A/E from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall the Owner be precluded or estopped from recovering from the Contractor or its Surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill its obligations under the Contract and Project Order. A waiver on the part of the Owner of any breach of any part of the Contract and Project Order shall not be held to be a waiver of any other or subsequent breach.

11.5.05 The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

11.5.06 As a condition of Final Acceptance, the Contractor will return all of the Contract and Project Order Documents, including any copies made, and any copies that are in the possession of Subcontractors, suppliers and materialmen, to the Owner. Failure to return the Contractual Documents, and all copies, to the Owner will be reported to a Law Enforcement Investigating Authority. Furthermore, the Contractor shall not be allowed to participate in future confidential solicitations until such time that the Contractor has taken corrective actions satisfactory to Miami Dade County.

11.6 CONTRACTOR'S AFFIDAVIT AND RELEASE OF ALL CLAIMS

11.6.01 Upon the completion of the Work and before the final payment is made; the Contractor shall execute a Contractor's Affidavit and Release of All Claims. This is to be accompanied by a consent of the Surety, in favor of the Owner, on the Form included in the Contract Documents. An original Contractor's Affidavit and Release of All Claims shall be submitted to the Field Representative with the Contractor's Request for Final Payment.

11.6.02 The rights of all persons supplying labor, materials and supplies, used directly or indirectly in the prosecution of the Work covered by this Contract and Project Order are governed by the provisions of Section 255.05, Florida Statutes. Nothing in the Contract Documents shall be construed to confer any benefits or rights upon or to create any relationships whatsoever with any Subcontractor, supplier, laborer or any other party except as same may be granted, conferred or created by Section 255.05 of the Florida Statutes.

ARTICLE 12 **INDEMNIFICATION AND HOLD HARMLESS**

12.1 INDEMNIFICATION AND HOLD HARMLESS

12.1.01 In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the County, their elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work in an amount not to exceed Five Million Dollars (\$5,000,000) per Project.

12.1.02 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

12.1.03 In the event that any claims are brought or actions are filed against the County with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the County may select the attorneys to appear and defend such claims or actions on behalf of the County. The Contractor further agrees to pay at the Contractor's expense the attorneys' fees and costs incurred by those attorneys selected by the County to appear and defend such claims or actions on behalf of the County. The County, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the County.

12.1.04 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes,

as may be amended.

12.1.05 This Section shall survive expiration or termination of this Agreement.

12.2 PERFORMANCE AND PAYMENT BOND

12.2.01 Although the Contractor has been approved by its Surety to provide a Performance and Payment Bond in the amount of Thirty Million Dollars (\$30,000,000), within fifteen (15) calendar days from the date of Notice of Award presented to the Contractor, the Contractor shall deliver to the County a Performance and Payment Bond in the amount of Ten Million Dollars (\$10,000,000). The Contractor must maintain such Performance and Payment Bond annually throughout the life of the Contract. In the event the value of Work exceeds Ten Million Dollars (\$10,000,000) the bond must be increased accordingly in increments of Ten Million Dollars (\$10,000,000).

- A. Bond shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to financial strength and financial size according to the latest (1986 or later) edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$500,001 to \$1,500,000	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,000 to \$10,000,000	A VIII
Over \$10,000,000	A IX

- B. On Contract amounts of \$500,000 or less, the Bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
 - (1) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Invitation to Bid is issued.
 - (2) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
 - (3) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The Bond amount shall not exceed the underwriting limitations as shown in this circular.

- C. For Contracts in excess of \$500,000 the provision of Subsection 12.2.01.B will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- D. Surety Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- E. The attorney-in-fact or other officer who signs a Performance and Payment Bond for a

surety company must file with such Bond a certified copy of his/her power of attorney authorizing him/her to do so.

12.2.02 The cost of the Bond shall be included in the Total Contract amount. The premiums shall be charged in a pass through basis with no mark up.

12.2.03 The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

12.2.04 In the event the Surety on the Performance and Payment Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Owner shall withhold all payments under the provisions of these Contract Documents until the Contractor has given a good and sufficient Bond in lieu of Bond executed by such Surety.

12.2.05 Cancellation of any Bond or non-payment by the Contractor of any premium for any Bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.

12.2.04 The Bond shall be delivered to the Internal Services Department, Strategic Procurement Division located at 111 NW 1st Street, Suite 1300, Miami, Florida 33128 in accordance with the instructions within the Notice of Award.

12.3 INSURANCE

12.3.01 The Contractor shall maintain the following insurance throughout the performance of this Contract until the Work has been completed by the Contractor and accepted by the Owner. The Contractor and Sub-Contractors shall furnish to the Internal Services Department, Strategic Procurement Division located at 111 NW 1st Street, Suite 1300, Miami, Florida 33128.

- A. **Worker's Compensation**, as required by Chapter 440, Florida Statutes.
- B. **Automobile Liability Insurance**, covering all owned, non-owned and hired vehicles used in connection with the work in an amount not less than:
 - (1) \$5,000,000 combined single limit per occurrence for bodily injury and property damage for vehicles used on the AOA.
 - (2) \$1,000,000 combined single limit per occurrence for bodily injury and property damage covering vehicles when being used by the Contractor off the AOA.
- C. **Commercial General Liability Insurance** on a comprehensive basis, including Contractual Liability, Broad Form Property Damage and Products and Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.

12.3.02 All insurance policies required herein shall be issued in companies authorized to do business under the laws of the State of Florida, with the following qualifications:

- A. The company must be rated no less than "A-" as to financial strength, and no less than

"VII" as to financial size in accordance with the latest edition of "Best's Key Rating Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of MDAD Risk Management Office.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

12.3.03 The Contractor shall furnish certificates of insurance and insurance policies to the Owner prior to commencing any operations under this Contract. Certificates and policies shall clearly indicate that the Contractor has obtained insurance, in the type, amount, and classifications, as required for strict compliance with this Article. The certificates and policies must provide that, in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty (30) days advance notice shall be given to the MDAD Risk Management.

12.3.04 Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the Contractor from liability under any other portion of this Contract.

12.3.05 Cancellation of any insurance or bonds, or non-payment by the Contractor of any premium for any insurance policies or bonds required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.

12.3.06 The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the agreement. If insurance certificates are scheduled to expire during the contract period, the Contractor shall be responsible for submitting new or renewed insurance certificates to MDAD's Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

12.3.07 The Owner reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Contractor agrees to permit such inspection at the offices of the Owner.

