Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2009

Agenda Item No. 8(A)(1)(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Award recommendation for the Non-exclusive Telecommunications & Network Services Management Agreement Miami-Dade Aviation Department RFP No. MDAD-08-06, to Norstan Communications Inc., d/b/a Black Box Network Services not to exceed $50,000,000

RECOMMENDATION

It is recommended that the Board approve the attached Non-exclusive Telecommunications and Network Services Agreement (the "Agreement") between Miami-Dade County (the "County") through its Miami-Dade Aviation Department ("MDAD" or the "Department") and Norstan Communications, Inc. d/b/a Black Box Network Services, Inc. ("Black Box" or the "Contractor") to provide telecommunications and network management services at Miami International Airport ("MIA" or the "Airport"), and the general aviation airports. It is further recommended that the Board authorize the Mayor or his designee, to execute said agreement and any cancellation or termination provisions on behalf of the County. Exhibits to this Agreement are on file with the Clerk of the Board.

SCOPE

The work will be performed in various districts.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact of this award over the contract period, five years with two one-year renewals, is approximately $50 million. The source of funding for this Agreement is MDAD's Operating Budget. Additionally, the Department generates annual revenues of $1,234,368 from tenants and users at the Airport through provision of Shared Airport Tenant Services ("SATS").

TRACK RECORD/MONITOR

Black Box is the current vendor performing telecommunications and network services for MDAD and is in good standing according to MDAD Telecommunications Chief, Pedro Garcia, P.E. A full due diligence analysis was conducted on Black Box, the proposer on this RFP, which revealed no pending infractions or existing suspensions at the state or federal levels. Black Box acquired NextiraOne LLC, on April 30, 2006. NextiraOne pled guilty to charges stemming from e-rate business conducted with libraries in South Dakota. The Federal Communications Commission ("FCC") suspended NextiraOne for one (1) year "from participating in any activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting or advising applicants or service providers regarding the schools and libraries support mechanism". The suspension against NextiraOne has since been lifted, and Black Box is an active vendor at both state and federal levels. It should be noted that NextiraOne LLC, was not a proposer on this solicitation.

COMPLIANCE DATA

There is no history of violations for this firm in the Department of Small Business Development's database.

DELEGATED AUTHORITY

The authority of the Mayor/County Manager to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County. The Agreement provides that within the total estimated agreement amount of $50 million, that procurements for various services and equipment will be processed, as well as any renewal, cancellation and termination provisions contained therein.

BACKGROUND

The County, through its Miami-Dade Aviation Department, solicited proposals from interested parties to provide telecommunications and network management services at MIA and the general aviation airports. Request for Proposals No. MDAD-08-06 (the "RFP"), for Non-exclusive Telecommunications and Network Services Management Agreement was advertised on April 21, 2008.

The following three (3) firms responded to the County public advertisement:

- Shared Technologies, Inc. ("Shared")
- Air-Transport Services Inc. ("Air-IT")
- Norstan Communications, Inc. d/b/a Black Box Network Services ("Black Box")

The Evaluation/Selection Committee (the "Committee") reviewed the three (3) proposals, and found Shared and Air-IT non-responsible for failing to meet the minimum qualifications. The Committee determined that based on the proposals submitted by Shared and Air-IT, and the additional reference checks conducted on the firms, that both firms lacked the requisite experience to perform the required services. The Committee found Black Box responsible, and recommended Black Box for negotiations. The appointed Negotiation Committee successfully negotiated a contract with Black Box on March 17, 2009.

PROJECT:	Non-exclusive Telecommunications and Network Services for Miami-Dade Aviation Department
PROJECT NO.	RFP No. MDAD-08-06
PROJECT LOCATION:	Miami International Airport and general aviation airports
DESCRIPTION OF PROJECT:	The Contractor shall furnish all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, management and operational support services for all voice and data network infrastructure (the "Work") for MDAD, its users and tenants, and the management of SATS for the County to tenants and users at the Airport. The scope of services include the provisioning of voice and data network services and maintaining existing and future voice and data networks infrastructure equipment including installation, operation, repair, maintenance, monitoring and support of all MDAD network and telephone devices. The Contractor shall provide 24/7 on-site Help Desk and Network Operation Center dedicated to providing uninterrupted service to Airport operations, including the provisioning of access to a remote Technical Assistance Center to help local staff resolve troubles as needed.

At the request of the County, the Contractor shall be capable of performing telecommunications infrastructure installations for new buildings, remodeling or additions to existing buildings, located on the airport property, including telephone, data network, wireless systems, public address system, Airport operational systems, building management systems, life safety, conduit and any telecommunications inside wiring and outside plant needed to support these or any other systems necessary to make the buildings operational, when these requirements are omitted or changed from the builder's original scope of work or if new requirements are identified since the original scope of work was prepared

If, at the request of the County, the Contractor performs the work above, the County shall reimburse the Contractor for the approved cost of such work. Upon the request of the County and advice as to the work to be performed by the Contractor, the Contractor shall manage same in accordance with the provisions stated in the Agreement.

AGREEMENT AMOUNT:

Management Fee

The Agreement provides for a management fee of $7,136,906 for the first year based on a staff of fifty-one (51) persons, which includes all overhead, and profit. The compensation for the rest of the Agreement is based on this management fee as adjusted for the requirements of the Capital Improvement Program ("CIP") and the change in the Florida Consumer Price Index ("CPI") for all Urban Consumers for Miami-Ft. Lauderdale for the salaries of the personnel.

Variable Cost

The Agreement also provides for estimated variable costs plus 8% mark up when authorized by the Department as follows:

1) Procurement of new materials and equipment at $1,100,000 per year

2) Obligations with vendors for all third-party maintenance agreements at $90,000 per year:

3) Project management of subcontracts at $600,000 per year:

4) On-call after hour services at 350 hours per year estimated at $177,753

The estimated total fixed and variable costs for the initial, five (5) year term of the Agreement is $37,772,379, (see Table 1 attached hereto).

Although the initial five (5) year Agreement amount reflects a total of $37,772,379, the Department recommends a total allocation of $50,000,000, in order to prudently support new construction and tenants, mitigate unforeseen circumstances (natural disasters, emergencies), and have the required funding to cover the additional two (2) year extension should the Department decide to exercise this option. All procurement expenditures will be processed in

	accordance with the dollar thresholds established in Administrative Order 3-38.
CONTRACT PERIOD:	Five (5) years
OPTION TO EXTEND:	Two (2) years, in one (1) year increments
REVIEW COMMITTEE DATE:	October 3, 2007
CONTRACT MEASURES:	Eight percent (8%) CSBE Goal
CONTRACT MEASURE ACHIEVED:	Eight percent (8%) ($3,021,790.32) Sub-contractor: Ruben Electric Technology Inc. Certification No. 10209
CWP WORKFORCE GOAL:	For work performed at MIA - 29% (11 employees) For work performed at Opa-locka - 45% (17 employees) For work performed at other MDAD facilities the CWP goal will be determined in accordance with Administrative Order No. 3-37
COMPANY NAME:	Norstan Communications, Inc. d/b/a Black Box Network Services
COMPANY PRINCIPALS:	Ralph Terry Blakemore, President Michael McAndrew, Vice President
COMPANY LOCATION:	5101 Shady Oak Road Minnetonka, MN 55343
GENDER, ETHNICITY, OWNERSHIP:	Black Box is publicly traded (NYSE:BBOX)
PREVIOUS AGREEMENTS WITH THE COUNTY IN LAST FIVE (5) YEARS:	2/2004 as NextiraOne, LLC amount $35,580,448 First Amendment increased amount to $42,696,537 Second Amendment increased amount to $46,792,711
RESPONSIBLE WAGES:	Yes
LIVING WAGE:	No
USER AGENCY:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 6, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

✓ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) 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(A)(1)(A)
10-6-09

RESOLUTION NO. _____

RESOLUTION APPROVING NON-EXCLUSIVE TELECOMMUNICATIONS AND NETWORK SERVICES AGREEMENT BETWEEN MIAMI-DADE COUNTY AND NORSTAN COMMUNICATIONS, INC. D/B/A BLACK BOX NETWORK SERVICES FOR MIAMI-DADE AVIATION DEPARTMENT, RFP NO. MDAD-08-06; IN AN AMOUNT NOT TO EXCEED $50,000,000; AND AUTHORIZING MAYOR OR HIS DESIGNEE TO EXECUTE AGREEMENT AND EXERCISE ANY CANCELLATION OR TERMINATION PROVISIONS CONTAINED THEREIN

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 the Board: (i) approves the Non-exclusive Telecommunications and Network Services Agreement (the "Agreement") for the Miami-Dade Aviation Department ("MDAD" or the "Department") between Miami-Dade County (the "County") and Norstan Communications, Inc. d/b/a Black Box Network Services ("Black Box"), RFP No. MDAD-08-06, in substantially the form attached hereto, and in an amount not to exceed $50,000,000 for a term of five (5) years, with an option to renew for two (2) years in one (1) year increments at the County's sole discretion; and (ii) authorizes the Mayor or designee to execute same and exercise or enforce the cancellation or termination provisions contained therein. The Agreement (a) furnishes all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, management and operational support services for all voice and data network infrastructure for MDAD, its users and tenants, and (b) manages Shared Airport Tenant Services provided to tenants and users at Miami International Airport.

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

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. for DSH

David Stephen Hope

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

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126
Fax: (305) 375-2484

July 10, 2009

Miguel De Grandy, P.A.
800 Douglas Road, Suite 850
Coral Gables, FL 33134

Re: Bid Protest – RFP No. MDAD-08-06
Non-exclusive Telecommunications & Network Services Management Agreement

Dear Mr. De Grandy:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the hearing examiner in connection with the foregoing bid protest hearing which was held on July 1, 2009.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By Diane Collins
Diane Collins, Acting Division Chief
Clerk of the Board Division

DC/fcd
Attachments

cc: Honorable Carlos Alvarez (via email)
George Burgess, County Manager (via email)
Ysela Llort, Assistant County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
David Hope, Assistant County Attorney (via email)
Jose Abreu, Director, MDAD (via email)
Ana Sotorrio, Associate Aviation Director, MDAD (via email)
Lenora Allen-Johnson, MDAD (via email)
Tony Quintero, MDAD (via email)
Marie Clark-Vincent, MDAD (via email)
Air Transport IT Services, Inc. (via US Mail)
Norstand Comm./Black Box Network Services (via US mail)
Shared Technologies, Inc. (via US mail)

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CLERK OF THE BOARD
2009 JUL 10 AM 11:04
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

DOUTHIT LAW, LLC
5955 NE 4th Court
Miami, FL 33137
(305) 893-0110 (305) 893-7499 Fax

July 9, 2009

TO: Clerk of the Board

FROM: Marc Anthony Douthit, Esq.

RE: Bid Protest–Project No. MDAD-08-06
Non-exclusive Telecommunications and Network Services Management Agreement

MEMORANDUM OPINION

This matter came before this Hearing Examiner on July 1, 2009 on the Bid Protest of Air Transport IT Services, Inc. (Air-IT), protesting Miami-Dade County's Recommendation of Award of Project Number MDAD-08-06, Non-exclusive Telecommunications and Network Services Management Agreement (Contract) to Norstan Communications d/b/a Black Box Network Services (Black Box). Air-IT was represented by Miguel DeGrandy, Esq., the Office of the County Attorney was represented by David Stephen Hope, Esq. and Black Box was represented by Jose Villalobos, Esq.

Prior to the Hearing, Black Box moved to intervene in the proceedings, arguing that as the recommended bidder they had a vested interest in the outcome of these proceedings. In reviewing Air-IT's Written Intent to Protest, the relief it seeks is that the Contract in question be rejected and the recommendation of award to Black Box be

7B

JUL-10-2009 11:01 From:DOUTHIT LAW To:3053752484 Page:2/18

thrown out and a new solicitation issued. Clearly, Black Box has an interest in the outcome of this matter and as such, its intervention in this matter was allowed.[1] .

PROCEDURAL BACKGROUND

Miami-Dade County, through the Miami Dade Aviation Department (County or MDAD) issued a Request for Proposal for project MDAD-08-06 on May 2, 2008 (RFP). The RFP sought responses from vendors to perform telecommunications and network management services at Miami International Airport, the general aviation airports and other Miami-Dade Aviation Department facilities which may be added in the future (collectively "the Airport"). Air-It, Black Box and a third entity, Shared Technologies, Inc. responded to the RFP.

Prior to the bid submission deadline, Air-IT, through counsel submitted to MDAD in accordance with Implementing Order, IO 3-21, certain objections to the RFP as written. This letter dated June 4, 2008 was written with the specific intention to allow Air-IT to preserve its rights in the event it later filed a Bid Protest directed to the issues raised in the letter. At the hearing the parties agreed that the issues raised in the Pre-Bid letter of objection, from a procedural standpoint at least, were properly preserved by Air-IT and those issues were submitted and argued before this Hearing Examiner at the Hearing.

[1]At the time of the hearing, both the Protestor and the County Attorney indicated that they did not have any objection to the intervention of Air-IT in these proceedings.

7C

JUL-10-2009 11:01 From:DOUTHIT LAW To:3053752484 Page:3/18

Air-IT also raised several other issues in its Written Intent to Protest which can be generally divided into two categories. First, are those issues raised in the Pre-Bid Objection letter dated June 4, 2008. The remaining issues relate to the "administration" of the bid process. This second category of issues go to the heart of Air-IT's assertion that the recommended bidder, Black Box was, in both the structure and language of the RFP and in the County's treatment during the bid process, given preferential treatment. This in turn skewed the bid process in favor of Black Box.[2]

By Memorandum dated August 5, 2008, all of the bidders were found to be "responsive" to the RFP. However, the proposals of Shared Technologies and Air-IT were found by the Evaluation Committee to be non-responsible due to their failings in meeting the Minimum Qualifications of the RFP. Subsequently, Black Box was notified by the County that it was the highest ranked responsive and responsible bidder and a recommendation was made to the County Manager to award the contract to Black Box. The County Manager in turn, recommended to the Board of County Commissioners that the contract be awarded to Black Box. It is from that recommendation of award that Air-IT filed its Written Notice of Intent to Protest.

IMPACT OF MDAD-04-01

Air-IT has asserted that the current RFP, which is the subject of this Protest is essentially identical to Request for Proposals, MDAD-04-01 (2004 RFP), issued for the

[2] Air-IT also makes a general objection to the RFP that the language contained in the RFP was so vague and unrelated to the project at hand as to render it arbitrary and capricious. Without going into to detail as to each such issue, I do not find that the language of the RFP is unusually vague and therefore not arbitrary

7D

JUL-10-2009 11:02 From:DOUTHIT LAW To:3053752484 Page:4/18

same services in 2004. Without going into a detailed comparison of the similarities of the terms of the two RFP's, the impact of the terms and conditions of the 2004 RFP on this process is limited. Air-IT contends that the County recognized the flaws in the 2004 RFP when none of the bidders were able to meet the Minimum Qualification Requirements. As a result, in 2008, using those same criteria, the only bidder who could possibly meet the Minimum Qualification Requirements in this RFP would be the incumbent, which in this case would be Black Box. Black could accomplish this by virtue of their purchase of the recommended bidder in the 2004 RFP, Nextira One.

Pedro Garcia, the Chair of Telecommunications for the Aviation Department, testified that to his recollection, the Minimum Qualification Requirements in the 2004 RFP were changed to lessen the number of years of prior experience that was required to meet the Minimum Qualification Requirements of the 2004 RFP. Air-IT points out that the 2004 Evaluation Committee expressed concern that none of the 2004 bidders met the Minimum Qualification Requirements of 2004 RFP. As such, the Minimum Qualification Requirements were adjusted so that some or all of the 2004 bidders to be able to meet them.

In 2008, using the same criteria, only Black Box met the Minimum Qualification Requirements and Air-IT suggests that not only did these criteria eliminate many potential bidders, but also favored Black Box as the incumbent. While it is impossible to tell whether the Minimum Qualification Requirements prevented any potential bidders

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or capricious. Any questions which a potential Proposer may have could have been addressed prior to the bid submission date and indeed Air-IT took advantage of this opportunity.

7E

JUL-10-2009 11:02 From:DOUTHIT LAW To:3053752484 Page:5/18

from responding to the 2008 RFP it cannot be said that using these same minimum qualifications somehow favored Black Box. The mere passage of time is sufficient to change the dynamic in such a way that makes qualifications that may have indeed been unreasonable and unreachable in 2004, perfectly reasonable and reflective of the current market conditions in 2008. I have no evidence before me, nor am I aware of any legal authority that requires the County to treat each of these RFP's identically, particularly four years later.

Related to this issue is the question of whether the incumbent, Black Box somehow benefited by the language of the RFP, particularly with respect to the inclusion of a Transition Plan as a requirement of the RFP response. Air-IT was careful to point out in its Written Intent to Protest that it was not challenging the relative weight being given to the Transition Plan requirement, but rather, its issue is with the perceived advantage gained by Black Box as the incumbent.

Air-IT points out that in attempting to comply with the Transition Plan requirement, it contacted certain key members of the existing provider's staff to determine if they would, if Air-IT was the recommended bidder for the RFP, be willing to work with the Air-IT team. In response, Black Box sent Air-IT a letter demanding that Air-IT refrain from any contact with its employees. Air-IT suggests that Black Box was and is the only bidder who can provide a "seamless" transition, since it is currently performing these services at the Airport.

7F

JUL-10-2009 11:02 From:DOUTHIT LAW To:3053752484 Page:6/18

In reading the plain language of the RFP as it relates to the Transition Plan, I find no language which would tend to show a bias towards Black Box or against Air-IT. While Air-IT has interpreted the Transition Plan requirement as the need to create a "seamless" transition, there is nothing in the language of the RFP that imposes such a requirement.

I do not think it reasonable to expect that any member of the evaluation committee who has had experience with Black Box as the incumbent, could completely overlook and ignore that information and experience in their evaluation. However, Black Box's incumbency can work in both directions. The experiences can be positive and negative. While Air-IT believes that incumbency will assist Black Box, it is entirely possible that the position of being the incumbent could have had a negative impact on the Black Box bid.

Air-IT suggests as much in its May 23, 2008 letter from its counsel to Black Box, implying that although the County has the option to extend the existing contract, it has chosen to put the contract back out for bid, something not routinely done when the County is satisfied with the services of the incumbent. Certainly, there is nothing in the language of the RFP which tends to give any indication either way.

The language simply calls for a Plan. Given, that at the end of the day, the RFP process could result in a new provider, change was a contemplated by-product of the process. Air-IT could create a Plan of its own choosing detailing how it would handle the changed circumstances which would exist from Air-IT replacing Black Box at the

76

JUL-10-2009 11:02 From:DOUTHIT LAW To:3053752484 Page:7/18

Airport. The language in the RFP related to the Transition Plan does not impose a "seamless" requirement, but merely a statement as to how Air-IT was going to manage that change. I do not find that this language creates an unfair competitive advantage for the incumbent, nor does it create a disadvantage to any other Proposer.

FINANCIAL VIABILITY OF AIR-IT

One of the basis' for the County declaring Air-IT a non-responsible bidder was Air-IT's failure to provide Tax Returns and audited Financial Statements for Air-IT. Air-IT provided financial information from its parent company FRAPORT. The County determined that the information provided by Air-IT did not meet the minimum qualifications because it was not information from the "Proposer", but rather from its parent corporation.

Air-IT contrasts this determination by the County against the determination by the County that Black Box could utilize the prior experience of its affiliated corporations to bolster its "resume" showing that it provided the services sought under the RFP in other places. The testimony of Gregory Nicholson, Vice President and General Counsel of Nextira One d/b/a Black Box Network Services indicated that Norstan Communications, Inc., the bidder under for the RFP has a very complex corporate structure and there are many entities that do business as Black Box Network Services. He explained that Black Box Corporation is a holding company and it has many subsidiaries many of which using the Black Box name in one form or another.

