

Walters, Vivian (SPEE)

From: Walters, Vivian (SPEE)
Sent: Wednesday, May 02, 2012 2:18 PM
To: 'yesenia.delanuez@next-technology.com'; 'lhilt@ashvinsgroup.com'; 'laser@laser-products.com'; 'vls@pcnetworks.com'; 'osiris@ats-corp.com'
Cc: Johnson, Laurie (SPEE)
Subject: Verification of Availability
Attachments: Verification-RFP 819.pdf

Find attached (a **DRAFT** of) the “**Scopes of Work**” and “**Special Requirements**” for an upcoming **RFP**. Please review to determine if you would be able to **satisfy the requirements** (as applicable), and **interested in responding**; if so, please check the appropriate area below and respond to this email confirming the same.

Please pay “**CLOSE**” attention to the various sections and the “**SPECIAL**” requirements for each, and confirm your **ability and availability** to satisfy “**ALL**” sections/scopes.

See (**Sections 2.1 through 4.3**)- (While you are not proposing at this time, be mindful your response strongly influences SBD’s determination as it relates to a potential SBE Measure). So please be diligent in your review of the information and respond accordingly, based on your ability to meet **ALL** the requirements.

Are you able to satisfy the requirements of the attached documents? **YES** **NO**

Any questions, feel free to contact me at the number below.

Regards,

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Miami-Dade County is a public entity subject to Chapter 119 of the Florida Status concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.



1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Information Technology Department (ITD) on behalf of the Transit (MDT), Parks, Recreation and Open Spaces (PROS), Seaport and Public Works and Waste Management (PWWM) Departments, is soliciting proposals for a turnkey Automated/Biometric Time and Attendance Data Capture Solution (Solution) to be used for recording and tracking time and attendance for County staff located at numerous physical locations throughout the County. The proposed System should include a web-based, County hosted software component as well as integrated devices that employ biometric technology and other alternative technologies to capture and record staff sign-in and sign-out times.

The County anticipates awarding a contract for a five year period, with two, three-year options to renew, at the County's sole discretion.

The anticipated schedule for this Solicitation is as follows:

Solicitation issued:	May 21, 2012
Pre-Proposal Conference:	See front cover for date, time and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the DPM ADA Coordinator at (305) 375-1530 at least five days in advance.
Deadline for receipt of questions:	June 1, 2012 at 5:00PM (Local time)
Proposal due date:	See front cover for date, time and place.
Evaluation process:	Scheduled to begin the week of June 25, 2012
Projected award date:	January 2013

1.2 Definitions

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

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposer" to mean the person, firm, entity or organization, as stated on Form A-1, submitting a response to this Solicitation.
4. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
5. The word "Solicitation" to mean this Request for Proposals (RFP) or Request for Qualifications (RFQ) document, and all associated addenda and attachments.
6. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
7. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.
8. The words "Should", "Will", "Can" to mean desirable features, but not mandatory requirements.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. A proposal shall be the Proposer's firm commitment to provide the goods and services solicited in the manner requested in the Solicitation and described in the proposal. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary. Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsive. To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- the County Mayor, County Commissioners or their respective staffs **and** the County's professional staff or;
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the County Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at clerkbcc@miamidade.gov.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two (\$10,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 Lobbyist Contingency Fees

- A) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- B) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.7 Collusion

Where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Furthermore, any prior understanding, agreement, or connection between two or more corporations, firms, or persons submitting a proposal for the same services shall also be presumed to be collusive. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

2.0 SCOPE OF SERVICES

2.1 INTRODUCTION

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Information Technology Department (ITD) on behalf of the Transit (MDT), Parks, Recreation and Open Spaces (PROS), Seaport, Public Works and Waste Management (PWWM) Departments, is soliciting proposals for a turnkey Automated/Biometric Time and Attendance Data Capture Solution (Solution) to be used for recording and tracking time and attendance for County staff located at numerous physical locations throughout the County. The proposed Solution should incorporate basic business rules for managing, or processing staff time from multiple locations and operating environments to allow the County to minimize user input and facilitate validation of data and consistency of business processes.

The proposed Solution should include a web-based, County hosted software component that will be required to interface directly with the County's Oracle's PeopleSoft Enterprise Resource Planning (ERP) infrastructure as well as integrated devices that employ biometric technology, such as fingerprint identification, facial, retinal or hand scanning, or other technology that can be used to biologically identify County staff in order to capture and record staff sign-in and sign-out times as well as alternative devices such as card swipe devices or other mobile solution. The proposed Solution must be able to operate in areas that may be exposed to environmental conditions such as extreme heat, cold, humidity or other factors. In addition, the proposed Solution must be able to operate in facilities that are prone to grease, dust or debris such as garages, stockrooms, or warehouses. The selected Proposer will be required to provide a turnkey Solution capable of meeting the requirements outlined in this Section 2.0, including but not limited to application software licenses, devices, implementation, configuration, testing, planning, documentation, training as well as subsequent maintenance and support services.

2.2 BACKGROUND

The software components of the proposed Solution will be hosted at the Miami-Dade County data center operated and maintained by the Information Technology Department (ITD).

2.2.1 Current Technology Environment

The County currently operates in an Oracle's PeopleSoft Enterprise Resource Planning (ERP) environment. ERP is the system of record for all employee demographic information, including Type, Department, Time Reporting Codes, Scheduling, and Supervisor Approval Hierarchies. As a component of ERP, the County uses Oracle's PeopleSoft Time and Labor (T&L) self-service module will be used as the system of record for detailed time recordkeeping, workflow processes, and historic adjustments. In addition, the T&L holds business rules relating to time administration. The County is in the process of implementing the Oracle's PeopleSoft Absence Management (AM) module for the automation of off-time requests. AM will integrate with T&L to accommodate the tracking of all worked and non-worked time for each pay period. In addition, Oracle's PeopleSoft Human Capital Management (HCM) is utilized for the management of all Human Resource data for the County.

