



MDX PROCUREMENT POLICY
INCLUDING THE
MDX SMALL BUSINESS PARTICIPATION POLICY
&
CONTRACT PERFORMANCE EVALUATION POLICY
APPROVED, AS AMENDED, JUNE 23, 2009

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ARTICLE 1- GENERAL PROVISIONS

Part A - Purposes, Construction, and Applications

1-101 Purposes, Rules of Construction.

(1) *Interpretation.* This Policy shall be construed liberally and applied to promote its underlying purposes and policies.

(2) *Purposes and Policies.* The underlying purposes and policies of this Policy are:

- (a) to establish the rules governing Procurement by MDX;
- (b) to promote public confidence in the integrity of the procedures followed in MDX Procurement;
- (c) to ensure the fair and equitable treatment of all persons who participate in the MDX Procurement system; and
- (d) to maximize economy in MDX Procurement activities and, to the fullest extent practicable, the purchasing value of MDX funds.

(3) *Singular-Plural and Gender Rules.* In this Policy, unless the context requires otherwise:

- (a) words in the singular number include the plural, and those in the plural include the singular; and
- (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

1-102 Application of this Policy.

This Policy applies only to Contracts for the Procurement by MDX of Supplies or Services, and to amendments, extensions and renewals thereof, solicited or entered into after the effective date of this Policy. This Policy shall apply to expenditures of public funds made under MDX Contracts, regardless of their source. It shall not apply to the sale or other disposal of MDX Supplies or other property, whether personal or real. Nothing in this Policy shall prevent MDX from complying with the terms and conditions of any grant, gift, bequest, loan or cooperative agreement, and to the extent this Policy is inconsistent with any such terms and conditions, such terms and conditions shall take precedence.

Notwithstanding anything in this Policy to the contrary, in connection with any MDX procurement of Services related to a potential capital markets transaction to which MDX may be a party, including, without limitation the issuance of bonds or other debt instruments or the entry by MDX into derivative financial arrangements, the Executive Director, the Deputy Executive Director or the Chief Financial Officer may direct, if he or she deems it to be in the best interests of MDX, that MDX procure such services in a manner customarily employed by

state and other local governmental entities. The Executive Director, the Deputy Executive Director or the Chief Financial Officer, as the case may be, shall ensure that any such alternate means of procurement is done in a fair and objective manner and in as competitive a manner as is practicable under the circumstances. Services that may be procured by such alternate means include, without limitation, procurement of credit enhancement or reserve sureties, official statement printing services, corporate trust services, auction agent services and other similar services.

The following items are exempt from the application of the Procurement Policy:

- Services provided by institutions of higher learning
- Services provided by non-profit organizations
- Services provided by other governmental entities
- Goods or Services from state sponsored institutions
- Dues and memberships
- Subscriptions
- Food and catering services
- Utilities

1-103 Effective Date.

This Policy shall become effective on the date it is approved by resolution of the MDX Board.

Part B - Definitions of Terms Used in this Policy

1-201 Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Policy, unless the context in which they are used clearly requires a different meaning or unless defined elsewhere in this Policy.

(1) *Awards Committee* means the applicable standing Committee of the Authority, as may be amended from time to time, having delegated power in accordance with the MDX Bylaws with oversight for the particular Goods or Services being procured, i.e., Budget and Finance, Operations, Policy and Planning, and Public Communications.

(2) *Change Order* means a written order authorized by the Chief Purchasing Officer, or any person designated in writing and approved by the Executive Director and any other required approval authority, whether contingent or not, directing the Contractor to make changes in the plans, specifications or work, within the scope of a contract. Also referred to as Supplemental Agreements.

(3) *Chief Purchasing Officer* means the Executive Director of MDX or such other person holding the position created in Section 2-201 (Designation and Qualifications of the Chief

Purchasing Officer), as the head of the Procurement of MDX, or the Designee of either such person designated in writing and approved by the Executive Director.

(4) *Commodity* means any of the various supplies, materials, goods, merchandise, equipment and other personal property purchased leased or otherwise contracted for by MDX.

(5) *Construction* means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(6) *Construction Contract* shall have the meaning ascribed to it in Article 6 of this Policy.

(7) *Construction Manager* replaces the general contractor and works for a fee with MDX and the architect or designer through the design phase to contain the budget and schedule. The Construction Manager may provide a guaranteed maximum price ("GMP"), and bids the work out to local trade contractors. The Construction Manager mobilizes to the site and manages the trade contractors for quality and schedule.

(8) *Consultant* means a Contractor providing Professional Services to MDX. In the application of F.S. 287.055 *Consultant* also includes a Firm that holds a current certificate of registration under Chapter 481, F.S. to practice architecture or landscape architecture or a Firm that holds a current certificate as a registered engineer under Chapter 471, F.S. to practice engineering and who is employed by or under Contract to MDX for the providing of professional architect Services, landscape architect Services, or engineering Services.

(9) *Consultants' Competitive Negotiation Act* or *CCNA* means Section 287.055, F.S., as amended from time to time.

(10) *Contingency Allowance* means funds established following award of a Contract to be used for revisions to Contract terms, existing work, anticipated unknown work or unanticipated work. Contingency Allowance shall be expended through a Contract Amendment approved by the Chief Purchasing Officer, the Executive Director and any other required approval authority.

(11) *Contract* means all types of MDX agreements for Procurement of Supplies, Services, Construction, whatever these agreements may be called.

(12) *Contract Amendment* means any written alteration in the terms or provisions of any Contract accomplished by mutual action of the parties of the Contract. See Change Orders.

(13) *Contract Extension* means a continuation of a Contract after the expiration of the Contract term.

(14) *Contractor* means any Firm having a Contract with MDX.

(15) *Cooperative Procurement* means Procurement by, or on behalf of, MDX and at least one other public or private entity.

(16) *Cost-Reimbursement Contract* means a Contract under which a Contractor is reimbursed for costs that are allowable and allocable in accordance with the Contract terms and the provision of this Policy, and a fee, if any.

(17) *Counsel* means the legal counsel contracted by the Authority from time to time or the MDX General Counsel.

(18) *Data* means recorded information, regardless of form or characteristic.

(19) *Design-Build Consultant* means a Consultant hired in connection with the preparation of a Design Criteria package.

(20) *Design-Build Contract* means a single Contract with a Design-Build Firm for the design and Construction of a Construction project.

(21) *Design-Build Firm* means a partnership, corporation, or other legal entity that:

- (a) Is certified under Sec. 489.119, F.S. to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
- (b) Is certified under Sec. 471.023, F.S. to practice engineering; or
- (c) Is certified under Sec. 481.219, F.S. to practice architecture; or
- (d) Is certified under Sec. 481.319, F.S. to practice landscape architecture.

(22) *Design Criteria* means concise, performance-oriented drawings or Specifications of a MDX Construction project.

(23) *Design Professional Services* are those Services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, codified in the Consultants' Competitive Negotiation Act, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with their professional employment or practice.

(24) *Designee* means a duly authorized representative of a person holding a position of authority.

(25) *Determination* means a finding or decision made in the course of the Procurement process required by the Policy.

(26) *Director(s)* means any of the directors of MDX.

(27) *Disadvantaged Business Enterprise (or DBE)* shall have the meaning ascribed to it in Article 11 of this Policy.

(28) *Emergency* means a reasonably unforeseen breakdown in machinery, damage, destruction or obstruction of machinery or roadway or any other property owned or operated by MDX, a threatened termination of an essential service, the development of a dangerous condition, the development of a circumstance causing curtailment or diminution of an essential service or the opportunity to secure significant financial gain, or avoid significant financial loss, through immediate or timely action.

(29) *Employee* means an individual drawing a salary from MDX, whether appointed or not.

(30) *Evaluation Committee* means the committee appointed by the Awards Committee to evaluate all responses from proposers based upon the requirements of the Solicitation Documents.

(31) *Ex Parte Communication* means any oral or written communication relative to a solicitation, evaluation, award or Contract controversy that occurs outside of an advertised public meeting pursuant to Section 286.011, F.S. or occurs with someone other than the MDX Chief Purchasing Officer, subject to the exclusions in Section 2-101 of this Policy.

(32) *Executive Director* means the Executive Director of MDX.

(33) *Firm* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, governmental body or any other legal entity.

(34) *Industry Association* means a voluntary association of Firms having membership in a not-for-profit corporation with specified common interests.

(35) *Intermediate Procurement* means the purchase of Commodities, supplies, or Services related to the construction, operation and/or maintenance of MDX roadways and facilities each of which in the aggregate does not exceed \$199,999.00.

(36) *Invitation to Bid* means all documents, including the instruction to bidders, the bid form, the proposed contract and all addenda, regardless of medium, whether attached to or incorporated by reference in solicitations for bids. An Invitation to Bid may also be referred to as the Bidding Documents.

(37) *Invitation to Negotiate* means all documents, regardless of medium, whether attached to or incorporated by reference in solicitations for responses from Firms entering into negotiations with MDX to provide the required Commodities, supplies, or Services.

(38) *MDX Board* means the members of MDX appointed to serve as provided under the Florida Expressway Authority Act, as amended.

(39) *Miami-Dade Expressway Authority (or MDX)* means that body politic and corporate, a public instrumentality and an agency of the State of Florida established under Part I of Chapter 348 Florida Statutes, as amended from time to time.

(40) *Policy* means this MDX Procurement Policy.

(41) *Price Proposal* means that portion of the response to a Solicitation Document that addresses price.

(42) *Procurement* means purchasing, renting, leasing, or otherwise acquiring any Commodities, Supplies, Services, and Construction. It also includes all functions that pertain to the acquisition of any Supply, Service, or Construction, including description of requirements, selection and solicitation of sources, preparation and award of Contract.

(43) *Professional Services* means Services the value of which are substantially measured by the professional competence of the Firm performing them and which are not susceptible to realistic evaluation/assessment by cost of Services alone. Professional Services shall include, but are not limited to, Services customarily rendered by attorneys, certified public accountants, and insurance and financial personnel, public relations consultants, legislative consultants and systems, planning and management consultants. For purposes of this Policy, Professional Services shall not include Services customarily rendered by architects, landscape architects, professional engineers, registered surveyors and Contractors (collectively referred to as "Design Criteria Professional Services"). The Procurement of Professional Services is regulated under Article 5 of this Policy.

(44) *Proposal* means the response to a Solicitation Document that addresses a Proposer's experience, qualifications and approach etc., as may required by the Solicitation Documents.

(45) *Real Estate* means land, including buildings and improvements, its natural assets, easements or an interest therein.

(46) *Request for Proposals* means all documents, regardless of medium, whether attached to or incorporated by reference in solicitations for proposals.

(47) *Request for Statements of Qualifications* means all documents, regardless of medium, whether attached or incorporated by reference, utilized for soliciting information to determine the most qualified firms. Also referred to as *Request for Qualifications*.

(48) *Responsible Bidder* means a Firm that has the business judgment, experience, facilities and capability in all respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance.

(49) *Responsive Bidder* means a Firm that has submitted a bid that conforms in all material respects to the Solicitation Document.

(50) *Responsive Proposer* means a Firm that has submitted a Proposal that conforms in all material respects to the Solicitation Document.

(51) *Services* means the furnishing of labor, time, skill, expertise, or effort by a Consultant or a Contractor rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but not be limited to evaluations; consultations; maintenance;

accounting; security; management systems; management consulting; educational training programs; research and development studies or report on the findings of consultants engaged there under; and professional, technical and social services. This term shall also include the routine operation, routine repair, and routine maintenance of structures, buildings, real property or equipment. This term shall not include employment agreements or collective bargaining agreements.

(52) *Shortlisting* means the process of evaluating responses from Firms, based upon criteria set forth in Solicitation Documents, to determine the most qualified Firms in order of ranking or scoring and to then select a certain number of the highest ranked or scored Firms to be invited to submit competitive proposals or to participate further in an alternate method of Procurement.

(53) *Small Purchases* means purchases of particular Supplies, Services, and Construction each of which in the aggregate does not exceed \$25,000.00 in any fiscal year.

(54) *Solicitation Documents* means Invitations to Bid, Requests for Statements of Qualification, Requests for Proposals, Invitations to Negotiate, Requests for Qualifications issued by MDX or other such documents used for a Procurement.

(55) *Specifications* means any description of the physical or functional characteristics, or of the nature of an item of Supply, Service, Construction or Real Estate. It may include a description of any requirement for inspecting or testing an item of Supply, Service, Construction or Real Estate or preparing an item of Supply for delivery.

(56) *Successful Bidder* means the Responsible Bidder and Responsive Bidder to whom the MDX makes an award.

(57) *Supplies* means all property, including but not limited to, equipment, materials, repair parts, consumables, tools and other items of personal property.

(58) *Supplemental Agreement* means any written alteration in the terms or provisions of any Contract accomplished by mutual action of the parties of the Contract.

(59) *Technical Proposal* means that portion of the response to a Solicitation Document that addresses technical and commercial terms and conditions, but not price.

Part C - Policy Revision

1-301 Continual Review of Policy.

The Policy and Planning Committee of MDX shall review this Policy as necessary, and shall make such recommendations with respect thereto to the MDX Board as it shall see fit.

1-302 Revisions to the Policy.

The MDX Board may revise this Policy from time to time at its sole discretion.

Part D - Use of Alternates

1-401 Alternate Sources

The MDX Board may in its sole discretion decide to utilize the services, resources, operational procedures, new developments or innovations adopted by other agencies.

ARTICLE 2 - PROCUREMENT ORGANIZATION

Part A - MDX Policy

2-101 Ex Parte Communication Prohibited.

(1) *Policy.* Adherence to procedures which ensure fairness is essential to the maintenance of public confidence in the value and soundness of the important process of public procurement. Therefore, any Ex Parte Communication between a bidder, proposer, Contractor or protestant (or its employees, agents or representatives) and MDX (its members, Employees, agents, Counsel, or representatives) is strictly prohibited. The period under which the following prohibitions are effective is commonly referred to as the Cone of Silence.

(2) *Periods.* Ex Parte Communication is prohibited during the following periods:

- (a) from the date of advertising of the solicitation through award of a Contract; and
- (b) from initiation of a protest of an award or Contract through resolution for the parties involved in the protest.