ARTICLE 13 **CANCELLATION OR TERMINATION OF CONTRACT**

13.1 CANCELLATION BY THE OWNER

13.1.01 The Owner may at its option and discretion cancel the Contract or any Project at any time without any default on the part of the Contractor by giving a written Notice of Cancellation to the Contractor and its Surety at least ten (10) Days prior to the effective date of such cancellation.

13.1.02 In the event of cancellation by the Owner, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Architect/Engineer and the Consulting Engineers. The Contractor will be paid for:

- A. The final value of all work completed under the Contract and Project Order, based upon the approved Schedule of Values and/or Unit Prices,
- B. The final value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,
- C. The final value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the Contract Officer prior to release of payment for such materials and equipment.
- D. No claims for loss of anticipated profits or for any other reason in connection with the cancellation of the Contract shall be considered.

13.1.03 In the event of cancellation under this Article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such cancellation.

13.1.04 In the event of cancellation under this Article, the Owner does not waive or void any credits otherwise due Owner at the time of cancellation, including Liquidated Damages, and back charges for defective or deficient work.

13.1.05 Upon cancellation as above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.

13.2 TERMINATION BY DEFAULT OF CONTRACTOR

13.2.01 The Contract and Project Order may be terminated by the Owner for failure of the Contractor to comply with any requirements of the Contract and Project Order Documents including but not limited to:

- A. Failure to begin the work under the Contract and Project Order within the time specified in the "Notice to Proceed", or
- B. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract and Project Order, and the approved Progress Schedule, or
- C. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or the A/E, or
- D. Discontinues the prosecution of the work, or
- E. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or
- G. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or
- H. Makes an assignment for the benefit of creditors, or
- I. For any other cause whatsoever, fails to carry on the work in an acceptable manner.
- J. The Owner may terminate this Contract if the Contractor is found to have submitted a false certification or to have been, or is subsequently during the term of this Contract, placed on

the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

13.2.02 Before the Contract and Project Order is terminated; the Contractor and its Surety will be notified in writing by the Architect/Engineer of the conditions which make termination of the Contract and Project Order imminent. The Contract and Project Order will be terminated by the Owner ten (10) Days after said notice has been given to the Contractor and its Surety. Unless a satisfactory effort acceptable to the Owner has been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Contract and Project Order breached and send a written Notice of Termination to the Contractor and its Surety.

13.2.03 The Owner reserves the right, in lieu of termination as set forth in this Article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied.

13.2.04 In the event the Owner exercises its right to terminate the Contract and Project Order for default of the Contractor as set forth herein, the Surety shall complete the Contract and Project Order in accordance with its terms and conditions. If the Surety takes over, the time or delay between Notice of Default and start of work by the Surety is a Non-Excusable Delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days, or after such takeover fails to prosecute the Work in an expeditious manner, the Owner may exercise any of its other options including completing the Work by whatever means and method it deems advisable (see Article 3). No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract and Project Order shall be considered.

13.2.05 The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the Owner to the affected Subcontractors and suppliers at any tier.

13.3 TERMINATION FOR NATIONAL EMERGENCIES

13.3.01 The Owner shall terminate the Contract and Project Order or portion thereof by written notice when the Contractor is prevented from proceeding with the construction Contract and Project Order as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.

13.3.02 When the Contract and Project Order, or any portion thereof, is terminated before completion of all items of work in the Contract and Project Order, payment will be made for the actual number of units or items of work completed at the Contract and Project Order price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Contract and Project Order shall be considered.

13.4 IMPLEMENTATION OF CANCELLATION OR TERMINATION

13.4.01 If the Owner cancels or terminates the Contract or any Project Order, the Contractor shall stop all work on the date specified in the Notice of Cancellation or Termination and shall:

- A. Cancel all orders and Subcontracts which may be terminated without costs;
- B. Cancel and settle other orders and Subcontracts where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed,

subject to prior approval of the Field Representative or the A/E.

- C. Transfer to the Owner, in accordance with directions of the Field Representative, all materials, supplies, work in progress, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;
- D. Deliver to the Field Representative or the A/E As-Built Documents, complete as of the date of cancellation or termination, Plans, Shop Drawings, Sketches, Permits, Certificates, Warranties, Guarantees, Specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work.
- E. The Contractor shall perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto.
- F. Cancellation or termination of the Contract/Project Order or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve its Surety of its obligation for and concerning any just claim arising out of the work performed.
- G. In arriving at the amount due the Contractor under this Article, there will be deducted, (1) any claim which the Owner may have against the Contractor in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the Owner.

ARTICLE 14 **SENSITIVE SECURITY INFORMATION (SSI)**

With the issuance of a POD, it may be determined that the drawings and specifications for that project contains Sensitive Security Information (SSI), as defined by 49 CFR 1520, and, as such, these drawings and specifications are exempt from dissemination to the general public.

If it is determined that the project documents contain SSI information, the Contractor will be required to execute a non-disclosure affidavit, and return the executed affidavit with the PO (Refer to Special Provision 4).

ARTICLE 15 **VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)**

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Florida Statute, titled "Verification of Employment Eligibility." This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective, January 1, 2021, and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination, and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the

statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 16 VENDOR REGISTRATION

16.1 The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor’s Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Contractor’s “County Vendor Number.” To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual’s Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- **Identification of individual account records**
- **Payments to individual/Contractor for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

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| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)</p> <p>3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> <p>4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County)</p> <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County)</p> <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>7. Miami-Dade County Code of Business Ethics Affidavit
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)</p> <p>8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the Code of Miami-Dade County)</p> | <p>9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County)</p> <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> <p>11. Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit
(Section 448.095, of the Florida State Statutes)</p> <p>12. Miami-Dade County Pay Parity Affidavit
(Resolution R-1072-17)</p> <p>13. Miami-Dade County Suspected Workers’ Compensation Fraud Affidavit
(Resolution No. R-919-18)</p> <p>14. Office of the Inspector General
(Section 2-1076 of the Code of Miami-Dade County)</p> <p>15. Small Business Enterprises
<i>The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.</i></p> |
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State of Florida.

16. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the

16.2 Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), of the Code, the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 17

PRESS RELEASE OR OTHER PUBLIC COMMUNICATIONS

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 18

U.S. SOCCER FEDERATION 2026 WORLD CUP

The terms of this Agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Agreement, the Contractor shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement.