○ Application Environment

The County is currently licensed for Oracle's PeopleSoft Enterprise Human Resources Application version 8.9 being upgraded to version 9.1. The Application includes the following modules:

- Human Capital Management (HCM)
- Payroll for North America
- Benefits Administration

- Talent Acquisition / Candidate Gateway
 - Time and Labor
 - Absence Management
 - Discipline / Grievance Tracking
 - Workforce Management
 - Compensation
 - Workforce Learning (eLearning)
- **Database Environment**

The Application runs on IBM p6 Eclipses p695 using AIX 6.1, on Oracle Database Enterprise Edition 11.2.0.2. All files systems are stored on IBM Tier 1 Storage Area Network (SAN) storage media.

2.2.2 Current Processes – Miami-Dade Transit Department

MDT is the largest transit agency in the state of Florida and is responsible for planning and providing all public transit services in the County, including Metrobus, Metrorail, Metromover, and Paratransit services. Currently, MDT records over 353,000 weekday boardings across the various transportation methods.

Time clock operations take place at seven locations for over 1,000 employees. Current time clock operations mix of paper and electronic processes as outline below:

- Designated Timekeepers prepare weekly paper time cards. The preparation includes the writing of employee name, employee identification number, and pay period date range for each employee.
- The completed time cards are then provided to the employee for signature at the beginning of the work week.
- Employees physically punch in upon arrival and punch out time worked at a clock card machine upon completion of the work day
- Supervisors enter leave usage type, if any, on time cards and write his/her initials next to the entry
- Employees review and verify time cards and sign upon concurrence
- Designated Timekeepers verify the time card and enter the data from the time cards into the Oracle PeopleSoft Human Resources Application Time and Labor Module (e-Par) on a weekly basis
- Chiefs/Superintendents approve e-Par entries electronically for each employee on a bi-weekly basis

MDT uses DESfire EV1 contactless smart cards and smart card readers that comply with parts 1 through 4 of ISO/MEC 14443 standards to store basic employee information.

2.2.3 Current Processes – Parks, Recreation, and Open Spaces Department (PROS)

PROS is the third largest park system in the United States, consisting of 263 parks and more than 12,848 acres of land. Made up of more than just playgrounds and athletic fields, it also comprises after-school, sports-development and summer-camp programs; programs for seniors and people with

disabilities; educational nature centers and nature preserves; environmental restoration efforts; arts and culture programs and events; the renowned Zoo Miami and Deering Estate; the Crandon Tennis Center; golf courses; beaches; marinas; campgrounds; pools; and more. PROS has two divisions that use time clock process: Construction and Maintenance and Special Tax.

The Construction and Maintenance division consists of 75 employees, including both office and off-site staff. Current time clock processes for office staff are outlined below:

- Employees enter time clock data directly into the e-Par on a bi-weekly basis
- Division Managers approve e-Par entries electronically for each employee on a bi-weekly basis

Current time clock processes for off-site staff are outlined below:

- Employees use a card swipe timekeeping devices the sign in upon arrival and sign out time worked
- Designated staff generates weekly reports of time recorded and makes manual adjustments in the report as needed
- Designated Timekeepers verify the reports and enter the data from the report into the e-Par on a weekly basis
- Division Managers approve e-Par entries electronically for each employee on a bi-weekly basis

The Special Tax division consists of 70 employees. Current time clock processes for this division is outlined below:

- Employees physically sign in upon arrival and sign out time worked on a designated time sheet.
- Supervisors review and fax copies of sign in sheets to the main division office on a weekly basis. All changes are recorded and reviewed on the original sign in sheet.
- Designated Timekeepers verify the time sheet and enter the data from the time sheet into the e-Par on a weekly basis
- Division Managers approve e-Par entries electronically for each employee on a bi-weekly basis

2.2.4 Current Processes – Miami-Dade Seaport

The Seaport is responsible for the management and operations of the Port of Miami, which offers services to two dozen of the world's leading cargo lines, reach some 250 ports in more than 100 countries. In addition to cargo, the Port of Miami operates multiple passenger terminals for numerous cruise lines that operate out of Miami-Dade County. Seaport has four divisions the currently use time clock processes; Facilities Operations, Cargo/Cruise Operations, Safety and Security, and Finance.

The Facilities Operations division consists of approximate 112 full time employees. All employees access a physical clock card machine from one location. The Cargo/Cruise Operations division consists of 28 full time employees and 45 to 50 part time employees. All employees access a physical clock card machine from one location. Current time clock processes for these divisions are outlined below:

- Employees physically punch in upon arrival and punch out time worked at a clock card machine upon completion of the work day
- Designated Timekeepers verify the time card and enter the data from the time cards into e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

The Finance division consists of 30 employees that use time clock processes. Employees in this division do not access physical clock card machines. Current time clock processes for these divisions are outlined below:

- Employees physically complete designated time sheet on a weekly basis.
- Designated Timekeepers verify the time sheet and enter the data from the time sheet into the e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

The Safety and Security division consists of 123 full time employees that use time clock processes. Employees in this division do not access physical clock card machines. Current time clock processes for these divisions are outlined below:

- Employees physically sign in upon arrival and sign out time worked on a designated time sheet.
- Approximately 6 employees are required to email the supervisor when they arrive and exit at work.
- Designated Timekeepers verify the time sheet and enter the data from the time sheet into the e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

Seaport uses HID 1336 DUOPROX11 contactless smart cards and card readers in Corporate 1000 format to store basic employee information.

2.2.5 Current Processes – Public Works and Waste Management Department (PWWM)

PWWM is composed of two main functions, Public Works and Waste Management. Public Works is responsible for the engineering, construction and maintenance of the County's numerous roads, bridges and canals, along with the traffic signals and signs that support them. Not only does Public Works oversee and administer the collection of tolls on both the Rickenbacker and Venetian Causeways, but is also committed to beautifying and maintaining landscapes along the public rights-of-way in the County. Public Works also enables the creation of Special Taxing Districts to provide special services or make specific infrastructure improvements to neighborhoods that otherwise could not be provided. Public Works also implements local and state mosquito control programs to help minimize the threat of disease. Waste Management the principal agency charged with the responsibility to provide waste collection, transfer, recycling and disposal services in the County and consists of the following divisions: Transfer, Landfills, Maintenance, Garbage, Trash, and Administration.