(3) *Exclusions.* This requirement shall not prohibit:

- (a) meetings called or requested by MDX and attended by bidders or proposers for the purpose of discussing a solicitation, evaluation or selection process including, but not limited to, substantive aspects of the solicitation document. Such meetings may include, but are not limited to, pre-bid or pre-proposal meetings, site visits to MDX's, bidders' or proposers' facilities, interviews/negotiation sessions as part of the selection process, and other presentations by bidders or proposers, all of which are requested by MDX. Such authorized meetings shall be limited to topics specified by MDX; solicitation documents may provide for communications from bidders or proposers to designated MDX staff requesting topics for discussion at meetings called or requested by MDX pursuant to this subsection.
- (b) the addressing of the MDX Board or any of its committees at public meetings;
- (c) the filing and prosecution of a written protest to any proposed award to be made pursuant to the solicitation, evaluation and selection process, pursuant to Section 10-101 which filing and prosecution shall give notice to all bidders or proposers. Protest proceedings shall be limited to open public meetings, with no Ex Parte Communications outside those meetings;
- (d) contacts by MDX's current Contractors and approved counter-parties but only in regard to: (1) any work performed on MDX projects unrelated to

the solicitation and which are currently in process; or (2) any MDX projects under the Cone of Silence for which the current Contractors or approved counter-parties do not intend to submit a response or have not submitted a response to any Solicitation Documents for those projects.

- (e) communications between the Chief Purchasing Officer or other MDX representatives and the bidder or Contractor for routine matters arising from Procurement under Section 3-101 (Small Purchases);
- (f) communications between Contractors and MDX representatives in accordance with the requirements of any administrative remedies process;
- (g) contacts by bidders and proposers (actual or potential) and MDX regarding projects unrelated to the Procurement for which the Bidders or Proposers (actual or potential) intend to submit a response or have submitted a response to any Solicitation Documents for those projects; and
- (h) communications between the Chief Purchasing Officer and bidders and/or proposers (actual or potential) for matters regarding pending Procurements.
- (i) communication between the technical representative assigned to the Solicitation and bidders and/or proposers only in the presence of the Chief Purchasing Officer for matters regarding pending Procurements until seven calendar days before bid/proposal submittal at which time the technical representative shall be subject to the Cone of Silence.

Violation of this provision as set forth herein shall at the discretion of MDX be grounds: 1) to disqualify the violator from the Procurement; 2) to void any award to or Contract with the violator; and/or 3) to temporarily or permanently debar the violator from future work with MDX.

2-102 Lobbyist Disclosure

It is the policy of MDX that all actual and potential bidders and proposers provide MDX with a written affidavit that includes the full name, residence address and business address of any Lobbyists (defined below) representing such bidder or proposer for a specific MDX Procurement or contains an affirmative statement that no Lobbyists have been retained by such bidder or proposer for the specific Procurement (“Lobbyist Affidavit”).

The Lobbyist Affidavit shall be provided to the Chief Purchasing Officer prior to the start of the Cone of Silence for any Procurement or by a date certain, as indicated in the Solicitation Documents. Bidders and proposers (whether actual or potential) shall be responsible for providing the Chief Purchasing Officer with any amendments to the previously submitted Lobbyist Affidavit through the end of the Cone of Silence for the specific Procurement.

Failure to provide the above required Lobbyist Affidavit shall result in the actual or potential bidder or proposer being deemed nonresponsive and prohibited from participating

further in the specific Procurement.

No person shall engage in Lobbying activities during the Cone of Silence for a specific Procurement, as it relates to that Procurement. Lobbying during the Cone of Silence shall result in the bidder or proposer being prohibited from participating in the specific Procurement.

If the Procurement is conducted pursuant to the Consultants' Competitive Negotiation Act ("CCNA"), contingent fees are prohibited (see Section 287.055(6), F.S.).

Lobby or *Lobbying* means communicating directly or indirectly, either in person, by telephone, by letter, by electronic means or by any other form of communication, with any Board member or any member of any decision-making body under the jurisdiction of the Board, or any MDX employee, consultant or attorney, where the Lobbyist seeks to encourage the passage, defeat, modification, or repeal of any item which may be presented for a vote before the Board, or any decision-making body under the jurisdiction of the Board, or which may be presented for consideration by an MDX employee as a recommendation to the Board or decision-making body or any employee making a final MDX procurement decision.

Person means any individual, business, corporation, association, firm, partnership, nonprofit organization, or other organization or group.

Lobbyist means any person who is employed and receives payment or who contracts for economic consideration for the purpose of Lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to Lobby on behalf of that other person or governmental entity. Any person who, in his or her individual capacity, merely communicates with the Board, a Board member, a decision-making body under the jurisdiction of the Board, or any MDX employee, consultant, or attorney, for the purpose of self-representation, without compensation or reimbursements, to express support of or opposition to any item which may be presented for a vote before the Board, and who shall so declare to the person or body with whom he or she discusses any such item, shall not be required to register as a Lobbyist. Additionally, any individual who engages in Lobbying as a volunteer, without payment of any compensation or reimbursement of expenses, either directly or indirectly, shall not be required to be disclosed as a Lobbyist.

Part B – Chief Purchasing Officer

2-201 Designation and Qualifications of the Chief Purchasing Officer.

The Executive Director shall serve as the Chief Purchasing Officer unless and until another Chief Purchasing Officer is approved by the MDX Board. The Chief Purchasing Officer shall be a full-time Employee with demonstrated executive and organizational ability.

2-202 Authority of the Chief Purchasing Officer.

The Chief Purchasing Officer shall have primary administrative authority over Procurement, including, without limitation, the following areas:

- (1) conditions and procedures for delegations of Procurement authority;

- (2) determination of prequalification;
- (3) recommendation to appropriate committee for suspension, debarment, and reinstatement of prospective bidders, proposers and Contractors;
- (4) conditions and procedures for the use of source selection methods authorized by this Policy, including Emergency Procurements;
- (5) recommendation to the appropriate committee for the opening or rejection of bids and proposers, and waiver of informalities in bids and proposals;
- (6) confidentiality of technical Data and trade secrets submitted by actual or potential bidders or proposers;
- (7) awards of procurements (pursuant to decisions of MDX Board or its Designee);
- (8) definitions and classes of Services and procedures for acquiring them;
- (9) methods for conducting price analysis;
- (10) use of bid, payment and performance bonds, letters of credits, etc. in connection with Contracts for Supplies, Services, and Construction;
- (11) guidelines for use of cost principles in negotiations, adjustments, and settlements;
- (12) rejection of bids or proposals due to late submittal; and
- (13) to negotiate the best terms and conditions for any Procurement where only one (1) responsive bid or proposal is received.

2-203 Delegation of Authority by the Chief Purchasing Officer

The Chief Purchasing Officer, if also the Executive Director, may, in writing, delegate authority over Procurement to any MDX Director. The Chief Purchasing Officer may delegate a technical representative to assist the Procurement Department in responding to questions raised by actual or potential proposers. Any such delegation shall be in writing.

The Chief Purchasing Officer (if not the same as the Executive Director), may delegate his/her authority regarding Procurements to any of the Directors in writing, with the prior written consent of the Executive Director.

Part C - Awards Committee

2-301 Designation of the Awards Committee.

All Procurements under this Policy, the procedures and documentation related thereto, and the Contracts to be let pursuant thereto shall be reviewed by the Awards Committee. Unless the MDX Board shall determine otherwise, the Awards Committee shall be in accordance with the MDX By-laws.

2-302 Duties of the Awards Committee.

(1) *Recommended Actions.* The Awards Committee shall make recommendations to the MDX Board for Procurement actions to include, without limitation, the following:

- (a) award, renewal, cancellation or extension of Contracts;
- (b) approval of Contract Contingency Allowances;
- (c) approval of Contract Amendments;
- (d) rescission of Contract awards;
- (e) approval of results of negotiations and price impacts;
- (f) final ranking of proposers; and
- (g) approval of assignment of Contracts.

(2) *Actions.* The Awards Committee shall have authority to take the following Procurement actions:

- (a) approval of Procurement documents, including but not limited to, evaluation criteria, Requests for Proposals, and Requests for Statements of Qualifications;
- (b) approval of Shortlisting; and
- (c) appointment of Evaluation Committee;
- (d) cancellation of Procurements.

Part D – Evaluation Committee

2-401 Designation of the Evaluation Committee

The Awards Committee shall designate the members of the Evaluation Committee for each Procurement. The criteria for designation as an Evaluation Committee member shall include: 1) relevant industry experience; 2) knowledge of the needs of MDX as it relates to the Services to be evaluated; and 3) no conflicts of interest. An MDX Board member may be designated as a member of the Evaluation Committee in an oversight and non-voting role unless the Awards Committee determines that the Board Member meets the above criteria and in such case may then serve as an evaluator and voting member of the Evaluation Committee, at the discretion of the Awards Committee.

2-402 Duties of the Evaluation Committee

In the event a Solicitation provides for Shortlisting, the Evaluation Committee shall make recommendations regarding Shortlisting and final ranking for consideration by the Awards

Committee. If one Firm is to be selected, three (3) Firms or less shall be recommended for Shortlisting. If a pool of Firms is to be selected, then two (2) times the amount of Firms in the pool or less shall be recommended for Shortlisting.

Evaluators shall score based on the following methodology in evaluating Firm's written documents and oral presentations:

90-100 Outstanding - The Firm exemplifies superior and/or exceptional characteristics in the evaluation criteria categories.

80-89 Excellent - The Firm illustrates extremely strong, but not exceptional, characteristics in the evaluation criteria categories. The evaluator may have a reservation, but there are enough redeeming features to compensate for, or outweigh, the reservation.

70-79 Good - The Firm demonstrates competitive average characteristics in most of the evaluation criteria, but may be particularly strong in one or more areas.

66-69 Average/Fair - While the Firm is competitive in each of the evaluation criteria, the evaluator has substantial concerns about the overall strength of the Firm. The Firm does not stand out.

65 and below - Below Average/Poor - The Firm has serious deficiencies when compared to most of the evaluation criteria. In addition, several of the evaluation criteria may not be addressed or may be missing.

2-403 Absence of Evaluation Committee Members

(1) In the event an Evaluation Committee member is unable to attend an Evaluation Committee meeting, he or she shall be required to review the recording of that meeting or the written minutes (if a recording is not available) prior to the submission of his or her scores or ranking to the Chief Purchasing Officer. Failure to do so shall mean exclusion of the Evaluation Committee member's scores or ranking.

2-404 Neutrality/Disclosure Statement

All members of Evaluation Committees shall execute a Neutrality/Disclosure Statement, prior to any evaluation of responses from bidders and/or proposers, stating that, among other things; the particular member has not had and will not have improper conversations with bidders/proposers or other Evaluation Committee members, and has no conflict of interest regarding the Procurement.

Part E – Notification of Procurements

2-501 Advance Notification

At the beginning of every quarter, the Chief Purchasing Officer shall inform Firms, that have signed up with MDX to receive advance notification, of MDX projects that will be

advertised that quarter and the subsequent quarter.

2-502 Advertisements of Procurements

All Procurements shall be advertised by MDX in compliance with applicable laws, unless exempted by applicable law and this Policy (e.g. Emergency Procurements, Sole Source Procurements, Small Purchases and Intermediate Purchases). Advertisements shall, at a minimum, be advertised on the MDX website and shall provide adequate public notice in compliance with applicable laws. Advertisements shall also appear in such other publications as may be approved by the Awards Committee for such Procurement.

ARTICLE 3 - SMALL PURCHASES

3-101 Small Purchases.

(1) *Conditions for Use.* Small Purchases may be authorized by the Chief Purchasing Officer, provided that each Small Purchase does not in the aggregate exceed \$25,000.00 in any fiscal year and provided further that approved budget authority for such expenditure in that fiscal year has been approved by the MDX Board. Procurement requirements shall not be artificially divided so as to constitute a Small Purchase under this section.

(2) *Competitive Pricing.* Small Purchases shall require, at a minimum, the following kind and number of quotations from prospective suppliers:

- (a) one properly documented oral quotation for Procurements of \$1,000 or less; or
- (b) three written or properly documented oral quotations for Procurements exceeding \$1,000 but not exceeding \$25,000.00.

(3) *Decline to Provide Quotation.* If, in subsections (2)(b) above, after reasonable effort, only one source provides a responsive quotation, then award may be made to the responsive source.

(4) *Informal Contracts.* After it has been determined that the Small Purchase is appropriate to secure the commodity or service, the procurement may be evidenced by an Informal Contract as defined herein.

COMMENTARY:

- (1) *This section recognizes that certain public purchases do not justify the administrative time and expense necessary for the conduct of competitive sealed bidding.*
- (2) *Care must be taken to ensure that purchase requirements are not fragmented in order to fall within the authority contained in this section, thus circumventing the source selection procedures otherwise required by this Policy.*

- (3) *The requirement for written quotations does not exclude quotations by electronic means.*
- (4) *While in a particular Emergency an award may be made without any competition, the intent of this Policy is to require as much competition as practicable in a given situation. For example, when the amount of the Emergency Procurement is within the limits established in Section 3-101 (Small Purchases), the competitive procedures prescribed under that Section should be used when reasonably practicable.*

3-102 List of Prospective Bidders and Proposers.

The Chief Purchasing Officer may maintain a list of prospective bidders or proposers for Supplies and Services used by MDX. For individual solicitations, the mailing lists of prospective bidders or proposers shall include an appropriate number of prospective bidders or proposers from this list in accordance with the requirements of the method of source selection used. If the list of prospective bidders or proposers is large, all prospective bidders or proposers on the list need not be solicited.

ARTICLE 4 – INTERMEDIATE PROCUREMENTS

4-101 Intermediate Procurements

(1) *Conditions for Use.* Intermediate Procurements may be used for the purchase of Commodities, supplies, or Services related to the construction, operation and/or maintenance of MDX, its roadways and/or facilities. Intermediate Procurements may be authorized by the Executive Director subject to Section 4-102 hereof, provided that: 1) each Intermediate Procurement does not in the aggregate exceed \$199,999.00 for the same purchase or service; 2) that such expenditure has been approved in the budget for that fiscal year by the MDX Board; and 3) that the goods and Services being procured are not considered atypical. For the purpose of this section “atypical” means a good and/or service not usually procured in the normal course of business or operation of MDX. Procurement requirements shall not be artificially divided so as to constitute an Intermediate Procurement under this section. For Services procured pursuant to the CCNA, this threshold shall be \$50,000.