Where the Contractor’s rights or obligations under this Agreement are in conflict with the County’s obligations under the Airport Agreement, and upon notice by the County to the Contractor, the terms of this Agreement shall be deemed conformed to the County’s obligations under the Airport Agreement. Where such conformance would cause a material change in this Contract, Contractor shall have the right, upon written notice to the County within five (5) days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Contractor shall have no cause of action for money damages of any kind, including but not limited to direct damages, unamortized costs or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the Agreement does not elect to terminate this Agreement within the time specified herein, this Agreement shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same.

ARTICLE 19
TRANSITION OF PENDING PROJECTS

The Owner may require the Contractor to assume assignments of existing, ongoing subcontracts or projects issued under the prior MCC contract. Where such assumption is required, the contractor shall assume the permits related to such projects, and shall be responsible for the project or subcontract as if issued under this agreement. In such event, Contractor shall have the opportunity to review and comment on the proposed assignment agreements. MDAD shall be responsible for any additional direct costs, if any, and to the extent such costs are recoverable under the applicable subcontract, associated with completing or correcting the work or repairing defective work and any delays associated with such activities and Owner shall negotiate any additional indirect costs related to the assumption of such projects, except that indirect costs for such projects shall not exceed 12%. Assumed assignments shall not be consider Extra Work.

ARTICLE 20
CONSUMER PRICE INDEX ADJUSTMENT

The pricing provided by the Contractor shall remain fixed for a period of no less than twelve (12) months after the commencement of the contract. The rates specified in the Price Schedule may be adjusted by the lower of either the percentage increase in the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics (BLS-U) or the cost-of-living adjustment for the County non-union bargaining unit. The CPI adjustment is based on the percent change of the CPI for the most recent month to the CPI of the 12 previous months but not-to-exceed 5% for each rate. The County reserves the right to negotiate lower rate increases based on market research information or other factors that influence price. It is the Contractor’s responsibility to request any pricing adjustment under this provision. The Contractors request for adjustment must be submitted to the County’s Internal Services Department, Strategic Procurement Division for review

no more than ninety (90) days or no less than forty five (45) days prior to expiration of the current contract year.

ARTICLE 21
BUY AMERICAN PREFERENCES

A. The Aviation Safety and Capacity Expansion Act of 1990 (49 U.S.C. 50101) and County Ordinance [REDACTED] provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:

1. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs). 1 or 2 shall be treated as domestic.
2. Components. As used in this clause, components mean those articles, materials, and supplies incorporated directly into steel and manufactured products.
3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

B. The Contractor will be required to assure that only domestic steel and manufactured products will be used by the Contractor, Subcontractors, materialmen and suppliers in the performance of this contract, except those:

1. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
2. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
3. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent (25%).

ARTICLE 22
PROMPT PAYMENT

It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.10.4.01, of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be fourteen (14) calendar days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

ARTICLE 23
ETHICS COMMISSION

Pursuant to Section 2-11.1(w) of the Code of Miami-Dade County, the Ethics Commission has jurisdiction over Consultants and vendors. The Contractor must provide the Ethics Commission with a written report regarding its compliance with any restriction contained in the advisory opinion issued by the Ethics Commission to the Contractor, sub-consultants, or team members within ninety (90) days of each task assignment. The report must be submitted to the Executive Director, Commission on Ethics and Public Trust at 19 West Flagler St., Suite 207, Miami, Florida 33130.

ARTICLE 24
TRUTH IN NEGOTIATION

Pursuant to A.O. 3-39 and Florida Statutes Chapter 287.055 5(a): For all lump sum costs or costs plus a fixed fee contract in which a fee will exceed One Hundred Ninety-Five Thousand Dollars (\$195,000; 287.017 – category four), the County will require the firm receiving the award to execute a Truth-In-Negotiation Certificate as required by Chapter 287, Florida Statutes.

ARTICLE 25
DISPUTE RESOLUTION

In the event the Contractor and Owner are unable to resolve their differences concerning the form, content, or propriety of any pay application, (referred to in

this Section as a “Dispute”), either the Contractor or Owner may initiate a dispute in accordance with the procedure set forth in this article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder. All Disputes under this Contract shall be decided by the Department Director or his designee. ~~Majority Construction Management, LLC~~ Director or designee shall not be binding but shall be admissible in a court of competent jurisdiction.

LLC

As soon as practicable, the Department Director or designee shall adopt a schedule for the Contractor and Owner to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within twenty (20) working days of the date on which such written submissions are filed, the Department Director or designee shall afford each party an opportunity to present a maximum of one (1) hour of argument. The Department Director designee may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the party is entitled to favorable resolution pursuant to the terms of this Contract. As part of such decision, the Department Director or designee shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Department Director or designee shall have the authority to rule on questions of law, including disputes over contract interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Department Director or designee is authorized by both parties to strike elements of claims seeking relief or damages not available under the contract by summary disposition.

In the event that the Department Director or designee determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Department Director or designee at his reasonable discretion.

No formal discovery shall be allowed in connection with any proceeding under this article. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this contract shall remain in force and effect throughout the proceeding. The Department Director or designee shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this contract shall constitute a waiver of that party’s claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of

any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

The Department Director or designee shall issue a written decision within fifteen (15) working days after conclusion of any testimonial proceeding and, if no testimonial proceeding is conducted, within forty-five (45) days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or subcontractor claims. As indicated previously, the decision of the Department Director or designee is not binding on the parties, but will be admissible in a court of competent jurisdiction.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Architect/Engineer's interpretation. Any presentation or request by the Contractor under this article will be subject to the same requirements for Submittal of Claims in this article.

ARTICLE 26
SHARED TENANT SERVICES

MDAD reserves the right to require the Contractor to utilize Shared Tenant Services during the term of this Contract on a paid subscription basis. Contractor shall: (1) limit the access to only the area within the licensed Area; (2) not interfere with any other equipment of MDAD or other tenants or Contractors; (3) have the sole responsibility, at its own cost and expense, for fully complying with any and all applicable present and future rules, regulations, policies, restrictions, ordinances, statutes, laws and or orders of any state, local or federal government; and (4) comply at its own sole cost and expense with all applicable present and future privacy laws from any governmental organization (US or foreign) as may be amended from time to time. Contractor shall be solely responsible for any and all civil or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws and or orders.

The Contractor shall sign the Telecommunications Systems / Services – Airport Rental Agreement, within seven (7) days of the executed Agreement date, in order to comply with the Shared Tenant Services requirement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the bound parties have caused this Contract to be executed by their appropriate officials, as of the date first above written.