7H

JUL-10-2009 11:02 From:DOUTHIT LAW To:3053752484 Page:8/18

When questioned about the experience of "Black Box" having performed like services for other facilities and in other locations, Mr. Nicholson conceded that he was unaware of which Black Box Network Services actually performed the services for these facilities. Further, Pete Betancourt, Aviation Chief Procurement Contracting Officer for MDAD, testified that in his inquiry regarding the experience of Black Box, he did not seek to make any distinction between the various Black Box entities and considered the experience of each as meeting the experience qualifications.

The County counters the Air-IT position by stating that Black Box and Nextira One, the current contractor is one in the same, since Black Box purchased Nextira One in 2006. Both Pedro Garcia and Pete Betancourt of MDAD considered the work and experience of Nextira One as applicable to Black Box, since the same individuals who were performing the work at the airport for Nextira One are now performing the work for Black Box.

The language of the Financial Viability Section of the RFP provides in relevant part: "The Proposer must provide evidence to indicate that the Proposer has financial resources..." In its June 27, 2008 letter, MDAD requested financial information from Air-IT. The information that Air-IT had provided in its bid proposal related to its parent corporation, FRAPORT which they assert "stands in the shoes" of Air-IT. Air-IT's reliance on this arrangement being satisfactory to the County was partly based on the fact that Air-IT is currently under contract with the Airport to provide Airport Operation Information Systems (AOIS) services at the Airport. In response to the Request for

Proposals that was issued for that project, Air-IT provided the financial information of FRAPORT, its parent company and that was acceptable under those circumstances.

I do not mean to suggest or imply that the County is under any obligation to administer the RFP process for every contract in an identical fashion. Indeed, there may be perfectly valid and legitimate reasons for the acceptance of this type of financial information under the AOIS RFP that are not applicable here. The County certainly has the right and ability to make these independent determinations and it is not my place to replace my judgment for the judgment of the County. However, the conduct of the County under the AOIS contract does show recognition of the complex and intertwined business structures of many of today's large, multi-national corporations. Air-IT is a part of a larger body of inter-related companies. Depending on corporate structure of these types of companies, the parent corporation may be the source of all of its financial strength. This structure is consistent with the language of the RFP in that a fair reading of the language only requires that the Proposer provide "evidence" of the Proposer's financial resources. There is nothing in this language that points a Proposer to any particular type of evidence and while the County may value and give more weight to certain types of evidence, the determination that Air-IT was non-responsible based upon its failure to meet the minimum qualifications for Financial Responsibility was arbitrary and in this regard Air-IT's point is well taken.

The County's analysis with respect to Black Box's experience in meeting the minimum qualifications regarding Black Box's prior experience at other facilities further

highlights this point. Black Box is also a part of a large conglomerate of corporations. Mr. Nicholson testified that while he was unsure of the exact number, there may well be over fifty affiliated companies all doing business as Black Box Network Services. While no one could testify with any absolute certainty, it is clear that Black Box was permitted to utilize the experience of many of these affiliates to bolster its bid proposal.

I have been unable to identify a difference between the use of affiliated companies and for this purpose and the use by Air-IT, of its parent company for the purpose of Financial Viability. The distinction might be that one is that one usage is limited to the financial qualifications and the other is related to the ability to perform the work under the RFP. However, the language of the two sections of the RFP which both specifically refer to the Proposer's information, do not warrant a completely different outcome in this regard.

That being said, I do not accept the position advanced by Air-IT that the County could not and should not have used the experience of the various Black Box entities as part of its evaluation process of Black Box's bid and therefore Black Box should have been deemed a non-responsible bidder. As with the submission of Air-IT's financial information, the County is free to give appropriate weight to how a Proposer seeks to meet the Minimum Qualification Requirements. The County's discretion in this regard is not at issue however, it is the apparent unequal application of these standards that have given legitimacy to Air-IT's challenge in this regard. The County rightfully made a

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JUL-10-2009 11:03 From:DOUTHIT LAW To:3053752484 Page:11/18

determination with respect to Black Box and a fair interpretation of the RFP should have compelled a similar result with respect to Air-IT.

If Financial Viability was the sole basis for the determination that Air-IT was non-responsible, then no further analysis of this Bid Protest would be required. However, the evidence presented indicates that there were other independent bases for MDAD's determination that Air-IT was a non-responsible bidder.

DETERMINATION OF AIR-IT'S NON-RESPONSIBILITY

Responsibility is a question of the evaluation of a bidder to perform a contract and invest public authorities with discretionary power to pass upon the honesty and integrity of the bidder necessary to a faithful performance of the contract - upon his skill and business judgment, his experience and his facilities for carrying out the contract, his previous conduct under other contracts, and the quality of his previous work . . . .'" *Engineering Contractors Association of South Florida v. Broward County*, 789 So.2d 445 (Fla. 4th DCA 2001). A RFP is used when the public authority is incapable of completely defining the scope of work required, when the service may be provided in several different ways, when the qualifications and quality of service are considered the primary factors instead of price, or when responses contain varying levels of service which may require subsequent negotiation and specificity. *Sys. Dev. Corp. v. Dep't of Health & Rehabilitative Servs.*, 423 So.2d 433, 434 (Fla. 1st DCA 1982). The complexity of the scope of work and the need to utilize the RFP process in this instance is not in dispute.

While the September 19, 2008 letter to Air-IT from MDAD informing Air-IT that they were found to be a non-responsible bidder does not go into detail, MDAD asserted at the hearing that there were several reasons for this determination. Primary among them was the lack of requisite experience of Air-IT in performing the scope of services.

According to the testimony of Pete Betancourt, MDAD could not verify the information listed by Air-IT as proof of its requisite experience. Significantly, he was unable to find any corroboration for Air-IT's having performed similar work to what is required under this RFP. The prior experience he was able to verify did not indicate that Air-IT had the requisite telecommunications experience that was necessary and required. Based upon this, both he and Pedro Garcia testified that the Evaluation Committee determined that Air-IT was not a responsible bidder.

There was some mention of the experience of Air-IT's sister corporation, Gedas, A.G. and the experience they had in providing the services required under the RFP. These experiences may have bolstered the experience and capabilities of Air-IT. However, this experience was not included by Air-IT in its Bid and was justifiably not considered by MDAD in its determination of Air-IT's responsibility.

It is not my place to insert my judgment in the place of MDAD. Absent a showing that MDAD's determination that Air-IT was a non responsible bidder was arbitrary or capricious or that it was the product of fraud, dishonesty, illegality, oppression or misconduct, the determination by MDAD must stand. *Liberty County v.*

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JUL-10-2009 11:03 From:DOUTHIT LAW To:3053752484 Page:13/18

Baxter's Asphalt & Concrete, Inc., 421 So.2d 505 (Fla. 1982). There has been no evidence presented which would lead to this conclusion.

PUBLIC ENTITY CRIMES AFFIDAVIT

In its Written Intent to Protest, Air-IT's ultimate request for relief is to have the recommendation to award the contract to Black Box thrown out and to have the project re-advertised for bid. In order to justify this position, Air-IT has asserted not only that it has been unfairly treated during the bid process, but also that Black Box is not a responsible bidder and therefore not eligible to receive the award of this contract.

One of the justifications that Air-IT uses for its assertion that Black Box is not a responsible bidder centers around the County's handling and treatment of Black Box's Public Entity Crimes Affidavit. This issue, according to Air-IT is symbolic of the preferential and disparate treatment received by Black Box as the incumbent during the entire Bid Process.

Black Box is considered the incumbent by virtue of its purchase of Nextira One, who was the recommended bidder from the 2004 RFP and is currently performing the work at the airport. In 2006, Nextira One pled guilty to a single count of Wire Fraud in Federal Court. As a result, Black Box was required to disclose certain information on its Public Entity Crimes Affidavit as part of its Bid submission. Air-IT contends that the affidavit of Black Box was deficient and should have caused Black Box to be deemed non-responsive to the RFP.

7N

JUL-10-2009 11:03 From:DOUTHIT LAW To:3053752484 Page:14/18

Pete Betancourt testified that he investigated the issues related to the Public Entity Crimes Affidavit and the corresponding requirements of Florida Statute, Section 287.133. The County further performed a check of the Public Records and determined that Nextira One was not on any Convicted Vendors List and any prior period of debarment had expired. Pursuant to the language of the RFP, this is all that is required.

I do not find that the County's actions in either determining that Black Box had either satisfied the requirements necessary to fully and accurately complete the Public Entity Crimes Affidavit created a process which was somehow unfair to Air-IT or any other bidder.

MDAD requested additional information from Black Box for the purpose of clarification and met with Black Box on the issue. This is no different than the County requesting the additional written information from Air-IT regarding the Financial Viability information Air-IT provided in its Bid Proposal. Each Proposer had the opportunity to respond to MDAD's inquiry and satisfy their concerns. In this regard, all the bidders have been treated equally and fairly.

PROPOSAL GUARANTEE DEPOSIT

The requirement of the Proposal Guarantee Deposit raises an interesting point. It is a requirement imposed upon a bidder after determinations of responsiveness and responsibility have already been made. The Office of the County Attorney had already made a determination that Black Box is a responsive bidder. Further, a determination by the RFP Evaluation Committee had already been made that Black Box was a responsible

bidder. If the Proposal Guarantee Deposit is an ongoing "responsibility" requirement, then the question becomes is this a material provision of the RFP that cannot be waived either intentionally or by mere inaction as appears to be the case here.

Pete Betancourt testified that it was his belief that Black Box was required to post the Proposal Guarantee Deposit within seven days of being notified by the County to do so, which they did. He provided no substantive explanation for why the County waited until after negotiations to make this request except to say it appeared to be an oversight.

The County has wide discretion in exercising its judgment over the contracting decisions. However, as a public body the County is not entitled to omit or alter **material** provisions required by the RFP because in doing so the public body fails to "inspire public confidence in the fairness of the [RFP] process." State, *Dep't of Lottery v. Gtech Corp.*, 816 So.2d 648 (Fla. 1st DCA 2001). Although a bid containing a material variance is unacceptable, *Glatstein v. City of Miami*, 399 So.2d 1005 (Fla. 3d DCA), rev. denied, 407 So.2d 1102 (Fla.1981), not every deviation from the invitation is material.

The question is whether or not the Proposal Guarantee Deposit provision of the RFP is a "material" provision. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition. (*Robinson Electrical Co., Inc. v. Dade Co.*, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). See also Rule 13A-1.02(9), Fla.Admin.Code, which reserves to the agency the right to waive any minor irregularities in an otherwise valid bid, a minor irregularity being a variation which "does not affect the price of the bid, or give the bidder an advantage or benefit not

JUL-10-2009 11:04 From:DOUTHIT LAW To:3053752484 Page:16/18

enjoyed by other bidders or does not adversely impact the interests of the agency." *Tropabest Foods, Inc. v. State, Dept. of General Services*, 493 So.2d 50 (Fla. 1st DCA 1986). A material provision has been found to mean a provision which gives one bidder a substantial advantage over another. *Robinson Electric, Co. v. Metropolitan Dade County*, 417 So.2d 1032 (Fla. 3rd DCA 1982. In determining whether a specific noncompliance constitutes a substantial and hence nonwaivable irregularity, the courts have applied two criteria--first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. *Robinson* at 1033.

Here both elements of the two part criteria weigh in favor of this requirement being one that MDAD would have the discretion to waive. MDAD was apparently satisfied that a valid contract would be entered into since it engaged in negotiations with Black Box and expressed no concern over the lack of a Proposal Guaranty Bond. More importantly in this instance, this deviation was regarding a requirement that was only imposed after the "notification" that Black Box was invited to negotiate. The competitive bidding process was not affected to the extent that it was compromised in any way. *Robinson* which involved a question of a bidder's failing to submit a bid bond, but rather

7Q

JUL-10-2009 11:04 From:DOUTHIT LAW To:3053752484 Page:17/18

submitted a cashier's check cites *Bryan Construction, Co. v. Board of Trustees*, 31 N.J. Super. 200, 106 A.2d 303 (App.Div. 1954), which states:

> "If it can be said any irregularity here existed, it is patent that competitive bidding was not in any wise affected. It prevented no one from bidding, and all those that did bid were on equal footing, having the same opportunities as the defendant to read and utilize the instructions."

Here the same is true. This post negotiation requirement was not anti-competitive, since it was only imposed after a bidder had already been singled out for negotiation. Whether by intent or by accident, it cannot be said that the County's interpretation of when the Proposal Guarantee Deposit was due, right or wrong somehow so taints the bid process as to warrant granting the relief sought by Air-IT.

CONCLUSION

The Protestor has a high burden to carry in protesting a recommendation under a RFP. The County has wide latitude in the administration of the Bid Process and in its determinations of responsibility. The depth and breadth of that latitude is certainly being tested in this case. However, I cannot find that as a whole, the RFP, the administration of the bid process or the conclusions reached by MDAD are either arbitrary and capricious or the product of dishonesty, fraud, illegality, oppression or misconduct. I am constrained to the boundaries of those criteria in reaching my conclusions and as such find and recommend that the Recommendation of the County Manager to award the contract under RFP MDAD 08-06 be AFFIRMED and the protest of Air-IT be DENIED.

Marc Anthony Douthit
Hearing Examiner

7R

JUL-10-2009 11:04 From:DOUTHIT LAW To:3053752484 Page:18/18

Table 1
Proposal Line Items

		Direct Salary Individual Hourly Rate	Direct Salary Individual Yearly Salary	Total Yearly Salary	Payroll Multiplier	(CPI For Miami-Ft. Lauderdale, Adjusted Annually, presently 2.9%) Year 1	Year 2	Year 3	Year 4	Year 5
						0%	2.90%	2.90%	2.90%	2.90%
1.0 On-Site Management Maintenance and Operations Staff										
Service Manager	1	$62	$128,960	$128,960	1.96	$252,762	$260,092	$267,634	$275,396	$283,382
Office and Administrative Supervisor	1	$31	$64,480	$64,480	1.96	$126,381	$130,046	$133,817	$137,698	$141,691
Administrative Assistant	1	$17	$35,360	$35,360	1.96	$69,306	$71,315	$73,384	$75,512	$77,702
Billing Specialist	1	$18	$37,440	$37,440	1.96	$73,382	$75,510	$77,700	$79,954	$82,272
Purchasing Administrator	1	$20	$41,600	$41,600	1.96	$81,536	$83,901	$86,334	$88,837	$91,414
SATS Technical Specialist	1	$48	$99,840	$99,840	1.96	$195,686	$201,361	$207,201	$213,210	$219,393
Voice Communications Supervisor	1	$43	$89,440	$89,440	1.96	$175,302	$180,386	$185,617	$191,000	$196,539
Senior Voice Technician - LEAD	1	$34	$70,720	$70,720	1.96	$138,611	$142,631	$146,767	$151,023	$155,403
Senior Voice Technicians	2	$27	$56,160	$112,320	1.96	$220,147	$226,531	$233,101	$239,861	$246,817
PBX Engineer	1	$43	$89,440	$89,440	1.96	$175,302	$180,386	$185,617	$191,000	$196,539
PBX Programmer / Administrator	1	$40	$83,200	$83,200	1.96	$163,072	$167,801	$172,667	$177,675	$182,827
Voice Technician	5	$24	$49,920	$249,600	1.96	$489,216	$503,403	$518,002	$533,024	$548,482
Data Communications Supervisor	1	$47	$97,760	$97,760	1.96	$191,610	$197,166	$202,884	$208,768	$214,822
Network Engineer Level V	1	$67	$139,360	$139,360	1.96	$273,146	$281,067	$289,218	$297,605	$306,236
Network Engineer	6	$43	$89,440	$536,640	1.96	$1,051,814	$1,082,317	$1,113,704	$1,146,002	$1,179,236
Network Technicians	1	$25	$52,000	$52,000	1.96	$101,920	$104,876	$107,917	$111,047	$114,267
Help Desk & NOC Supervisor	1	$42	$87,360	$87,360	1.96	$171,226	$176,191	$181,301	$186,558	$191,969
NOC Technicians - Senior Level	2	$24	$49,920	$99,840	1.96	$195,686	$201,361	$207,201	$213,210	$219,393
NOC Technicians	11	$19	$39,520	$434,720	1.96	$852,051	$876,761	$902,187	$928,350	$955,272
NOC Openview/Netview Configuration Admi	1	$41	$85,280	$85,280	1.96	$167,149	$171,996	$176,984	$182,117	$187,398
Cable Planning & Special Projects Sup.	1	$41	$85,280	$85,280	1.96	$167,149	$171,996	$176,984	$182,117	$187,398
Cable Planning & Sp. Proj. Engineer	1	$40	$83,200	$83,200	1.96	$163,072	$167,801	$172,667	$177,675	$182,827
Fiber and Copper Cable Technicians	2	$28	$58,240	$116,480	1.96	$228,301	$234,922	$241,734	$248,745	$255,958
Facility Engineer - PM	3	$31	$64,480	$193,440	1.96	$379,142	$390,138	$401,452	$413,094	$425,073
Cable Management Field QA	1	$31	$64,480	$64,480	1.96	$126,381	$130,046	$133,817	$137,698	$141,691
Cable Management Data Entry Clerk	1	$16	$33,280	$33,280	1.96	$65,229	$67,120	$69,067	$71,070	$73,131
CADD Operator	1	$27	$56,160	$56,160	1.96	$110,074	$113,266	$116,550	$119,930	$123,408
Principal Engineer Special Projects	0	$55	$114,400	$0	1.96	$0	$0	$0	$0	$0
Warehouse Clerk	0	$17	$35,360	$0	1.96	$0	$0	$0	$0	$0
Desktop Support Specialist	0	$24	$49,920	$0	1.96	$0	$0	$0	$0	$0
Total	51									
(Per recommended staffing)										
2.0 After Normal Work Hours Rates (OT Multiplier)		Direct Salary	Payroll Multiplier	OT Mult.	Billing Rate					
(Estimated hours = 350 per year) using the Monday through Saturday rate)		30	$ 1.96	1.5	$ 30,870	$ 30,870	$31,765	$32,686	$33,634	$34,610
			% Mark up							
3.0 Project Management of Subcontracts			8%			$ 48,000	$ 48,000	$ 48,000	$ 48,000	$ 48,000
(Estimated contracts $600,000 per year)						$600,000	$600,000	$600,000	$600,000	$600,000
(Individual subcontracts greater than $100,000, fee not greater than 10%)										
4.0 Obligations with Vendors			8%			$ 7,200	$7,200	$7,200	$7,200	$7,200
(All third party Maintenance Agreements)						$90,000	$90,000	$90,000	$90,000	$90,000
(Estimated contracts: $90,000 per year)										
5.0 New Materials and Equipment Purchased			8%			$ 88,000	$88,000	$88,000	$88,000	$88,000
(Estimated purchase orders = $1,100,000 per year)						$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000
6.0 Yearly Totals						$8,368,723	$8,555,353	$8,747,395	$8,945,007	$9,148,349
7.0 Five-year Total										**$43,764,828**

Memorandum

MIAMI-DADE COUNTY

Date: March 17, 2009

To: George M. Burgess
County Manager

From: Pedro J. Betancourt, PMP
Contracting Officer
Contracts Administration Division
Miami-Dade Aviation Department

Subject: Negotiation Committee Report for Request for Proposals for Telecommunications & Network Services for Miami-Dade Aviation Department RFP No. MDAD-08-06

Attached please find six (6) copies of the proposed Telecommunications and Network Services Agreement for Miami-Dade Aviation Department ("MDAD"), RFP No. MDAD-08-06, negotiated by the Negotiation Committee with the following firm: Norstan Communications Inc., d/b/a Black Box Network Services, Inc. ("Black Box" or the "Contractor").