4-102 Procedures for Intermediate Procurements

(1) *Intermediate Procurements shall be competitively procured. Whenever practical and advantageous, MDX shall use its best efforts to award to:*

- (a) any pre-approved State vendor; or
- (b) any pre-approved County vendor; or
- (c) any contractor who is currently or has previously done business with MDX; or

- (d) any Small Business (“SB”) vendor

The requirements of this section shall not apply in the event of an emergency as defined in Section 4-103(1)(a).

(2) If only one responsive bid or proposal for Commodities or Services is received, the Chief Purchasing Officer may negotiate on the best terms and conditions.

(3) A written Solicitation Document shall be issued which shall include a detailed description of the Commodities or Services sought; the date for submittal of bids or proposals; and the relevant contractual terms and conditions applicable to the procurement of Commodities or Services, including the criteria which shall include, but need not be limited to, price, to be used in determining acceptability of the bid or proposal. Bids and proposals shall be accepted in writing by the due date. The Intermediate Procurement contract shall be awarded with reasonable promptness by written notice to the qualified, responsible and responsive proposer or bidder who submits the lowest responsive bid.

COMMENTARY:

The pools of the above listed vendors are often very large. In addition to the other requirements set out herein, the CPO is authorized to establish a reasonable competitive methodology, criteria or system to determine the pool of vendors to participate in an Intermediate Procurement. The pool shall contain a minimum of three vendors.

4-103 Purchases That Exceed \$199,999.00

(1) When the purchase price of Commodities or Services exceeds the threshold amount of \$199,999.00, no purchase of Commodities or Services may be made without receiving competitive sealed bids or competitive proposals except when there is:

- (a) a Sole Source Procurement, as determined pursuant to Section 6-103 of this Policy; or
- (b) an Emergency Procurement, as determined pursuant to Section 6-105 of this Policy.
- (c) the Utilization of Other Governmental Contracts (Piggybacking), as determined pursuant to Section 6-107 of this Policy.

ARTICLE- 5 PROFESSIONAL SERVICES

5-101 Competitive Selection Procedures for Professional Services (Competitive Proposals).

(1) *Professional Services.* Professional Services shall be obtained by competitive proposals, except as authorized under Section 3-101 (Small Purchases), Section 4-101

(Intermediate Purchases), Section 6-103 (Sole Source Procurements), Section 6-105 (Emergency Procurements) or Section 6-106 (Invitation to Negotiate). In addition, Professional Services may be obtained in accordance with Section 6-101 (Competitive Award of Contracts) or Section 6-102 (Competitive Negotiated Bidding) or Section 6-107 (Utilization of Other Governmental Contracts) if the Chief Purchasing Officer determines in writing that it is practicable and advantageous to MDX to employ one of these alternative methods.

COMMENTARY:

- (1) *Procurement of Professional Services using competitive sealed bidding or competitive negotiated bidding or competitive proposals assures competition in price and Services. The use of functional or performance Specifications is allowed under all methods to facilitate consideration of alternative means of meeting MDX needs, with evaluation, where appropriate, on the basis of total or life cycle costs. The criteria to be used in the evaluation process under all methods must be fully disclosed in the solicitation. Only criteria disclosed in the solicitation may be used to evaluate the Services proposed.*
- (2) *Procurement of Professional Services using the competitive proposals method differs from the competitive sealed bidding method and the competitive negotiated bidding method in the following ways:*
 - (a) *Under competitive sealed or competitive negotiated bidding, judgmental factors may be used only to determine if the bidder is responsive and qualified. Under competitive proposals, judgmental factors may be used to determine not only if the proposer is responsive and qualified, but may also be used to evaluate competing proposals. The effect of the different use of judgmental evaluation is that under competitive sealed or competitive negotiated bidding, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest Responsive and Responsible Bidder. Under competitive proposals, the quality of competing Services may be compared and trade-offs made between price and quality of the Services offered (all as set forth in the Request for Proposals). Award under competitive proposals is then made to the responsive and qualified proposer whose proposal is most advantageous to MDX.*
 - (b) *Competitive sealed bidding and competitive proposals also differ in that under competitive*

sealed bidding, no changes are allowed once the bids have been opened, except for correction of errors in limited circumstances. The competitive proposals method, on the other hand, permits:

- (i) discussion after proposals have been opened to allow for clarification and identification of the highest ranked proposer; and*
 - (ii) negotiation of final Contract terms with the highest ranked proposer.*
- (c) Competitive negotiated bidding and competitive proposals also differ in that the competitive negotiated bidding method allows for negotiation of price and scope of Services before identification of the lowest evaluated bid. The competitive proposals method, on the other hand, allows negotiation of price and modification of scope of Services only after the highest ranked proposer has been identified.*
- (3) Situations in which alternative methods may be practical and advantageous to MDX include when:*
 - (a) the required Services are common and defined by industry standards;*
 - (b) the acceptable level of service quality is set by industry practice;*
 - (c) all service providers provide Services of uniform quality and acceptability; and*
 - (d) all service providers possessing certain certifications are acceptable.*
- (4) What is practicable may not necessarily be beneficial to MDX. Consequently, terms are used in this section to avoid a possibly restrictive interpretation of the authority to use competitive sealed or competitive negotiated bidding or competitive proposals.*

(2) Statement of Qualifications. Any Procurement of Professional Services may require that Firms engaged in providing Professional Services submit Statements of Qualifications (“SOQ’s”) and expressions of interest in providing such types of Services. The Awards Committee may specify a uniform format for statements of qualifications and may evaluate such statements of qualifications and expressions of interest based upon objective

criteria to be set forth in the Request for Statements of Qualifications as a means of Shortlisting or selection.

5-102 Request for Proposals.

(1) *Request for Proposals.* Proposals may be solicited through a Request for Proposals. The Request for Proposals shall describe the scope of Services required, list the type of information and Data required of each proposer and list all evaluation factors in accordance with Article 8-202 of this Policy.

COMMENTARY:

- (1) *It is also intended that Professional Services may be procured on a "retained" basis as well as for a particular project. Frequently, MDX may need to consult various professionals on an ongoing but "from-time-to-time" basis.*
- (2) *Documentation of the actions taken by the Chief Purchasing Officer is an important means of curbing any improprieties and establishing public confidence in the process by which Services covered by this section are procured.*
- (3) *Award of the Contract is to be made on the basis of the criteria stated in the Request for Proposals. These criteria, in turn, should reflect MDX's policy that demonstrated competence and qualifications to render the required Services must be possessed by the proposer with whom MDX contracts, and that the compensation requested must be fair and reasonable.*

ARTICLE 6 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

6-101 Competitive Award of Contracts

(1) All Contracts for the purchase of goods, Commodities, Services or construction shall be competitively awarded in accordance with Sections 6-101(2), 6-101(3), 6-101(4), 6-101(5) and 6-101(6) of this policy except as provided in:

- (a) Article 3 of this Policy (Small Purchases);
- (b) Article 4 of this Policy (Intermediate Purchases)
- (c) Article 5 of this Policy (Professional Services);
- (d) Section 6-102 (Competitive Negotiated Bidding);
- (e) Section 6-103 (Sole Source Procurements);

- (f) Section 6-104 (Procurement of Standard, Proprietary and Original Equipment Manufacturer Items);
- (g) Section 6-105 (Emergency Procurements);
- (h) Article 7, *Part B* (Design Build Provision);
- (i) Sections 255.20 and 287.055, Florida Statutes.
- (j) Section 6-106 (Invitation to Negotiate); and
- (k) Section 6-107 (Utilization of Other Governmental Contracts).

A Contract is competitively awarded when the Contract is awarded based on the submission of sealed bids or Proposal in response to a Solicitation Document.

(2) Contracts for the construction or improvement of a public building, structure or other public construction works, ("Construction Contracts") shall be competitively awarded in accordance with Section 6-101(1). Where applicable, the award of Construction Contracts shall comply with the provisions of Section 255.20, Florida Statutes.

COMMENTARY:

(1) *Competitive sealed bidding is the commonly used method for acquiring Supplies, Services, and Construction for public agencies. Florida Statutes §255.20 requires competitive bidding where projects to construct or improve a public building, structure or other public construction works are estimated to have Construction costs of more than Two Hundred Thousand Dollars (\$200,000.00). This method does not include negotiations with bidders after the receipt and opening of bids. Award is to be made based strictly on the criteria set forth in the Solicitation Document.*

(3) *Invitation to Bid.* An Invitation to Bid issued by MDX shall comply with Section 8-201 of this Policy and shall include instructions to bidders, a purchase description (as defined herein), and all Contractual terms and conditions applicable to the Procurement, as outlined in Article 8 of this Policy. If the award is to be made to the Responsive Bidder with the lowest price, this must be specifically stated in the Invitation to Bid.

(4) *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, a Solicitation Document may be issued requesting the submission of unpriced offers to be followed by a Solicitation Document limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

COMMENTARY:

Multi-step competitive sealed bidding provides the flexibility to refine the

purchase description prior to requesting prices from bidders.

(5) *Request for Proposal.* If MDX uses a Request for Proposals, the Request for Proposal, shall comply with Section 8-202. This method shall also be used to procure Construction Manager services.

(6) *Competitive Negotiations.* If the project is subject to competitive negotiations, Section 6-102 shall apply.

6-102 Competitive Negotiated Bidding.

(1) *Conditions for Use.* MDX may enter into a Contract by competitive negotiated bidding if the Awards Committee determines that the use of competitive negotiated bidding is advantageous to MDX.

COMMENTARY:

(1) *Both competitive sealed bidding and competitive negotiated bidding assure price and product competition. The use of functional or performance Specifications is allowed under both methods to facilitate consideration of alternative means of meeting MDX needs, with evaluation, where appropriate, on the basis of total or life cycle costs. The criteria to be used in the evaluation process under either method must be disclosed in the solicitation. Only criteria disclosed in the solicitation may be used to evaluate the items bid.*

(2) *The principal difference between the two methods of source selection is that the competitive sealed bidding method does not allow MDX to consider bids containing exceptions taken to the requirements set forth in the Invitation to Bid while the competitive negotiated bidding method does. The competitive negotiated bidding method allows bidders to propose alternatives to any of the commercial or technical requirements of the Invitation to Bid.*

(2) *Invitation to Bid.* Bids shall be solicited through an Invitation to Bid as set forth in Section 6-101 and Section 8-201 of this policy, with the following modifications:

- (a) the Invitation to Bid shall include a description of the competitive negotiated bidding procedure;
- (b) bidders shall be directed to submit a bid comprising a Technical Proposal and a Price Proposal, each in a separate, sealed envelope.

(3) *Public Notice.* Adequate public notice of the Invitation to Bid shall be given in the same manner as provided in Section 8-201 (General Guideline for the Contents of an Invitation to Bid, Public Notice).

(4) *Bid Opening.* Bids shall be opened in the same manner as provided in Section 8-201 (Bid Opening) except that, at the time of bid opening, the envelope containing the Technical Proposal shall be opened and the envelope containing the Price Proposal shall remain sealed.

(5) *Evaluation.* The Evaluation Committee shall review and evaluate proposals received in accordance with the criteria set forth in the Invitation to Bid.

(6) *Negotiation of Technical Proposal.* The Evaluation Committee shall conduct discussions with Responsive Bidders, for the purpose of resolving or clarifying any exceptions contained in Technical Proposals to the requirements set forth in the Solicitation Document. Revisions to the requirements contained in the Solicitation Document may be made throughout the negotiation process. If this occurs, all Responsive Bidders shall have the opportunity to adjust Technical Proposals to accommodate the revisions. At the conclusion of negotiations, any Technical Proposals that have unresolved exceptions shall be rejected. The associated Price Proposal shall be returned to the bidder unopened.

(7) *Submission of Price Impacts.* Bidders shall prepare and submit to the Evaluation Committee a price impact for each exception or clarification where agreement was reached.

(8) *Awards Committee Approval.* The results of negotiations and price impacts shall be submitted by the Evaluation Committee to the Awards Committee for approval. Upon approval, the Awards Committee shall set a date and time for the Price Proposal opening.

(9) *Price Proposal Opening.* The Price Proposals shall be opened at a public meeting and the price impacts shall be applied to the Price Proposals.

(10) *Final Review and Tabulation.* The Evaluation Committee shall perform a final review of Technical Proposals, Price Proposals and price impacts and shall recommend to the Awards Committee the lowest evaluated bid using the evaluation criteria set forth in the Invitation to Bid for final award.

(11) *Award.* Award shall be made to the Successful Bidder best or most meeting or exceeding the requirements set forth in the Invitation to Bid. Tie bids shall be resolved in accordance with procedures included in the Solicitation Documents. Multiple or split awards may be made if in the best interest of MDX and provided for in the Solicitation Documents.

6-103 Sole Source Procurements.

A Contract may be awarded for Supplies, Services, and Construction without competition when the Chief Purchasing Officer determines in writing that:

- (a) there is only one justifiable source for the required Supplies, Services, or Construction; or
- (b) a service is a follow-up of Services that may only be done efficiently and effectively by the Firm that previously rendered the initial Services to MDX.

However, if such contract is for an amount greater than the threshold amount of \$199,999.00, i.e. not a Small or Intermediate Purchase, the Chief Purchasing Officer shall prepare a certification of conditions and circumstances and shall provide that to the MDX Board for prior approval.

COMMENTARY:

This method of Procurement involves no competition and should be utilized only when justified and necessary to serve MDX needs.

6-104 Procurement of Standard, Proprietary and Original Equipment Manufacturer Items.

A Contract may be awarded for Supplies or Services with limited competition when, under operational procedures, the Chief Purchasing Officer determines in writing that the Supplies or Services:

- (a) must be a certain type, brand, make or manufacture (proprietary); or
- (b) must be obtained from the original equipment manufacturer, manufacturer's representative or a distributor authorized by the original equipment manufacturer because of the criticality of the item or compatibility within the MDX system (original equipment manufacturer).

6-105 Emergency Procurements.