CONTRACTOR
MAGNUM CONSTRUCTION MANAGEMENT, LLC

BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA

By: [Signature]
Name: Daniel Munilla
Title: President
Date: 08/11/2021
Attest: Johanna Santos [Signature]
Corporate Secretary/Notary Public

By: _____
Name: Daniella Levine Cava
Title: Mayor
Date: _____
Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal



Approved as to form
and legal sufficiency

Assistant County Attorney

CONTRACTOR (if Partnership or Corporate Joint Venture)

(A) PARTNERSHIP OR
CORPORATE JOINT VENTURER:
JOINT VENTURER:

(B) PARTNERSHIP OR
CORPORATE

(Corporate Name)

(Corporate Name)

By: _____
President

By: _____
President

Attest _____
Secretary

Attest _____
Secretary

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

(CORPORATE SEAL)

NAME OF MANAGING JOINT VENTURER:

By _____
Signature of Authorized Representative of Joint Venture

Witnesses as to Above

Contractor (If a L.L.C.):

Magnum Construction Management, LLC

Name of L.L.C.

A Florida member-managed limited liability company

By:  _____
Signature of Member
Daniel Munilla

 _____
Witness
Laura Munilla

Appendix A Price Schedule

Appendix A -Price Schedule

General Contractor for Miscellaneous Construction Contract

INSTRUCTIONS:

The Contractor's price shall be submitted on this Appendix A "Price Schedule." Contractor is requested to fill in the applicable blanks on this document.

A. PART 1 - PRICE BREAKDOWN FOR PRE-CONSTRUCTION SERVICES

Positions	Hourly Rate
General Manager	\$ 137.56
Scheduler	\$ 96.15
Safety Coordinator	\$ 101.59
Estimator	\$ 100.96
CSBE Program Manager	\$ 86.54
Accountant	\$ 84.26
Project/Construction Manager	\$ 100.96
Clerical	\$ 44.10

Magnum Construction Management, LLC

B. PART 2 - CONSTRUCTION FEES

Estimated Project Value	Type of Contractor	Percentage Fee
Up to \$200,000	General Contractor/Multi-Trade Contractor	9.27%
\$200,001 - \$1,000,000	General Contractor/Multi-Trade Contractor	9.27%
Over \$1,000,000	General Contractor/Multi-Trade Contractor	9.27%

FIRM: **Magnum Construction Management, LLC d/b/a MCM**

By:



Daniel Munilla, President

CONTRACTOR'S GUARANTEE (Cont'd)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____ 20 __,

by _____,
(Authorized Representative)

of _____, who is personally known to me or who
(Corporation, Partnership, etc.)

has produced _____ as identification and who did/did not take an oath.

(Signature of Notary)

(Print Name)

(Notary Stamp or Seal)

Notary Commission Number: _____

My Commission Expires: _____

SUBCONTRACTOR'S GUARANTEE (Cont'd)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 20 __ by

_____,
(Authorized Representative)

of _____,
(Corporation, Partnership, etc.)

who is personally known to me or who has produced _____ as identification and
who did/did not take an oath.

(Signature of Notary)

(Print Name)

(Notary Stamp or Seal)

Notary Commission Number: _____

My Commission Expires: _____

CONTRACTOR'S AFFIDAVIT AND RELEASE OF CLAIM
FOR PAY APPLICATION FOR PAYMENT NO. _____

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared the AFFIANT, _____

who being duly sworn, deposes and says as follows:

That they are the duly authorized representative of

(Name of Contractor)

being its _____

(Partner) (President or other Officer)

and as such has full authority to make this affidavit and to give this Release of Claim.

That the said Contractor has completed certain work for the Owner, under its Contract No. _____ dated _____, for which the Contractor has requested partial payment. This Application for Payment is for \$ _____, and of the said amount, the Contractor has heretofore received the sum of \$ _____, under prior Pay Application No. _____ leaving a balance of \$ _____, now due and payable.

That the said Contractor hereby covenants that the claims of all persons supplying labor, materials and supplies, used directly or indirectly in the prosecution of the work covered by the aforesaid prior Application for Payment No. _____, have been paid in full,

That the said Contractor hereby releases the Owner from any and all claims of any nature arising out of the performance of the aforesaid certain work described in prior Pay Application No. _____, and hereby accepts the aforesaid Amount in lieu of those claims.

CONTRACTOR:

Name of Contractor

By _____
Signature of Authorized Representative)

(Title)

(Date)

CONTRACTOR'S AFFIDAVIT AND RELEASE OF CLAIM
FOR PAY APPLICATION FOR PAYMENT NO. (Cont'd)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 20__, by

(Authorized Representative)

of

(Corporation, Partnership, etc.)

who is personally known to me or who has produced _____
as identification and who did/did not take an oath.

(Signature of Notary)

(Print Name)

(Notary Stamp or Seal)

Notary Commission Number: _____

My Commission Expires: _____

CONTRACTOR'S AFFIDAVIT AND RELEASE OF ALL CLAIMS

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared the AFFIANT,
_____ who being duly sworn, deposes and says as follows:

That they are the duly authorized representative of:

_____ (Name of Contractor)
being its _____
(Partner) (President or other Officer)

and as such has full authority to make this affidavit and to give this Release of All Claims.

That the said Contractor has completed certain work for the Owner, under its Contract No. _____, dated _____, for which the Contractor has requested payment in full. The Final Contract Amount is \$ _____, and of the said amount, the Contractor has heretofore received the sum of \$ _____, leaving a retained balance of \$ _____, now due and payable.

That the said Contractor hereby covenants that the claims of all persons supplying labor, materials and supplies, used directly or indirectly in the prosecution of the work covered by the aforesaid Contract, have been paid in full, except for the sum of \$ _____, which shall be paid in full from the aforesaid retained balance due the Contractor.

That the said Contractor hereby releases the Owner from any and all claims of any nature arising out of the performance of the aforesaid Contract, and hereby accepts the aforesaid Final Contract Amount in lieu thereof.

That the said Contractor hereby covenants that payment by the Owner of the Final Contract Amount in no way releases the Contractor from its continuing obligations under the Performance and Payment Bond heretofore posted with the Owner, and the Surety on said Bond hereby consents to the payment by the Owner of the retained funds.