Public Works operations consist of 793 employees. Time clock operations take place at 17 locations. Current time clock operations mix of paper and electronic processes as outline below:

The Waste Management operation consists of 997 employees. Time clock operations currently take place at six locations, to be potential expanded to 23 locations. The Transfer, Landfills, and Maintenance divisions use physical clock card machines. Current time clock processes for this division is outlined below:

- Employees physically punch in upon arrival and punch out time worked at a clock card machine upon completion of the work day
- Designated Timekeepers verify the time card and enter the data from the time cards into e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

The Garbage and Trash divisions do not access physical clock card machines. Current time clock processes for these divisions are outlined below:

- Employees physically sign in upon arrival and sign out time worked on a designated time sheet on a daily basis.
- Supervisors complete daily rosters and enter data into a time tracker spreadsheet.
- Designated Timekeepers verify the roster and enter the data into the e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

The Administration division does not access physical clock card machines. Current time clock processes for this division is outlined below:

- Employees create electronic time sheets on a weekly basis.
- Electronic time sheets are printed, signed and submitted to supervisors for review and approval.
- Employees enter the same data into the e-Par on a weekly basis
- Supervisors approve e-Par entries electronically for each employee on a bi-weekly basis

2.3 DEVICES/SOFTWARE TO BE PROVIDED

The proposed Solution must include the following devices:

Department	Device Description	Quantity
PWWM	Biometric Time Clock Devices	30
MDT	Biometric Time Clock Devices	50
PROS	Biometric Time Clock Devices	13
Seaport	<u>Alternative Time Clock Devices</u>	6
Total Time Clock Devices:		99

The proposed Solution shall include perpetual software license(s) to accommodate the number of Users as listed below. All licenses that may be required to access third party software are to be included with the proposed solution. The County will not purchase licenses for third party applications which are integrated into the Automated/Biometric and Attendance Data Capture solution. In the event that the proposed solution requires third party software licenses in order to meet the technical and functional requirements of this solicitation, during contract negotiations, the County reserves the right to leverage software license agreements that may be in place between any proposed third party software copyright holder and the entities included as "Users" for this solicitation, with the objective of reducing software acquisition or maintenance costs.

Department	Required Software Licenses	Quantity
PWWM	Software Users	1790
MDT	Software Users	1034
PROS	Software Users	150

Seaport	<u>Software Users</u>	420
Total Software Users:		3394

If required, an appropriate number of local capture devices that connect with the Time Clock devices must also be provided.

The proposed Solution must include an interface and data mapping to all supported versions of Oracle's PeopleSoft Time and Labor Module.

2.4 MAINTENANCE SERVICES TO BE PROVIDED

The proposed Solution, including both the software and device components, must be of the most recent release and the selected Proposer shall provide maintenance services for the proposed Solution throughout the term of the contract. These services shall include updates and upgrades to the Solution to maintain compatibility with future County hardware and software infrastructure, including any re-architecture or implementation cost associated with the support of the new release. These services shall also include corrections of any substantial defects, fixes of any minor bugs, and fixes due to any conflicts with mandatory operating system security patches as well as upgrades to new version releases. Non-production environments, such as testing and staging shall also be covered under. The services for the software component may be provided via Remote Server Access either by Citrix Secure Socket Layers (SSL) Virtual Private Network (VPN), Encrypted Connection, or dedicated Internet Protocol (IP) address; access will require prior approval from the County. The selected Proposer shall also be responsible for providing maintenance services on any developed portions of the proposed Solution, including any interfaces or data mapping. Proposers should provide a detailed description of maintenance services to be provided in Item No. 28 of the Proposer Information Section. Maintenance Services shall take effect after the Warranty period (1 year after Final Acceptance) and commence on the 1st day of the 13th month after the date of the Certificate of Acceptance.

2.5 TRAINING SERVICES TO BE PROVIDED

The selected Proposer shall provide on-site training broken down into user appropriate sessions for the following groups:

- System Administrators – 10-15 users
- HR Administrators – 12-15 users
- Management/Supervisors – 10-15 users
- End Users – 10-15 users in a train the trainer environment

The training should cover all areas of the proposed Solution, including the use of the devices and all aspects of the software, including but not limited to data entry, querying, reporting and administrative functions. Training shall take place during normal business hours Monday through Friday. Additional training shall be made available via on-line videos and resources on an ongoing basis throughout the term of the contract awarded as a result of this solicitation. Facilities and computers will be provided by the County for the purpose of conducting such training. The selected Proposer should also provide electronic system documentation, including specific technical information about the Solution, such as installation instructions, backup, restore and/or recovery information, and detailed software configuration information. Proposers should provide a detailed description of training services to be provided in Item No. 27 of the Proposer Information Section.

2.6 TECHNICAL SUPPORT SERVICES TO BE PROVIDED

The County's preferred escalation process is outlined below:

Severity	Definition	Response Time	Resolution Time	Status Frequency Update
1=Critical	A major component of the System is in a non-responsive state and severely affects Users' productivity or operations. A high impact problem which affects the Users.	One (1) Hour	Four (4) Hours	One (1) Hour
2=Urgent	Any component failure or loss of functionality not covered in Severity 1, which is hindering operations, such as, but not limited to: excessively slow response time; functionality degradation; error messages; backup problems; or issues affecting the use of a module or the data.	Two (2) Hours	Eight (8) Hours	Two (2) Hours
3=Important	Lesser issues, questions, or items that minimally impact the work flow or require a work around.	4 hours	Seventy two (72) Hours	Four (4) Hours
4=Minor	Issues, questions, or items that don't impact the work flow. Issues that can easily be scheduled such as an upgrade or patch.	24 hours	One (1) Month for an acceptable work around until final resolution	Weekly Status Call

The selected Proposer should make live support available 7AM to 7PM EST, 7 days per week to address Critical issues. Proposers should provide a detailed description of technical support services to be provided in Item No. 29 of the Proposer Information Section. Technical Support Services shall take effect after the Warranty period (1 year after Final Acceptance) and commence on the 1st day of the 13th month after the date of the Certificate of Acceptance.