DESCRIPTION OF SERVICES

Miami-Dade County ("County"), through Miami-Dade Aviation Department solicited proposals from interested parties to provide telecommunications and network management services at Miami International Airport ("MIA"), the general aviation airports, and other Miami-Dade Aviation Department facilities that may be added in the future (collectively, the "Airport"). Services include furnishing all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, and management and operational support services for: (i) all voice and data network infrastructure for MDAD, its users and tenants; and (ii) the management of shared airport tenant services ("SATS") for the County to tenants and users at the Airport (collectively, the "Work").

FEE, SOURCE OF FUNDING, AND TERM OF AGREEMENT

The total amount for the five (5) year period will be $50,000,000, and will be funded through the MDAD operating budget.

The term of this Agreement will be five (5) years; the County reserves the right to extend this Agreement for up to an additional two (2) years, in one (1) year increments, on the same terms and conditions

SELECTION PROCESS

In accordance with Administrative Order No 3-38, MDAD advertised a Request for Proposals ("RFP") No. MDAD-08-06, to solicit proposals to manage the Telecommunications and Network Services for MDAD. The following three (3) firms responded to the County public advertisement:

Shared Technologies, Inc., Air-Transport Services Inc. (Air-IT), and Black Box Network Services.

The contract measure established for the RFP was an eight percent (8%) Community Small Business Enterprises (CSBE) goal. All three (3) were found in compliance with the required contract measure.

The Evaluation/Selection Committee ("Committee") proceeded to review the three (3) responsive proposals.

After review of the proposals, the Committee recommended that Shared Technologies, Inc. and Air-IT, were not responsible for failing to meet the minimum qualifications. The Committee deemed Black Box Network Services responsible and meeting the minimum qualifications and proceeded to open the Part B (price proposal) for Black Box. The firm of Black Box was the proposer recommended by the Committee for negotiations. The appointed Negotiation Committee then proceeded to negotiate with Black Box.

A satisfactory Agreement was negotiated with Black Box on March 17, 2009. As a result of the March 17th, meeting, the Committee reconvened on April 2, 2009 to discuss and agree to revisions to the Agreement and Technical Specifications.

Attachments

c: Clerk of the Board of County Commissioners

EVALUATION/SELECTION COMMITTEE
Pedro J. Betancourt Chairperson (non-voting)
Maurice Jenkins, MDAD
Pedro Garcia, MDAD
Julie Howlett, Ft. Lauderdale Int. Airport
Barry Cowvins, SBD
Alton Robinson, Greater Orlando Aviation Authority

NEGOTIATION COMMITTEE
Maurice Jenkins, Chairperson, MDAD
Pedro Garcia, MDAD
Barry Cowvins, SBD

MEMORANDUM MIAMI-DADE COUNTY

DATE: April 27, 2009

TO: Jose Abreu, Director
Miami-Dade Aviation Department

FROM: Penelope Townsley, Director
Small Business Development

SUBJECT: Compliance Review
MDAD-08-06
Non-Exclusive Telecommunications and Network Management Services Agreement

---

The Department of Small Business Development (SBD) has completed its review of compliance for the subject project with the Community Small Business Enterprise Program (CSBE). The contract measure applicable to this project is an 8% CSBE Goal.

The Miami-Dade Aviation Department - Minority Affairs Division submitted bid documents for Norstan Communications, Inc. D/B/A/ Black Box Network Services for compliance review.

Norstan Communications, Inc. D/B/A/ Black Box Network Services submitted a Schedule of Intent Affidavit committing to utilize Ruben Electric Technology, Inc. a certified CSBE firm to perform low voltage electrical work at 8%. Norstan Communications, Inc. D/B/A/ Black Box Network Services has fulfilled the required contract measure and is in compliance with the CSBE Participation Provisions.

Please note that SBD staff only reviewed and addressed compliance with the CSBE program. The Miami-Dade Aviation Department is responsible for any other issues that may exist. Should you have any questions or need additional information, please call Asa Ferguson at 305-375-4729.

PT: af

cc: Milton Collins, MDAD
Pete Betancourt, MDAD
Alice Hidalgo-Gato, SBD
Patrice King, SBD
File

THIS FORM MUST BE COMPLETED

SCHEDULE OF INTENT AFFIDAVIT

COMMUNITY SMALL BUSINESS ENTEPRISE PROGRAM

Name of Prime Contractor Firm Norstan Communications, Inc. d/b/a Black Box Network Services **Contact Person** Johnathan Lewis

Address PO Box 998526, Miami, Florida 33299 **Phone** (305) 876-8467 **Fax** (305) 869-4842

Project Name Non-Exclusive Telecommunications and Network Management Services Agreement **Project Number** MDAD-08-06

CSBE Contract Measure 8%

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Norstan Communications, Inc. d/b/a Black Box Network Services				0%
			Prime Contractor Total Percentage:	0%

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

Name of Subcontractor	Certification No.	Certification Expiration Date	Type of CSBE work to be performed by Subcontractor	Subcontractor % of Bid
Ruben Electric Technology, Inc	10209	10/31/2008	Low Voltage Electrical	8%
				0%
				0%
		Subcontractor Total Percentage:		8%

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

Frank Skubel	Frank Skubel	Vice President	4/25/2008
Prime Signature	**Prime Print Name**	**Prime Print Title**	**Date**

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.

	Emilio Grullon	President	4/25/2008
Subcontractor Signature	**Subcontractor Print Name**	**Subcontractor Print Title**	**Date**

☐ **Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.**

☐ **Check this box if a Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.**

12

Dept. of Business Development
Project Worksheet

DEPARTMENT OF BUSINESS DEVELOPMENT

Project/Contract Title: NON-EXCLUSIVE TELECOMMUNICATIONS AND NETWORK MANAGEMENT SERVICES AGREEMENT (SIC 15)

RC Date: 10/03/2007

Project/Contract No: RFP NO.MDAD 08-06

Funding Source: AVIATION BONDS

Item No: 3-01

Department: MIAMI DADE AVIATION DEPARTMENT

Resubmittal Date(s): 09/12/2007, 09/26/2007

Estimated Cost of Project/Bid: $50,000,000.00

Description of Project/Bid: TO ESTABLISH A CONTRACT FOR THE PROVISION OF TELECOMMUNICATIONS AND NETWORK MANAGEMENT SERVICES AT MIAMI INTERNATIONAL AIRPORT, GENERAL AVIATION AIRPORTS, AND OTHER COUNTY FACILITIES THAT MAY BE ADDED IN THE FUTURE. THE TERM OF THE AGREEMENT WILL BE FOR FIVE (5) YEARS AND THE COUNTY RESERVES THE RIGHT TO EXTEND THIS AGREEMENT FOR UP TO TWO (2) YEARS, IN ONE (1) YEAR INCREMENTS, NOT TO EXCEED SEVEN (7) YEARS.

Contract Measure Recommendation

Measure	Program	Goal Percent
Goal	CSBE	7.70%
Workforce Goal	CWP	

Reasons for Recommendation

This project was deferred by the Review Committee on 9/12/07 and 9/26/2007 in order for the Aviation Department to provide additional clarification.

An analysis of the factors contained in Section VI C of Administrative Order 3-22 indicates that an 8% CSBE goal is appropriate in the electrical trade.
Section II A. of Administrative Order 3-37 indicates that a Community Workforce Program (CWP) goal is appropriate on this project as follows: Work done at Miami International Airport (MIA) will have a 29% CWP goal (11 people), and work done at Opalocka Airport will have a 45% CWP goal (17 people). If work is done at additional county facilities, the CWP goal will be determined as per Administrative Order 3-37.

CWP Estimated Workforce:
CWP Workforce Recommendation:

CWP Designated Target Areas: Empowerment Zones, Enterprise Zones, Target Urban Areas, Focus Areas

Analysis for Recommendation of a Goal

Subtrade	Cat.	Estimated Value	% of Items to Base Bid	Availability
Electrical Contractors	CSBE	$3,850,000.00	7.70%	43
	Total	$3,850,000.00	7.70%	

Living Wages: YES [ ] NO [X] Highway: YES [ ] NO [X] Heavy Construction: YES [ ] NO [X]

Responsible Wages: YES [X] NO [ ] Building: YES [X] NO [ ]

Ordinance 90-143 is applicable to all construction projects over $100,000 that do not utilize Federal Funds

REVIEW COMMITTEE RECOMMENDATION

Tier 1 Set Aside _____ Bonger 10/18/07

Set Aside _____ Level 1 _____ Level 2 _____ Level 3 _____

Trade Set Aside (MCC) _____ Goal 2% CSBE & CWP Bid Preference _____

No Measure _____ Deferred _____ Selection Factor _____

Chairperson, Review Committee — Date 10/3/07

County Manager — Date 10/22/07

DBDR0090 v. 20090101

13

REVIEWED 3/31/09

CSBE Goal Accom

MONTHLY UTILIZATION REPORT
CSBE

This report is required to be submitted by the tenth day or before each month to Miami-Dade County (MDC). If project has not started, enter anticipated start date in the space provided. Failure to comply may result in proceedings to impose sanctions, penalty. Sanctions may include the suspending of any payment or part thereof, terminating or cancellation of the contract, and the denial to participate in any future contracts awarded by MDC.

REPORTING PERIOD	
TO:	2/28/2009
FROM:	2/1/2009

PROJECT NAME:	Non-Exclusive Telecommunications and Network Services Ac		
PROJECT NUMBER:	RFP# M.D.A.D.-04-01	PROJECTED START DATE:	2/
PROJECT LOCATION:	Miami International Airport		

PRIME CONTRACTOR				CONTRACT AWARD DATE	CONTRACT AWARD AMOUNT	CHANGE ORDER AMOUNT	CONTRACT PERIOD
NAME:	Black Box Network Services	PHONE:	(305) 889-8523				
ADDRESS:	P.O. Box 998526, Miami, Florida 33299			2/7/2004	$35,089,089.63	$11,212,260.00	2/7/04-2/2/

46,301,349.6

AMOUNT REQUISITIONED THIS PERIOD:	$	153,230.86	DATE REQUISITIONED:	2/1-28/09	
TOTAL AMOUNT REQUISITIONED TO DATE:	$	40,468,897.26			DID LAST MDC REQUISITION
LAST PAYMENT BY Miami Dade County (MDC):	$	64,161.65	DATE OF LAST PMT BY MDC:	2/1-28/09	
TOTAL AMOUNT PAID BY MDC:	$	37,631,850.98	Was last MDC pmt. within 14 days of Prime's requisition?	YES ☐ NO ☑	IF NO PLEASE explain below

COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE) OPPORTUNITIES

NAME OF CSBE	GOAL %	TIER 1,2,3,4	CONTRACT PERIOD START DATE	CONTRACT PERIOD END DATE	DESCRIPTION OF WORK	BOND WAIVER ☐	CONTRACT AMOUNT	AMOUNT REQUISITIONED THIS PERIOD	DATE OF REQUISITION (YR/MO/DD)	AMOUNT REQUISITIONED TO DATE	LAST PAYMENT
Ruben Electric Technology	4%	1	2/7/04	2/2/10	Electrical	N	1,852,052.99	62,744.36	2/1-28/09	2,908,827.10	41,262
						TOTAL	$1,852,053.99	$ 62,744.36		$ 2,908,827.10	

Executed by: _____
Signature of Affiant

Tracy Dennis-Zamora
Printed Name of Affiant

3/8/2009 — Date

(305) 889-8523 — Phone

M-900

Sworn before me: This 10th Day of March in 09

Holly Stern-Klaity

HOLLY STERN-KLAITY
MY COMMISSION # DD 540690
EXPIRES: June 30, 2010
Bonded Thru Notary Public Underwriters

CSBE Utilization — 8%

NON-EXCLUSIVE TELECOMMUNICATIONS AND NETWORK MANAGEMENT SERVICES AGREEMENT

made as of the _____ day of _____ in the year 2009.

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

And the Contractor: **Norstan Communications Inc.**
d/b/a Black Box Network Services
5101 Shady Oak Road
Minnetonka, MN 55343

Which term shall include its officers, partners, employees, successors, legal representatives and assigns.

Description of the Project: Provides for the operations, management, maintenance, service, support and equipment, and supplies of certain telecommunications and data network, infrastructure, hardware and software systems for Miami-Dade Aviation Department as more specifically herein.

TABLE OF CONTENTS

Page

INTRODUCTIONS 1
ARTICLE 1 - DEFINITIONS 1
ARTICLE 2 - NON-EXCLUSIVE AGREEMENT 4
ARTICLE 3 - SCOPE OF SERVICES 5
ARTICLE 4 - PERSONNEL 6
ARTICLE 5 - OFFICE SPACE, PARKING ARRANGEMENTS AND NETWORK/APPLICATIONS ACCESS 9
ARTICLE 6 - SECURITY AND AIRFIELD OPERATIONS AREA 11
ARTICLE 7 - BUDGETING 14
ARTICLE 8 - PAYMENTS AND COST REIMBURSEMENTS 16
ARTICLE 9 - WARRANTY 21
ARTICLE 10 - SOFTWARE AND SOFTWARE LICENSE 23
ARTICLE 11 - NATURE OF THE AGREEMENT 25
ARTICLE 12 - MANNER OF PERFORMANCE 26
ARTICLE 13 - TERM OF AGREEMENT 27
ARTICLE 14 - CONTRACTOR REPRESENTATIONS AND WARRANTIES 27
ARTICLE 15 - PROJECT MANAGER AND RESOLUTION OF DISPUTES 27
ARTICLE 16 - COUNTY EXPENDITURE AUTHORITY 28
ARTICLE 17 - SUBCONTRACTUAL RELATIONS 29
ARTICLE 18 - ASSIGNMENT 30
ARTICLE 19 - PROPRIETARY INFORMATION 31
ARTICLE 20 - PROPRIETARY RIGHTS 31
ARTICLE 21 - CONFIDENTIALITY 32
ARTICLE 22 - ACCOUNTING RECORDS AND AUDIT PROVISIONS 33
ARTICLE 23 - IPSIG AND INSPECTOR GENERAL REVIEWS 33
ARTICLE 24 - COMMUNITY SMALL BUSINESS ENTERPRISE 35
ARTICLE 25 - EQUAL EMPLOYMENT OPPORTUNITY NONDISCRIMINATION AND AFFIRMATIVE ACTION 35
ARTICLE 26 - INDEMNIFICATION 38
ARTICLE 27 - PATENT AND COPYRIGHT INDEMNIFICATION 38
ARTICLE 28 - INSURANCE 39
ARTICLE 29 - IRREVOCABLE STANDBY LETTER OF CREDIT OR PERFORMANCE AND PAYMENT BOND 40
ARTICLE 30 - MONETARY ASSESSMENTS FOR NON-PERFORMANCE 42
ARTICLE 31 - TERMINATION AND DEFAULT PROVISIONS 43
ARTICLE 32 - FORCE MAJEURE 47
ARTICLE 33 - CONFLICT OF INTEREST 47
ARTICLE 34 - MISCELLANEOUS PROVISIONS 48

TABLE OF EXHIBITS

SPECIAL PROVISIONS
Community Small Business Enterprise Participation Provisions
Community Workforce Program Participation Provisions
Miami-Dade County Responsible Wages & Benefits

EXHIBITS:
Exhibit A: Telecommunications and Network Management Services Specification
Exhibit B: Equipment, Systems and Subsystems Plans and Diagrams
Exhibit C: Job Descriptions and Qualifications
Exhibit D: Irrevocable Standby Letter of Credit and Performance and Payment Bond
Exhibit E: Airport Customs Security Area Bond
Exhibit F: Preliminary Budget Estimate
Exhibit G: Inventory List: MDAD Fixed Assets
Exhibit H: Existing Operations/Engineering Space

FORMS:
- Contractor Affidavit and Release of All Claims Subcontractor Affidavit
- Contractor's Affidavit in Compliance with Florida Trench Safety Act
- Miami-Dade County Clearinghouse Procedures for Placing Job Opportunities
- Sign-off Sheet for Underground Utilities Clearance
- Shut Down Request Form
- Hot Work Permit

EXECUTED AFFIDAVITS:
- Sworn Statement on Public Entity Crimes
- Miami-Dade County Debarment Disclosure Affidavit
- Criminal Record Affidavit
- Current in Obligations to the County Affidavits
- Contractor's Disclosure Affidavit for Miami-Dade County
- Code of Business Ethics Affidavit
- Affirmative Action Plan/Procurement Policy Affidavit
- Affirmative Action Plan/Procurement Exemption Affidavit
- Subcontractor/Supplier Listing
- Disability Nondiscrimination Certification
- Family Leave Certification
- Domestic Leave Compliance Certification
- Confidentiality Affidavit

NON-EXCLUSIVE TELECOMMUNICATIONS AND NETWORK MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT AGREEMENT is made this _____ day of _____, 2009 by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "Board"), and _____(the "Contractor") a corporation, authorized to do business in the State of Florida (collectively, the "Parties").

WHEREAS, a Request for Proposal ("RFP") No. MDAD-08-06 was issued by the Miami-Dade Aviation Department ("MDAD") on April 21, 2008 to obtain a contractor to (i) become the telecommunications infrastructure manager, (ii) provide for the design, installation, maintenance, repair, management, and operational support services for all voice and data network infrastructure for MDAD, and (iii) manage the shared airport tenant services ("SATS") customers at Miami International Airport ("MIA"); and

WHEREAS, in response to the RFP solicitation, the County has received proposals and an award has been made to the Contractor,

NOW, THEREFORE, in consideration of the premises, agreement, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

The following words expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

1.1 **Airport**: Any of the aviation related property in Miami-Dade County, Florida, which the County owns and operates, which presently includes Miami International Airport, and the following general aviation airports ("GAAs"): (i) Kendall Tamiami Airport; (ii) Homestead Airport; (iii) Opa-locka Airport; (iv) Opa-locka West Airport; and (v) Training and Transition Airport.

1.2 **Agreement** or **Contract:** The non-exclusive telecommunications, data network, and shared airport tenant services management agreement between the County and the Contractor, including all of its terms and conditions, associated addenda, attachments, exhibits, amendments, and work orders issued by the County.

1.3 **Amendment:** A written, signed, and approved by the authorized party or his or her designee, modification to this Agreement, executed by the Contractor and the County covering changes, additions, or reductions in the terms of this Agreement.

1.4 **Article:** the article section contained in this Agreement

1.5 **Board:** The Board of County Commissioners of Miami-Dade County, Florida.

1.6 **Business Day:** Monday through Sunday.

1.7 **CAD Manager:** The manager of MDAD Technical Support.

1.8 **Calling Services:** The mechanical process of placing, timing, and pricing each long distance or otherwise chargeable telephone call placed with a carrier or other suitable means and for which the County charges a resale fee to the equipment user.

1.9 **Code:** The Code of Miami-Dade County, Florida.

1.10 **Contract Date:** The date on which this Agreement is effective, which shall be the Acceptance Date set forth above.

1.11 **Contractor:** The entity identified on the cover page of this Agreement.

1.12 **Contractor Holidays:** The Contractor's calendar year holiday schedule pursuant to this Agreement is New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Contractor Holidays are subject to change for the successive calendar years under this Agreement at the sole discretion of the Contractor, provided that (i) such Contractor Holidays shall not exceed a total of eight (8) days, and (ii) the Contractor provides written notice to the County of such change on or before December 1st of the prior calendar year to the effective change.

1.13 **Contractor Project Manager:** The Contractor's assigned project manager to oversee all telecommunications aspects as determined and defined within this Agreement. The Contractor shall from time to time provide written notice to the County designating the assigned Contractor Project Manager.