Notwithstanding any other provision of this Policy, the Chief Purchasing Officer may make Emergency Procurements when the Chief Purchasing Officer determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the Authority requires emergency action. After the Chief Purchasing Officer makes such a written determination, the Authority may proceed with the procurement of Commodities or Services necessitated by the immediate danger, without competition. However, such emergency procurement shall be made with such competition as is practicable under the circumstances. If the Executive Director is not the Chief Purchasing Officer, the Executive Director shall furnish a copy of the written determination and any other documents relating to the emergency action to the Chief Purchasing Officer. A copy of the written determination shall be furnished to the Chief Financial Officer with the voucher authorizing payment. The individual purchase of shelter or supplies which are needed on an emergency basis to avoid institutionalization or placement in a more restrictive setting is an emergency for the purposes of this paragraph, and the filing with the Chief Purchasing Officer (in the case where the Executive Director is not the Chief Purchasing Officer) of such statement is not required under such circumstances. In the case of the emergency purchase of insurance, the period of coverage of such insurance shall not exceed a period of 30 days, and all such emergency purchases shall be reported to the Chief Purchasing Officer (if not the Executive Director).

COMMENTARY:

- (1) *This section authorizes the Procurement of Supplies, Services, or*

Construction where the urgency of the need does not permit the delay involved in utilizing other methods of source selection.

- (2) *While in a particular Emergency an award may be made without any competition, the intent of this Policy is to require as much competition as practicable in a given situation. For example, when the amount of the Emergency Procurement is within that adopted for Small Purchases in Article 3 of this Policy, the competitive procedures prescribed under that Section should be used when feasible.*
- (3) *Use of this section may be justified because all bids submitted under the competitive sealed bid method are unreasonable, and there is no time to resolicit bids without avoiding Emergency conditions.*

6-106 Invitation to Negotiate.

Invitations to Negotiate may be utilized if the Awards Committee determines that the use of an Invitation to Negotiate is advantageous to MDX. The Invitation to Negotiate is aimed at providing an alternative means of soliciting interested and qualified firms so that MDX may enter into negotiations with the Firm most capable of providing the required Supplies and Services. The Invitation to Negotiate will supply the firms with information necessary to bring MDX together with the proposers; however, the scope of work, approaches and terms of the project may be open to consideration and negotiation. In accordance with Article 8-203 of this Policy, the terms, price, method of delivery, and the conditions of performance may be negotiable. Invitations to Negotiate may not be used for procuring professional services addressed by the CCNA.

6-107 Utilization of Other Governmental Contracts (Piggy-backing).

MDX may utilize a contract entered into between another governmental entity and a provider of Supplies and Services sought by MDX, if the Chief Purchasing Officer determines in writing that it is practicable and advantageous for MDX to employ this alternative method. If such other governmental contract is utilized, the public notice requirements and/or the need to utilize the selection processes found in this Policy is obviated; however, a separate contract must be executed by MDX and the particular provider. This separate contract will then incorporate by reference the other governmental contract. Other governmental contracts that MDX may utilize include, but are not limited to, contracts of the State of Florida, General Services Administration, and other governmental entities, counties and municipalities within the State of Florida.

Part B - Cancellation of Invitations to Bid or Requests for Proposals

6-201 Cancellation of Invitations to Bid or Requests for Proposals.

An Invitation to Bid, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, as may be specified in the Solicitation Documents, when the Awards Committee determines, in its sole and absolute

discretion, that such cancellation or rejection is in the best interest of MDX.

Part C - Bidder Qualifications

6-301 Responsiveness and Responsibility of Bidders.

Unless otherwise set forth in the Solicitation Documents, the Awards Committee shall determine whether a bidder or proposer is responsive (except in the case of a late submittal, where the Chief Purchasing Officer shall make such a determination) and responsible. A written determination of nonresponsiveness or nonresponsibility of a bidder or proposer shall be made in accordance with the requirements of the applicable Solicitation Document. The only exception is that the Chief Purchasing Officer shall determine that a bidder/proposer is or is not responsive based on compliance with the required date and time for submittals.

Part D - Contracts

6-401 Types of Contracts.

Contract types contemplated by the Policy include, but are not limited to, the following:

- (a) Firm fixed-price Contracts;
- (b) Unit price Contracts;
- (c) Fixed-price Contracts with price adjustment;
- (d) Cost Contracts;
- (e) Cost-plus-fixed fee Contracts;
- (f) Cost-plus-a-percentage-of-cost with a not-to-exceed cap Contracts;
- (g) Cost-Reimbursement Contracts with cost incentive fee;
- (h) Performance incentive Contracts;
- (i) Time and materials Contracts;
- (j) Labor hour Contracts;
- (k) Definite quantity Contracts;
- (l) Indefinite quantity Contracts;
- (m) Requirements Contracts;
- (n) Master Contracts and related orders and work authorizations; and
- (o) New, innovative or alternative forms of construction procedures and

contracts which may be used by other transportation authorities or governmental entities.

COMMENTARY:

- (1) *Unit price Contracts are Firm fixed-price Contracts and are listed separately because of the common usage of the term.*
- (2) *Contracts may include incentive provisions such as value engineering. Value engineering provisions encourage the Contractor and MDX to share cost savings arising from adoption of Contract Amendments reflecting changes in design, work methods, materials, or components-cost-reducing measures not known to the Contractor or MDX prior to award. Exercising the value engineering provisions results in reduced total cost of Supplies, Services, or Construction equivalent or superior to those Supplies, Services, or Construction originally specified in the Contract.*
- (3) *Master Contracts will be utilized as appropriate to outline scope of Services and other relevant provisions. Subsequent orders or work authorizations shall be negotiated subject to the master Contract and shall contain the appropriate unit price, prices or fees and not-to-exceed maximum amounts for the order or work authorization.*

6-402-A Limitations to the Use of Contract Types.

Any type of Contract subject to this Policy that will promote the best interest of MDX may be used provided that, to the maximum extent practicable, all Contracts except master Contracts must contain a not-to-exceed maximum amount. All subsequent orders or work authorizations under master Contracts must be in writing and contain a not-to-exceed maximum amount. A Cost-Reimbursement Contract may be used only when a determination is made in writing that such Contract is likely to be less costly to MDX than any other type or that it is impracticable to obtain the Supplies, Services, or Construction required except under such a Contract.

6-402-B Form of Contract Documents

(1) *Formal Contracts.* Formal Contracts are for Commodities and Services over the threshold amount of \$25,000.00. Counsel shall approve as to form and legality all Formal Contract documents including, but not limited to, initial Contracts, Contract renewals, Contract Extensions, Change Orders, Contingency Agreements, and Contract Amendments.

(2) *Informal Contracts.* Informal Contracts are for Commodities and Services under the threshold amount of \$25,000.00 (for Small Purchases and below). Pursuant to Section 3-101 (Small Purchases), verbal quotes or written quotes can be obtained to procure these Commodities and Services. Purchase order formats may be used for Informal Contracts which incorporate

general terms and conditions required by MDX. Purchase order formats may include electronic formats.

(3) *Use of Form Contracts.* Subject to the approval of Counsel and the Chief Purchasing Officer, where practicable under the circumstances, MDX shall base formal Contracts upon standard contract forms distributed by Professional Associations (*e.g.* the AIA) in order to minimize costs and simplify solicitation procedures. Where use of such standard contract forms is not practicable, in order to minimize costs and simplify solicitation procedures, Counsel and the Chief Purchasing Officer shall develop and utilize where practicable standard form MDX contracts.

COMMENTARY:

- (1) *The intent of this section is to authorize any type of Contract that best suits the interest of MDX. Cost-Reimbursement Contracts may be used when uncertainties involved in the work to be performed are of such magnitude that the cost of performance is too difficult to estimate with reasonable certainty and use of a fixed-price Contract could seriously affect a Contractor's financial stability or result in payments by MDX for contingencies that may never occur. Use of cost-type Contracts is also authorized when it is impracticable to contract on any other basis.*
- (2) *Only those costs recognized as allowable under the Contract will be reimbursed.*

6-403 Initial Term of Contracts (Initial Contract Period).

(1) *Specified Period.* Master Contracts, unit price Contracts and other Contracts for Supplies or Services may be entered into for any period of time deemed to be in the best interest of MDX provided:

- (a) the term of the Contract is included in the solicitation; or
- (b) in the case of Procurement under Section 6-102 (Competitive Negotiated Bidding), the term of the Contract is determined through negotiation; and
- (c) funds shall be available until at least the end of the then current fiscal year; or
- (d) for orders or work authorizations under master Contracts, funds shall be available prior to release of orders or work authorizations; and
- (e) the Contract contains prices or the method of determining prices for the term of the Contract.

Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor.

(2) *Determination Prior to Use.* Prior to the utilization of a multi-year Contract, it shall be determined in writing:

- (a) that estimated requirements cover the period of the Contract and are reasonably firm and continuing; and
- (b) that such a Contract will serve the best interest of MDX by encouraging effective competition or otherwise promoting economies in MDX Procurement, operations or maintenance.

COMMENTARY:

(1) *MDX has restrictions upon the use of funds in a fiscal year other than that in which the funds are appropriated. This section permits multi-year Procurement so that MDX may:*

- (a) *procure larger quantities and obtain the benefits of volume discounts; and*
- (b) *encourage Contractors to make capital investments or investments in process changes required to reduce the cost of goods or Services they provide MDX.*

(2) *A multi-year Contract should be used only for master Contracts, unit price Contracts and Supplies or Services needed on a continuing basis with annual quantity requirements that can be reasonably estimated in advance. Multi-year Procurements should attract more competitors to submit bids or offers for the large Contract awards and thereby provide MDX with the benefits of increased competition.*

(3) *In some cases potential vendors are reluctant to enter into multi-year Contracts because of volatility or fluctuations in the vendor's cost of materials or components. To facilitate volume discounts through multi-year Contracts in these situations, Contracts may be structured with fixed and variable cost elements, where the variable cost elements escalate or de-escalate based upon materials or component prices at the time of order. In no situation, however, shall MDX enter into a Contract with variable price elements that requires MDX to order Supplies when such Supplies exceed any not-to-exceed price established in the Contract or when MDX determines that such order is not in its best interest.*

6-404 Renewal Terms of Contracts.

(1) *Specified Period.* A Contract for Supplies or Services may be renewed for any period of time, and for any number of renewals, deemed to be in the best interest of MDX

provided:

- (a) the terms of the renewals have been included in the solicitation; or
- (b) in the case of Procurements under Section 6-102 (Competitive Negotiated Bidding), Section 6-103 (Sole Source Procurements) and Section 6-104 (Procurement of Standard, Proprietary and Original Equipment Manufacturer Items) the terms of the renewals have been determined through negotiation; and
- (c) funds shall be available for at least the first fiscal year; or
- (d) for orders or work authorizations under master Contracts, funds shall be available prior to release of orders or work authorizations; and
- (e) the Contract contains prices or the method of determining prices for the terms of the renewals.

(2) *Determination Prior to Use.* Prior to the utilization of a renewal, it shall be determined in writing:

- (a) that estimated requirements cover the renewal period and are reasonably firm and continuing; and
- (b) that such a renewal will serve the best interest of MDX by promoting economies in MDX Procurement, operations or maintenance.

COMMENTARY:

This section allows MDX to assess conditions before the end of the current Contract term and to continue the Contract with the Contractor if doing so is in the best interest of MDX and the initial Contract document permits.

(3) *Single-Year Renewal.* The period of a renewal may be one fiscal year or less. Payment and performance obligations for the renewal period shall be subject to the availability and appropriation of funds therefor. For orders or work authorizations under master Contracts, funds shall be available prior to release of orders or work authorizations.

(4) *Multi-Year Renewal.* The period of a renewal may be more than one fiscal year. Funds must be available for at least the duration of the then current fiscal year at the time of renewal. Payment and performance obligations for the succeeding fiscal year or years shall be subject to the availability and appropriation of funds therefor. For orders or work authorizations under master Contracts, funds shall be available prior to release of orders or work authorizations.

6-405 Extension of Contracts.

If determined to be in the best interest of MDX, the term and/or amount of a contract may be modified subject to the approval by the applicable authority (Executive Director, Awards

Committee, or Board) as set out below.

6-406 Approval and Signing Authority of Contracts and Supplemental Agreements

(1) *Approval Authority.*

(A) Contracts

For Contracts of \$199,999.00 or less, the Executive Director has approval authority. All other Contracts shall be approved by the MDX Board.

(B) Supplemental Agreements

1. The Executive Director may approve Supplemental Agreements as follows:

- Contract Amount: For a single Contract which is cumulatively less than or equal to 20% of the original Contract amount or \$2,000,000, whichever is less;
- Contract Time: For Contract time that does not involve changes to the original Contract amount above the delegated authority set out herein;
- Other Administrative Changes: For other contract changes that do not relate to changes in scope and/or contract amount and contract time. Changes to scope are not permitted by this authority.

2. The applicable Awards Committee shall approve all Supplemental Agreements as follows:

- Contract Amount: For a single Contract any amount which is cumulatively greater than 20% of the original Contract amount or \$3,000,000, whichever is less;
- Contract Time: For Contract time that also involves changes to the original Contract amount above the Executive Director's delegated authority up to \$3,000,000.

3. The Board shall approve all Supplemental Agreements that exceed the authority delegated herein to the Executive Director or to the Awards Committee.

For those contracts with Guaranteed Maximum Price ("GMP") provisions, subsequent to adoption of the GMP to the contract, the original Contract amount shall be equal to the combination of any initial Contract amount plus the GMP amount."

(1) *Signing Authority.* Subject to the required approval authority, the Executive Director, and the Chair, Vice Chair and Treasurer of the Board shall have the authority to sign all Contracts, and Supplemental Agreements, whether formal or informal.

6-407 Contract Incentives and Disincentives

The MDX Board may approve incentives or bonuses for early or on-time completion of Contracts. Such incentives or bonuses shall be such percentage of the cost benefit to MDX of the on-time or early completion as shall be determined by the Board on a case by case basis.

The MDX Board may approve disincentives for late completion of Contracts. Such disincentives shall be such percentage of the cost detriment to MDX of the late completion as shall be determined by the Board on a case by case basis.

Part E - Reports and Record Retention

6-601 Reports

Supplemental Agreement Report:

A monthly report shall be provided to the appropriate MDX Awards Committee and the MDX Board listing all the Supplemental Agreements approved the previous month and shall include the relevant Procurement/Contract number and any project number, the amount of the Supplemental Agreement and the cumulative amount of all approved Supplemental Agreements for the Contract to date. The report should also include any value added to the Contract by the Supplemental Agreement.