2.7 IMPLEMENTATION SERVICES TO BE PROVIDED

The selected Proposer shall be responsible for providing on-site installation and configuration services for the Solution, including cleaning, converting, and importing existing employee data and other related support data. The selected Proposer shall be responsible for testing the Solution and insuring proper functionality prior to launching in the production environment. It is the intention of the County to have the proposed Solution in place as soon as possible. Therefore, an expedited implementation timeline is preferable. Proposers should provide a detailed description of implementation services and timeline in Item No. 25 of the Proposer Information Section.

2.8 ESCROW SERVICES TO BE PROVIDED

The Selected Proposer shall be required to enter into a software escrow agreement with a licensed third party agent to house the source code associated with the proposed Solution at the time of contract award. Proposers should provide a detailed description of escrow services and a copy of an existing escrow agreement in Item No. 31 of the Proposer Information Section.

2.9 INTERFACES TO BE PROVIDED

The Oracle PeopleSoft Human Capital Management (HCM) applications will be utilized by the County as the system of record for all Human Resource data, Time Labor data, Absence data, business processes, approval hierarchies, schedules and rules. The proposed Solution will must interface to and from the Oracle PeopleSoft HCM system, release 8.9 or higher, as follows:

Time Collection Interface (to PeopleSoft HCM)

The proposed Solution shall capture employee time, utilizing or mapping to PeopleSoft Time Reporting Codes (TRCs), to transfer recorded time from Time Clock systems to the PeopleSoft "Punch" time or Standard Time reporting record. The County currently has more than 175 TRCs utilized for time tracking, however, only certain codes may be used by employees based on Union Agreements and Job Status categories. The Proposed Solution will need to determine which codes an employee may use when time is captured. In addition, task reporting is required for some County departments. As such, the proposed Solution shall track appropriate task codes along with the TRCs for an employee.

Human Capital Interface (from PeopleSoft HCM)

The proposed Solution shall interface with certain PeopleSoft HCM data for verification purposes and for messaging to employees. Specifically, the following data will need to be imported from PeopleSoft to the Time Clock Solution with appropriate edits, to ensure proper access, appropriate usage of TRC and Task codes, and employee message customization:

Employee Type (Full-time, Part-time, Temporary), Department, Job Classification (Hourly / Job Basis), Bargaining Agreement (Union Code), shift, hire / job date start date, employee anniversary date, TRC code updates (additions / deletions to available codes by employee), employee leave from / to dates, return from leave date, employee transfer dates, employee transfer department (employee may transfer from one set of department codes to another within a time reporting cycle), employee schedule and employee termination date.

2.10 SOLUTION FUNCTIONALITY**2.10.1 Device Requirements**

Proposers are required to complete the Device Requirements table outlined in the Proposer Information Section, Item No. 22 indicating whether the proposed Solution meets, does not meet, or requires customization to meet the outlined requirements.

2.10.2 Software Requirements

Proposers are required to complete the Software Requirements table outlined in the Proposer Information Section, Item No. 22 indicating whether the proposed Solution meets, does not meet, or requires customization to meet the outlined requirements.

2.10.3 Desired Requirements

Proposers are required to complete the Desired Requirements table outlined in the Proposer Information Section, Item No. 22 indicating whether the proposed Solution meets, does not meet, or requires customization to meet the outlined DESIRED requirements.

2.11 OPTIONAL ENTERPRISE SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT

If Proposer's software licensing model is other than an Enterprise Software License, Proposers are encouraged but not required, to offer an enterprise license and associated maintenance support. **If a Proposer offers an "Optional Enterprise Software License and Maintenance and Support", it must use the attached Form B-1.** The "Optional Enterprise Software License and Maintenance and Support" are considered optional services not included in the Scope of Services and are to be contracted at the sole discretion of the County.

2.12 OPTIONAL PRODUCTS AND SERVICES

Proposers are encouraged but not required, to offer Optional Products and Services to the County. This may include alternative software and/or devices that are offered by Proposers or cabling or wiring of facilities needed for the proper function of devices, inclusive of required permits for completing such services. All optional products and/or services must be included in Form B-1, Section C. Such optional products and/or services are not included in the evaluation of proposals and are to be contracted at the sole discretion of the County.

3.0 RESPONSE REQUIREMENTS

3.1 SUBMITTAL REQUIREMENTS

In response to this Solicitation, Proposer should **return the entire completed Proposal Submission Package** (see attached). Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.0 EVALUATION PROCESS

4.1 REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.2 EVALUATION CRITERIA

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Evaluation/Selection Committee is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Evaluation/Selection Committee member.

Evaluation Criteria		Points
Technical Criteria		
1	Solution Requirements: Proposer's capability to meet the functional and technical specification requirements described in this Solicitation, together with an evaluation of how well it matches the Proposer's understanding of the County's needs described in this Solicitation including but not limited to: A) Device Requirements B) Software Requirements C) Desired Requirements D) Interface Requirements	40
2	Proposer's approach and methodology to providing the services requested in this Solicitation including usability, customization, implementation, training, maintenance and technical support services.	20
3	Proposer's relevant experience and qualifications including key personnel of the Proposer and any key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors.	20
Criteria		
4	Proposed price will be evaluated based on the solution proposed and overall best value to the County.	20
Total Points Per Evaluation/Selection Committee Member:		100

4.3 ORAL PRESENTATIONS

Upon completion of the criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See **Form A-2** regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Evaluation/Selection Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.4 SELECTION FACTOR

This Solicitation includes a selection factor for Miami-Dade County Certified Small Business Enterprises (SBE's) as follows. A SBE/Micro Business Enterprise is entitled to receive an additional ten percent (10%) of the total technical evaluation points on the technical portion of such Proposer's proposal. An SBE/Micro Business Enterprise must be certified by Small Business Development for the type of goods and/or services the Proposer provides in accordance with the applicable Commodity Code(s) for this Solicitation. For certification information contact Small Business Development at (305) 375-2378 or access <http://new.miamidade.gov/business/business-development.asp>. The SBE/Micro Business Enterprise must be certified by proposal submission deadline, at contract award, and for the duration of the contract to remain eligible for the preference. Firms that graduate from the SBE program during the contract may remain on the contract.