1.14 **County:** Miami-Dade County, a political subdivision of the State of Florida.

1.15 **County Manager:** The County Manager of Miami-Dade County.

1.16 **Days:** Calendar days.

1.17 **Department:** Miami-Dade Aviation Department, a department of Miami-Dade County.

1.18 **Director:** The director of the Miami-Dade Aviation Department or authorized representative(s) designated in writing with respect to a specific matter(s) concerning the Services.

1.19 **Documentation:** All project plans, records, procedures, schematics, diagrams, and manufacturer and Contractor manuals customized or created specifically for the County.

1.20 **Equipment:** All telecommunications and data information systems products purchased from or serviced by the Contractor pursuant to this Agreement. Equipment shall also include hardware, Software, licenses, and permits.

1.21 **Equipment Charges:** All charges including flat rate local telephone service, related to the rental, sale, or provided equipment serviced from the Airport's system to MIA tenants or users, other than MDAD.

1.22 **Existing System:** The Equipment, Systems, Software and circuits described in this Agreement and Exhibits "A" and "B".

1.23 **Gross Revenues:** All moneys paid or payable to, or in consideration of determinable value received by the County from Calling Services and/or Equipment Charges paid by tenants and users of Shared Airport Tenant Services provided at the Airport, for transactions or telecommunications services provided or rendered in connection with such Calling Services and/or Equipment, for connection to the public telecommunications network, regardless of when or where the order is received, the goods delivered, or services rendered, whether paid or unpaid, on a cash or credit basis, or in consideration of any other thing of value.

1.24 **Help Desk:** A call receipt center that users can access to report troubles associated with their voice, data and network services. It shall also include Level 1 support to assist MDAD employees with their email, and Microsoft Office Suite applications.

1.25 **IS&T:** MDAD Information Systems and Telecommunications Division.

1.26 **MAC**: Moves, adds, or changes work performed by Contractor pursuant to proper authorization from the County.

1.27 **Maintain**: Preventive maintenance, repair or replacement, as deemed appropriate in Contractor's reasonable business judgment, of any Equipment. The Contractor will provide the labor. Maintenance shall be both preventive and remedial, so that any Equipment in the custody of Contractor shall be maintained in a manner to ensure its continued usability and value, including cosmetic conditions, to the same condition as when entrusted to Contractor by MDAD.

1.28 **Manager:** The Assistant Director of MDAD Information Systems and Telecommunication Division. The County shall from time to time provide written notice to the Contractor designating the assigned Manager.

1.29 **Notice to Proceed:** A written notice to proceed issued by the Project Manager authorizing Contractor to proceed with the work described in this Agreement.

1.30 **Obligations with Vendors:** All maintenance and technical support agreements the Contractor maintains with vendors associated with the telecommunications and data network systems, necessary to perform the Services outlined in the Agreement.

1.31 **Personal Property:** The property owned by Contractor and not included within the Equipment, including but not limited to office equipment, test equipment, and office furnishings.

1.32 **Premises:** Any real property on the Airport.

1.33 **Project Manager:** The Chief of the MDAD Telecommunications Division, the Assistant Director of IS&T, or their designee. The Project Manager's responsibilities are to coordinate and communicate with the Contractor and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement. All parties may rely on the instructions or determinations made by the Project Manager; provided, however, that such instructions and determinations do not change the Scope of Services or modify the terms and conditions of this Agreement. The County shall from time to time provide written notice to the Contractor designating the Project Manager.

1.34 **Reimbursable Expenses:** Those expenses delineated in the "Payments and Costs Reimbursable" sub-article of this Agreement which are separately approved by the County, and incurred by the Contractor in fulfillment of this Agreement.

1.35 **Risk Management Division:** A division of Miami-Dade County, with offices at Miami-Dade Aviation Department, 4200 NW 36 St., Bldg. 5A Miami, Florida.

1.36 **Services:** All services, work and actions by the Contractor performed pursuant to, or undertaken under this Agreement.

1.37 **Shared Airport Tenant Services or SATS:** As defined in Section 364.339(1), Florida Statutes means the provision of service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

1.38 Software: Any:

- set of one (1) or more computer or telephone system programs that is composed of routines, subroutines, concepts, processes, algorithms, formulas, ideas, or know-how severally owned by or licensed by the County and/or any one of its suppliers, regardless of the particular delivery media in or on which such intangible assets may be embodied. Software shall also include any modifications, corrections, patches, updates, or revisions to Software originally provided.
- software applications, or programs referenced herein or required to perform the functions described in this Agreement.

1.39 Subcontractor: Any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor irrespective of privity of contract with the Contractor.

1.40 Sub-System: The integrated systems, including voice mail, automated attendants, automatic call distributors, customized control routing, power supplies, remote access devices, battery back-up units, integrated voice response, uninterruptible power supplies, network data systems and any related and embedded Software reporting products so designated by the County.

1.41 System: The telecommunications and network systems, which may include Equipment, network switches, telephone switches, Sub-Systems, related Software, and peripheral equipment.

1.42 TAC: Technical Assistance Center

1.43 Tenant: Any individual, company, or business located at the Airport, under lease with the County or MDAD or otherwise engaged in the activities of serving Airport users, passengers, or the movement of cargo.

1.44 Unsatisfactory Work: Work or performance that is defined as failing to comply in any respect with the manufacturer's published specifications, or the requirements or the scope of work as defined in this Agreement or by either MDAD or a SATS customer in its work order.

1.45 Work: All matters and things required to be done by the Contractor in accordance with the provisions of this Agreement.

1.46 Workaround: The initial restoration of the supplied Services followed by the permanent repair of any impacted components.

ARTICLE 2
NON-EXCLUSIVE AGREEMENT

Notwithstanding any other provision of this non-exclusive Agreement, the County is not precluded from retaining or utilizing any other contractor(s), staff, or a combination of contractor(s) and staff to perform any services within the contract limits defined in the Agreement. The County may elect to competitively procure and contract any infrastructure or system additions and changes, including, but not limited to 1) outside plant extensions, 2) major changes in network architecture, 3) premise wiring at all Airport facilities, and 4) other telecommunications infrastructure changes. The Contractor shall have no claim against the County as a result of the County electing to retain or utilize such other contractor(s) to perform any such services, provided that the County shall instruct all other contractor(s) that

they shall not act in a way that would disrupt or interfere with Contractor's performance of its duties, and take all other reasonably possible steps to avoid any such disruption or interference.

ARTICLE 3
SCOPE OF SERVICES

The Contractor shall: (i) furnish all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, management, and operational support services for all voice and data network infrastructure for the Miami-Dade Aviation Department, its users and Tenants; and (ii) the management of Shared Airport Tenant Services for the County to Tenants and users at the Airport.

The Work includes, but is not limited to: (a) provisioning of voice and data network services, including configuration and installation of network and voice systems equipment, including low voltage equipment installations; (b) maintaining existing and future voice and data networks infrastructure equipment including operation, maintenance, repair, monitoring, and support of network devices such as routers, switches, and servers, and telephone equipment such as PBX's and IPE's (c) supporting of circuits, including vendor resolutions and support of environmentals including UPS devices for all switches and routers at all sites; (d) daily analysis of network performance to research trending and troubleshooting from end point to end point to enable quick resolution of system degradation; (e) providing capacity planning for all network links, PBX switches and trunk groups; (f) providing an on-site Help Desk and Network Operation Center dedicated to providing uninterrupted service to airport operations; (g) providing 24-7 access to a remote TAC to help local staff resolve troubles as needed. (h) managing the existing voice and data network infrastructure; (i) maintaining records as required by MDAD, including but not limited to, equipment and cable plant, record keeping of work order activity, installed equipment, telephone number inventory, number dialing plan, key sheets, and cable management to the Intermediate Distribution Frame level and jack level for existing and new structure; (j) managing the turn-key installation of new voice, data and network services such as user training on equipment, project scheduling, appropriate billing to MDAD and SATS customers; (j) billing user customers for services, and also for the specified equipment, including when specifically requested by appropriate work order; (k) needs assessment; (l) system design; (m) procurement of equipment and parts; (n) documentation and reports; (o) record keeping and installed equipment inventory; and (p) electrical work specific to telecommunications installation q) provide physical on-site or user locations pc support r) any other functions related to the provisioning of these services.

At the request of the County the Contractor shall perform telecommunications infrastructure installations for new buildings, remodeled buildings or additions to existing buildings, located on the Airport, including telephone, data network, wireless systems, public address system, Airport operational systems, building management systems, life safety, conduit and any telecommunications inside wiring and outside plant needed to support these or any other systems necessary to make the buildings operational, when these requirements are omitted or changed from the builder's original scope of work or if new requirements are identified since the original scope of work was prepared.

If, at the request of the County, the Contractor performs the additional work outside of the original scope, the County shall reimburse the Contractor for the approved cost of such work. Upon the request of the County and advice as to the Work to be performed by the

Contractor, the Contractor shall manage same in accordance with the provisions stated in the Agreement.

The Contractor shall also provide, install and maintain technical systems hardware and software associated with the management of all telecommunications Asynchronous Transfer Mode ("ATM") Gigabit Ethernet & ATM infrastructure. In addition, the Contractor shall maintain computer hardware and software and the database associated with the cable record systems, the New Security System Cable Management System (after the initial contract expires with that system's provider), and any billing system the Contractor chooses to employ subject to approval by the Department. These Software applications shall be maintained and operated at such a level that is suitable to maintain the quality of service or additional requirements outlined in the Agreement or other sections of this specification. Back-ups shall be performed and maintained off-site by the Contractor for all key technical systems to ensure data integrity and disaster recovery. The complete service requirements for this Agreement are included as Exhibit "A", entitled Telecommunications and Network Management Services Specification to this Agreement.

ARTICLE 4
PERSONNEL

The Contractor shall initially provide for a staff of fifty-one (51) persons to support the operations, management, maintenance, service, support and equipment and supplies of the telecommunication and data network infrastructure, hardware and software systems as herein described in this Agreement. Subcontractors shall only be used, subject to prior written approval from the Department, when the existing work force is unable to perform project management services within established time frames, and for installation of cable and conduit requiring permits from the Building & Zoning Department. The County may require proof of need from the Contractor in this regard.

The Contractor will operate on its own network, and provide its own email service. MDAD will provide one (1) network connection and email account to each of the Contractors Help Desk and Network Operations staff members as required to support the Help Desk and Network Operations Center functions at MIA. The Work Order and Trouble Ticketing system supported by the Contractor resides on the County operated LAN at MIA. MDAD will provide the Contractor with access to system and server to enable the support and maintenance requirements detailed in the Telecommunications and Network Management Specifications.

Prior to the beginning of each month, the Contractor shall provide MDAD with its upcoming month's work schedule. This schedule shall list employee's name, date and hours each employee is scheduled to work throughout the month. The schedule shall also list the after hours – emergency employee(s) name and cellular phone number.

4.1 Categories of Labor to be Provided by the Contractor

The Contractor shall provide, either through its own staff or through Subcontractors, the labor competent and sufficient to perform the Work described in Article 3 entitled "Scope of Services" of this Agreement, required by the County. The Contractor shall provide a list of all personnel assigned to this Agreement that includes their title and job responsibilities. Any changes in staffing shall be approved in advance by the Department. If additional personnel are needed to perform the Services, the Contractor shall submit a staffing proposal request that includes justification and a cost proposal to the County for its consideration and approval. The County reserves the right to review the Contractor's operations, and if the System and/or personnel requirements decrease, can correspondingly reduce the management fee. The

management fee may be correspondingly reduced as a result of the County's decision to retain or employ its own personnel or others. Such reductions, for any reason, may decrease the total number of Contractor staff down to no fewer than forty (40) people to perform a portion of the Services required.

Exhibit "C" provides the County's requirements regarding job descriptions and qualifications. The County reserves the right to review all Contractor's employee resumes, from time-to-time, to ensure these requirements are met. Based on the current scope of Work contemplated under this Agreement, Exhibit "A" includes an organizational chart provided for Contractor's understanding of the approximate number of employees needed to perform the work outlined in this Agreement.

4.2 Personnel

The Contractor shall recruit, screen, and employ such full-time, and part-time personnel as needed, for the Contractor to competently and efficiently fulfill its obligations under the terms of this Agreement. The Department shall have the right to approve personnel to be employed in designated classifications or levels.

4.3 Personnel Standards

A. The Contractor shall only fill positions with personnel who have met all of the personnel provisions of this Agreement and who meet the training qualifications required for each position. All licenses and certifications for each position shall be kept current to meet the requirements for the Equipment and Work at the Department.

B. The Contractor shall ensure that all employees present a clean, neat and professional appearance at all times, and perform their duties in a cooperative, courteous, and efficient manner. Contractor employees shall be dressed in manner suitable for the type of work they are to perform.

C. The County reserves the right, and the Contractor agrees, to have the Contractor's staff swipe its identification badges at locations specified by the County whenever the Contractor's employees start or finish their shift or at the beginning and end of their lunch break.

D. Removal of Staff

The County reserves the right to request the Contractor to remove from the Contractor's staff, within fifteen (15) days of receipt of written notice, any individual performing services under this Agreement, whose performance, behavior, or conduct is found unsatisfactory to the County or MDAD. The Contractor shall supply competent employees. The County may require the Contractor to remove an employee the County deems careless, incompetent, insubordinate or otherwise objectionable, and whose continued employment on County property is not in the best interest of the County. Any employee of the Contractor's staff in violation of the current federal, state, and County security provisions shall be subject to immediate removal from the Contractor's staff assigned to perform the duties under this Agreement. If a license or certification is revoked, suspended or expired for any employee that is required to maintain a specific license or certification in order to perform his or her duties under this Agreement, the employee shall be subject to immediate removal from the Contractor's staff for this Agreement, and another employee with the required license or certification shall be tendered for the MDAD approval.

E. The Contractor acknowledges and agrees that the Contractor, its Subcontractors, and all employees are subject to all federal, state, and local laws. As required by an employee's assigned duties, the employee must be eligible for applicable federal, state, and local clearances and certifications including but not limited to, the Transportation Safety Administration, Customs, Homeland Security Department, and Immigration and Naturalization Services.

F. The Contractor shall require that any employee performing services under this Agreement who is arrested on-duty or off-duty shall within a reasonable amount of time, not to exceed three (3) calendar days, notify the Contractor, who will immediately notify the Project Manager. Failure to notify the Project Manager of an arrest shall result in administrative action up to and including the removal of said employee from the Contractor's staff for this Agreement. In addition, the employee can lose access to secured areas of the Airport in accordance with applicable federal, state, and local laws.

4.4 Employees are the Responsibility of the Contractor

All employees and subcontractors of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction, and neither employees nor agents of the County. Each Contractor employee shall have and wear proper identification.

4.5 Tips and Gratuities

No employee of the Contractor shall be permitted, directly or indirectly to solicit, accept, or request any form of tip or gratuity.

4.6 Employee Relations Expenses

The Contractor shall not be reimbursed by the Department for any legal or other services with respect to employee relations' matters applicable to employees of the Contractor.

4.7 Language Requirements

All Contractor employees must be able to take instructions from its management or, in the event of an emergency, from the Department, and shall be required to communicate, speak and write in English proficiently.

4.8 Other Agreements

The Contractor shall not, without the specific advance written approval of the Department, which approval may be withheld without stated cause, enter into any contract, agreement or arrangement of any kind, which would or could in any way serve to: (a) increase reimbursable operating expenses for wages or fringe benefits; (b) modify or change the duties, work rules, working hours or responsibilities of reimbursable employees of the Contractor hereunder; or (c) delegate or assign to any other party the right to make decisions as to such matters.

4.9 Labor Activity

If any strike, boycott, picket, work stoppage, slowdown or other labor activity is directed against the Contractor at the Airport, which results in the curtailment or discontinuance of Services performed hereunder, the Department shall have the right, during said period, to cause the Services required to be provided under this

Agreement to be performed by others without any liability to the County. During such period, this Agreement may be abated at the sole discretion of the County. During such period, the Contractor's "Management Fee", as delineated in subarticle 8.1, shall be proportionately reduced. If such strike, boycott, picket, work stoppage, slowdown, or other adverse labor activity continues for a period to fifteen (15) days, the County shall have the right to terminate this Agreement for cause.

4.10 Competing Employment

Contractor's on-site employees shall not engage in any type of activities for the provision of services outlined in this Agreement to entities other than MDAD and the SATS customers of the Department during said working hours under this Agreement. The employees shall be dedicated totally and solely to the fulfillment of the Contractor's obligations at the Airport required by this Agreement, during said working hours. Except as may be required by law, the Contractor and its employees, agents, Subcontractors and suppliers shall not represent, directly or indirectly, that any product or service provided by the Contractor or such other parties has been approved or endorsed by the County.

4.11 Continued Engagement of Critical Personnel

Pursuant to Miami-Dade County Resolution No. R-744-00, the Contractor shall identify in Appendix **(to be included later)** those specific technical or professional personnel, which may effect the firm's qualifications or capabilities to perform the Services under this Agreement. Such personnel must be consistent with the staff proposed at the public hearing and/or listed in the proposal and shall not be replaced except when the Department determines, in its discretion, that the proposed replacement personnel have equal of greater qualifications or capabilities to perform the Services.

ARTICLE 5

OFFICE SPACE, PARKING ARRANGEMENTS AND NETWORK / APPLICATIONS ACCESS

5.1 Existing Operations / Engineering Space

A. Based on fifty one (51) assigned personnel, MDAD will provide limited space to the Contractor for its workspace for (i) offices, as presently described in Exhibit "H", (ii) NOC, and (iii) Help Desk (collectively, the "Space"), and storage space with loading dock for cables, to the Contractor at no cost. In the event this Space becomes unavailable, the County will provide comparable space to the Contractor at the Department's expense. No additional space will be provided by the Department in its facilities for additional personnel of the Contractor or any of its Subcontractors.

B. Custodial Service for Equipment Rooms and Office Areas: MDAD will provide routine custodial service for the Contractor's offices and engineering area. This service shall include cleaning of floors, and emptying of waste paper and recycled paper containers. This custodial service shall not include the routine cleaning of the MIA Terminal Building Switch Room and the Building 3030 Switch Room. These locations shall be cleaned and maintained by the Contractor.

In addition, the Contractor is responsible for providing preventative maintenance in and on all equipment rooms as follows:

- Each telecommunications equipment room shall be provided with periodic checking to ensure an environment that is suitable for the equipment.
- The Contractor shall immediately notify the Department when it finds debris left by other contractors, vendors, or suppliers of the Department.
- When necessary, the Contractor shall perform cleaning (whether self-performed or via subcontract) to ensure a suitable environment that shall include the removal of debris and the cleaning of equipment, cabling, and terminations for all primary and special equipment rooms.

C. Maintenance and Repair: The Contractor shall preserve the Space in good working order and condition, subject to ordinary wear and tear.

D. Alterations and Signs: The Contractor shall not alter the support space in any way whatsoever, erect any signs, nor permit any advertising of any nature without prior written approval from the Department.

5.2 Parking Arrangements

The County shall furnish parking permits for Contractor's assigned staff for the term of this Agreement. **Construction vehicles and equipment will only be authorized at the job site and at pre-assigned parking areas**.

5.3 Furniture and Supporting Equipment

The Contractor shall provide its own office furniture and supporting office equipment, including but not limited to, desks, chairs, filing cabinets, cell phones and paging devices, wall partitions, copiers, personal computers ("PCs"), and facsimile machines. The cost for these items shall be in the rate structure shown in Exhibit "F". No separate compensation for furniture and equipment shall be considered. Upon termination or expiration of this Agreement (whichever comes first), the Contractor will abandon in place all Contractor owned wall partitions, desks, chairs and filing cabinets. Upon such abandonment, all ownership of this furniture will revert to the County.