Intermediate Procurement Report:

A monthly report shall be provided to the appropriate MDX Awards Committee and the MDX Board listing all the Intermediate Procurements for the previous month.

On-Going Procurement Report:

A monthly report shall be provided to the MDX Board listing all on-going procurements that exceed the Intermediate Procurement threshold.

6-602 Retention of Procurement Records.

All Procurement records shall be retained, made available and disposed of in accordance with the requirements of the Florida Public Records Law.

6-603 Record of Procurement Actions Taken Under Section 6-103 (Sole Source Procurements) and Section 6-105 (Emergency Procurements)

The Chief Purchasing Officer shall submit a report listing all Procurements made under Section 6-103 (Sole Source Procurements) and Section 6-105 (Emergency Procurements) to the MDX Board on a monthly basis. Such report may be prepared in combination with other materials submitted to the MDX Board.

ARTICLE 7 - PROCUREMENT OF CONSULTANT FOR DESIGN PROFESSIONAL

SERVICES

Part A - Architect, Engineer and Land Surveying Services

The selection of a Consultant to provide Design Professional Services shall be competitively awarded in accordance with this Article 7. Where applicable the award of a Contract for Design Professional Services shall be in accordance with the Consultants' Competitive Negotiation Act, Florida Statutes Section 287.055, whether or not construction is involved. The provisions of this Article shall not apply to Professional Services in Article 5 hereof.

7-101 Architect, Engineer and Land Surveying Services for Specific Projects.

(1) *Conditions for Use.* Architect, engineer and land surveying Services shall be procured as provided in this section except as otherwise provided in Section 7-102 (Continuing Architect, Engineer and Land Surveying Services), Section 7-201 (Design-Build Services), Section 7-301 (Follow-Up Services or Reuse of Existing Plans), Section 7-302 (Obtaining Services in an Emergency), and Section 7-303 (Public Agency as Consultant).

(2) *Statement of Qualifications.* Any Procurement of Services specified in this section may require that Firms engaged in providing Services submit statements of qualifications expressing interest in providing such types of Services. The Awards Committee may specify a uniform format for statements of qualifications. The Evaluation Committee will evaluate such statements of qualifications and expressions of interest based upon objective criteria to be set forth in the Solicitation Documents as a means of determining those Firms that shall be recommended to the Awards Committee for Shortlisting.

(3) *Policy.* It is the policy of MDX to publicly announce all requirements for architect, engineer and land surveying Services and to negotiate Contracts for architect-engineer and land surveying Services on the basis of demonstrated competence and qualification for the type of Services required, and at fair and reasonable prices.

(4) *Receipt of Statements of Qualifications.* Upon receipt of Statements of Qualifications, the Chief Purchasing Officer shall stamp each Statement of Qualifications with the date and time of receipt. The Chief Purchasing Officer shall prepare a list of all responses received. Late Statements of Qualifications shall not be accepted under any circumstances, regardless of cause.

(5) *Evaluation.* The Evaluation Committee shall review and evaluate each response received in accordance with the criteria set forth in the Request for Statements of Qualifications. The evaluation criteria shall include, but not be limited to, professional qualifications, availability, and past work of the Firms, including the partners or members thereof. To the extent then permitted by applicable law as interpreted by Counsel, evaluation factors may also include whether the Firm is a Disadvantaged Business Enterprise or a Small Business Enterprise. The Evaluation Committee may conduct discussions with the Firms for the purpose of clarifying the contents of the Statements of Qualifications and/or scoring of the Statements of Qualifications, unless the Request for Statements of Qualifications allows respondents to supplement their Statements of Qualifications pursuant to guidelines addressed in the

procurement document.

(6) **Determination of Most Qualified Firms.** The product of the evaluation process shall be a list of most qualified proposers in order of ranking with the first proposer listed being the proposer judged most qualified to perform the required Services and the last proposer listed being the proposer judged least qualified to perform the required Services. Tie rankings are permissible. When proposers are tied for most qualified, those proposers shall be further ranked in accordance with procedures set out in the Solicitation Documents. The Evaluation Committee shall provide its recommended ranking to the Awards Committee for approval.

(7) **Request for Proposal/Request for Qualifications.** Proposals shall be solicited through either a Request for Proposal or Request for Qualifications. The Solicitation Document shall comply with Section 8-202 of this Policy and shall describe the scope of services required, list the type of information and Data required of each proposer and list all evaluation factors.

(8) **Evaluation Factors.** Evaluation factors shall include such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the Firm; and the volume of work previously awarded to each Firm by MDX, with the object of effecting an equitable distribution of Contracts among qualified Firms, provided such distribution does not violate the principle of selection of the most highly qualified Firms. To the extent then permitted by applicable law as interpreted by Counsel, evaluation factors may also include whether the Firm is a Disadvantaged Business Enterprise (DBE) or a Small Business Enterprise (as defined in MDX's Small Business Participation Policy) (SBE) or provides a certain percentage participation by either DBEs or SBEs, in compliance with MDX's Small Business Participation Policy.

(9) **Receipt of Proposals.** Upon receipt of a proposal, the Chief Purchasing Officer shall stamp the proposal with the date and time received. The Chief Purchasing Officer shall prepare a list of all proposals received. Late proposals shall not be accepted under any circumstances, regardless of cause.

(10) **Evaluation.** The Evaluation Committee shall review and evaluate proposals received in accordance with the criteria set forth in the Solicitation Documents. The Evaluation Committee may conduct discussions with any proposer for the sole purpose of clarifying the contents of its proposal. If contemplated by the Solicitation Documents, the Evaluation Committee may require all or a shortlisted group of proposers to make oral presentations before the Evaluation Committee, any other committee of MDX or the MDX Board.

(11) **Ranking of Proposals.** Unless otherwise set forth in the Solicitation Documents, the product of the evaluation process shall be a list of qualified proposers in rank order with the first proposer listed being the proposer judged most qualified to perform the required Services and the last proposer listed being the proposer judged least qualified to perform the required Services. Tie rankings are permissible. When proposers are tied for most qualified, those proposers shall be further ranked in accordance with procedures set out in the Solicitation Documents. The Evaluation Committee shall provide its recommended ranking to the Awards Committee for its approval and recommendation to the MDX Board.

(12) *Award.* Award shall be made by the MDX Board to the Responsive Proposer determined to be most qualified and in agreement with compensation and other Contract terms determined to be fair and reasonable. Multiple or split awards may be made if in the best interest of MDX and provided for in the Solicitation Document.

(13) *Negotiation of Contract.* With the assistance of Counsel, the Chief Purchasing Officer, or any person designated by the MDX Board, shall negotiate fair and reasonable compensation and other Contract terms with the most qualified proposer. If compensation and other Contract terms cannot be agreed upon with the most qualified proposer, then negotiations will be formally terminated with the selected proposer. If one or more other proposers are determined to be qualified, negotiations may be conducted with such other proposers, in the order of their respective ranking. A substantially final form of each Contract for Professional Services shall be presented to the MDX Board for approval.

(14) *Required Contract Terms and Conditions.* Counsel and the Chief Purchasing Officer shall ensure that all solicitations and Contracts comply with and contain terms and conditions required by the Consultants' Competitive Negotiation Act, Florida Statutes Section 287.055.

COMMENTARY:

- (1) *This section applies to Procurement of all Services within the scope of architecture, landscape architecture, professional engineering or land surveying and mapping as defined by the laws of the State of Florida whether or not Construction is involved.*
- (2) *The principal reasons supporting this selection procedure for architect, engineer and land surveying Services are the lack of a definitive scope of work for such Services at the time the selection is made and the importance of selecting the most qualified Firm. In general, the architect, engineer or land surveyor is engaged to represent MDX's interests and is, therefore, in a different relationship with MDX from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the most qualified architect, engineer or land surveying Firms are considered initially, and price negotiated later. This is also a requirement of CCNA.*
- (3) *It is considered more desirable (and required by law) to make the qualification selections first and then to discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of labor hours, personnel costs and alternatives that the architect, engineer or land surveyor should consider in depth). Once parameters have been fully discussed and understood and the architect, engineer or land surveyor proposes a fee for the work, the recommended procedure requires MDX to make its own evaluation and judgment as to the reasonableness of the fee.*
- (4) *If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing Firms. If the fee cannot be negotiated to the satisfaction of MDX, negotiations with other qualified Firms are initiated. Thus price clearly is an important factor in the award of the architect, engineer or land surveying Services Contract under this procedure. The principal difference between the recommended procedure for architect, engineer and land surveyor selection and the procedures used in most other competitive source selections is the point at which price is considered.*

7-102 Continuing Architect, Engineer and Land Surveying Services.

- (1) *Conditions for Use.* Continuing architect, engineer and land surveying Services Contracts may be entered into with no time limitation except that the Contract shall provide a

termination clause, when MDX requires these Services for:

- (a) projects in which Construction costs do not exceed \$1,000,000, or
- (b) study activity when the fee for such Professional Services does not exceed \$50,000; or
- (c) work of a specified nature outlined in a scope of Services, with no time limitation, except that the Contract must provide a termination clause.

The continuing Contract shall be awarded in accordance with the requirements of Section 7-101 (Architect, Engineer and Land Surveying Services for Specific Projects).

(2) *Multiple Awards.* Continuing architect, engineer and land surveying Services Contracts may be awarded to more than one proposer. Award shall be made to the proposers determined to be most qualified and in agreement to compensation and other Contract terms determined to be fair and reasonable.

(3) *Individual Project Price Proposals.* The Chief Purchasing Officer or project manager may normally obtain Price Proposals from continuing Consultants on a project-by-project basis. Assignment of a project to a continuing Consultant for any reason other than lowest Price Proposal meeting or exceeding all requirements shall be documented in writing.

COMMENTARY:

- (1) *Continuing Contracts may be advantageous to provide Services for several small Construction or study projects or for relatively small, recurring Construction or study projects.*
- (2) *Multiple awards provide for competitive Price Proposals for specific projects and for selection of the proposer with the highest level of expertise required for a specific project.*
- (3) *Assigning projects to the low-cost provider is preferred. However, projects may be assigned to continuing Consultants on the basis of superior expertise or scheduling/workload.*

Part B - Design-Build Provisions.

7-201 Design-Build Services.

(1) *Condition for Use.* Design-Build Services shall be procured as provided in this section except as otherwise provided in 7-302 (Obtaining Services in an Emergency).

COMMENTARY:

Design-Build Services may be employed when it is in MDX's best interest to have a single Contract with a Design-Build Firm for the design and Construction of a

project.

(2) *Procurement Methods*

MDX may use either the Competitive Proposal Selection Process or the Qualifications-Based Selection Process outlined herein for procurement of Design-Build Services.

(3) *Competitive Proposal Selection Process*

(a) *Selection of a Design-Build Consultant.* MDX may use a Design-Build Consultant employed by MDX or a Design-Build Consultant retained by MDX to prepare the Design Criteria. If MDX elects to retain the Services of a Design-Build Consultant to prepare and seal the Design Criteria, then the Design-Build Consultant shall be selected and contracted with in accordance with the requirements of Section 7-101 (Architect, Engineer and Land Surveying Services for Specific Projects). A Design-Build Consultant who has been selected to prepare the Design Criteria shall not be eligible to render Services under a Design-Build Contract executed pursuant to the Design Criteria. The Design-Build Consultant shall be available for consultation regarding the evaluation of proposals submitted by Design-Build Firms, for the supervision and approval of detailed working drawings of the project, and for evaluation of the compliance of the project Construction with the Design Criteria.

(b) *Preparation of Design Criteria.* Design Criteria shall be prepared for the design and Construction of the design-build project. The purpose of the Design Criteria is to furnish sufficient information so as to permit Design-Build Firms to prepare a response to MDX's Request for Proposals, or to permit MDX to enter into a negotiated Design-Build Contract. The Design Criteria shall specify applicable performance-based criteria for the Construction project, which may include, but not be limited to:

- (a) the legal description of the site;
- (b) survey information concerning the site;
- (c) interior space requirements;
- (d) material quality standards;
- (e) schematic layouts and conceptual design criteria;
- (f) cost or budget estimates;
- (g) design and Construction schedules;
- (h) site development requirements;
- (i) provisions for utilities;
- (j) storm water retention and disposal; and

- (k) parking requirements.

The Design Criteria shall be prepared by the selected Design-Build Consultant. If a Design- Build Consultant is retained by MDX, the Design-Build Consultant shall seal the Design Criteria.

(c) *Statements of Qualification.* Any Procurement of Services specified in this section may require that Firms engaged in providing Services submit statements of qualifications expressing interest in providing such types of Services. The Awards Committee may specify a uniform format for statements of qualifications. The Evaluation Committee will evaluate such statements of qualifications and expressions of interest based upon objective criteria to be set forth in the Solicitation Documents as a means of determining those Firms that shall be recommended to the Awards Committee for Shortlisting.

(d) *Receipt of Statements of Qualifications.* Upon receipt of Statements of Qualifications, the Chief Purchasing Officer shall stamp each Statement of Qualifications with the date and time of receipt. The Chief Purchasing Officer shall prepare a list of all responses received. Late Statements of Qualifications shall not be accepted under any circumstances, regardless of cause.

(e) *Evaluation.* The Evaluation Committee shall review and evaluate each response received in accordance with the criteria set forth in the Request for Statements of Qualifications. The evaluation criteria shall include, but not be limited to, professional qualifications, availability, and past work of the Firms, including the partners or members thereof. To the extent then permitted by applicable law as interpreted by Counsel, evaluation factors may also include whether the Firm is a Disadvantaged Business Enterprise or a Small Business Enterprise. The Evaluation Committee may conduct discussions with the Design-Build Firms for the purpose of clarifying the contents of the Statements of Qualifications and/or scoring of the Statements of Qualifications, unless the Request for Statements of Qualifications allows respondents to supplement their Statements of Qualifications pursuant to guidelines addressed in the procurement document.

(f) *Determination of Most Qualified Design-Build Firms.* The product of the evaluation process shall be a list of most qualified proposers in order of ranking with the first proposer listed being the proposer judged most qualified to perform the required Services and the last proposer listed being the proposer judged least qualified to perform the required Services. Tie rankings are permissible. When proposers are tied for most qualified, those proposers shall be further ranked in accordance with procedures set out in the Solicitation Documents. The Evaluation Committee shall provide its recommended ranking to the Awards Committee for approval.