4.5 LOCAL CERTIFIED SERVICE-DISABLED VETERAN'S BUSINESS ENTERPRISE PREFERENCE

This Solicitation includes a preference for Miami-Dade County Local Certified Service-Disabled Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code of Miami-Dade County. A VBE is entitled to receive an additional five percent (5%) of the total technical evaluation points on the technical portion of such Proposer's proposal. If a Miami-Dade County Certified Small Business Enterprise (SBE) measure is being applied to this Solicitation, a VBE which also qualifies for the SBE measure shall not receive the veteran's preference provided in this section and shall be limited to the applicable SBE preference.

4.6 PRICE EVALUATION

The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.7 LOCAL PREFERENCE

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses (see **Form A-4**). If, following the completion of final rankings by the Evaluation/Selection Committee, a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Evaluation/Selection Committee will recommend that a contract be negotiated with said local Proposer.

4.8 NEGOTIATIONS

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. In his sole discretion, the County Mayor or designee may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations shall:

- a) Complete a Collusion Affidavit, in accordance with Sections 2-8.1.1 of the Miami-Dade County Code as amended by Ordinance 08-113. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

4.9 CONTRACT AWARD

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.10 RIGHTS OF PROTEST

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Implementing Order No. 3-21.

5.0 TERMS AND CONDITIONS

The anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

A. Vendor Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the DPM website at http://www.miamidadecounty.gov/DPM/vendor_registration.asp or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

B. Insurance Requirements

The Contractor shall furnish to the County, Department of Procurement Management, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

C. Inspector General Reviews

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise indicated. The cost of the audit, if applicable, shall be one quarter (1/4) of one (1) percent of the total contract amount and the cost shall be included in any proposed price. The audit cost will be deducted by the County from progress payments to the Contractor, if applicable.

D. User Access Program

Pursuant to Miami-Dade County Ordinance No. 03-192, any agreement issued as a result of this Solicitation is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Solicitation and the utilization of the County contract price and the terms and conditions identified therein, are subject to the two percent (2%) UAP.

6.0 ATTACHMENTS

Draft Form of Agreement

Attachment 1

Attachment 2

Attachment 3

Proposal Submission Package

(Including Form A-1, Proposer Information Section, Forms A2-A6 and Form B-1)

DRAFT

DRAFT FORM OF AGREEMENT

DRAFT

(DRAFT FORM OF AGREEMENT)

AUTOMATED BIOMETRIC TIME AND ATTENDANCE DATA CAPTURE SOLUTION

THIS SOFTWARE LICENSING, HARDWARE, IMPLEMENTATION, INTEGRATION MAINTENANCE, AND SUPPORT AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY"), AND _____, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF _____, HAVING ITS PRINCIPAL OFFICE AT _____ (HEREINAFTER REFERRED TO AS THE "CONTRACTOR").

RECITALS

WHEREAS, the Contractor has submitted a written proposal dated _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein. The Contractor has offered to provide the County with an Oracle's PeopleSoft Enterprise Application Archiving Solution, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals, RFP No. 819 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to procure from the Contractor an Automated/Biometric Time and Attendance Data Capture Solution such Oracle's PeopleSoft Enterprise Application Archiving Solution inclusive of all software licensing, devices, implementation, configurations, customizations, training, maintenance, and technical support services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

1.1 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the System which are furnished to the County in connection with the System.

1.2 "Final System Acceptance" shall mean the County's final approval that Software is performing in accordance with the terms and conditions of this contract for a period of 120 calendar days following full deployment of the System in a production environment.

1.2 "License Fee" shall mean the annual fee associated to granting the County use of the Software as outlined in Appendix B "Price Schedule."

1.3 "Maintenance" shall mean the product updates and product upgrades required for the County to achieve optimal performance of the Software as outlined in Appendix A, "Scope of Services."

1.4 "Projects" and "Services" shall mean enhancements or modifications to the Software in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities.

1.5 "System" shall mean the software, hardware, devices and components required to provide the County with the Automated/Biometric Time and Attendance Data Collection Solution listed in Appendix A "Scope of Services" attached hereto and any subsequent error corrections or updates supplied to the County by the Contractor pursuant to this Agreement. Appendix A "Scope of Services" may be amended from time to time by the parties in writing.

1.6 "Support Services" shall mean the process to resolve reported incidents through error correction, patches, hot fixes, workarounds, replacements or any other type of correction or modification required to fully utilize the System capabilities, as outlined in Appendix A, "Scope of Services."

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows:

- 1) These terms and conditions including all attachments, exhibits, and appendixes and any associated addenda thereof,
- 2) County's RFP including all Addendums, 3) Contractor's proposal to RFP No. 819 and any associated addenda and attachments thereof.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services (Appendix A), and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) 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 this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) 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 Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of 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 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.

ARTICLE 5. MANNER OF PERFORMANCE

- a) 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 agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) 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. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) 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 and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any 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 inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 6. DELIVERY

6.1 Delivery of the System shall be according to Appendix A "Scope of Services" and contingent upon final acceptance by the County.

6.2 Documentation. The Contractor shall provide electronic copies of the associated Documentation as provided by the developer of the System to the County upon final System acceptance.

ARTICLE 7. AGREEMENT TERM

7.1 The Agreement shall become effective on the date that it is signed by the County or the Contractor, whichever is later and shall continue through the last day of the 60th month following signature. The County, at its sole discretion, reserves the right to exercise the option-to-renew this Agreement for two (2) additional three (3) year terms, for a maximum total of ten (11) years.

7.2 Extension. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals.

7.3 Notification. The County will notify the Contractor in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 8. GRANT OF LICENSE

8.1 License. Contractor agrees to provide the County with licensed Software and Documentation in accordance with the provisions contained within this Agreement.

8.2 Contractor grants the County a limited, perpetual, non-exclusive license to use the licensed Software and

Documentation in accordance with the terms of this Agreement. Such license shall not be construed to be any license to source code for any of the Software.

ARTICLE 9. SUPPORT AND MAINTENANCE SERVICES

Contractor shall provide the County with technical support and maintenance services in the manner outlined in Appendix A, "Scope of Services" for the System throughout the term of this agreement, including any options or extensions exercised by the County.