CONTRACTOR:

_____ Name of Contractor

By _____
(Signature of Authorized Representative)

_____ (Title)

_____ (Date)

CONTRACTOR'S AFFIDAVIT AND RELEASE OF ALL CLAIMS (Cont'd)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 20 ____, by

(Authorized Representative)

of

(Corporation, Partnership, etc.)

who is personally known to me or who has produced _____
as identification and who did/did not take an oath.

(Signature of Notary)

(Print Name)

(Notary Stamp or Seal)

Notary Commission Number: _____

My Commission Expires: _____

SUBCONTRACTOR'S AFFIDAVIT IN COMPLIANCE WITH
SECTION NO. 10-35, MIAMI-DADE COUNTY CODE

NOTE: The Prime Contractor shall attach this statement, completed by each First Tier Subcontractor whose work appears on the prior requisition for payment, and by each direct supplier to the Prime Contractor who has furnished materials directly to the Prime Contractor which materials were included in the prior requisition for payment.

Project Name: _____ Project Number: _____
Dated: _____
Name - General Contractor _____
Name - Subcontractor/Supplier _____
Signature of Authorized Representative of Subcontractor/Supplier: _____

Title: _____ Date: _____

This Affidavit is an attachment to the Prime Contractor's Pay Requisition No. ____
Total Subcontract/Supplier Amount \$ ____.
Amount of work done by Subcontractor/Supplier under this pay requisition is \$ ____.

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 20__, by

(Authorized Representative)

of

(Corporation, Partnership, etc.)

who is personally known to me or who has produced _____
as identification and who did/did not take an oath, deposes and says that pursuant to the provisions of the
Contract for said project, all money due under prior requisitions for payment have been paid by
_____, the Prime (General) Contractor.

(Signature of Notary)

(Print Name)

(Notary Stamp or Seal)

Notary Commission Number: _____

My Commission Expires: _____

RELEASES OF CLAIM BY SUBCONTRACTORS REQUIRED

Section 10-35, Miami-Dade County Code

Before any prime contractor can receive any draw, except the first draw, for moneys due it as a result of a percentage of the work completed, it must pay all first-tier subcontractors and all direct suppliers of the prime contractor who have performed any work or supplied any materials directly to the prime contractor for the project as of that date their proportionate share of all previous draws and must provide the Owner's project manager with duly executed affidavits (subcontractor's statement of satisfaction) or releases of claim from all first-tier subcontractors and direct suppliers to the prime contractor who have performed any work or supplied any materials for the project as of that date, stating that said subcontractors and suppliers have been paid their proportionate share of all previous draws. In the event such affidavits cannot be furnished, the contractor may submit an executed consent of surety to requisition payment, identifying the subcontractors and suppliers, and the amounts for which the statement of satisfaction cannot be furnished. The Contractor's failure to provide a consent of surety to requisition payment will result in the amount in dispute being withheld until (1) the statement of satisfaction is furnished, or (2) consent of surety to requisition payment is furnished.

(Ord. No. 78-23, 4-4-78; Ord. No. 84-11, 2-7-84; Ord. No. 86-6, 2-4-86; Ord. No. 88-13, 3-1-88)

Consent of Surety to Pay Application for Payment

PROJECT NAME: _____ PROJECT NO.: _____

CONTRACTOR: _____

A/E CONSULTANT: _____

Attachment to Requisition No. _____ dated _____ in the amount of \$ _____

TO: MIAMI-DADE BOARD OF COUNTY COMMISSIONERS

The Surety Company, _____
(insert full name or legal title and address of Surety)

on the Bond of the Contractor listed above, hereby approves this payment to the Contractor. Said payment shall not relieve the Surety Company of any of its obligations to Miami-Dade County, including the Security from any and all liens, claims, or demands whatsoever that may now exist or be made in the future by any Subcontractor or material suppliers against this project and Contract.

This Consent of Surety recognizes that claims have been made by the following Subcontractors and material suppliers against the Contract in the amounts listed below:

(Subcontractor/material supplier name and telephone number)	(amount of claim)
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

() attached find additional listed names/amounts on pages 2 thru _____

The Surety recognizes that releases of lien or releases and assignment of claim have not been requested or received from all the Subcontractors and material suppliers for this facility.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____, 20____.

Attest:

Witnesses:

Surety: _____
Signature of Authorized Representative

Title: _____

(Seal)

Attachment: Surety Power of Attorney

**MIAMI-DADE COUNTY
SUBCONTRACTORS PAYMENT REPORT
(Ordinance 11-90)**

In accordance with Sections 2-8.8 of the County Code (as amended No. 11-90), an entity contracting with the County as a condition of final payment under a contract, the contractor shall identify all subcontractors used in the work, the amount of each subcontract, and the amount paid to each subcontractor. In the event that the contractor intends to pay less than the subcontract amount, the contractor shall deliver to the County a statement explaining the discrepancy or any disputed amount.

This form may be submitted after final payment to each subcontractor or comprehensively at the end of the contract with final requisition/invoice. All payments to subcontractors must be submitted as condition of final payment by Miami-Dade County. Please include in the "Total Amount Paid" column any funds that will be paid to subcontractors from the final payment issued by the County and denote such an amount with an asterisk (*). Attach statements explaining discrepancies when applicable.

PRIME CONTRACTOR/VENDOR:	
FEIN:	
PROJECT/CONTRACT NAME:	
PROJECT/CONTRACT NUMBER:	
CONTRACT AWARD DATE:	
CONTRACT AWARD AMOUNT:	