(g) *Request for Proposals.* Proposals shall be solicited through the Request for Proposals approved by the Awards Committee. Only the approved proposers determined most qualified shall be solicited.

(h) *Evaluation Factors.* Unless otherwise set forth in the Request for Proposals, the Request for Proposals shall contain the criteria, procedures and standards for the evaluation of the Design-Build Contract proposals based on price, and technical and design aspects of the project, with numerical weightings for each evaluation criterion.

(i) *Receipt of Proposals.* Upon receipt of proposals, the Chief Purchasing Officer shall stamp each proposal with the date and time of receipt. The Chief Purchasing Officer shall prepare a list of all responses received. Late proposals shall not be accepted under any circumstances, regardless of cause.

(j) *Evaluation.* The Evaluation Committee shall review and evaluate each proposal received in accordance with the criteria set forth in the Request for Proposals. The Evaluation Committee may conduct oral presentations/interviews with any of the proposers for the purpose of clarifying the contents of the proposals and/or scoring of the proposals, unless the Request for Proposals allows proposers to supplement their proposals pursuant to guidelines addressed in the procurement document. However, no separate percentage of proposers scores shall be awarded for the oral presentations/interviews.

(k) *Ranking of Proposals.* The product of the evaluation process shall be a list of proposers in rank order with the first proposer listed being the proposer that submitted the highest evaluated proposal and the last proposer listed being the proposer submitting the lowest evaluated proposal. Tie rankings are permissible. When proposers are tied for the highest evaluated proposal, those proposers shall be further ranked in accordance with such procedures as shall be specified in the solicitation materials.

(l) *Award.* The Evaluation Committee shall submit the list of proposers in rank order to the Awards Committee for its approval and recommendation to the MDX Board. Award shall be made by the MDX Board to the Responsive Proposer submitting the highest evaluated proposal meeting or exceeding the design criteria requirements and the requirements of the Solicitation Documents. Multiple or split awards may be made if in the best interest of MDX and provided for in the Solicitation Documents.

(4) *Qualifications-Based Selection Process*

(a) *Selection of a Licensed Design Professional.* MDX may use a licensed design professional employed or retained by MDX to serve as MDX's representative ("Licensed Design Professional"). The Licensed Design Professional must assist MDX in the selection of the Design-Build Firm. The Licensed Design Professional may be an employee of MDX with sufficient qualifications or MDX may decide to procure the services of such a professional. If MDX decides to hire a third party engineer or architect to serve in this role, then the Licensed Design Professional shall be selected and contracted with in accordance with the requirements of Section 7-101 (Architect, Engineer and Land Surveying Services for Specific Projects).

(b) *Request for Statements of Qualifications.* Statements of Qualifications shall be solicited through the Request for Statements of Qualifications approved by the

Awards Committee. The Request for Statements of Qualifications should set forth a brief description of the design-build project, the type of information and data required of each responding Firm and the evaluation criteria and selection process to be used in determining the Design-Build Firms most qualified to perform the work associated with the project.

(c) Evaluation Factors. Unless otherwise set forth in the Request for Statements of Qualifications, the Request for Statements of Qualifications shall contain the criteria, procedures and standards for the evaluation of the Statements of Qualifications. The evaluation criteria may include, but not be limited to, professional qualifications, availability, and past work of the Firms, including the partners or members thereof, willingness to meet time and budget requirements, location, recent, current, and projected workloads of the firms, and the volume of work previously awarded to each firm by MDX, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. MDX may not yet, at this point in the procurement process, request, accept, or consider proposals for the compensation to be paid under the contract. To the extent then permitted by applicable law as interpreted by Counsel, evaluation factors may also include whether the Firm is a Disadvantaged Business Enterprise or a Small Business Enterprise.

(d) Receipt of Proposals. Upon receipt of Statements of Qualifications, the Chief Purchasing Officer shall stamp each Statement of Qualifications with the date and time of receipt. The Chief Purchasing Officer shall prepare a list of all responses received. Late Statements of Qualifications shall not be accepted under any circumstances, regardless of cause.

(e) Evaluation. The Evaluation Committee shall review and evaluate each Statement of Qualifications received in accordance with the criteria set forth in the Request for Statements of Qualifications. The Evaluation Committee may conduct discussions or oral presentations with the proposers for the purpose of clarifying the contents of the Statements of Qualifications and/or scoring of the Statements of Qualifications, unless the Request for Statements of Qualifications allows proposers to supplement their Statements of Qualifications pursuant to guidelines addressed in the Solicitation Documents. However, no separate percentage of proposers' scores shall be awarded for the oral presentations/interviews. MDX shall select no fewer than three firms deemed to be the most highly qualified to furnish the required services.

(f) Ranking of Project Proposals. The product of the evaluation process shall be a list of proposers in rank order with the first proposer listed being the proposer that submitted the highest evaluated proposal and the last proposer listed being the proposer submitting the lowest evaluated proposal. Tie rankings are permissible. When proposers are tied for the highest evaluated proposal, those proposers shall be further ranked in accordance with such procedures as shall be specified in the solicitation materials.

(g) Selection. The Evaluation Committee shall submit the list of proposers in rank order to the Awards Committee for its approval and recommendation to the MDX

Board. Award shall be made by the MDX Board to the Responsive Proposer determined to be the most qualified and in agreement with Contract terms determined to be fair and reasonable.

(h) Negotiations. After the proposers have been ranked, the Chief Purchasing Officer shall enter into negotiations with the most qualified proposer (highest ranked) to determine if they can reach an agreed-upon price for the desired services which MDX determines is fair, competitive, and reasonable. In making such determination, the Chief Purchasing Officer shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. If MDX is unable to negotiate a satisfactory contract with the proposer considered to be the most qualified at a price the Chief Purchasing Officer determines to be fair, competitive, and reasonable, negotiations with that proposer must be formally terminated. The Chief Purchasing Officer shall then undertake negotiations with the second most qualified proposer.

(i) Guaranteed Maximum Price and Completion Date. The selected proposer will subsequently establish a guaranteed maximum price and guaranteed completion date acceptable to the MDX Board.

(5) Stipend. The Awards Committee shall determine whether a stipend shall be paid to the unsuccessful proposers and the formula to be used for determining the amount of said stipend.

Part C - Miscellaneous Provisions.

7-301 Follow-Up Services or Reuse of Existing Plans.

(1) *Follow-Up Services.* Upon certification by the Chief Purchasing Officer that the purchase of Services described in this Article are follow-up or related studies by the Consultant originally performing the service, there need not be any public notice requirement or utilization of the selection process as provided in this Article.

COMMENTARY:

Retaining the Consultant originally performing a service for follow-up or related studies is unusual and must be thoroughly justified. One example of a situation where retaining the original Consultant for a follow-up or related study would be justified is when:

- (a) *a new study is small relative to the original study;*
and
- (b) *the Consultant must rely on the original study to perform the new study; and*
- (c) *the task of validating the original study is significant relative to the work required to perform*

the new study.

In this example, the follow-up or related study may only be done efficiently by the original Consultant.

(2) *Reuse of Existing Plans.* Notwithstanding any other provision of this section, there need not be any public notice requirement or utilization of the selection process as provided in this Article for projects in which MDX is able to reuse existing plans from a prior project. Public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of Section 287.0855(11), F.S.

7-302 Obtaining Services in an Emergency.

Notwithstanding any other provision of this Policy, the Chief Purchasing Officer may negotiate or authorize others to negotiate with the most qualified architect, engineer or land surveyor available at that time when there exists an Emergency. The Chief Purchasing Officer shall make a written determination of the basis for the Emergency and for the selection of the particular Consultant. [See Section 6-105.]

7-303 Public Agency as Consultant.

Nothing in this Article shall prevent MDX from utilizing another public agency and its staff as a consultant under this Article without the requirement of a competitive award.

ARTICLE 8 - SOLICITATION DOCUMENTS

Part A - Preparation of Solicitation Documents

8-101 Maximum Practicable Competition.

All Specifications, form of solicitations and Solicitation Documents shall seek to promote overall economy for the purpose intended and encourage competition in satisfying MDX's needs, and shall not be unduly restrictive.

COMMENTARY:

Proper drafting of Solicitation Documents requires experienced persons with superior writing skill, supported by adequate resources. The major goals of the drafters should be to encourage competition and prevent favoritism in the preparation of solicitation documents for items that economically meet the needs of MDX.

8-102 Solicitation Documents and Specifications Prepared by Consultants, Architects and Engineers.

The requirements of this Article regarding the purposes and nonrestrictiveness of purchasing documents shall apply to all purchasing documents and Specifications, including, but

not limited to, those prepared by consultants, architects, engineers, designers, and draftsmen for MDX Contracts.

Part B - Forms of Solicitations

8-201 General Guideline for the Contents of an Invitation to Bid.

- (1) *Invitation to Bid.* The essential elements of an Invitation to Bid are:
 - (a) a unique identifier for the solicitation;
 - (b) a brief statement of the required supply, service, or Construction item;
 - (c) the bid delivery requirements and the bid opening date;
 - (d) bid bond and performance/payment bond requirements, if any; and
 - (e) announcement of the pre-bid meeting and attendance requirements, if any.
- (2) *Instructions to Bidders.* The Invitation to Bid shall present general information applicable to the bidding and bid award process and any specific instructions or requirements applicable to the particular Invitation to Bid. The Invitation to Bid shall set forth the criteria and method by which all bids shall be evaluated.
- (3) *Form of Bid.* The Invitation to Bid shall set forth the prescribed form that all bidders shall use to record and submit their bids and any other bidder forms prescribed by this Policy.
- (4) *Contract Terms and Conditions.* The Invitation to Bid shall set forth substantially the content and the legal framework of the Contract between MDX and the Contractor.
- (5) *Standard Forms.* Subject to Section 6-402-B of this Policy, the Invitation to Bid shall set forth the forms the Contractor shall use in fulfilling the administrative requirements of the Contract.
- (6) *Purchase Description.* The Invitation to Bid shall set forth the Specifications and other technical requirements for the desired Supplies, Services, or Construction.
- (7) *Public Notice.* This shall be conducted in accordance with Section 2-502.
- (8) *Bid Opening.* Bids shall be opened publicly in the presence of the Chief Purchasing Officer and one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as may be specified by the Invitation to Bid, together with the name of each bidder, shall be read aloud and recorded; the record and each bid shall be open to public inspection to the extent provided in and in accordance with the Florida Public Records Law.
- (9) *Evaluation.* The Chief Purchasing Officer shall review and evaluate bids received in accordance with the criteria set forth in the Invitation to Bid. The Chief Purchasing Officer

may conduct discussions with any bidder for the sole purpose of clarifying the contents of its bid.

(10) *Bid Acceptance and Bid Evaluation.* Bids shall be received without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid. Criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable. The Invitation to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid. Late bids or amendment to bids after submission shall not be accepted under any circumstances, regardless of cause.

(11) *Bid Rejection.* MDX reserves the right, in its sole and absolute discretion, to reject all or any part of a bid or to waive informalities in its best interest. MDX also reserves the right to reject all bids and to rebid the project or elect not to proceed with the project.

(12) *Rejection of Exceptions to Requirements; Withdrawal of Bids.* MDX reserves the right to reject any exceptions to the requirements set forth in the Invitation to Bid contained in the bids. In such event, MDX will notify the bidder of its rejection of such exceptions and allow the bidder to withdraw the bid or to continue to be considered with the understanding that the exceptions are rejected.

(13) *Correction or Withdrawal of Bids; Cancellation of Awards.* The Invitation to Bid, or other applicable Solicitation Documents, shall govern any correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or Contracts based on such bid mistakes. After bid opening no changes in bid prices or other provision of bids prejudicial to the interest of MDX or fair competition shall be permitted. Except as otherwise provided in the Invitation to Bid or other Solicitation Documents, all decisions to permit the correction or withdrawal of bids, or to cancel awards or Contracts based on bid mistakes, shall be supported by a written determination made by the Chief Purchasing Officer. This shall also apply to Procurements where proposers submit Price Proposals.

(14) *Contract to be Awarded.* If the Contract is to be awarded based on price, the Contract must be awarded to the lowest qualified and responsive bidder in accordance with the terms of the Invitation to Bid. Nothing in this subsection shall restrict the rights of MDX to reject the low bid of a nonqualified or nonresponsive bidder. MDX specifically reserves the right to take the Bidder's past performance with MDX (and others) into consideration as one of the criteria used in determining whether the Bidder and the bid are responsive, responsible and qualified, and most advantageous to MDX.

COMMENTARY:

MDX recognizes that a bidder has no right, as a matter of law, to correct or withdraw a bid once a bid has been opened. MDX realizes, however, that certain circumstances may justify correction or withdrawal of a bid on a case-by-case basis.

(15) *Award.* The Awards Committee shall recommend and the MDX Board shall award the Contract with reasonable promptness by written notice to the Successful Bidder whose bid best meets or exceeds the requirements and criteria set forth in the Invitation to Bid. Tie bids

shall be resolved in accordance with operational procedures or guidelines as set out in the Invitation to Bid. MDX reserves the right to negotiate an adjustment of the bid price, including changes in the bid requirements, with the successful bidder, in order to bring the bid within the amount of funds available to MDX. Multiple or split awards may be made if in the best interest of MDX and provided for in the solicitation document.

8-202 General Guideline for the Contents of a Request for Proposal.

- (1) *Invitation to Propose.* The essential elements of a Request for Proposal are:
 - (a) a unique identifier for the solicitation;
 - (b) a brief statement of the purpose of the solicitation;
 - (c) the proposal delivery requirements and the proposal opening date; and
 - (d) announcement of the pre-proposal meeting and attendance requirements, if any.
- (2) *General Information.* The Request for Proposal shall set forth a brief statement of the purpose of the solicitation and general, background information that may be helpful to the proposer in preparing its proposal.
- (3) *Scope of Services.* The Request for Proposal shall set forth a detailed description of the Services desired.
- (4) *Minimum Requirements of Proposers.* The Request for Proposal shall set forth the requirements a proposer must satisfy in order to have its proposal considered, including the required form of proposal.
- (5) *Selection Criteria.* The Request for Proposal shall contain the criteria and method by which all proposals shall be evaluated.
- (6) *Sample Contract.* The Request for Proposal shall set forth a form of Contract for the engagement reflecting substantially the form and content of a Professional Services agreement or negotiated Contract acceptable to MDX for the particular solicitation. The form of Contract shall be approved by Counsel.
- (7) *Public Notice.* This shall be done in accordance with Section 2-502.
- (8) *Receipt of Proposals.* Upon receipt of a proposal, the Chief Purchasing Officer shall stamp the proposal with the date and time received. The Chief Purchasing Officer shall prepare a list of all proposals received. Late proposals shall not be accepted under any circumstances, regardless of cause.
- (9) *Evaluation.* The Evaluation Committee shall review and evaluate proposals received in accordance with the criteria set forth in the Request for Proposal. The Evaluation Committee may conduct discussions with any proposer for the sole purpose of clarifying the

contents of its proposal. If contemplated by the Request for Proposal, the Evaluation Committee may require all or a shortlisted group of proposers to make oral presentations before the Evaluation Committee, the Awards Committee, any other committee of MDX or the MDX Board.