ARTICLE 10. SOFTWARE MODIFICATIONS

10.1 Software Enhancements or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications including all relevant source code. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. The Contractor shall submit a cost and/or temporary revenue sharing proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

- a) After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Such enhancements or modifications shall become the property of the County. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.
- b) Following the County's acceptance of all enhancements/modification, the Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Software System, and any and all Documentation relating to the Software and or enhancements/modification thereto.

ARTICLE 11. IMPLEMENTATION SERVICES

- a) The County shall accept or reject the System and/or Deliverables within fifteen business (15) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to provide deliverables within the time specified or if the System and/or Deliverables delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the delivered System and/or Deliverable or may accept any item of Software System and/or Deliverable and reject the balance of the delivered System and/or Deliverable. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the System and/or Deliverables for such items of rejected Deliverables and/or System within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- c) The Contractor shall bear the risk of loss or damage to delivered System and/or Deliverables until the time the Project Manager certifies that the System(s) has successfully completed the System Acceptance test whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor or the County or from any other cause whatsoever, except loss or damage arising solely from the negligence or willful acts of the County.
- d) Contractor agrees to install the System at the designated County locations. Contractor agrees to commence installation of the System according to the Implementation Schedule unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services without interruption and in accordance with the Implementation Schedule, so that such System is in good working order and ready for use by the dates set forth in the

Schedule.

1. Contractor agrees to do all things necessary for proper implementation of the System and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work to complete System installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the System. The County shall attempt to provide reasonable working and secure storage space for the performance by Contractor of the implementation services described herein.
 2. Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in the scope of work , including, but not limited to, (a) system configuration; (b) interface development ; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other vendors supplying peripheral or ancillary equipment that will interface with the System; and (g) any additional services necessary to ensure Contractor's compliance with this Article 11.
- e) Testing shall consist of the tests described in the Scope of Services which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the System in conformance with the requirements of the Contract. This will include an actual demonstration of all required System functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating system performance.

ARTICLE 12. TESTS

The Contractor shall configure and program the System to conform to the Scope of Services. The software and associated hardware will be subject to several tests, including a System Acceptance test as further defined in the Scope of Services, Implementation Plan, and Acceptance Criteria to be developed and agreed by both parties. To assure System performance, the County's Project manager will coordinate all testing of the System and provide Final Acceptance upon completion of all milestones and deliverables as outlined in the Scope of Services.

Failure of the System to satisfy the acceptance criteria and conform to the requirements set forth in the Scope of Services by the timeframes set forth in the Implementation Timeline may result in the County withholding payment until satisfactory acceptance is granted to the Contractor.

After Final Acceptance is granted, any modifications, fixes, enhancements, and/or new releases of the System require separate testing periods and sign-off from the County Project Manager prior to migrating it into the production software. The testing protocol shall be as follows:

- Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements, and/or new releases of the software available for testing.
- The Contractor's Project Manager will coordinate all user acceptance testing dates, acceptance criteria, and training for the new functionality for the test group.
- The County will be granted five (5) business days or other timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet;
- The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the functionality) within 5 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly;
- Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties;

- Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County;

ARTICLE 13. LICENSE FEES, METHOD AND TIMES OF PAYMENT

13.1 License Fee. In consideration of the license rights granted in Article 2 above, the County shall pay the Software License Fees or other consideration for the Software and Documentation as set forth on Appendix B "Price Schedule" attached hereto. All amounts payable hereunder by the County shall be payable on an annual basis. The County shall have no obligation to pay the Licensor or any additional sum in excess of this amount, except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Licensor. All Services undertaken by the Licensor or before County's approval of this Agreement shall be at the Licensor's risk and expense.

13.2 Travel. With respect to travel costs and travel related expenses, the Licensor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

13.3 Fixed Pricing. Prices shall remain firm and fixed for the term of the Agreement, including any option or extension periods; however, the Licensor may offer incentive discounts to the County at any time during the Agreement term, including any renewal or extension thereof.

13.4 Invoices. All invoices shall be taken from the books of account kept by the Licensor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Licensor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

Invoices and associated back-up documentation shall be submitted in duplicate by the Licensor to the County as follows:

Miami-Dade County

 Attention: _____

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 14. PROTECTION OF SOFTWARE

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

14.2 Proprietary Rights. The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subconsultants and suppliers may use only in connection of the performance of Services under this Agreement.

- a) All rights, title and interest in and to certain ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subconsultants specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- b) Accordingly, neither the Contractor nor its employees, agents, subconsultants 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, subconsultants or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- c) Except as otherwise provided in subsections a and b above, or elsewhere herein, the Contractor hereunder shall retain all proprietary rights in and to all Software provided hereunder, that have not been customized to satisfy the performance criteria set forth by the County in a defined SOW.

14.3 No Reverse Engineering. The County agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

ARTICLE 15. CONFIDENTIALITY

15.1 Acknowledgement. As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law.

15.2 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, may include Confidential Information and if so, 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. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. 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 such Confidential Information without the prior written consent of the County.

15.3 The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

15.4 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 restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

15.5 Survival. Contractor's obligations under this Article 15 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

ARTICLE 16. WARRANTIES

16.1 Ownership. The Contractor represents that it is the owner of the entire right, title, and interest in and to the System, and that it has the sole right to grant licenses there under, and that it has not knowingly granted licenses there under to any other entity that would restrict rights granted hereunder except as stated herein.

The Contractor warrants, for a period of one (1) year from the County's Final System Acceptance, that the System, including any Software, Hardware and related components provided by the Contractor under the performance of this Agreement shall:

- (i) Be free from defects in material and workmanship under normal use and remain in good working order, wear and tear excepted;
- (ii) Function properly and in conformity with the warranties in this Agreement;
- (iii) Meet the performance standards set forth in the Scope of Work and the Original Equipment Manufacturer's published specifications.

During the Warranty Period, Contractor agrees to use all reasonable efforts and resources to provide to the County all corrections and/or modifications necessary to correct problems with the System provided by the Contractor that are reported to Contractor, at no additional cost to the price identified in the Price Schedule.

During the Warranty Period, Contractor shall enforce the manufacturer's warranty and maintenance obligations relating to the any Hardware, Equipment and related Software it provides.