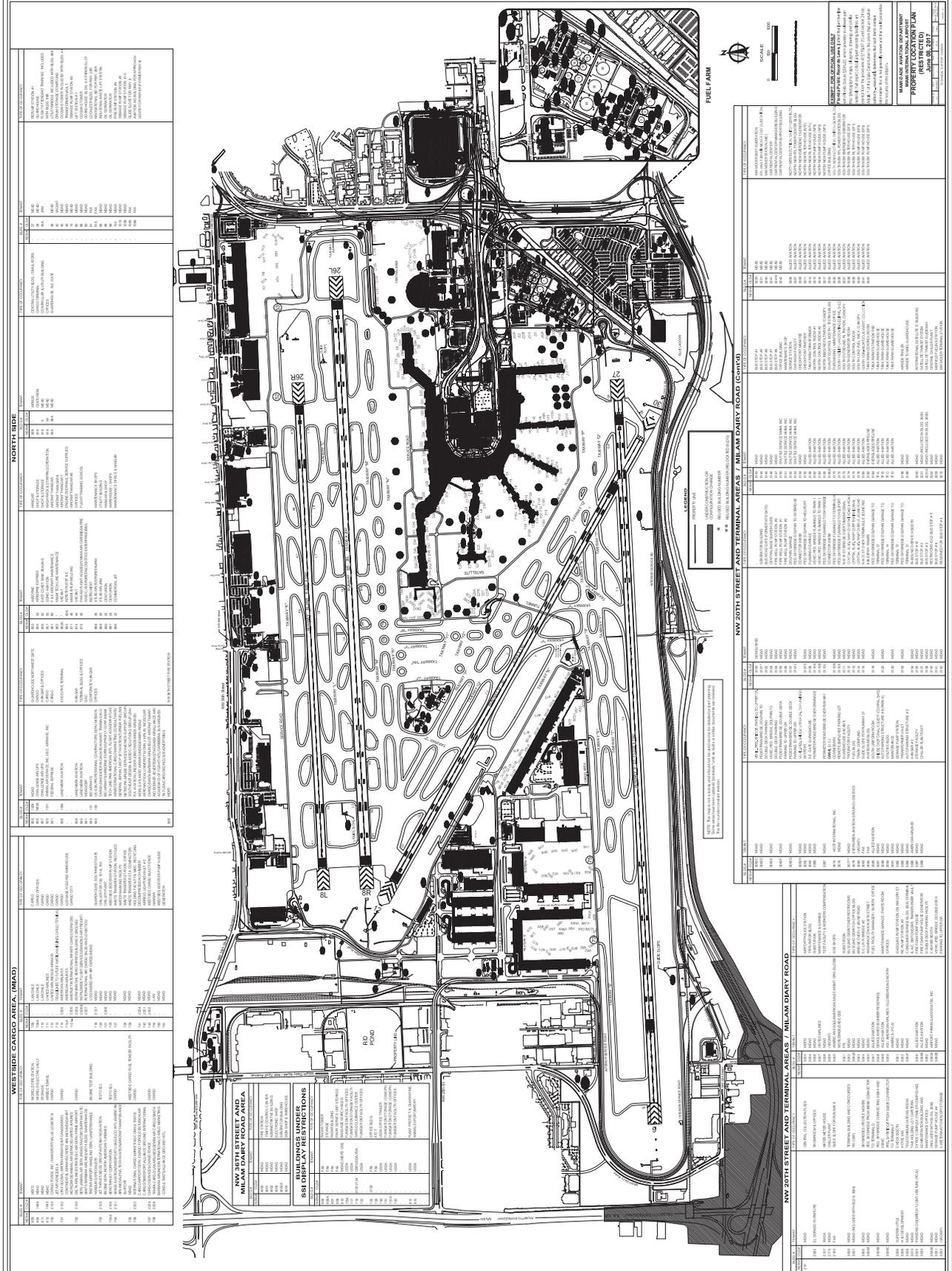
SUBCONTRACTOR	FEIN	CONTRACT VALUE	TOTAL AMOUNT PAID
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

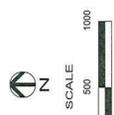
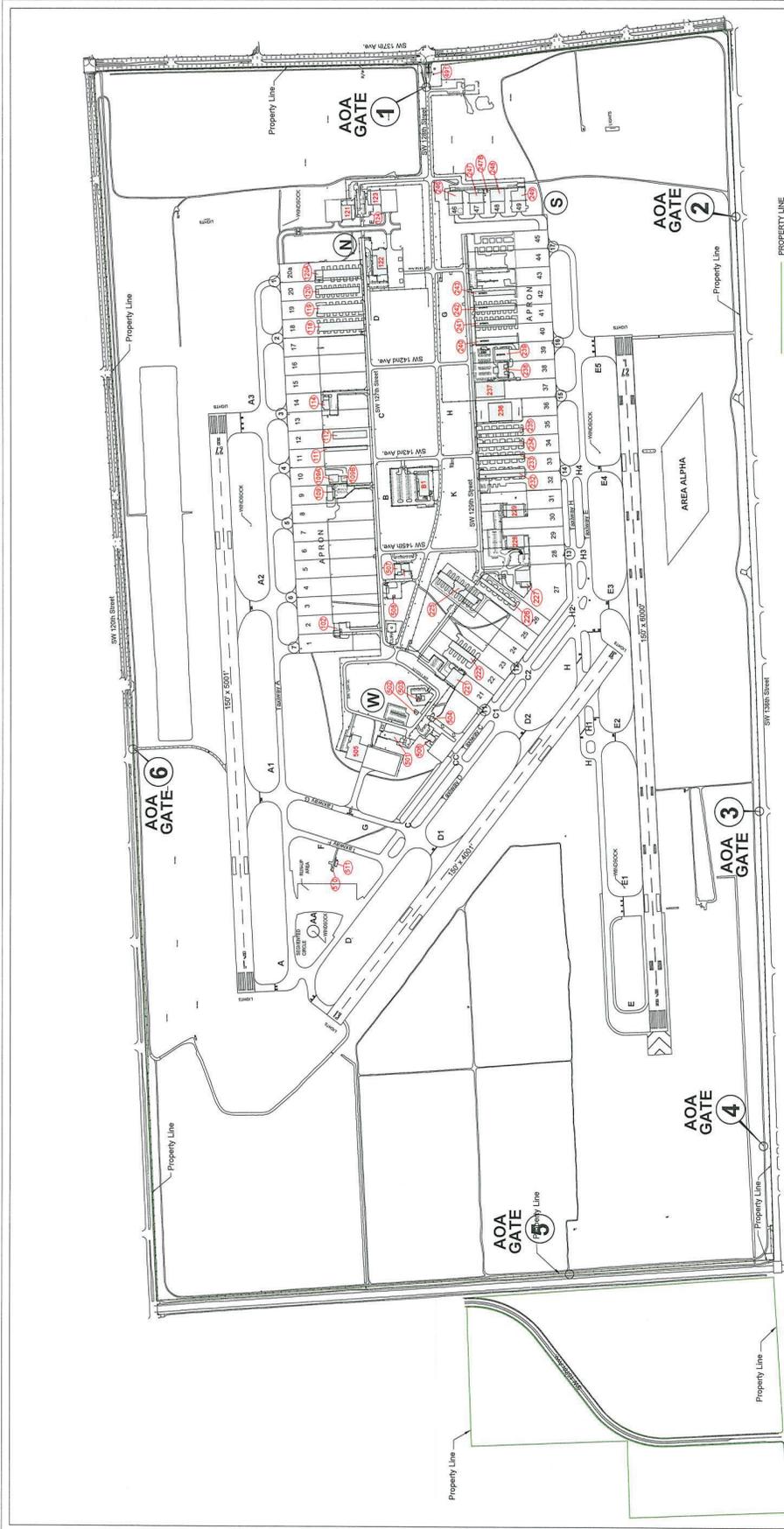
Completed form should be included with final requisition/invoice to the contracting/user County department.