5.4 Office Supplies and Consumable Items

All office supplies and consumable items used in performance of the Contractor's work shall be provided by the Contractor.

5.5 Telecommunications Costs

MDAD will provide telephones and related services for all Contractor's operations and maintenance work within MDAD, including local calling within Miami-Dade County. The Contractor will be provided telephone service (local service and voice mail) using the MDAD telephone systems. This will include limited extensions and telephone sets to support its operations at MIA. The Contractor shall be responsible for all long distance telephone charges of a personal nature or those non-related to MDAD business, made from MDAD telephones. A monthly reimbursement to MDAD will be made by the Contractor to compensate the County for any such long distance charges. If the Contractor decides to use the local service provider, it will be entirely responsible for any initial and recurring charges associated with these lines. Any special circuits required for additional functionality will be provisioned and paid for by the Contractor. Paging service will be provided by the Contractor to allow for paging of Contractor's key individuals as alarm conditions are experienced. Cellular phones

(or radios) required for technicians and key management personnel will be entirely at the Contractor's expense.

5.6 **Computer Network / System Application Access**
The Contractor will operate on its own network, and provide its own email service. MDAD will provide one (1) network connection and email account to each of the Contractors Help Desk and Network Operations staff members as required to support the Help Desk and Network Operations Center functions at MIA. The County will make available As-built drawings if they exist and are available and as necessary. The Work Order and Trouble Ticketing system supported by the Contractor resides on the County operated LAN at MIA. MDAD will provide the Contractor with access to system and server to enable the support and maintenance requirements detailed in the Telecommunications and Network Management Specifications.

ARTICLE 6
SECURITY AND AIRFIELD OPERATIONS AREA

6.1 Contractor acknowledges and accepts full responsibility for compliance with all applicable rules and regulations of the Transportation Security Adrninistration ("TSA"), Federal Aviation Administration ("FAA"), and MDAD as set forth from time to time relating to Contractor's work at the Airport. Contractor fully understands and acknowledges that any security measures deemed necessary by the Contractor for the protection of jobsite, or equipment and property and access to the airfield operations area ("AOA") through the jobsite shall be the sole responsibility of the Contractor and shall involve no additional cost to MDAD. All such security measures by the Contractor shall be in accordance with the TSA, 49 C.F.R. Parts 1500 *et alia* and the MIA security plan. The Department shall notify the Contractor of all security related amendments that impact the Contractor's operation.

6.2 All project plans, engineering records, procedures, schematics, diagrams, and manufacturer and Contractor manuals prepared by the Contractor and its Subcontractors under this Agreement shall follow security requirements of the TSA, 49 C.F.R. Parts 1500 *et alia* and other MDAD security procedures and shall bear the following warning:

A. **Warning Notice:** This document contains sensitive security information that is controlled under the provisions of 49 CFR PART 1520. No part of this document may be released without the written permission of the Under Secretary of Transportation for Security, Transportation Security Administration, 400 7th Street, S.W., Washington, DC 20590 or the Federal Security Director at Miami International Airport. The unauthorized release of this document may result in civil penalty or other action. For United States government agencies, the public availability of this document is to be determined under 5 U.S.C. § 552.

B. In accordance with Florida Statutes § 119.07(3)(ee), "Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, ... or other structure owned and operated by an agency as defined in s. 119.011 are exempt ..." from public records to ensure the safety of government infrastructures and to ensure public safety. The Contractor represents it has completed and notarized a Confidentiality Affidavit, included in the Affidavit section of this Agreement,

which certifies the Contractor and each employee agree, in accordance with Florida Statutes § 119.07(3)(ee), to maintain the exempt status of this information. Information made exempt by this paragraph may be disclosed to a licensed architect, engineer, or contractor who is performing work on or related to the Airport. The entities or persons receiving such information shall maintain the exempt status of the information.

C. In addition to the above requirements in this subarticle, the Contractor agrees to abide by all federal, state, and County procedures, by which the documents are handled, copied, and distributed which may include but is not limited to:

1. Each employee of the Contractor and its Subcontractor(s) that will be involved in the project, shall sign an agreement stating that they will not copy, duplicate, or distribute the Documentation unless authorized by MDAD.
2. The Contractor and its Subcontractor(s) agree in writing that the Documentation is to be kept and maintained in a secure location.
3. The Documentation shall be numbered and the whereabouts of all Documentation shall be tracked at all times.
4. A log is developed to track the Documentation including logging in the date, time, and name of the individual(s) that work on or view the Documentation.

6.3 MDAD authorized identification badges will be issued to all Contractor employees working in the security identification display area ("SIDA") or any other secured area of MIA. All such employees will be issued photo identification badges and will be subject to Federal Bureau of Investigation ("FBI") fingerprint based criminal background investigation.

6.4 The Contractor shall be responsible for requesting MDAD to issue identification badges to all employees whom the Contractor requests be authorized access to the SIDA, and shall be further responsible for the immediate reporting of all lost or stolen identification badges and the immediate return of the identification badges of all personnel transferred from MIA assignment or terminated from the employ of the Contractor or upon final acceptance of the work or termination of this Agreement. Contractor will be responsible for fees associated with lost and unaccounted badges as well as the fee for fingerprinting and identification issuance.

6.5 All employees of the Contractor and its Subcontractor(s) who must work within MDAD secured areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the secured area. Identification 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 Security and Safety Division shall provide the identification badges to the Contractor. Each employee must complete the SIDA training program conducted by MDAD and comply with all other FAA or MDAD requirements as specified by MDAD at the time of application for the identification badge before an identification badge is issued.

6.6 Ramp permits will be issued to the Contractor authorizing vehicle entrance to the AOA through specified MDAD guard gates for the term of this Agreement. These permits will be issued only for those vehicles (including vehicles belonging to the Subcontractor(s)) that must have access to the site during the performance of the

Agreement. These permits will be only issued to Contractor owned vehicles or to Contractor leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three (3) inch lettering) displayed on both sides of the vehicle.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required in this Agreement. Proof of such insurance shall be provided to MDAD Airside Operations Division upon request. Unless otherwise specified in the Agreement, ramp permits will not be required or issued by MDAD for work performed at the GAAs.

6.7 Before the Contractor shall permit any employee with pictured identification to operate a motor vehicle on the AOA without MDAD escort, 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 AOA may be withdrawn by the Department because of violation of AOA driving rules or loss, revocation, or suspension of one's Florida driver's license.

6.8 The Contractor agrees that its personnel, vehicles and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that MDAD has the right to prohibit an individual, agent or employee of the Contractor or Subcontractor(s) from entering the AOA, 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, sabotage or other unlawful activities, including but not limited to repeated failure to comply with MDAD, and TSA SIDA and AOA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his or her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA 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 AOA and are intended to reduce the incidence of thefts, cargo tampering, sabotage and other unlawful activities at MIA and to maximize compliance with MDAD and TSA access control policies and procedures.

6.9 The Contractor understands and agrees that vehicles shall neither be parked on the AOA in areas not designated or authorized by MDAD, nor in any manner contrary to any posted regulatory signs, traffic control devices or pavement markings.

6.10 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 ("FIS") agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the FIS 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 FIS agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Contractor.

6.11 Notwithstanding the specific provisions of this article, MDAD shall have the right to

add, amend or delete any portion hereof in order to meet reasonable security requirements of MDAD or TSA. The Department shall notify the Contractor, in writing, of all security related amendments.

6.12 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 require.

6.13 Contractor agrees that it will include in all agreements with its Subcontractor(s) an obligation by such parties to comply with all security requirements applicable to their operations at MIA. Contractor agrees that in addition to all remedies, Monetary Assessment for Non-Performance and sanctions that may be imposed by MDAD or the TSA upon the Contractor's Subcontractor(s) and its individual employees for a violation of applicable security provisions, the Contractor shall be responsible to MDAD for all such violations and shall indemnify and hold MDAD harmless for all costs, fines and Monetary Assessment for Non-Performance arising therefrom which shall include reasonable attorneys' fees.

6.14 AOA Security at GAAs: The Contractor and its Subcontractor(s), and suppliers shall "sign in" and "sign out" at the airport's manager's office or his designated representative whenever the Contractor is performing work at a GAA.

6.15 In the event the Contractor is assigned a project within the Customs area and the Contractor is required to obtain an Airport Customs security bond (Exhibit "E"), the Department shall reimburse the Contractor the cost of the premium for such bond, as substantiated by the invoice.

ARTICLE 7
BUDGETING

7.1 **Preliminary Budget Estimate**

Annually, on or before August 1st, the Contractor shall provide the Department with a preliminary budget estimate (the "Preliminary Budget Estimate") for all expenses anticipated to be needed to provide for the Scope of Services in the following fiscal year under this Agreement. The estimate shall be established in good faith, but shall not be a warranty or assurance of any kind regarding the actual expenses which will be incurred. The preliminary budget estimate is intended to allow the Contractor to work with the County in order to assist it in its budgeting for expenses related to the Scope of Services in the following fiscal year. The Contractor shall also provide a projected SATS billing report for the following fiscal year.

The Contractor's price proposal for the Scope of Services (except for future plans) for the System will be the initial Preliminary Budget Estimate, which is attached to this Agreement as Exhibit "F".

The Preliminary Budget Estimate shall include comparisons to the current fiscal year with a summary of all recommended changes in compensation and staffing, if any, and include the following:

A. The total number of employees of Contractor under this Agreement.

B. A classification title and job description of each job to be preformed by employees of Contractor hereunder.

C. The total number of employees who will be performing each job classification hereunder.

D. The total wages or salary to be paid each employee hereunder according to job classification.

E. The multiplier.

F. Total prices for Obligations with Vendors.

G. Estimated total Subcontractor prices.

H. Estimated total parts and materials prices.

I. Estimated total Reimbursable Expenses.

7.2 Pricing of Employee Expenses by the Contractor

Contractor shall not change, alter or modify any of the following, without the prior written approval of the Department:

A. The total number of employees of Contractor used to perform the Services hereunder.

B. The classification and job description of each job to be performed by employees of Contractor used to perform the Services hereunder.

C. The number of employees who will be performing each job classification hereunder.

D. The wages or salary to be paid each employee hereunder according to job classification.

E. The multiplier.

F. The maximum number of entry-level employees retained by the Contractor during any twelve (12) month period.

7.3 Changes in Employee Expenses by the Department

The Department may, at any time, upon fifteen (15) days written notice, require the Contractor to change, alter or modify any or all of the following:

A. The total number of employees of Contractor paid for by the County according to the provisions hereunder, subject to the provisions of Article 4 entitled "Personnel" of this Agreement.

B. The classification title and job description of each job to be performed by employees of Contractor hereunder, provided that the County shall compensate the Contractor for any increased compensation due employees as a result of an increase in title or job description, and that no reduction in title or description and associated reduction in compensation may occur which would result in an employee being assigned whose classification level is below that which is proper for the services to be performed.

C. The number of employees who will be performing each job classification hereunder, provided that the County shall compensate the Contractor for any increased compensation due employees as a result of an increase in the number of employees, if approved by the County. No reduction shall occur which causes the number of employees performing in a different job classification, to become insufficient to perform the services required in that other classification.

If any such change, alteration or modification results in an increase or decrease in employee expenses, then the compensation as defined in the Payments and Cost Reimbursements article shall be adjusted accordingly by the Department.

ARTICLE 8
PAYMENTS AND COST REIMBURSEMENTS

The monies paid the Contractor shall be determined as set forth in subarticles below, and may be greater or less than the Preliminary Budget Estimate.

8.1 Management Fee:

Basic Scope of Services

Except for the compensation for project management subcontracted services and reimbursements, the Contractor shall be paid a management fee (the "Management Fee") to provide for all of the operations, management, maintenance, service, support and procurement services, including all Obligations with Vendors associated with the telecommunications systems provided in the telecommunications and data network infrastructure, hardware and software systems specification as herein described in this Agreement. This Management Fee shall include: (i) the Contractor's profit and overhead for these Services, (ii) a staff transition cost for the first year of this Agreement, and (iii) all other costs associated with complying with the requirements set forth in this Agreement.

A. The County shall pay the Contractor, as consideration for managing and providing the services required herein, a monthly Management Fee payable in arrears equal to the total agreed upon number of employees employed during that period, upon billing by the Contractor in accordance with this article. The payment for either a partial month or staffing of less than fifty-one (51) persons shall be pro-rated based upon the price proposal schedule, included as Exhibit "F", to this Agreement.

Such Management Fee may be increased only when the existing work force is unable to perform the services without degradation in the System, and under the following circumstance for additional services rendered:

If, as a result of the County's Capital Improvement Program ("CIP"), the Services provided by the Contractor hereunder increases, and/or when otherwise approved in accordance with this Agreement (for example changes in employees' expenses), the County shall increase the monthly Management Fee in an amount commensurate to the increase in the Contractor's Services. If the Contractor believes that additional personnel are needed to perform the Services, or that Obligations with Vendors need to be added, or that existing Obligations with Vendors need to be changed, the Contractor shall submit a proposal request that includes justification and a cost proposal to the County, and the County may increase the monthly Management Fee accordingly.

The County reserves the right to review the Contractor's operations and if the requirements increase or decrease, the County may correspondingly increase or reduce the Management Fee based upon an addition or reduction in the Contractor's staffing, or change in Obligations with Vendors.

The Contractor shall calculate changes in the Management Fee by using the base salary of the employee according to job classification ("Direct Salaries")

as reported to the United States Internal Revenue Services, times a **2.13** multiplier of such Direct Salaries and taking into account changes in Obligations with Vendors. The **2.13** multiplier is all inclusive, and compensates Contractor for all expenses directly or indirectly related to that employee's compensation, including but not limited to, social security, medicare, health and life insurance, unemployment, all benefits which include fringe benefits including Contractor Holidays, holiday pay, overtime (other than that provided in subarticle 8.3.D), annual, sick, and other types of leave, five (5) – ten (10) days a year technical training at the National Technical Resource Center ("NTRC"), and associated facilities provided to the employee such as vehicles, office equipment, office supplies, furnishing, and test equipment, plus all Contractor's overhead and profit; all of which items are included in the lump sum Management Fee.

B. The Management Fee will be adjusted to reflect an increase per year in the salaries of the Contractor's personnel based on the change to the Consumer Price Index for all Urban Consumers for Miami-Ft. Lauderdale.

8.2 <u>Project Management Services</u>

When subcontracting is required, authorized in accordance with the Scope of Services article of this Agreement, and the Contractor has competitively bid the work order(s), the Contractor agrees to an agreed fixed dollar amount of compensation (the sum of the lowest responsive and responsible subcontractor bids) plus **eight percent (8%)** of the price of the Subcontractor work, as compensation for the Contractor's management of the work supplied.

The County shall have no obligation to pay the Contractor any additional sum in excess of this lump sum amount, except for a change and/or modification to work order(s) approved and executed in writing in advance by the County and the Contractor.

All Services undertaken by the Contractor before the County's approval of the respective work order shall be performed at the Contractor's sole risk and expense.

8.3 <u>Reimbursements</u>

All Reimbursable Expenses shall be approved in advance by the Department. The Contractor shall represent and warrant on each invoice that it submits for payment of a reimbursable item, that it has no interests, directly or indirectly, in the reimbursable products or services that have not been disclosed in writing and approved by the County, and that all direct or indirect discounts related to the purchases have been provided to the County. Payment for Reimbursable Expenses may be requested monthly and shall be made on duly certified invoices listing such expenses and substantiated by supporting documentation. The Contractor shall be entitled to the following direct reimbursements without any additional Contractor's mark-up of any kind except where noted:

A. Procurement of Material, Equipment and Inventory: The Contractor shall submit to the Department, for each item purchased, the item, the price and a grand total, including the amount of freight and tax, and the work order number. The Contractor shall be entitled to an **eight percent (8%)** markup of the price of the procurement of material, equipment and inventory as compensation for the Contractor's management of these procurement services.

B. Airport Customs security bond (Exhibit "E").

C. When an on-site technical training course is requested by the County, the County will pay for the cost of the training class, Contractor's instructor's air-fare, lodging and meals during the training session, in accordance with Chapter 25 of Miami-Dade County Code, Aviation Department Rules and Regulations, and Administrative Order 6-1.

D. In the event that the Contractor responds to calls after normal on-site work hours, the Contractor will be compensated at the respective based rate times 1.5 for personnel for work performed after on-site hours of operation Monday through Sunday and at the respective rate for personnel for work performed after on-site hours of operation on Contractor Holidays as specified in the Technical Specification. If an employee has to come on-site and responds from home to resolve the problem, Contractor will be allowed to bill a four (4) hour minimum for each occurrence. If Contractor responds only to a phone call from home and does not come on-site, Contractor shall be allowed to bill one (1) hour for each occurrence.

E. The Management Fee described above already incorporates the payment of regular hours of all personnel. For the payment of approved overtime, however, the reimbursement to the Contractor will be paid in the amounts provided in clause (D) above. There shall be no overtime payment for any management and/or supervisory personnel.

F. Parking reimbursement for Contractor's employees.

8.4 <u>Subcontractors and Obligations with Vendors</u>

All Subcontractors and Obligations with Vendors shall be approved in advance by the Department.

The Contractor shall obtain three (3) quotes from sub-contractors for cable and conduit installations and provide a quote to MDAD for approval whenever the total value of installation exceeds $4,000.

The Contractor shall represent and warrant on each invoice that it submits for payment of the following listed items, that it has no interests, directly or indirectly, in the referenced products or services that have not been disclosed in writing and approved by the County, and that all direct or indirect discounts related to the purchases have been provided to the County. Payment for Subcontractors and Obligations with Vendors may be requested monthly and shall be made on duly certified invoices listing such expenses and substantiated by supporting documentation, and which shall include the original Subcontractor or Obligations with Vendors invoice(s). The Contractor shall be entitled to monthly payments of its invoices related to the following items:

a. Subcontractors, when approved by the Manager, are necessary for the accomplishment of the Services. Other than the project management services described above, if Subcontractor(s) are needed for any Service, the cost of the Subcontractor will be reimbursed to the Contractor at Subcontractor's invoice cost to the Contractor plus **eight percent (8%)**

b. The costs associated with variable Obligations with Vendors will be reimbursed to Contractor at cost plus **eight percent (8%)** Non-reimbursable Expenses.

Unless specifically authorized in writing in advance by the Department, the Contractor shall not be reimbursed for expenses of the following type or kind:

A. The Contractor's legal and accounting fees.

B. Charitable and political contributions.

C. Travel (except when approved in advance for training services) and entertainment.

D. Corporate public relations, gifts, dues, subscriptions, and memberships.

E. Any penalties, assessments or fines issued by any court or authorized government entity or agency, unless such penalty, assessment, or fine results from the direct action or inaction of the County, provided however, that the County will not be liable for such amounts when acting in its governmental capacity.

8.6 Cash Losses or Losses from Employee Theft

All cash losses or losses from employee theft shall be the responsibility of and be reimbursed by the Contractor.

8.7 Prompt Payment

The Contractor shall be responsible for making prompt and timely payment of all obligations arising out of this Agreement, to maximize the potential for available discounts and rebates, and comply with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. All discounts, allowances, and rebates paid or received hereunder shall be to the credit and benefit of the County. The Contractor shall pay from its own funds any penalty, fine or like assessment resulting from any late, delinquent, or delayed payment of an obligation hereunder; provided, the Contractor has not been unduly delayed in making payment of such obligation by action or inaction of the County.

8.8 Method of Billing and Payment

Contractor may submit monthly statements as set forth in this article on a monthly basis, ***but only after*** the Services for which the monthly summary statements are submitted have been completed. An original monthly summary statement as set forth below is due within thirty (30) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after this Agreement terminates or expires. Invoices shall designate the nature of the Services performed and/or the expenses incurred.