In the event the System, or any part or component thereof, does not satisfy the conditions of performance, the Contractor's obligation is to provide repair at the Contractor's cost and expense, or to provide different hardware, equipment, software and services required to attain the performance requirements. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof.

ARTICLE 17. INDEMNIFICATION AND INSURANCE

Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Proposer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Proposer as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida, Department of Financial Services and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

NOTE: MIAMI DADE COUNTY RFP NUMBER AND TITLE OF CONTRACT MUST APPEAR ON EACH CERTIFICATE.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligation under this section or under any other section of this Agreement.

The Contractor shall submit a certificate of insurance within ten (10) business days after notification of recommendation to award. If certificate does not include the coverages outlined in the terms and conditions of this solicitation, the vendor shall be given an additional five (5) business days to submit a corrected certificate to the County. Failure of the Contractor to provide the required certificate of insurance within fifteen (15) business days may result in the Contractor being deemed non-responsible and the issuance of a new award recommendation.

The Contractor shall be responsible for assuring that the insurance certificate required in conjunction with this Article remain in force for the duration of the contractual period; including any and all option years that may be granted to the Contractor in accordance with Article 7 of this Agreement. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the contract until such time as the new or renewed certificates are received by the County in the manner prescribed in the solicitation; provided, however, that this suspended period does not exceed thirty (30) calendar days. If such suspension exceeds thirty (30) calendars days, the County may, at its sole discretion, terminate this contract for cause and seek re-procurement damages from the Contractor in accordance with Article 20 of this Agreement.

ARTICLE 18. EVENT OF DEFAULT

18.1 An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

- i. the Contractor has not delivered Deliverables on a timely basis;
- ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
- iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services or components of the System;
- 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 if 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;
- vii. the Contractor has failed in the representation of any warranties stated herein.

18.2 When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or provide the System 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 which 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;
- 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.

18.3 In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 19. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("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. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may 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 upon the Termination Date.

ARTICLE 20. REMEDIES IN THE EVENT OF DEFAULT

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

- i. lost revenues;
- ii. the difference between the cost associated with procuring Services or System hereunder and the amount actually expended by the County for reprourement of Services or System, including procurement and administrative costs; and,
- iii. such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 21. TERMINATION

21.1 Termination based on fraud. The County may terminate this Agreement if the Contractor, an individual or corporation or other entity attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

- a) The County may, as a further sanction, terminate or cancel any other Agreement(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- b) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its obligations with the County under this Agreement through fraud, misrepresentation or material misstatement may be debarred 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 County Code.

21.2 Termination for Convenience. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- a) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County: (i) stop work on the date specified in the notice ("the Effective Termination Date"); (ii) take such action as may be necessary for the protection and preservation of the County's materials and property; (iii) take no action which will increase the amounts payable by the County under this Agreement; and
- b) In the event that the County exercises its right to terminate this Agreement for convenience only, the Contractor will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- c) All compensation pursuant to this Article are subject to audit.

21.3 Termination for Default. This Agreement may be terminated by the County if any of the events outlined in Article 18 (Events of Default) have occurred, provided that a Notice of Default has been provided in accordance with Article 19.

21.4 Effective Date of Termination. Termination due to a material breach shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination.

ARTICLE 22. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) To the County Project Manager:

Miami-Dade County
Information Technology Department
5680 SW 87th Ave
Miami, FL 33173

Attention: Joe Conway
Phone: (305) 596-8453
E-mail: jconway@miamidade.gov

and to the Contract Manager:

Miami-Dade County
Internal Services Department
Procurement Management Services Division
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Melissa Adames
Phone: (305) 375- 4029
Fax: (305) 375- 5688
E-Mail: madames@miamidade.gov

(2) To the Contractor

Attention:
Phone:
Fax:
E-mail:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 23. NONASSIGNABILITY

Contractor shall not assign this Agreement or its rights hereunder without the prior written consent of the County.

ARTICLE 24. INSPECTOR GENERAL REVIEWS

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all County/Trust contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless, as stated in the Special Conditions, this Contract is federally or state funded where federal or state law or regulations preclude such a charge. The Contractor shall in stating its agreed process be mindful of this assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form. The audit cost shall also be included in all change orders and all contract renewals and extensions.

The Miami-Dade Office of Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption. Upon ten (10) days written notice to the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (proposal preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

1. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

2. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

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.

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

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Trust; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; (n) interlocal agreements; and (o) grant agreements granting not-for profit organizations Building Better Communities General Obligation Bond Program funds. Notwithstanding the foregoing, the Trust may authorize the inclusion of the fee assessment of one-quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Trust contracts including, but not limited to, those contracts specifically exempted above

ARTICLE 25. GOVERNING LAW

This Agreement, including appendices, and all matters relating to this Agreement (whether in Agreement, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida, the county of Miami-Dade. All claims, disputes, or lawsuits arising out of or in connection with this Agreement shall be conducted in the exclusive venue in a court of competent jurisdiction in Miami-Dade County, Florida.

ARTICLE 26. COUNTY USER ACCESS PROGRAM (UAP)

26.1 User Access Fee. Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any Agreement resulting from this solicitation and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Agreement shall invoice the Agreement price and shall accept as payment thereof the Agreement price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

26.2 Joint Purchase. Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Agreement pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

26.3 Contractor Compliance. If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with this Agreement.

ARTICLE 27. VENDOR REGISTRATION AND FORMS

(A) Vendor Registration. The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit** (Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit** (Section 2-8-1(d)(2) of the County Code)
3. **Miami-Dade County Employment Drug-free Workplace Certification** (Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit** (Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit** (Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit** (Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics** (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit** (Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit** (Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices** (Ordinance 97-35)
12. **Subcontractor /Supplier Listing** (Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging** (Resolution R-738-92)
14. **W-9 and 8109 Forms**

(as required by the Internal Revenue Service)

15. **FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County **Affidavit**
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. **Office of the Inspector General**

(Section 2-1076 of the County Code)

17. **Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. **Antitrust Laws**

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida

(B) Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 28. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager identified in Article 19 will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses..
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the County's Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the County's Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the County's Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the

County's Project Manager. In the event that the Contractor and the County's Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the County's Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 29. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 30. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County 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.
- b) 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 consultant 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.
- c) 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 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.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict 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.
- e) In the event 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, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 31. SEVERABILITY

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the same shall be deemed to be of no effect and deemed stricken from this Agreement. The remaining provisions of the Agreement shall remain in full force and effect.