Signature

Print Name and Title

Date





NOTE:
The boundaries of the block of North Lots were realigned in December 2015. Please refer to this revised alignment for further planning. Contact MDOAD Technical Support if you have any questions.

NOTE:
The boundaries of lots 35 & 36 have changed since the 2015 survey.

NOTE:
Building # 102A to replace #102, and #109C to replace #109

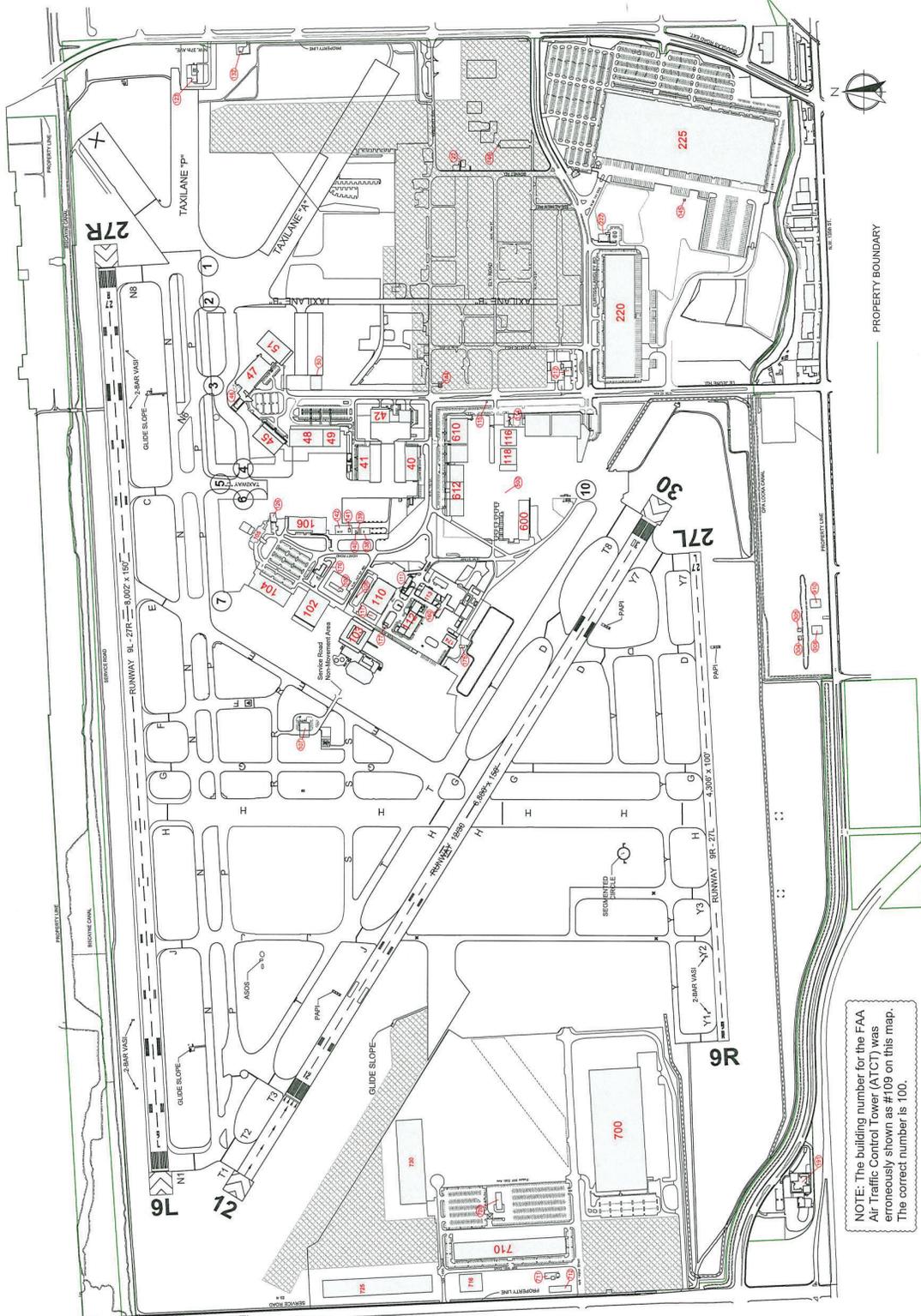
BUILD. NO.	TENANT	TYPE OF OCCUPANCY	BUILD. NO.	TENANT	TYPE OF OCCUPANCY	BUILD. NO.	TENANT	TYPE OF OCCUPANCY
102	SILVER EXPRESS	HANDGAR OFFICE & LOUNGE	223 & 224	RELIANCE AVIATION	RELIANCE AVIATION	249	MDOAD	HANDGAR
103-109	NUMBER RESERVED	-	225	RELIANCE AVIATION	RELIANCE AVIATION	249	MDOAD	PUMP HOUSE
110	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE & LOUNGE	226	RELIANCE AVIATION	RELIANCE AVIATION	250-490	NUMBERS RESERVED	REARON TOWER
111 & 112	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE & LOUNGE	227	RELIANCE AVIATION	RELIANCE AVIATION	482 TO 500	NUMBERS RESERVED	FLIGHT SIMULATOR LAB
113	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE & LOUNGE	228	RELIANCE AVIATION	RELIANCE AVIATION	501	MDOAD	FLIGHT SERVICE STATION
114	FERNANDEZ AVIATION	HANDGAR OFFICE	229	TAMAMAR AIR	TAMAMAR AIR	502	FVA	AIR TRAFFIC CONTROL TOWER
115-117	NUMBER RESERVED	-	230-232	TAMAMAR AIR	TAMAMAR AIR	504	INTERNATIONAL FLIGHT CENTERS	CLASSROOMS, OFFICES
118-104	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	233	TAMAMAR AIR	TAMAMAR AIR	505	INTERNATIONAL FLIGHT CENTERS	AIRCRAFT MUSEUM
119	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	234	TAMAMAR AIR	TAMAMAR AIR	506	INTERNATIONAL FLIGHT CENTERS	ADMINISTRATION & MAINTENANCE
120	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	235	TAMAMAR AIR	TAMAMAR AIR	507	INTERNATIONAL FLIGHT CENTERS	FUEL SERVICE STATION
121	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	236	TAMAMAR AIR	TAMAMAR AIR	508	INTERNATIONAL FLIGHT CENTERS	STORAGE FACILITY
122	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	237	TAMAMAR AIR	TAMAMAR AIR	509	INTERNATIONAL FLIGHT CENTERS	LIFTING WALL
123	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	238	TAMAMAR AIR	TAMAMAR AIR	510	INTERNATIONAL FLIGHT CENTERS	FLIGHT SERVICE STATION
124	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	239	TAMAMAR AIR	TAMAMAR AIR	511	INTERNATIONAL FLIGHT CENTERS	-
125	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	240-242	NUMBER RESERVED	-	512	INTERNATIONAL FLIGHT CENTERS	-
126	ADVANCE R. E. HOLDINGS	HANDGAR OFFICE	243	NUMBER RESERVED	-	513	INTERNATIONAL FLIGHT CENTERS	-
201	INTERNATIONAL FLIGHT CENTER	HANDGAR OFFICE & LOUNGE	244 & 247	INTERNATIONAL FLIGHT CENTER	INTERNATIONAL FLIGHT CENTER	514	INTERNATIONAL FLIGHT CENTER	-
202	INTERNATIONAL FLIGHT CENTER	HANDGAR OFFICE & LOUNGE	245	INTERNATIONAL FLIGHT CENTER	INTERNATIONAL FLIGHT CENTER	515	INTERNATIONAL FLIGHT CENTER	-
203	INTERNATIONAL FLIGHT CENTER	HANDGAR OFFICE & LOUNGE	246	INTERNATIONAL FLIGHT CENTER	INTERNATIONAL FLIGHT CENTER	516	INTERNATIONAL FLIGHT CENTER	-
204	INTERNATIONAL FLIGHT CENTER	HANDGAR OFFICE & LOUNGE	248	INTERNATIONAL FLIGHT CENTER	INTERNATIONAL FLIGHT CENTER	517	INTERNATIONAL FLIGHT CENTER	-