Prior to submitting its first invoice, the Contractor shall submit a sample format of its monthly-itemized summary statement and invoice for the Department's review and approval for use for this Agreement.

The Contractor will provide itemized billings for purchases made on behalf of, and authorized by MDAD. These itemized billings shall be sufficiently detailed to establish the cost to the County of individual components supplied.

All invoices for subcontracted labor costs shall have attached supporting invoices with details of personnel employed, hours worked, amounts paid and such other information as necessary to ensure compliance with the terms of this Agreement.

8.9 Payments to the County:

In the event, the Contractor either collects monies on behalf of the Department or owes monies to the Department, then the Contractor shall tender all monies payable, as required by the Agreement, pursuant to the following:

In Person:	Miami-Dade Aviation Department Finance Division 4200 NW 36th Street Building 5A, Suite 300

During normal business hours, 8:00 A.M. to 5:00 P.M. Monday through Friday

By Mail:	Miami-Dade Aviation Department Finance Division P.O. Box 526624 Miami, Florida 33152-6624
By Express Mail:	Miami-Dade Aviation Department Finance Division 4200 NW 36th Street Building 5A, Suite 300 Miami, Florida 33122
By Wire Transfer:	In accordance with wire transfer instructions provided by MDAD Finance Division, 305-876-7383.

8.10 Payments to the Contractor

The County shall pay the Contractor within forty-five (45) calendar days of receipt of the Contractor's invoice, pursuant to Section 218.74, Florida Statutes and Section 2-8.1.4(4)(b) of the Code. All invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Project Manager. Payment may be withheld or delayed for failure of the Contractor to comply with a term, condition, or requirement of this Agreement. Within the time for payment, the County shall deliver written notice to Contractor setting forth the specific reasons why any portion(s) of an invoice are not being paid, but the County will notify the Contractor within thirty (30) days. Interest on improperly delayed payments shall be paid at the rate of one percent (1%) per month, and commence thirty (30) days after the due date of the payment.

Payment shall be made to Contractor at:

Contractor

Norstan Communications, Inc.
d/b/a Black Box Network Services
5101 Shady Oak Rd.
Minnetonka, MN 55343

8.11 Miscellaneous

Except as specifically permitted under the Subcontractual Relations article of this Agreement, the County shall not offset an amount claimed to be due, against an invoice which otherwise is payable in accordance with subarticles 8.8 and 8.10.

The Parties will comply with Section 196.295, Florida Statutes.

ARTICLE 9
WARRANTY

9.1 New Systems / Equipment / Software / Installations / Service and Documentation Warranty

A. New Systems / Equipment / Software:

Contractor represents and warrants that Contractor is in compliance with the manufacturer's warranty of any Equipment, Systems, Sub-Systems, Software and parts thereof purchased through the Contractor or used by the Contractor under this Agreement, during the term of this Agreement. The Contractor shall function and operate the Equipment, Systems, Sub-Systems, Software and parts thereof in accordance with the manufacturer's published specifications and all applicable County specifications, requirements and design guidelines. The Contractor shall perform all actions necessary to enforce such manufacturer's warranty for the Equipment, Systems, Sub-Systems, Software, and parts thereof.

Contractor agrees to ensure all warranty service shall be kept or maintained. Contractor shall be responsible for enforcing warranties of the equipment purchased from other contractor(s) and vendor(s), provided that litigation shall only be required at the Department's request and expense for enforcement of a warranty.

If the Contractor is unable to repair any defective items purchased or used by the Contractor, the Contractor shall replace and reinstall such replacement items at no additional cost to County. Warranty service includes: (i) preventive maintenance based upon the specific needs of the individual items of the Equipment or parts; (ii) unscheduled, on-call remedial maintenance; and (iii) adjustments and replacement of Equipment or parts deemed necessary by Contractor. Warranty service shall be provided at no cost to the County.

The Contractor covenants and represents that all Equipment and all of its parts and components shall be new and unused unless otherwise approved in advance and in writing by the County, and that County shall be entitled to claim ownership and all available investment credits and that Contractor shall claim no such ownership or credits.

The Contractor shall warrant that the County shall receive free, good, clear title to, and free and clear of all liens and encumbrances of, all materials, deliverables and products supplied or developed under this Agreement.

If any System, Equipment, Software or part thereof fails three (3) times in any thirty (30) day period for one (1) hour or more, or for two (2) calendar days, for each such failure not due to external causes, the Department has the option to request replacement of such unit as soon as reasonably possible with comparable equipment or software or capacity and performance equal to or greater than the replaced unit. If the frequency and/or duration of a specific malfunction, defect, failure or nonconformity with specifications seriously impacts the County's business operations, the Department may request, and the Contractor shall arrange, at no charge to the County, for a trained factory engineering specialist to visit the site in order to assist in resolving such malfunctions and to develop a plan of action to prevent their recurrence.

B. New Installation Warranty

Contractor warrants that all new designs and installations provided by Contractor shall meet the functional, performance, reliability and other business requirements and intended uses of County and is fit for such intended uses. Contractor warrants all installation shall be performed in accordance to applicable specifications and the County Design Guideline Manual ("DGM"). The DGM may be found at **http://www.miami-airport.com/html/documents_and_manuals.html**.

C. Service Warranty

Contractor warrants that it shall provide preventive and remedial maintenance for the Equipment so as to meet the requirements and service levels set forth herein.

Contractor warrants all work performed under this Agreement shall be done by qualified personnel as set forth in this Agreement, and that each of its employees or agents assigned to perform services shall have proper skill, training and background so as to be able to perform in a competent and professional manner and that all work shall be performed in accordance with required schedules and referenced standards and guidelines so as to maintain the integrity of the County's system(s).

The Contractor warrants all equipment and systems shall be fully and properly functional for an average of 99.98% per uptime requirements. If the Systems, Equipment or infrastructure (i.e., System) fails to meet the agreed upon uptime or response times then County shall invoke the Monetary Assessment for Non-Performance outlined in this Agreement. It shall be the sole responsibility of Contractor to maintain a service log (the "Service Log") for the purposes of tracking and calculating the monthly uptime levels, the format of such Service Log to be mutually acceptable to both Parties. Such Service Log shall be submitted monthly for County's review.

The Contractor warrants and represents that its personnel and Subcontractors have the proper skill, training, background, knowledge, experience, rights, authorizations, and licenses as necessary to perform the Services described herein.

Contractor warrants all accounting and billing records shall be accurately maintained in accordance with the provisions of this Agreement.

D. Documentation Warranty

Contractor agrees that during the term of this Agreement, all Documentation provided with Equipment, Systems, Sub-Systems, Software and parts thereof shall be furnished to the County at no additional cost. All revisions to existing Documentation and new Documentation developed for Equipment, Systems, Sub-Systems, and parts thereof not supplied by either the manufacturer or the Contractor shall be furnished to the County at cost, without any Contractor mark-up. Contractor warrants all such Documentation developed or updated during the term of this Agreement accurately reflect the installation and operations of the systems and infrastructure and kept up to date.

9.2 Not Covered Under Warranties

The Parties agree the warranties and covenants set forth in subarticle 9.1 shall not apply to the extent the Services rendered by Contractor are affected by any of the following: (i) unauthorized actions of the County's personnel; (ii) unauthorized actions of third parties not an agent, Subcontractor, or supplier of the Contractor; (iii) failure of software of equipment not administered by Contractor; (iv) modification of the work product by the County or third party not an agent, Subcontractor, or supplier of the

Contractor; or (v) damage or malfunction of hardware or software cause by the County or third party not an agent, Subcontractor, or supplier of the Contractor.

9.3 Organizational Structure

Contractor represents and warrants that no owner, officer of the board, or director of Contractor was a previous owner, officer of the board, or director of Williams Communications Solutions. A breach of this subarticle constitutes grounds for termination of the Agreement pursuant to subarticle 31.5 of this Agreement.

ARTICLE 10
SOFTWARE AND SOFTWARE LICENSE

The Contractor recognizes that title to and ownership of the existing Equipment used in connection with providing Services pursuant to this Agreement is held by and in the name of Miami-Dade County, and that such Equipment includes computer hardware and software used for telecommunications and data network purposes.

10.1 Joint Obligations

The County will keep the Software licenses for the Equipment in full force and effect during the term of this Agreement. Contractor will do nothing on its part during the term of this Agreement that will cause such license(s) to be terminated by the licensor or diminish the County's rights to use such license(s).

A. Contractor Provided Software

Certain software suppliers license on a nonexclusive basis to the Contractor, and the Contractor also develops software or has software developed for it by third parties (collectively, the "Licensed Software"). All such software is and will remain the property of Contractor or its third party suppliers. Contractor, with respect to the software it uses or develops under the terms of this Agreement, and to the extent authorized under the supplier licenses, grants the County, for such software a personal, nontransferable and nonexclusive sublicense to use the software (including related Documentation), for the life of the particular System or Equipment to which such software is related, solely to maintain, use and operate such System for which the software is initially furnished, provided the County:

(i) uses the software solely for County's governmental and business purposes in the operation of the Equipment or any new Equipment or in compliance with the requirements of this equipment, and such perpetual rights shall remain in force upon expiration and/or termination of this Agreement; and

(ii) does not copy or reproduce any of the software without the Contractor's consent, except to the extent necessary for (A) archival and back-up purposes and (B) the operation and/or use of the System and except as allowed by law, does not attempt to develop any source code from the software, nor reverse engineer, decompile, disassemble, reverse translate, or otherwise translate the software into human readable form.

B. Contractor's Warranty and Maintenance Obligations Unaffected

Nothing contained in this article shall diminish, extinguish, or relieve the Contractor from its responsibilities and obligations to provide maintenance pursuant to this Agreement, including, but not limited to, providing maintenance for the Licensed

Software, and the payment of any and all costs for such license maintenance to the licensor, or others as may be required. In the event the County has independent of the Contractor, purchased Software or other software pertaining to the Equipment, the Contractor's right to maintain the Equipment is conditioned and contingent upon the County's having valid licenses for the Software or other software pertaining to such Equipment.

10.2 Software

The Contractor shall provide the County with Documentation, satisfactory to the County, confirming that the Contractor has acquired on the County's behalf all Software licenses required.

The Contractor shall, at its own expense, secure and administer for the County, in the County's name, any and all necessary sublicenses or direct licenses for the third party sublicenses and direct licenses upon the same terms and conditions as the license between the Contractor and the County contained herein and additional terms and conditions which, in the County's sole discretion, are acceptable to the County. The terms and conditions of such licenses or sublicense agreements shall include, but not be limited to, the right of the County pursuant to the original manufacturer's license and the Department's approved purchase order: (i) to make multiple copies of the software; (ii) to use the software on multiple processors utilized by the County or entities affiliated with the County, at no additional licensing fee; and (iii) to maintain and modify the third party software without restriction. The requirements shown in article 10 of this Agreement applies to all licenses required in the Technical Specification such as, but not limited to, Software needed for Help Desk, Network Operation Center, and STS Billing. If Contractor believes other software and resulting license(s) that may be required from time to time during the term of this Agreement does not apply or comply or deviates with the terms stated herein, the Contractor shall immediately notify the County of the situation, and for review and approval prior to procurement.

The Contractor hereby grants to the County, and/or its agents, suppliers and vendors a perpetual, non-exclusive, irrevocable license to use the Licensed Software, in both source and object code pursuant to the following paragraph, for any purpose not expressly forbidden by the terms in this subarticle 10.2 and as more fully described in the "Scope of License" provision below. Such license shall include but be limited to, the unrestricted right of the County to provide the Licensed Software, including the Documentation and programs therefore, to any other person(s) or entity(ies) for their use in connection with providing goods and/or services to the County.

The Contractor shall require that its Subcontractors and suppliers also grant to the County, and/or its agents, suppliers and vendors, perpetual, non-exclusive, irrevocable licenses to use the third party software in object code form, and for Contractor developed software in both source and object code form, for any purpose not expressly forbidden by the terms hereof. Such licenses shall also include but not be limited to, the unrestricted right of the County to provide the third party software, Documentation and programs therefore, to any other person(s) or entity(ies) for their use in connection with providing goods and/or services to the County.

As used above, "irrevocable" shall include, but not be limited to, the right of the County to continue using the Contractor's Licensed Software or third party software irrespective of any breach or default pursuant to the terms hereof.

A. Scope of License

The County may use the Licensed Software on any and all equipment configurations of whatever make, manufacture and/or model, owned controlled or contracted for, by the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County or which may assume the responsibilities of the County or any successors of the County, all of which uses are subject to the provisions of this subarticle 10.2.

B. Software related Documentation

The Licensed Software related Documentation shall: (i) consist of any and all operator's and users manuals, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the system; (ii) control file and scripts used to compile, link, load and/or make the applications and systems; and (iii) test scripts, test plans and test data and other materials for use in conjunction with the applicable software. The Documentation will in all cases be fully applicable to the use of the programs with the Equipment, and will identify and reflect any particular features of the Equipment which may affect the normal use and operation of the programs. The County will have the right, as part of the Agreement to make as many additional copies of the Documentation as it may deem necessary.

C. Ownership of Licensed Software

The Contractor hereby warrants and represents that the Contractor possesses all rights to and interest in the Licensed Software, and all portions thereof, or otherwise have the right to grant to the County the affected licenses, without violating any rights of any third party.

D. County to Execute License Agreements

The County understands that suppliers of software including the Contractor may require the County to execute license agreements in order to use the software. Contractor understands that the County is a governmental entity and may not be able to execute such an agreement, as a matter of law or administrative policy among other things, because of the terms and provisions contained therein. In the event Equipment to be supplied by the Contractor requires the County to execute a separate software license agreement, whether with the Contractor or a third party supplier of such software, then the Contractor will notify the County of such circumstances, and provide the County with a copy of the software license agreement. Contractor will not provide the County with any Equipment, System or Sub-System where the operation or use thereof is contingent upon the executed license agreement, unless and until the County has informed the Contractor that the County is willing and able to execute such license agreement.

ARTICLE 11
NATURE OF THE AGREEMENT

The Contractor shall provide the Services set forth in Article 3, Scope of Services, to this Agreement, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under the Agreement. All things not expressly mentioned in this Agreement, necessary to either enforce or carrying out its purpose and intent are implied, and the Parties shall perform the same as though they were specifically mentioned, described and delineated.

The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Agreement. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Manager.

The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious, fiduciary, and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

The Contractor shall not have liability for the immediate or long-term effects of matters related to any action or inaction by the Department. Further, if a lawsuit is brought against the Contractor, by a third party that is neither an employee nor supplier of the Contractor, and the claim is based upon the Contractor's action or inaction which occurs based upon the Department's action or inaction under this Agreement, then the Contractor may bring a Third-party claim against the County.

ARTICLE 12
MANNER OF PERFORMANCE

The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, Subcontractor, or any other person performing Services hereunder. The Contractor acknowledges that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing Services hereunder at the behest of the County.

The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals, familiar with the locations of the telecommunications infrastructure at the Airport, and other personnel to meet the requirements referenced in this Agreement. The Contractor agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing, is inadequate or inappropriate, or that any individual is not performing in a manner consistent with the requirements for the position.

The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, and licenses as necessary to perform the Services described herein in a competent and professional manner.

The Contractor shall at all times cooperate with the County, and coordinate its work efforts and those of its Subcontractors, to most effectively and efficiently maintain the progress in performing the Services. Similarly, the County shall at all times cooperate with the Contractor and coordinate its work efforts, and those of the County's independent contractors, to most effectively and efficiently maintain the progress in the Contractor's performance of its Services.

The Contractor shall comply with all provisions of all federal, state and County laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 13
TERM OF AGREEMENT

The term of this Agreement will be five (5) years; the Department reserves the right to extend this Agreement for up to an additional two (2) years, in one (1) year increments, on the same terms and conditions contained herein, unless terminated under provisions contained herein. For each one (1) year extension period, the County shall issue a written notice to the Contractor of the County's election to extend this Agreement, one hundred-twenty (120) days prior to the expiration of the term of the Agreement. The maximum term of the Agreement with extensions is not to exceed seven (7) years. At anytime during the term of this Agreement the County may terminate the Agreement without cause on thirty (30) days written notice to the Contractor, provided however, that the Agreement shall have a minimum term of no less than three (3) years unless terminated earlier for cause.

ARTICLE 14
CONTRACTOR REPRESENTATIONS AND WARRANTIES

When the Contractor procures parts, equipment, and software necessary to perform the Work described herein it represents and warrants it shall transfer the unencumbered title to Miami-Dade County, for all telecommunications, data, software, licenses, permits, and other assets used to provide Services pursuant to this Agreement.

ARTICLE 15
PROJECT MANAGER AND RESOLUTION OF DISPUTES

The Project Manager shall coordinate all County responsibilities under this Agreement. All instructions from the County to the Contractor shall be issued by or through the Project Manager. Except for MDAD Information Systems and Telecommunications Division, and SATS customers, the Contractor shall notify any other person who attempts to give instructions that he or she must communicate with the Project Manager. The authority of the Project Manager is as follows:

a) The Project Manager will determine: (i) questions as to the value, acceptability and fitness of the Services; (ii) questions as to either party's fulfillment of its obligations under the Agreement; and (iii) questions as to the interpretation of the Scope of Services.

b) Contractor acknowledges and agrees that the Project Manager has no authority to make changes that would modify the scope of services to be provided under this Agreement.

c) The Contractor shall be bound by the determinations or orders specifically authorized under this Agreement and shall promptly obey and follow every order of the Project Manager specifically authorized under this Agreement, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally by the Project Manager, they will be issued in writing by the Project Manager as soon thereafter as is practicable, but not to exceed five (5) business days.

In the event of a dispute, the Contractor must first seek to resolve every difference concerning the Agreement with the Project Manager, for a period of thirty (30) days or such longer period as agreed upon by the Parties, which shall be a condition precedent to any lawsuit permitted hereunder. In the event the Contractor seeks to contest an issue or difference for which there has been administrative review by the Project Manager, such subsequent lawsuit shall be considered a *de novo* proceeding.

ARTICLE 16
COUNTY EXPENDITURE AUTHORITY

The dollar thresholds for obtaining project management services, procurement of material, equipment and inventory, and an increase in the management fee and appropriate authority levels are described as follows:

A. PURCHASES OF GREATER THAN $1,000,000
APPROVAL AUTHORITY: BOARD OF COUNTY COMMISSIONERS
The Board shall award all contracts greater than $1,000,000, and approve all contract modifications required of this Agreement.

B. **PURCHASES OF $500,000 UP TO $1,000,000**
APPROVAL AUTHORITY: COUNTY MANAGER
The County Manager shall award all contracts greater than $500,000 up to $1,000,000.

C. PURCHASES OF $100,000 UP TO $500,000
APPROVAL AUTHORITY: MDAD DIRECTOR
Each individual purchase of $100,000 or more and each continuing contract which can reasonably be anticipated to aggregate $100,000 or more within twelve (12) months.

D. PURCHASES OVER $10,000 UP TO $100,000
APPROVAL AUTHORITY: MDAD ASSISTANT DIRECTOR
Each individual purchase of $10,000 but less than $100,000 and each continuing contract which can reasonably be anticipated to be within this range within twelve (12) months.

E SMALL PURCHASE ORDER (UP TO $10,000)
APPROVAL AUTHORITY: MDAD DIVISION DIRECTOR
Each individual purchase request with a total value of less than $10,000, for a specific commodity, during one (1) fiscal year.

F. CONTRACT MODIFICATIONS
APPROVAL AUTHORITY: COUNTY MANAGER OR DESIGNEE
Approve contracts modifications not exceeding twenty percent (20%) in the aggregate of the original contract amount during the course of the initial contract term, and not exceeding twenty percent (20%) in the aggregate of the modified contract amount during the term of any option to renew that may be exercised.