ARTICLE 32. ANNUAL APPROPRIATION

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, and shall be treated as Termination for Convenience. Service/Maintenance can be cancelled at any time that the Contractor is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Contractor for canceling service/maintenance during the year.

ARTICLE 33. FORCE MAJEURE

Neither party hereto shall be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond the party's control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

ARTICLE 34. SURVIVAL

The parties acknowledge that the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 35. SOFTWARE ESCROW

The County requires that the Contractor maintain a software escrow account throughout the life of the Agreement to protect against failure of the Contractor to provide the agreed upon services. A copy of the vendor's source code is to be kept by a trusted third party to ensure that the County will have access to the source code in the event that the Contractor is unable to support the software. The Contractor is required to maintain the most current version of the application with the escrow agent including but not limited to all incremental releases and upgrades or Developed Works.

Should any of the following occur, such source code shall be released to the County:

- A. In the event that Contractor (or any assignee of its obligations under this agreement or any contract under which it is providing computerized services to Miami-Dade Administrative Agent):
- i. Becomes insolvent, files for relief under 11 U.S.C. §101, *et seq.*, or should proceedings be instituted against them in involuntary bankruptcy or respite, or should proceedings be taken against them looking to the appointment of a receiver, or syndic, or should any order be issued by any court for the appointment of a receiver;
 - ii. Ceases to continue to conduct business for a period of thirty (30) days;
 - iii. Merges with another business entity that cannot or is not willing to provide the services Owner has agreed to provide, and is then currently providing to Miami-Dade County or
 - iv. Assigns Owner's rights to the intellectual property with respect to the Owner software, as defined in the Source Code Escrow Agreement then currently being used by Miami-Dade County, and the assignee cannot or no longer intends to provide the services Owner has agreed to provide, and is then currently providing to Miami-Dade County.
 - v. Ceases to perform its support duty as defined in Article 9 and further defined in Appendix A, "Scope of Services," to the satisfaction of Miami-Dade County.
- B. Escrow Agent withdraws or is unable or unwilling to continue serving in that capacity without appointment by Owner of an equally qualified and insured escrow agent, and acceptance of that appointment by the Escrow Agent within 30 days of withdrawal of the predecessor escrow agent.
- C. Any other circumstance that places the source code at risk or otherwise subject to exposure, release or loss and/or potentially jeopardizes the integrity or current status of the Miami-Dade County operation requiring access to a current source code.

ARTICLE 36. PARTS AND EQUIPMENT INVENTORY

Contractor shall maintain an inventory of parts and/or replacement equipment sufficient for completing repairs and providing replacements and for expansion of the implementation in place at the County for the term of the Agreement, including any option or extension periods, so long as the County remains current on Maintenance and Support fees as outlined in Appendix B, "Price Schedule". Should the Contractor be unable to provide repair and/or replacement services due to insufficient Parts and Equipment Inventory, Contractor shall exercise best business practices to either 1) begin salvage activities to provide sufficient parts for County's required repairs, at Contractor's expense, or 2) provide a refurbished / replacement hardware or replacement in lieu of the repair. In an event of default on the part of the Contractor, as outlined in Article 18, the inventory of parts and equipment will be provided to the County at no additional cost to allow the County to maintain and support current operations.

ARTICLE 37. LIQUIDATED DAMAGES

The County and Contractor hereby agree that the delivery of completion of project milestones as outlined in Appendix A, "Scope of Services" are the essence of this Contract. Should the completion date described in Appendix C, "Implementation Timeline," not be achieved by the time specified (or as subsequently modified by mutual agreement of the parties), that may be deducted at the County's election, not as a penalty but as liquidated damages of One Thousand Dollars (\$1,000.00) per day for each and every calendar day of delay beyond the duration outlined in Appendix C.

Except with respect to defaults of Contractor's Subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the default or negligence of the Contractor, including delays resulting from the action or inaction of the County.

ARTICLE 38. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that 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 copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, 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.
- d) 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, at the County's option 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 (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 39. FUNCTIONALLY EQUIVALENT SOFTWARE

For as long as the County remains current on Support and/or the service fees for the Licensed Software, the Contractor is obligated to provide maintenance and support pursuant to the contract. In the event that Contractor should wish to discontinue maintenance and support of the then current version of the Licensed Software as set-forth in Appendix A, "Scope of Services" or any amendment thereto, and as long as the County is current on Support, Contractor shall be required to provide to the County, free of charge, and with reasonable time to allow for uninterrupted use by the County, a new version of the software, if one is generally made available to all Contractor customers of the Licensed Software current on Support, which shall replace the previous version and perform the functions described in Appendix A, "Scope of Services" or any amendment thereto, and to support and maintain such new version of the License Software for the balance of the term of this Agreement without additional costs to the County, other than the payment of applicable Support fees.

In the case that Contractor is providing Support of the then current version of the License Software being used by the County, Contractor shall only provide any new version of the License Software if the County is current on Support and there are no outstanding account receivables and the new License Software is generally made available to all Contractor's customers current on Support. Any License Software that includes additional functionality or modules that the County wishes to use may require additional fees which shall be mutually agreed upon in writing by the parties herein.

In the event of a conflict between this Article 39 and any other Articles contained within this Agreement, this Article 39 will prevail.

ARTICLE 40. SYSTEM PERFORMANCE

The System shall perform at or above the mutually agreed upon error rate percentages outlined in Appendix A, "Scope of Services," both System-wide and at single locations at all times during the Contract term, including any renewals or extensions thereof. Should the System fail to perform at or above such error rates System-wide, following a 72 hour period to allow for correction, the County will assess a penalty in the amount of \$1,000 for each percentage point below the agreed upon error rate per day for each day that the System does not meet the agreed upon percentage. Should the System fail to perform at or above such error rates at a single location, following a 48 hour period to allow for correction, the County will assess a penalty in the amount of \$100 for each percentage point below the agreed upon error rate per day for each day that the System does not meet the agreed upon percentage.