(10) *Ranking of Proposals.* Unless otherwise set forth in the Request for Proposal, the product of the evaluation process shall be a list of qualified proposers in rank order with the first proposer listed being the proposer judged most qualified to perform the required Services and the last proposer listed being the proposer judged least qualified to perform the required Services. Tie rankings are permissible. When proposers are tied for most qualified, these proposers shall be further ranked in accordance with procedures set out in the solicitation document.

(11) *Award.* The Evaluation Committee shall provide its recommendation for award to the Awards Committee, who shall, in turn, provide its recommendation to the MDX Board. Award shall be made by the MDX Board to the Responsive Proposer determined to be most qualified and in agreement with compensation and other Contract terms determined to be fair and reasonable. Multiple or split awards may be made if in the best interest of the MDX and provided for in the solicitation document.

(12) *Negotiation of Contract.* With the assistance of Counsel, the Chief Purchasing Officer, or any person designated by the MDX Board, shall negotiate fair and reasonable compensation and other Contract terms with the most qualified proposer. If compensation and other Contract terms cannot be agreed upon with the most qualified proposer, then negotiations will be formally terminated with the selected proposer. If one or more other proposers are determined to be qualified, negotiations may be conducted with such other proposers, in the order of their respective ranking. A substantially final form of each Contract for Professional Services shall be presented to the MDX Board for approval.

8-203 General Guideline for the Contents of an Invitation to Negotiate.

(1) *Request For Qualifications.* Any Procurement specified in this section may require that Firms engaged in providing the Supplies and/or Services sought by MDX submit Statements of Qualifications in providing the required Supplies and/or Services. MDX may specify a uniform format for Statements of Qualifications and the Evaluation Committee may evaluate such Statements of Qualifications based upon objective criteria to be set forth in the Request for Statements of Qualifications as a means of determining those Firms that shall be invited to participate further in this alternative method of Procurement.

(2) *Invitation to Negotiate.* The negotiation methods chosen by MDX will vary depending on the special conditions of the project; therefore, the following elements of a typical Invitation to Negotiate do not preclude alternative negotiation models.

- (a) a unique identifier for the solicitation;
- (b) a brief statement of the purpose of the solicitation;
- (c) the response delivery requirements and the opening date; and

(d) announcement of a pre-response meeting and attendance requirements, if any.

(2) *General Information.* The Invitation to Negotiate shall set forth a brief statement of the purpose of the solicitation and general, background information that may be helpful to the Firm in preparing its response.

(3) *Scope of Services.* If MDX is not capable of accurately and completely defining the scope of Services for a project, i.e., because of rapidly changing technology or because the Commodities and/or Services may be provided acceptably in several different ways, the scope of services may be negotiable.

(4) *Minimum Requirements.* The Invitation to Negotiate shall set forth the requirements a Firm must satisfy in order to have its response considered, including the required form.

(5) *Selection Criteria.* The Invitation to Negotiate shall contain the criteria and method by which responses shall be evaluated. The Evaluation Committee will timely evaluate the Responses with the intention of selecting qualified proposers to participate in the negotiations with MDX.

(6) *Sample Contract.* The Invitation to Negotiate may set forth a form Contract for the engagement with the caveat that the specific provisions of the Contract will be negotiable.

(7) *Public Notice.* This shall be done in accordance with Section 2-502.

(8) *Evaluation.* The Evaluation Committee shall review and evaluate the responses received in accordance with the criteria set forth in the Invitation to Negotiate.

(9) *Negotiation.* The Chief Purchasing Officer shall negotiate the specific terms, the fair and reasonable compensation, the method of delivery, and other Contract terms with the most qualified Firm(s). MDX will undertake negotiations until the most qualified Firm is selected and an acceptable contract price is established. A substantially final form of each Contract for Professional Services shall be presented to the MDX Board for approval.

(10) *Award.* After evaluating the responses and negotiating with the Firm(s), award, by the MDX Board, shall be made to the Firm determined to be most qualified based on the combination of response, qualifications and price, as determined by MDX.

8-204 Pre-Bid and Pre-Proposal Meetings.

(1) *Meetings.* The Chief Purchasing Officer, or the Awards Committee, shall determine whether pre-bid and pre-proposal meetings shall be utilized for a particular solicitation.

(2) *Site Visits.* Site visits or similar inspections of site or equipment may be part of, or in addition to, the pre-bid or pre-proposal meeting.

(3) *Attendance.* Attendance at pre-bid and pre-proposal meetings and site visits may be optional or may be a requirement to have one's bid or proposal considered.

ARTICLE 9 - BOND REQUIREMENTS

9-101 Bid Security.

(1) *Requirement for Bid Security or a Bid Guaranty.* Bid Security or a Bid Guaranty ("Bid Security") may be required for all competitive sealed bidding or competitive negotiated bidding for Construction Contracts when the price is estimated to exceed \$200,000. Bid Security shall be a bond provided by a surety company authorized to do business in the State of Florida, the equivalent in cash, letter of credit or otherwise supplied in a form satisfactory to MDX. Nothing herein prevents the requirement of such bonds on Construction Contracts equal to or less than \$200,000, or other Contracts, when the circumstances warrant.

(2) *Amount of Bid Security.* Bid Security shall be in an amount stated as a dollar value or percentage of the bid or proposal.

(3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation to Bid or Solicitation Documents requires Bid Security, noncompliance requires that the bid or proposal be rejected unless the Chief Purchasing Officer determines that the bid or proposal fails to comply in a nonsubstantive manner with the Bid Security requirements.

(4) *Withdrawal of Bid or Proposals.* After the bids or proposals are opened, they shall be irrevocable for the period specified in the Solicitation Documents, except as provided in Section 8-201(13) (Correction or Withdrawal of Bids; Cancellation of Award). If a bidder or proposer is permitted to withdraw its bid or proposal before award, no action shall be taken against the bidder or proposer or the Bid Security.

9-102 Contract Performance and Payment Bonds.

(1) *Bond Requirements.* All performance and payment bonds for Construction Contracts or other Contracts, as determined by MDX, shall comply with the applicable laws.

(2) *When Required-Amounts.* When a Construction Contract is awarded in excess of \$200,000, or another Contract is determined to require such bonds, the following bonds or security shall be delivered to MDX and shall become binding on the parties upon the execution of the Contract:

- (a) a performance bond satisfactory to MDX, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to MDX, in an amount equal to 100% of the price specified in the Contract; and

- (b) a payment bond satisfactory to MDX, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to MDX, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. The bond shall be in an amount equal to 100% of the price specified in the Contract.

A Contract Bond satisfying the above requirements for both performance and payment bonds may also be accepted by MDX.

(3) *Reduction of Bond Amounts.* The Chief Purchasing Officer may reduce the amount of performance and payment bonds for Construction Contracts estimated not to exceed \$200,000 or other Contracts.

(4) *Authority to Require Bonds.* Nothing herein limits the authority of the Chief Purchasing Officer to require performance or payment bonds for Construction Contracts equal to or less than \$200,000, or other Contracts, when the circumstances warrant.

9-103 Alternative Forms of Security.

(1) *Alternative Forms.* In lieu of the bonds required in this Article 9, a contractor may, with the prior approval of MDX, file with MDX security in any of the following forms:

- (a) cash;
- (b) a money order;
- (c) a certified check;
- (d) a cashier's check;
- (e) an irrevocable letter of credit; or
- (f) other alternative forms of security approved by the Chief Purchasing Officer.

(2) *Purpose and Conditions.* Any alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bonds required by this Article 9.

ARTICLE 10 - RIGHTS OF APPEAL/INVOICE DISPUTE RESOLUTION

10-101 Right of Appeal – Before and After an Award.

(1) *Before an Award*

(a) Any proposer may protest any decisions made by MDX during a Procurement, and before Notice of Award (as defined herein) by filing a written protest with the Secretary of the MDX Board within seventy-two (72) hours, excluding

Saturdays, Sundays and legal holidays after the date of written notice from MDX of any such decision.

(b) Subsections (2)(b) – (f) shall apply to any protests filed before a Notice of Award.

(2) *After an Award*

(a) An award letter ("Notice of Award"), signed by the Chief Purchasing Officer shall be sent to all Proposers. Any Proposer may protest any recommendations for Contract award by filing a written protest with the Secretary of the MDX Board within seventy-two (72) hours, excluding Saturdays, Sunday and legal holidays, after posting of the Notice of Award.

(b) A protest bond in the amount of \$10,000.00 or as required in the Solicitation Documents will be required for any protest. Failure to comply with the requirements of subsections (a) and (b) of this section shall constitute a waiver of any right to initiate any protest proceedings regarding this project.

(c) Within five (5) Calendar Days from the date of filing of the protest, the protesting party shall provide MDX with the grounds for its protest.

(d) Upon receipt of a written protest that has been timely filed, MDX and the protesting party shall attempt to resolve the protest by mutual agreement within ten (10) Calendar Days from the date of filing of the protest.

(e) If the protest is not resolved by mutual agreement within ten (10) Calendar Days from the date of filing, MDX and the protesting party shall select a mutually agreed-upon mediator and participate in mediation. All costs of mediation shall be borne by the protesting party, unless otherwise agreed upon by MDX. No court proceedings regarding any protest may be filed until the parties have first participated in mediation.

(f) In the event that a party serving a protest in accordance with this section fails to: (1) resolve the protest by mutual agreement within ten (10) calendar days from the date of filing of the protest; (2) work with MDX to select an agreed-upon mediator and participate in mediation within thirty (30) days after the failure to reach a mutual agreement; or (3) file and serve the requisite legal proceeding within thirty (30) days after the termination of an unsuccessful mediation, the protest shall be deemed withdrawn and have no further force and effect. Any waiver of this provision must be in writing and signed by MDX's Executive Director.

10-102 Conflict between Solicitation Documents and Policy.

If prior to an award it is determined that there is a discrepancy between this Policy and the Solicitation Document, then the Solicitation Document may be affirmed, revised or withdrawn in the sole discretion of the Awards Committee.

10-103 Remedies After an Award.

If after an award it is determined that a solicitation or a Contract is in violation of this Policy, then:

- (a) if the Firm awarded the Contract has not acted fraudulently or in bad faith:
 - (i) the Contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of MDX; or
 - (ii) the Contract may be terminated.
- (b) if the Firm awarded the Contract has acted fraudulently or in bad faith:
 - (i) the Contract may be declared null and void; or
 - (ii) the Contract may be ratified and affirmed if such action is in the best interest of MDX, without prejudice to MDX's rights in regard to such damages as may be appropriate.

10-104 Invoice Dispute Resolution Procedure

In the event a dispute occurs between any person who sells goods or Services, sells or leases personal property, or leases real property to MDX (the "Vendor") and MDX regarding MDX's payment obligations, the disagreement shall be resolved as provided below.

(1) *MDX-Initiated Disputes*

(a) Construction Services:

1. Within twenty (20) business days of receipt of an invoice or payment request that, in MDX's sole opinion, does not conform with all statutory requirements and with all requirements specified by MDX in the Vendor's Contract Documents, or Procurement Policy, as amended, or otherwise incorrect, e.g., lack of details or supporting documentation (an "Improper Invoice"), MDX shall provide the Vendor with written notification that the invoice is improper. The notification will indicate what corrective action(s) must be taken by the Vendor to cure the Improper Invoice.

2. The Vendor's resubmittal must be received by MDX within ten (10) business days. If the resubmittal is improper, within ten (10) business days of receipt, MDX shall initiate the dispute resolution procedures set forth herein.

(b) Goods And Nonconstruction Services:

1. Within ten (10) calendar days of receipt of an invoice or payment request that, in MDX's sole opinion, is an Improper Invoice, MDX shall provide the Vendor with written notification that the invoice is improper. The notification will indicate what corrective action(s) must be taken by the Vendor to cure the Improper Invoice.

2. The Vendor's resubmittal must be received by MDX within ten (10) business days. If the resubmittal is improper, within ten (10) business days of receipt MDX shall initiate the dispute resolution procedures set forth herein.

(2) *Vendor-Initiated Disputes*

(a) If the Vendor disputes MDX's request for corrective action(s) as outlined in the written notification(s), the Vendor shall immediately submit a written protest via certified mail stating clearly and in detail the basis of the dispute.

(b) The Vendor shall define the dispute in writing with full particulars of all items in dispute including itemized amounts claimed and required backup documentation. **The failure of the Vendor to file a written protest within ten (10) days of receipt of MDX's notification will be deemed an acceptance of MDX's conditions for payment.**

(c) Upon receipt of the Vendor's written protest, MDX shall initiate the dispute resolution procedures set forth herein.

(3) *Invoice Dispute Resolution Procedures*

(a) Disputes Less Than Or Equal To \$100,000.

1. If a dispute occurs between a Vendor and MDX concerning the payment of an invoice with a disputed amount less than or equal to \$100,000, and in the event there is no dispute resolution procedure established by the Contract Documents, the Executive Director of MDX (the "Executive Director") will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes, claims, and controversies between MDX and the Vendor, in an effort to avoid delay and future claims.

2. Unless both parties agree to allow additional time, the Executive Director shall initiate an investigation of the dispute within forty-five (45) days after MDX's receipt of the Improper Invoice or the resubmittal. Pending final resolution of a dispute, unless otherwise agreed to in writing, the Vendor shall proceed diligently with performance of the Work and MDX shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

3. The Executive Director will issue a written decision no later than sixty (60) days after the date on which MDX received the Improper Invoice or the resubmittal. In cases of extreme complexity, both parties may agree to allow additional time for the Executive Director to formulate the recommendation. The written final decision shall be sent to the Vendor via certified mail within five (5) days from the date the final decision is made. Although both MDX and the Vendor should place great weight on the Executive Director's recommendation, it is not binding. If the Executive Director's recommendation does not resolve the dispute, all records and written recommendations will be admissible as evidence in any subsequent dispute resolution procedures.