G. SOLE SOURCE, BID WAIVER AND EMERGENCY CONTRACTS
APPROVAL AUTHORITY: COUNTY MANAGER OR DESIGNEE
Approve awards of sole source, bid waiver and emergency contracts, when the award results in an amount of $100,000 or less.

Any change, modification, additional service, equipment or parts that causes, the financial obligation of the County to exceed the amount of authority of those noted above shall be presented for approval to the next higher authority level. If the Contractor fails to obtain the proper authorization as described above, then the County shall be absolved from payment of the liability.

ARTICLE 17
SUBCONTRACTUAL RELATIONS

If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Agreement will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby be discharged from its obligations and liabilities hereunder, but will be liable for all acts, omissions, or negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

The Contractor, before making any subcontract for any portion of the Services, will state in writing to the County the name of the proposed subcontractor, the portion of the Services that the subcontractor is to do, the place of business of such subcontractor, and such other information as the County may require. The County has the right to require the Contractor not to award any subcontract to a person, firm, corporation, or joint venture disapproved or debarred by the County.

Before entering into any subcontract hereunder, the Contractor will inform the subcontractor of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such services performed by such subcontractor will strictly comply with the requirements of this Agreement.

In order to qualify as a subcontractor satisfactory to the County, in addition to the other requirements herein provided, the subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, license(s), and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type that is required to be performed under this Agreement.

The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All subcontractors are required to protect the confidentiality of the County and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between the Contractor and Subcontractors hereunder.

The Contractor shall, where agreed to by the Subcontractor, insert a clause for the benefit of the County within each respective subcontract, which permits the County to request completion of performance by the Subcontractor of its obligations under the contract. Contractor agrees that the County shall be permitted to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event that the Contractor is in breach of its obligations, and the option to pay the Subcontractor directly for the performance by such Subcontractor. Should either the Contractor or Subcontractor(s) violate the terms of this article, the County may order all or any part of the subcontract work stopped, and may elect to complete the work itself or enter into an agreement with a third party to have the work completed. The cost to complete the work may be deducted from any unpaid balance payable to the Contractor. If there are no existing unpaid balances, or if the completion cost is in excess of the unpaid balance, the Contractor shall reimburse the County for this sum, plus any costs of collection. The Contractor shall be entitled to be paid for work performed to the time the work was stopped by the County. Notwithstanding, the foregoing, shall neither denote, connote, nor convey any obligation or liability on the part of the County to any Subcontractor.

NOTHING CONTAINED IN THIS AGREEMENT SHALL CREATE ANY CONTRACTUAL RELATIONSHIP BETWEEN ANY SUBCONTRACTOR AND THE COUNTY, OR ANY OBLIGATION ON THE PART OF COUNTY TO PAY ANY SUMS TO ANY SUBCONTRACTOR.

ARTICLE 18
ASSIGNMENT

Neither this Agreement nor any interest herein shall be assigned, or transferred by either party without prior written consent of the other party and said consent shall not be unreasonably withheld.

Contracts Assignable

All contracts, purchase agreements, and purchase orders entered into by the Contractor for the purchase of goods, capital equipment and services specifically pursuant to this Agreement, shall be assigned, with the consent of the Subcontractor, by the Contractor to the County or others as designated by the Department, upon either the request of the Department or termination of this Agreement. If such contracts, purchase agreements and purchase orders contain language acceptable to the Department, reflecting that they are assignable as provided herein, then upon such assignment, the Contractor shall be relieved from any further responsibility to the County under such contracts, agreements and orders, provided however, that the Contractor shall be liable for and shall indemnify the County with respect to any prospective or outstanding claims, set off, or payments due, with respect to said contracts, agreements, and orders which accrued prior to such assignment to the County.

ARTICLE 19
PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law, Chapter 119, Florida Statutes.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or material which the County has agreed to protect as proprietary information from disclosure or unauthorized use, and may also constitute or contain information or material which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

The County acknowledges that software licensed by the Contractor pursuant hereto may constitute or contain information or material which the County has agreed to protect as proprietary information from disclosure or unauthorized use, and may also constitute or contain information or material which the Contractor has developed at its own expense, the disclosure of which could harm the Contractor's proprietary interest therein.

During the term of the Agreement, the Contractor and the County, except as required by Chapter 119, Florida Statutes, will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County or Contractor has developed, used or is using, is holding for use, or which is otherwise in the possession of the County (the "Computer Software"). All third party license agreements must also be honored by the Contractor and its employees, and by the County, and if the Computer Software has been leased or purchased by the County, all third party license agreements must also be honored by the Contractor's employees and Subcontractors. This includes mainframe, minicomputers, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County and the County shall report to the Contractor, any information discovered or disclosed to the Contractor or the County which may relate to the improper use, publication, disclosure or removal from the other's property of any information technology software and hardware, and will take such steps as are within the Contractor's or the County's authority, respectively, to prevent improper use, disclosure or removal.

ARTICLE 20
PROPRIETARY RIGHTS

All rights, title and interest in and to materials, data, Documentation, certain inventions, designs and methods, specifications and related thereto developed by the Contractor and its Subcontractors, customized or created specifically for the County for use in connection with this Agreement (the "Developed Works"), shall become the property of the County.

The Contractor hereby acknowledges and represents that the County retains all rights, title and interests in and to the Developed Works, and copies thereof furnished by the County to the Contractor hereunder, or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process which are customized or created specifically for the scope of services provided herein and which are created as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor

as well as its employees, agents, Subcontractors and suppliers may use only in connection of the performance of Services under this Agreement.

The Contractor shall not, without the prior written consent of the County, use such Developed Works on any other project in which the Contractor or its employees, agents, Subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

Accordingly, neither the Contractor nor its employees, agents, Subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Contractor, or any employee, agent, Subcontractor, or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance under this Agreement, or as required by law.

Except as otherwise provided above, or elsewhere herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that has not been customized to satisfy the performance criteria set forth in Article 3, Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant County a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County.

Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical Documentation and Licensed Software provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such Licensed Software, specifications, data, Documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 21
CONFIDENTIALITY

All Developed Works constitute confidential information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. Neither the Contractor nor its employees, agents, Subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of the Developed Works without the prior written consent of the County.

The Contractor shall advise its employees, agents, Subcontractors and suppliers who may be exposed to such Developed Works of their obligation to keep such information confidential and Contractor shall promptly advise the County, in writing if it learns of any unauthorized use or disclosure of the Developed Works by any of its current or former employees, agents, or subcontractors or suppliers. In addition, the Contractor agrees to

cooperate fully and provide any assistance necessary to ensure the confidentiality of the Developed Works.

It is understood and agreed that in the event of a breach of this article, damages may not be an adequate remedy, and the County shall be entitled to injunctive relief to prevent any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately return to the County all such Developed Works existing in tangible form, and no copies thereof shall be retained by the Contractor's employees, agents, subcontractors or suppliers without the prior written consent of the County. This Confidentiality article will survive the termination of this Agreement, and will be in effect for all periods in which the Contractor retains copies of the Developed Works. The Contractor remains liable to the County for any breach of this article until all copies of the Developed Works have been returned to the County.

ARTICLE 22
ACCOUNTING RECORDS AND AUDIT PROVISIONS

The County reserves the right to audit the accounts and records of the Contractor supporting all payments for Services hereunder and all Reimbursable Expenses including, but not limited to, payroll records and federal tax returns. The County shall have unrestricted access to all of the Contractor's books and records that pertains to the Contractor's operation under this Agreement. In addition, the County shall have unrestricted right to audit, either by County staff or an audit firm chosen by the County. Such audit may take place during reasonable business hours for the period of the performance of this Agreement and for three (3) years after final payment under this Agreement. The Contractor shall maintain, as part of its regular accounting system, records of a nature and in a sufficient degree or detail to enable such audit to determine the personnel hours and personnel costs and other expenses associated with the Agreement. It is further agreed that said compensation provided for in this Agreement shall be adjusted to exclude any significant costs where the County determines that the payment for Services was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs. All such adjustments in compensation paid or payable to Contractor under this Agreement shall be made within three (3) years from the date of final billing or acceptance of the Services by the County, whichever is later. The Contractor shall pay for all audit-related expenses where the audit findings aggregate to greater than or equal to three percent (3%) of the correct amount the County should have paid or been invoiced. The three percent (3%) audit-related expense threshold only applies to the amount(s) audited, and not all of the Contractor's billings. Any overpayment amount(s) discovered by audit shall be reimbursed to the County within fifteen (15) day of notice of the audit results to the Contractor.

ARTICLE 23
IPSIG AND INSPECTOR GENERAL REVIEWS

23.1. Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order No. 3-20, the Contractor is aware that, when applicable, the County has the right to retain the services of an independent private sector Inspector General (the "IPSIG"), whenever the County deems it appropriate to do so. The County shall have the right but not the obligation to retain the services of an IPSIG who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Contractor and County in connection with this Contract. The scope of services performed by an IPSIG may include, but are not limited to, monitoring and

investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of Contractor, its officers, agents and employees, lobbyists, County staff and elected officials.

Upon ten (10) days written notice to Contractor from an IPSIG, the Contractor shall make all requested records and documents available to the IPSIG for inspection and copying. The IPSIG shall have the right to examine all documents and records in the Contractor's possessions, custody or control which, in the IPSIG'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 and unsuccessful subcontractors and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge 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.

23.2 **Inspector General**

Pursuant to Miami-Dade County Ordinance No. 97-215, the County has established the Office of the Inspector General (the "Inspector General"), which is empowered to conduct random audits on all County contracts throughout the duration of each contract. 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 is empowered to retain the services of independent private sector inspector generals to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, and County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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 judgement, 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 and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents 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 personal records and supporting documentation for the aforesaid documents and records. 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.

23.3 Nothing herein shall limit the right of the Contractor to contest any action by the IPSIG or the Inspector General on any legal or equitable ground.

57

Nothing in this article shall impair any independent right to the County to conduct audits or investigate activities. The provisions of this article are neither intended nor shall be construed to impose any liability on the County by the Contractor or third parties.

23.4 The County shall be responsible for the payment of these IPSIG and Inspector General services and for the payment of costs of Contractor related to actions by the IPSIG and/or the Office of the Inspector General for clerical staff time for obtaining and copying the Documentation, and any documents, provided however, the Contractor shall pay for all audit-related expenses where the audit findings aggregate to greater than or equal to three percent (3%) of the correct amount the County should have paid or been invoiced. The three percent (3%) audit-related expense threshold only applies to the amount(s) audited, and not all of the Contractor's billings. Any overpayment amount(s) discovered by audit shall be reimbursed to the County within fifteen (15) day of notice of the audit results to the Contractor. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or to review the operations, activities and performance of the Contractor as and to the extent as provided under this Agreement.

ARTICLE 24
COMMUNITY SMALL BUSINESS ENTERPRISE

24.1 This Agreement will adhere to all Miami-Dade County ordinances with special attention to all ordinances that relate to the Community Small Business Enterprise ("CSBE") Participation program.

24.2 The following has been established according to the CSBE program:

Contract Measure: **8% Goal**

All Proposers are **directed to and are required to adhere to** the attached Miami-Dade County Florida, Department of Small Business Development ("SBD"),[1] CSBE participation provisions, included within these Contract documents which delineates the requirements of this County program and the requirements for attaining the CSBE contract measure of a eight percent (8%) goal, all in accordance with applicable federal and state laws, and County ordinances.

ARTICLE 25
EQUAL EMPLOYMENT OPPORTUNITY
NONDISCRIMINATION AND AFFIRMATIVE ACTION

25.1 **Equal Employment Opportunity**
The Contractor shall neither discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, nor in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Contractor shall take affirmative actions to ensure that applicants are employed and that employees are treated during their

[1] formerly known as the Department of Small Business Affairs ("SBA").

S2

employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but are not limited to, the following: employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay of other forms of compensation, and selection for training including apprenticeships.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. The Contractor shall comply with all applicable provisions of the Civil Rights Act of 1964, Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, revised Order No. 4 of December 1, 1971, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act effective June 12, 1968, the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §§ 112.041, 112.042, and 112.043, and Miami-Dade County Ordinance No. 75-46, Articles 3 and 4.

25.2 <u>Nondiscriminatory Access to Premises</u>

The Contractor, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that the Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation.

25.3 <u>Breach of Nondiscrimination Covenants</u>:

In the event it has been determined that the Contractor has breached any enforceable nondiscrimination covenants contained in subarticles 25.1 (Equal Employment Opportunity) and 25.2 (Nondiscriminatory Access to Premises) above, pursuant to the complaint procedures contained in the applicable federal regulations, and the Contractor fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Event of Default subarticle hereof.

25.4 <u>Nondiscrimination</u>

During the performance of this Agreement, the Contractor agrees as follows:

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain the compliance with such rules, regulations, and orders. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, this Agreement may be cancelled, terminated, or suspended in whole or in part in accordance with Event of Default subarticle hereof and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as

amended by Executive Order 11375 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Contractor shall include subarticles 25.1 and 25.2 above in all Contractor subcontracts in excess of $10,000, unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, so that such provisions shall be binding upon each Subcontractor.

25.5 Disability Nondiscrimination Certification

By entering into this Agreement with the County and signing the Disability Nondiscrimination Certification, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement officer, courts, or the County to be in violation of the act or the resolution, such violation shall render this Contract terminable in accordance with the Event of Default subarticle hereof. This Contract shall be void if the Contractor submits a false certification pursuant to this Resolution or the Contractor violated the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

25.6 Affirmative Action / Non Discrimination of Employment, Promotion and Procurement Practices

In accordance with the requirements of Miami-Dade County Ordinance No. 98-30, all firms with annual gross revenues in excess of $5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Small Business Development. Said firms must also submit, as a part of their proposals/bids to be filed with the Clerk of the Board (the "Clerk"), an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Director are representative of the population make-up of the nation are exempted from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to SBD. Firms claiming exemption must submit, as part of their proposal/bids to be filed with the Clerk, an appropriately completed and signed Exemption Affidavit in accordance with Ordinance No. 98-30. These submittals shall be subject to periodic review to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It shall be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the ordinance. Those firms that do not exceed $5 million annual gross revenues must clearly state so in their bid/proposal.

57

ARTICLE 26
INDEMNIFICATION

26.1 Indemnification And Hold Harmless

The Contractor shall defend, indemnify, and save harmless the County, and its officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death, property damage (including loss of use thereof), economic loss, or any other loss or damage), due in any manner to the negligence, act, or failure to act of the Contractor or its Subcontractors, sub-subcontractors, materialmen or agents of any tier of their respective employees arising out of or relating to the performance of the Work covered by this Contract except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon; provided however, that Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the Contract or is performance shall be limited to the greater of $1 million or the Contract amount. Further, this indemnification requirement shall not be construed to require the Contractor to indemnify any of the above-listed Indemnitees to the extent of such indemnities' own sole and gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise. This provision shall survive early cancellation or termination of this Agreement.

26.2 County Liability

The County is a political subdivision as defined in Section 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity, nor shall it be construed as consent by a federal or state agency, or political subdivision of the State of Florida to be sued by third parties in any manner whether arising out of this Agreement or any other contract. The County acknowledges that it will not raise sovereign immunity as a defense to a contractual claim under this Agreement.

ARTICLE 27
PATENT AND COPYRIGHT INDEMNIFICATION

The Contractor warrants all deliverables furnished hereunder, including but not limited to: Equipment, programs, Documentation, Software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trademarks, trade secrets or any other third party proprietary rights, by the use or supplying of any of the Contractor's or Contractor Subcontractor's provided programs, Documentation, Software, analyses, applications, methods, ways, processes, and the like, used in the course of performance or completion of, or in any way connected with, the Work or the County's continued use of the deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

In the event any deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to use its best efforts to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or at Contractor's sole option (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

The Contractor shall not knowingly infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Services.

ARTICLE 28
INSURANCE

28.1 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 County.

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 AOA.

(2) $1,000,000 combined single limit per occurrence for bodily jury and property damage covering vehicles when being used by the Contractor off of 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.

28.2 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:

The company must be rated no less than "A-" as to management, and no less than "VII" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of

MDAD Risk Management.

28.3 The Contractor shall furnish certificates of insurance and insurance policies to the County 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 days advance notice shall be given to the MDAD Risk Management.

28.4 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.

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 County 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.

28.5 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.

28.6 The County 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 Department.

ARTICLE 29
IRREVOCABLE STANDBY LETTER OF CREDIT OR PERFORMANCE AND PAYMENT BOND

29.1 Either an irrevocable letter of credit ("LOC") drawn on a state or national bank satisfactory to Miami-Dade County, and payable to Miami-Dade County, Florida, or a performance and payment bond (the "Performance Bond"), satisfactory to Miami-Dade County, Florida, shall be executed on the forms attached hereto as Exhibit "D", in the amount of not less than five million dollars (US$ 5,000,000) for the first year of the initial term of the Agreement shall be required of the Contractor. Except if notified by the County to change the amount of the LOC or the Performance Bond, as applicable, the Contractor is required to renew the LOC or the Performance Bond, as applicable, annually for the duration of the Agreement.

A. All bonds shall be written through surety insurers authorized to do business in the State of Florida as a surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Agreement) Amount	Best's Rating

57

$ 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 agreement amounts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes 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 Notice to Negotiate was issued.

2) Certifying that the surety is otherwise in compliance with the State of 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 United States Department of the Treasury (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 B above will be adhered to, plus the surety insurer must have been listed on the Treasury list for at least three (3) 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 United States 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 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.

29.2 The required Performance 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.

29.3 Either the LOC or the Performance Bond shall be delivered to the County with the executed Agreement.

29.4 In the event the bank issuing the LOC or the surety on the Performance 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 principal place of business, or the State of Florida suspended or revoked as provided by law, the County shall withhold all payments under the provisions of this Agreement until the Contractor has given a good and sufficient LOC(s) or Performance Bond(s) in lieu of the LOC(s) or Performance Bond(s) executed by such issuing bank or surety.

29.5 Cancellation of any LOC or Performance Bond, or non-payment by the Contractor of any premium for any LOC or Performance Bond required by this Agreement shall constitute a breach of this Agreement. In addition to any other legal remedies, the

County at its sole option may terminate this Agreement or pay such premiums, and deduct the costs thereof from any amounts which are or may be due to the Contractor.

ARTICLE 30
MONETARY ASSESSMENTS FOR NON-PERFORMANCE

30.1 Monetary Assessment for Non-Performance

The County shall impose a Monetary Assessment for Non-Performance on the Contractor for failing to achieve the required service levels, response or timely completion failure to complete scheduled MAC work within the designated time schedule, and other performance measurements as more fully described below:

	Performance Measurement	**Monetary Assessment for Non-Performance Summary**
1	Failure of Contractor to meet the monthly service levels as stated in 2.2 of Exhibit A.	Contractor shall credit back to County at a rate of $1,000 per incident.
2.	Failure of Contractor to resolve or implement a MDAD approved Work-around within four (4) hours from notification to and approval from MDAD of critical or major problems.	Contractor shall credit back County at a rate of $5,000 per day for every critical or major classified problem related to Voice and Data Network that is either not resolved, or implemented and does not have an MDAD approved Workaround within four (4) hours of the problem.
3.	All projects, MACs, new installations, or provisioning individually shall be completed per the mutually agreed upon schedule and or the time frame if specified in this Agreement. If completion is not within ten percent (10%) of the schedule/goal, Monetary Assessment for Non-Performance will be invoked.	Missed deadlines will be assessed by the County that are within the control of the Contractor. Contractor shall credit back County at a rate of $1,000 per day in the event Contractor does not complete the work within ten percent (10%) of the agreed upon schedule/goal.
4.	Having a number of complaints (see 2.2 of Exhibit A) in any given month regarding responsiveness or inability to resolve in a timely manner.	Contractor shall credit back to County at a rate of $500 per incident above the number indicated in 2.2 of Exhibit "A".
5.	For all other service types not covered under 1 – 4 above in which the service requirements have not been met and Monetary Assessment for Non-Performance were stated in 2.2 of Exhibit A.	Contractor shall credit back to County at a rate of $500 per incident

The Parties recognize that the extent and calculation of damages may be difficult to ascertain, therefore, they agree that Monetary Assessment for Non-Performance in the amount stated are reasonable and is in lieu of all other remedies.