EXEMPT FOR OFFICIAL USE ONLY
This document contains information that is exempt from public release under the Freedom of Information Act (5 U.S.C. 552) and section 2(a) of Article I of the State Constitution to the extent that an aviation authority, as reasonably determines that such items contain information that is not generally known and that could jeopardize the security of the airport.

**MIAMI EXECUTIVE AIRPORT
PROPERTY LOCATION PLAN**



PROJECT FILE: MEG 2018 RLP Entry
DATE: 01-04-2018



NOTE: The building number for the FAA Air Traffic Control Tower (ATCT) was erroneously shown as #109 on this map. The correct number is 100.

BLDG. NO.	TENANT	TYPE OF OCCUPANCY
22	VACANT	TRAILER IN PROCESS OF RELOCATION
41	AA ACQUISITIONS	AA ACQUISITIONS
42	AA ACQUISITIONS	CORPORATE HEADQUARTERS
43	AA ACQUISITIONS	MANAGEMENT ADMINISTRATION
44	LANDMARK AVIATION	TERMINAL
45	LANDMARK AVIATION	LANDMARK AVIATION
46	LANDMARK AVIATION	HANGAR
47	LANDMARK AVIATION	HANGAR
48	LANDMARK AVIATION	HANGAR
49	LANDMARK AVIATION	HANGAR
50	LANDMARK AVIATION	HANGAR
51	AA ACQUISITIONS	AA ACQUISITIONS
52	AA ACQUISITIONS	AA ACQUISITIONS
100	US COAST GUARD	OFFICES & HANGAR
101	US COAST GUARD	OFFICES
102	US COAST GUARD	OFFICES
103	US COAST GUARD	OFFICES
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* NUMBER HAS BEEN REUSED



MIAMI-OPA LOCKA EXECUTIVE AIRPORT PROPERTY LOCATION PLAN

TECHNICAL SUPPORT DIVISION

EXEMPT FOR OFFICIAL USE ONLY
Florida Public Records Law. I attest that I am familiar with Florida Statutes §311.22, which provides in relevant part that "photographs, maps, blueprints, drawings and similar materials that depict critical airport operating facilities are exempt from the provisions of § 119.07 (1) Florida Statutes, which provides in relevant part that "information that is not generally known and that could jeopardize the security of the airport."

PROJECT FILE: OFF 2018 Base Map Rev02
DATE: 10-05-2018
N.T.S.

FLORIDA

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HOMESTEAD

MIAMI HOMESTEAD GENERAL AVIATION (X51) 4 NW UTC-5(-4DT) N25°29.95' W80°33.25'

MIAMI
L-23C, A
INP

7 B NOTAM FILE MIA

RWY 18-36: H3999X100 (ASPH) S-40, D-65, 2D-110

PCN 12 F/AY/T MIRL

RWY 18: Rgt t/c.

RWY 36: PAPI(P4R)—GA 3.0° TCH 24'.

RWY 10-28: H3000X75 (ASPH) S-20 PCN 5 F/AY/T MIRL

RWY 10: Tree.

RWY 28: Rgt t/c.

RWY 09U-27U: 2500X150 (TURF)

RWY 09U: Trees.

SERVICE: S4 FUEL 100LL, JET A OX 4

AIRPORT REMARKS: Attended 1200-0200Z. PAJA SE corner of arpt. Glider act 8000' and blw and crop dusting invof arpt. Aerobatic box S of arpt and E of Rwy 01. Remote control model flying fields 1.8 NM N Rwy 19. Rwy 09U-27U mkd with white cones.

AIRPORT MANAGER: (305) 869-1702

WEATHER DATA SOURCES: AWOS-3 118.375 (305) 247-2791.

COMMUNICATIONS: CTAF/UNICOM 122.8

MIAMI APP/DEP CON 125.5

CLEARANCE DELIVERY PHONE: For CD ctc Miami Apch at 305-869-5432.

RADIO AIDS TO NAVIGATION: NOTAM FILE MIA.

DOLPHIN (H) VORTAC 113.9 DHP Chan 86 N25°48.00'

W80°20.94' 216° 21.2 NM to fld. 6/4W.

TACAN AZIMUTH unusable:

055°-065° byd 35 NM bto 3,000'

185°-195° byd 23 NM

226°-236° byd 35 NM

DME unusable:

055°-065° byd 35 NM bto 3,000'