All performance measurement Monetary Assessment for Non-Performance shown above shall be cumulative. The cumulative amount of all performance measurement Monetary Assessment for Non-Performance shall not exceed $250,000 per calendar year. The Monetary Assessment for Non-Performance shall be deducted from the Contractor's Management Fee invoice amount for the month. These Monetary Assessment for Non-Performance shall not apply to the Contractor's invoice amounts that are attributable to third party intervention, or any external events outside the Contractor's control.

30.2 Actions Not Covered Under This Article

The Parties agree the Monetary Assessment for Non-Performance set forth in this Article shall not apply to the extent the Services rendered by Contractor are affected by any of the following (i) unauthorized actions of the County's personnel; (ii) unauthorized actions of third parties not an agent, Subcontractor, or supplier of the Contractor; (iii) failure of software or equipment not administered by Contractor; (iv) modification of the Work by the County, or third party not an agent, Subcontractor, or supplier of the Contractor; (v) damage or malfunction of hardware or software cause by the County, or third party not an agent, Subcontractor, or supplier of the Contractor; or (vi) the *force majeure* conditions set forth elsewhere in this Agreement.

ARTICLE 31
TERMINATION AND DEFAULT PROVISIONS

31.1 Termination For Convenience and Suspension Of Work

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, without cause, terminate this Agreement by thirty days (30) written notice to the Contractor, provided however, that this Agreement can only be terminated without cause if the Agreement is in effect for greater than three (3) years.

31.2 Actions at Termination

a) The Contractor shall, upon receipt of such notice, and as directed by the County:

i. stop work on the date specified in the notice (the "Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders, but the County shall reimburse Contractor for all costs and expenses of such cancellation, provided that Contractor has, within five (5) business days, advised MDAD in writing that there may be cancellation costs, and to the extent known, an estimate of amount of these costs;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders not incorporated in the Services;

v. take no action which will increase the amounts payable by the County under this Agreement; and

vi. implement a transition plan pursuant to the Transition Program Services subarticle of the Telecommunications and Network Management Services Specification as required in Exhibit A.

b) In the event that the County exercises its right to terminate this Agreement

pursuant to this Article, the Contractor will be compensated as stated in Article 8, Payments and Cost Reimbursements, herein for the:

i. portion of the Services completed in accordance with the Agreement and the work up to the Termination Date; and

ii. non-cancelable deliverables, that have been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

iii. any additional charges, incurred by the Contractor, at the direction of the County, not covered in clause (b)(i), above.

c) No claims for loss of anticipated profits or for any other reason in connection the cancellation, or termination of this Agreement shall be considered.

NOTE: All compensation paid pursuant to this subarticle is subject to audit.

31.3 Surrender of Office and Support Space

On or before the Termination Date of this Agreement, whether by lapse of time or otherwise, in accordance with the provisions contained herein, the Contractor shall vacate, quit and surrender and shall account for the support space, all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County in as good order and condition as they were upon commencement of this Agreement or date of subsequent acquisition, reasonable and normal wear and tear excepted.

31.4 Removal of Personal Property

On or before the Termination Date of this Agreement, the Contractor shall remove all of its personal property from the support space. Any personal property of the Contractor not removed in accordance with this subarticle may be removed by the Department for storage at the cost of the Contractor. Failure on the part of the Contractor to reclaim its personal property within thirty (30) days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be in the best interests of the County.

31.5 Termination For Cause

a) The County may terminate this Agreement, if an individual or corporation or joint venture or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or joint venture or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform, and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County, Florida.

d) The County may terminate this Agreement, if the Contractor fails to cure an event of default timely.

31.6 Contractor Event of Default

a. A default shall mean a breach of this Agreement by the Contractor (an "Event of Default"). In addition to those instances referred to herein as a breach, an Event of Default, shall include one (1) or more of the following:

   i. the Contractor has violated the terms and conditions of this Agreement, including failing to respond to major and minor failures on a timely basis, unless the Contractor has paid the damages flowing therefrom, and made all necessary repairs associated with the failure(s);

   ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply a sufficient number of properly skilled personnel;

   iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;

   iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law, or the Contractor's affairs have been put in the hands of a receiver;

   v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

   vi. the Contractor has failed to provide adequate assurances as required under subsection b below; or

   vii. the Contractor has failed in a representation or warranty stated herein.

b. When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services that the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

   i. treat such failure as a repudiation of this Agreement; and

   ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c. In the event the County terminates this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable Equipment, materials, products, computer files and databases, Documentation, reports, data, or Developed Works.

31.7 Notice of Default and Opportunity to Cure

If an Event of Default occurs, the County shall notify the Contractor (the "Default

Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. The Contractor can cure and rectify the default, to the County's reasonable satisfaction, within thirty (30) days of actual notice of the Default Notice (the "Cure Period"). The County may extend the Cure Period and grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as, the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The Default Notice shall specify the date the Contractor shall discontinue the services on or before the Termination Date.

31.8 <u>Remedies in the Event of Default</u>

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

i. SATS revenues lost to the County;

ii. the difference between the cost associated with procuring the Services hereunder and the amount actually expended by the County for reprocurement of the Services, including procurement and administrative costs; and

iii. such other damages as the County may be entitled.

31.9 <u>County Event Of Default</u>

The County shall be in default in the event (a "County Event of Default") that one of the following occurs:

(a) (i) the Contractor tenders all required documentation for payment under this Agreement; and

(ii) within fifteen (15) days, the County has not returned the invoice to the Contractor with an explanation of what is missing or incorrect; and

(iii) the County fails to pay that sum of money as and when due under this Agreement and fails to cure the nonpayment within thirty (30) days following receipt of written notice from the Contractor; or

(b) it commits a material breach of a nonpayment provision of this Agreement and fails to cure that breach within thirty (30) days after written notice describing the breach.

31.10 <u>Contractor Remedies Upon County Default</u>

In the event of a County Event of Default, the Contractor may exercise any right and seek any remedy provided at law or in equity.

31.11 <u>Contractor Right Of Early Termination</u>

In the event the County has reduced the level of the Contractor's staff below forty (40) persons or such greater reduction (provided however that no such reduction below forty (40) persons shall occur if the Agreement is in effect for less than three (3) years), such that the

Contractor believes in good faith that it can no longer effectively discharge all of its duties under this Agreement, then the Contractor shall have the right to terminate this Agreement on ninety (90) days written notice to the County, unless the County rescinds the required Contractor staff reduction within ten (10) business days of receipt of the notice. The reduction in the Contractor's staff under this subarticle, shall not include the total number of Contractor's staff that the County may reduce given a reduction in the Contractor's Services, pursuant to subarticle 4.1 of this Agreement.

ARTICLE 32
FORCE MAJEURE

If the performance of this Agreement, or any obligation contained in it, is prevented, restricted or interfered with by reason of either

1. fire, explosion, breakdown of plant, epidemic, hailstorm, hurricane, tornado, cyclone, flood, power failure, lightning, water, or other acts of God, or
2. war, revolution, terrorism, civil commotion, acts of public enemies, blockage, or embargo,

then the party affected, upon giving prompt notice to the other party, shall be excused from such affected performance on a day-to-day basis to the extent of such prevention, restriction or interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so prevented, restricted or interfered with); provided however, that the party so affected shall use its commercially reasonable efforts to avoid or remove such causes of non-performance and the Parties shall perform promptly whenever such causes are removed or ceased.

ARTICLE 33
CONFLICT OF INTEREST

Conflict of Interest Code of Ethics Ordinance: In connection with the terms and conditions of this Agreement, the Contractor agrees to adhere to and be governed by the County, Florida Conflict of Interest Code of Ethics Ordinance (Section 2-11.1 of the Code). Notwithstanding the provisions of any federal, state or County law governing the activities of the Contractor hereunder, commencing as of the effective date of this Agreement and continuing for the term hereof, the Contractor shall not knowingly enter into any contract or other financial arrangement with any person, corporation, municipality, authority, county, state, country, or any tenant or airline, which would constitute a conflict with interest of the County hereunder or with the Services provided by the Contractor to the County hereunder. The Miami-Dade County Ethics Commission shall make determination(s), binding upon the Parties, as to whether conflicts exist or will exist, and if such relationship will be serious enough to constitute a conflict hereunder.

The Contractor represents that no officer, director, employee, agent, or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

The Contractor also represents that, to the best of its actual knowledge:

(a) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other Contractor of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, supplies or Work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

(b) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided however, that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

(c) The provisions of this article are supplemental to, not in lieu of, all applicable laws with respect to conflicts of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

(d) In the event the Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions the Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 34
MISCELLANEOUS PROVISIONS

34.1. Binding Effect

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

34.2. Contractor Limitation of Liability

a) The Contractor and its Subcontractors shall not be liable for:

(i) any indirect, incidental, consequential, special or exemplary damages, except as it pertains to SATS revenues where the Contractor and its Subcontractor(s) shall be liable for consequential damages in an amount not to exceed $1,000,000;

(ii) any damages of any kind resulting from unauthorized use of or intrusion into the system, including toll fraud. This provision applies to all claims whether based upon breach of warranty, breach of contract, negligence, strict liability in tort where any other legal theory, and regardless of whether the Contractor or its subcontractors have been advised of the possibility of such damage or loss, except for damages resulting if the Contractor or its subcontractors fail to take explicit remedial action based upon the directive of the Department.

b) If a voice system or any other component thereof supports voice over IP protocol (telephony or transmission control protocol/internet protocol), the County may experience certain compromises in performance, liability and security, even when the System is in good working order. These compromises may become more acute if the County fails to follow the Contractor's or the manufacturer's recommendations for configuration, operation and use of the System. The County acknowledges that it is aware of these risks and that it has determined they are acceptable for its application of the System, and the County will not assert any claim against Contractor for such compromises. The County further acknowledges and agrees that the County is solely responsible for:

(i) ensuring that its network and systems are adequately secured against unauthorized intrusion; and

(iii) backing up its data and files.

34.3. <u>Other County Rights</u>

Contractor shall be liable for any physical damage it causes to the Equipment, System or circuits. This liability is limited to:(i) the Contractor's repair of the system or component thereof, or if the system or component cannot be repaired, replacement with a comparable system or component; and (ii) any other such damages to the County arising from the physical damage caused by the Contractor. The County may <u>also</u> bring any suit or proceeding for specific performance or for an injunction.

34.4. <u>No Estoppel or Waiver</u>

No acceptance, order, measurement, payment, or certificate of or by a party or its employees or agents shall estop the other party from asserting any right of the ensuing Agreement. There shall be no waiver of the right of a party to demand strict performance of any of the provisions, terms and covenants of this Agreement, nor shall there be any waiver of any breach, default or non-performance hereof by the other party unless such waiver is explicitly made in writing by the party. No delay or failure to exercise a right under the ensuing Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under the Agreement.

34.5. Federal Subordination

This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

34.6. Governmental Authority

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.

34.7. Headings

The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

34.8. Independent Contractor

The Contractor shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the County. All personnel provided by the Contractor in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Contractor under its sole discretion, and not employees or agents of the County.

34.9. Intent of Agreement

This Agreement is for the benefit of the Parties only and does not: (a) grant rights to third party beneficiaries, or to any person; or (b) authorize non-parties to the Agreement to maintain a suit for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

34.10. Joint Preparation

The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

34.11. Laws and Regulations

The Contractor shall comply with the Code of Miami Dade County, Florida (the "Code"), including but not limited to Chapter 25 of the Code, Operational Directives issued thereunder, all laws, statutes, ordinances, resolutions, regulations and rules of the United States of America, State of Florida, or Miami-Dade County, and any and all plans and programs developed in compliance therewith which may be applicable to its operations or activities under this Agreement.

34.12. Modifications

This Agreement may be modified and revised by written Amendment duly executed by the Parties hereto. Neither electronic mail nor instant messaging shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the

terms of the Agreement. **Any oral representation or modifications concerning this Agreement shall be of no force or effect.**

34.13. Notices

Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by Registered or Certified Mail, Return Receipt Requested, or express mail service to:

To the County:

Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504
with a required copy to the Project Manager

To the Contractor:
Norstan Communications, Inc.
d/b/a Black Box Network Services
5101 Shady Oak Rd.
Minnetonka, MN 55343

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or to such other respective addressees as the Parties may designate to each other in writing from time to time. Notices by Registered or Certified Mail shall be deemed given on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

34.14. Ownership Of Documents

Any and all reports, photographs, surveys, provided or created in connection with this Agreement are and shall remain the property of the County. In the event of termination of this Agreement, any software database, all electronic files associated with work performed, any reports; such as traffic, inventory, switch audit, service and or MAC logs and photographs, surveys, prepared by the Contractor, whether finished or unfinished, shall become the property of the County, and the Contractor shall immediately remit same to the County.

Contractor further acknowledges and agrees that Contractor shall not have ownership interest of any kind in any original materials, either written or readable by machine, prepared by Contractor for County, or prepared jointly by Contractor and County, constituting an original, a modification to, enhancement of derivative work based on such materials. Contractor shall be permitted to create and use such Documentation and Materials solely for the purpose of providing services to County.

34.15. Request for Proposal Incorporated and Order Of Precedence

The Contractor acknowledges that it has submitted to the County a proposal that was the basis for the award of this Agreement and upon which the County has relied. RFP No. MDAD-08-06, addenda, and concomitant documents are incorporated by reference into this Agreement. IN THE EVENT A CONFLICT EXISTS BETWEEN THE RFP DOCUMENTS AND THE NON-EXCLUSIVE TELECOMMUNICATIONS AND NETWORK MANAGEMENT SERVICES AGREEMENT, SAID CONFLICT SHALL BE RESOLVED IN THE FOLLOWING PRIORITY: (1) THE TERMS OF THE AGREEMENT; (2) EXHIBITS TO THE AGREEMENT; (3) ANY RFP ADDENDA; AND (4) THE RFP AND CONCOMITANT DOCUMENTS.

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the work order, 2) the Scope, Requirements, and Service Levels shown in the Agreement, and 3) these terms and conditions other than the Scope of Services.

34.16. Press Release Or Other Public Communication

The Contractor shall not issue or permit to be issued any press release, advertisement or literature of any kind that states or suggests that the County endorses the Contractor 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. This subarticle shall not preclude the Contractor from including the County as a representative customer. Except as may be required by law, or with the written consent of County, 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 other parties has been approved or endorsed by the County.

34.17. Prior Agreements

The Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. **No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.**

34.18. Rights to be Exercised by Department

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department. Wherever Department approval is required, it shall not be unreasonably withheld.

34.19. Security

Subject to recommendations from the Contractor as to reasonable and prudent security measures needed and approval by the Department, the Contractor shall be responsible for the security and protection of the facilities, and the equipment, furnishings, commodities and supplies provided under this Agreement, for which the Contractor has managerial responsibilities.

34.20. Severability

If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.

34.21. Solicitation

Except as provided by Section 2-11.1(s) of the Code, the Contractor warrants that: 1) it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement; and 2) it has not paid, or agreed to pay any company or other person any fee, or

commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the County without liability to the Contractor for any reason.

34.22. Survival

Any obligations of the Contractor and the County which by their terms would continue beyond the termination, cancellation or expiration of this Agreement or any service order shall survive with such termination, cancellation or expiration.

34.23. Taxes

The Contractor acknowledges that the County is a tax exempt entity. The Contractor shall pay all taxes lawfully assessed against its operations at the Airport, and the Contractor shall be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in a court of competent jurisdiction to determine the validity of such taxes.

34.24. Third Party Beneficiaries

Neither the Contractor nor the County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement, and that no third party shall be entitled to assert a claim against either of the Parties based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Agreement.

Contractor represents and warrants that it shall use access to and knowledge of Software, Systems and related Documentation solely to provide Services to County, and not for the use or benefit of any other third person nor shall Contractor disclose such materials to any third person, and shall limit disclosure to its employees who have a need to know for the performance of Services hereunder.

34.25. Governing Law; Venue

This Agreement shall be governed by the laws of the State of Florida. Venue for all actions and claims arising from this Agreement shall be heard in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida or in the United States District Court in and for the Southern District of Florida.

Registered Officer/Agent; Jurisdiction: The Contractor shall designate a registered office and a registered agent, as required by Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Florida Statutes. If the Contractor is a natural person, he and his personal representatives hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

34.26. Violations of Laws and Regulations

The Contractor agrees to pay on behalf of the County any Monetary Assessment for Non-Performance, assessment, or fine, issued in the name of the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or County governments, based in whole or substantial part upon a claim or allegation that the Contractor, its agents, Subcontractors, employees or invitees, have violated any law, statute, ordinance, resolution, regulation or rule described in this Agreement or any plan or program developed in compliance therewith.

34.27. Responsible Wages And Benefits

If construction work in excess of one hundred thousand dollars ($100,000) is required of, or undertaken by the Contractor as a result of this Agreement, the Contractor must pay laborers and mechanics performing work on the project no less than the hourly rates specified in accordance with Section 2-11.16 of the Code of Miami-Dade County, Florida and Administrative Order ("AO") No. 3-24. The Contractor shall fully comply with the requirements of the Code and AO and shall satisfy, comply with, and complete the requirements set forth in this Agreement.

It is also the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to $1 million dollars, any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority ("IDA"), shall comply, including requiring the lessee to require any contractor constructing such improvements to pay responsible wages to the same extent as if such improvements were County construction. A lessee must pay the County the monitoring fee(s) for the project according to the sliding scale approved by the Board.

This AO neither applies to County construction contracts less than or equal to one hundred thousand dollars ($100,000) or blanket County contracts designed to consolidate an indeterminate number of individual smaller construction contracts, repair or alteration activities which may be needed over a fixed period of time, provided the overall blanket contract ceiling does not exceed five hundred thousand dollars ($500,000) and further provided that no individual work order issued under such blanket contract shall exceed twenty-five thousand dollars ($25,000) per craft, nor does it apply to County construction contracts which are federally funded or otherwise subject to the Davis-Bacon Act, 40 U.S.C. § 276(a). Furthermore, this AO shall not apply to those privately funded projects on County-owned land for construction or alteration of public buildings or public works which are financed solely through private sources, without one dollar ($1) or more of financing provided through any federal, state, County or local government entity or bond sources including IDA bonds or similar type bond funding.

34.28. <u>Entirety of Agreement</u>

The Parties hereto agree that this Agreement sets forth the entire agreement between the Parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized by subarticles 34.12 and 34.17 to the Agreement, or by written instrument executed by the Parties hereto.

IN WITNESS WHEREOF, the County has hereto caused this Agreement to be issued and executed by its appropriate officials, which the Agreement by its execution by its appropriate officials hereby accepts, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI DADE COUNTY, FLORIDA

By: _____
Mayor

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(COUNTY SEAL)

CONTRACTOR: **Norstan Communications, Inc. d/b/a Black Box Network Services**

By: (Firm)

President | Secretary

WITNESSES TO ABOVE SIGNATURE:

Signature | Signature

Vicky L. REED | KENNETH J. HASTINGS

Print Name | Print Name

Approved by County Attorney as
to form and legal sufficiency.

David S. Hope