4. Within 15 days of receiving the Executive Director's recommendation, both MDX (represented by the Director of the MDX department supervising the Vendor's Contract) and the Vendor will respond to the other and to the Executive Director in writing, signifying either acceptance or rejection of the Executive Director's recommendation. The failure of either party to respond within the 15 day period will be deemed an acceptance of the Executive Director's recommendations. If MDX and the Vendor are able to resolve the dispute with or without the aid of the Executive Director's recommendations, MDX will promptly process any required Contract changes.

5. Should the dispute remain unresolved, either party may appeal the decision to the Executive Director only when there is new evidence to present. If the parties cannot reach a mutual agreement with the Executive Director's assistance, then, within ten (10) calendar days after unsuccessfully resolving their differences, MDX and Vendor agree to mediate the dispute first with the Invoice Disputes Board (the "Disputes Board") and then, if unsuccessful, with a mutually agreed upon mediator. All costs of mediation shall be borne by the protesting party, unless otherwise agreed upon by MDX.

6. In the event the dispute is not resolved through mediation, either party may institute litigation. If litigation is initiated, the parties agree that venue and jurisdiction of any litigation between them will be vested solely in a court of competent jurisdiction sitting in Miami-Dade County, Florida. The parties expressly agree to waive trial by jury in any such legal proceeding.

7. In the event that a party serving a dispute in accordance with this section fails to: (1) resolve the dispute by mutual agreement using the Executive Director; (2) work with MDX to participate in mediation first the Disputes Board and then, if unsuccessful, with an agreed upon mediator; or (3) file and serve the requisite legal proceedings within thirty (30) days after termination of unsuccessful mediation, the dispute shall be deemed withdrawn and have no further force and effect. Any waiver of this provision must be in writing and agreed to by MDX's Executive Director.

(b) Disputes Greater Than \$100,000.

1. If a dispute occurs between a Vendor and MDX concerning the payment of an invoice with a disputed amount greater than \$100,000, and in the event there is no dispute resolution procedure established by the Contract Documents, the Disputes Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes, claims, and controversies between MDX and the Vendor, in an effort to avoid delay and future claims. Upon receipt by the Disputes Board of a written protest, either from MDX (represented by the Director of the MDX department supervising the Vendor's Contract) or the Vendor, it will first be decided when to conduct the hearing. Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation.

Unless both parties agree to allow additional time, a hearing before the Disputes Board shall be held within forty-five (45) days after MDX's receipt of the Improper Invoice or the resubmittal. Pending final resolution of a dispute, unless otherwise agreed to in writing, the Vendor shall proceed diligently with performance of the Services and MDX shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

2. The Disputes Board will provide special expertise to assist and facilitate the timely and equitable resolution of any disputes and controversies between MDX and the Vendor. The Vendor will be afforded an opportunity to be heard by the Disputes Board and to offer evidence. The Disputes Board will fairly and impartially consider disputes referred to it and will provide recommendations to assist in the dispute resolution. The Disputes Board will formulate its own rules of operation. It is not desirable to adopt hard and fast rules for the functioning of the Disputes Board. The entire procedure will be kept flexible to adapt to changing situations.

3. Normally, the hearing will be conducted at the Project Job Site or MDX Headquarters. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. While the Disputes Board will keep a record of its sessions during the consideration of a dispute, it may not be necessary for the Disputes Board to keep a formal record. This will depend on the nature and magnitude of the dispute and on the attitude of the parties. If possible, it is desirable to keep the hearings completely informal. Formal records of the Disputes Board meetings may be transcribed by a court reporter if requested by one party and agreed upon by the other.

4. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, MDX and/or Vendor will provide the requested information to the Board and to the other party.

5. MDX and the Vendor will have representatives at all hearings. The Vendor will discuss the dispute, followed by MDX. Each party will then be allowed successive rebuttals until all aspects are fully covered. The Board members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all the evidence presented by both parties.

6. After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more members. All Board deliberations will be conducted in private, with all individual views kept strictly confidential. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be

based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

7. The Board will issue a written decision no later than sixty (60) days after the date on which MDX received the Improper Invoice or the resubmittal. In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The written final decision shall be sent to the Vendor via certified mail within five (5) days from the date the final decision is made. Although both MDX and the Vendor should place great weight on the Invoice Disputes Board recommendation, it is not binding. If the Board's recommendations do not resolve the dispute, all records and written recommendations will be admissible as evidence in any subsequent dispute resolution procedures.

8. Within 15 days of receiving the Board's recommendations, both MDX and the Vendor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of either party to respond within the 15 day period will be deemed an acceptance of the Board's recommendations. If MDX and the Vendor are able to resolve the dispute with or without the aid of the Board's recommendations, MDX will promptly process any required Contract changes.

9. Should the dispute remain unresolved, either party may appeal the decision back to the Board only when there is new evidence to present. If the parties cannot reach a mutual agreement by using the Invoice Disputes Board then, within ten (10) calendar days after unsuccessfully resolving their differences, MDX and Vendor agree to mediate the dispute with a mutually agreed upon mediator. All costs of mediation shall be borne by the protesting party, unless otherwise agreed upon by MDX.

10. In the event the dispute is not resolved through mediation, either party may institute litigation. If litigation is initiated, the parties agree that venue and jurisdiction of any litigation between them will be vested solely in a court of competent jurisdiction sitting in Miami-Dade County, Florida. The parties expressly agree to waive trial by jury in any such legal proceeding.

11. In the event that a party serving a dispute in accordance with this section fails to: (1) resolve the dispute by mutual agreement using the Invoice Disputes Board; (2) work with MDX to select an agreed upon mediator and participate in mediation; or (3) file and serve the requisite legal proceedings within thirty (30) days after termination of unsuccessful mediation, the dispute shall be deemed withdrawn and have no further force and effect. Any waiver of this provision must be in writing and agreed to by MDX's Executive Director.

(4) *Invoice Disputes Board Membership:*

The Invoice Disputes Board will consist of the Executive Director, the Director of

Finance and Administration/CFO and an MDX Board member, appointed by the Chair of the MDX Board.

ARTICLE 11 - EQUAL EMPLOYMENT OPPORTUNITIES AND MDX SMALL BUSINESS PARTICIPATION POLICY

I. EQUAL EMPLOYMENT OPPORTUNITIES

MDX, in accordance with the Provisions of Title VII of the Civil rights Act of 1964, as amended, 42 U.S.C. §2000e *et. seq.*, the Florida Civil Rights Act of 1992, as amended, §760.10 *et. seq.*, Fla. Stat. as amended, and other Federal and State discrimination statutes, prohibits discrimination on the basis of race, color, sex, age, national origin, religion, and disability or handicap. MDX notifies all bidders and individuals that it requires and encourages equal employment opportunities for minorities and women as employees in the work force.

MDX strongly supports disadvantaged, small, minority and woman owned businesses having full opportunity to submit bids and proposals in response to Solicitation Documents issued by MDX and commits that bidder and proposers will not be discriminated against on the basis of sex, race, color, national origin, religion or disability, or other protected status. The overall goal of MDX is to obtain an M/WBE and/or DBE participation of twenty-five percent 25% for the aggregate of its projects (“Overall Participation Goal”). However, compliance with the Overall Participation Goal is not a prerequisite for bidders or proposers on MDX projects.

II. MDX SMALL BUSINESS PARTICIPATION POLICY

It is the policy of MDX to promote the utilization of small businesses by Prime Consultant/Contractors in the fulfillment of their contractual obligations with MDX. In accordance with this policy MDX has adopted the following Small Business Participation Policy which shall be applicable to all Contracts entered into with MDX for Construction and Professional Services, as defined below.

Section I *Definitions*

The following definitions shall apply:

“*Available or availability*” means to have, prior to Bid submission, the ability to provide professional or construction services under a Contract by having:

1. Reasonably estimated, uncommitted capacity and expertise;
2. All licenses, permits, registrations and certifications;
3. The ability to obtain bonding that is reasonably required to perform the Contract consistent with normal industry practice; and
4. The ability to otherwise meet all the Bid specifications.

“*Bid*” means a quotation, proposal, letter of interest or offer by any Bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the Contract.

“*Bid Preference*” means an amount deducted (for evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the Bid on a competitively bid Contract, which is not set-aside for bidding solely by Small Businesses.

“*Bidder*” means any person, partnership, corporation or other business entity that submits a Bid.

“*Business day*” means a regular week day (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal or State governments.

“*CBE Program*” means the Community Business Enterprise Program operated and administered by Miami-Dade County and as codified in Miami-Dade County Code of Ordinances, Part III, Chapter 2, Section 2-10.4.01.

“*CSBE Program*” means the Community Small Business Enterprise Program operated and administered by Miami-Dade County and as codified in Miami-Dade County Code of Ordinances, Part III, Chapter 10, Section 10-33.02.

“*Calendar day*” means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

“*Commercially useful function*” means contractual responsibility for the execution of a distinct element of the work of a Contract by a business enterprise and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

1. The evaluation of the amount of work subcontracted;
2. Normal industry practices;
3. The skills, qualifications, or expertise of the enterprise to perform the work;
4. Whether the business’ own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

“*Construction*” means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

“*Construction Manager*” replaces the general contractor and works for a fee with MDX and the architect through the design phase to contain the budget and schedule. The Construction Manager may provide a guaranteed maximum price (“GMP”), and bids the work out to local trade contractors. The Construction Manger mobilizes to the site and manages the trade contractors for quality and schedule.

“*Contract*” means an agreement proposed and/or entered into by MDX for Construction or

Professional Services.

“*Contracting participation level*” refers to the level in which a Small Business firm is classified based on the combined bonding capacity of the applicant firm and that of all the firm’s affiliates. A Small Business’ level of bonding capacity shall be determined by utilizing the American Institute of Architect’s (MA) Document A305 Contractor’s Qualification Statement or its equivalent as determined by Miami-Dade County pursuant to its CSBE and CBE Programs. In addition, Contracts of three million dollars (\$3,000,000.00) or less (which may be reserved for limited competition amongst Small Businesses) will be classified into one (1) of the three (3) Contracting Participation Levels based on estimated project cost. The three (3) Contracting Participation Levels are:

Level I..... \$0--\$500,000.00

Level II..... \$500,001.00--\$1,000,000.00

Level III..... greater than \$1,000,000.00

Contracts with estimated project costs in excess of three million dollars (\$3,000,000.00) shall be “open market” Contracts which all firms can Bid on.

Small Businesses prequalified in one (1) Contracting Participation Level may not Bid on a set-aside Contract whose estimated cost falls within a lower Contracting Participation Level (e.g., a Small Business classified in Level III may not Bid on Set-aside Contracts whose estimated cost falls within Level II or I). Small Businesses can Bid on Set-aside Contracts whose estimated cost exceeds the limits of the Contracting Participation Level in which they are classified (e.g., a Level I Small Business can Bid on Set-aside Contracts whose estimated cost falls within Level II or III).

“*Design-Build Contract*” means a single Contract with a design-build firm for the design and construction of a public construction project.

“*Design-Build Firm*” means a partnership, corporation, or other legal entity which:

1. Partnership or joint venture, having at least one partner in compliance with either of the following two requirements:
 - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
 - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.
2. An individual corporation or other legal entity in compliance with the following two requirements:

- a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
- b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.

"Draw" means a request for payment submitted by the Prime Consultant/Contractor to MDX. A scheduled draw occurs, according to the Contract's payment schedule, when the Prime Consultant/Contractor is allowed to submit its request for payment. The date(s) of a scheduled draw may be stated with specificity in the Contract in the form of a payment schedule or may be stated as a reoccurring event taking place, for example, on the 30th of each month.

"Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architectural or land surveying services or a construction related enterprise.

"Graduation" means the Small Business has exceeded the specific size limits stated for the CBE or CSBE Program, based on the firm's three-year average annual gross revenues, and will no longer be considered a Small Business.

"Guaranteed maximum price ("GMP")" is the cost of the project that the Contractor guarantees will not be exceeded.

"MDX Board" means the Governing Board of MDX and any of its Designees.

"Prime Consultant/Contractor" means the successful Bidder who directly contracts with MDX for any Professional Services or Construction Contract.

"Primary Trade Contractor" means those contractors who directly contract with the Construction Manager. This definition only applies to Contracts for a Construction Manager.

"Professional Services" shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state, or those performed by any registered architect, professional engineer, registered landscape architect or registered land surveyor in connection with his professional employment or practice.

"Program Incentive" is an incentive that a firm can choose to use in a Bid based on the Bidder's participation in the Mentor-Protégé or the Worker Training Programs. The incentive consists of either a Bid Preference or Selection Factor that will be used in evaluating the Bidder's Bid on a specific project. The program incentive is a reduction of two (2) percent of Bid price (for evaluation purposes, only) or the addition of up to ten (10) percent of the total evaluation points to the Bidder's total score, i.e. the Selection Factor, depending on the type of procurement. For a Construction Manager, the only applicable Program Incentive is the reduction of two (2) percent of the Bid price. At MDX's discretion, this may not apply to Professional Services or consultant procurements.

“*Selection Factor*” means a percentage of total evaluation points added to the points scored by a Bidder responding to an RSOQ, RFP or RFQ for a Contract which is not set-aside for competition solely amongst Small Businesses.

“*Services*” means construction, maintenance, painting, alteration or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.

“*Set-aside*” means reservation for competition solely among Small Businesses for a Contract whose estimated cost is three million dollars (\$3,000,000.00) or less.

“*SIC (Standard Industrial Classification) or the equivalent North American Industry Classification System (NAICS) code*” is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged.

“*Small Business*” means the following:

1. With regard to Professional Services firms, a firm which provides architectural, landscape architectural, engineering, or surveying and mapping professional services, including a Design-Build Firm:
 - a. whose three (3) year average annual gross revenues does not exceed two million (\$2,000,000) dollars for first tier CBE’s, four million dollars (\$4,000,000) for second tier CBE’s in the case of architectural, engineering or surveying and mapping services, or six million dollars (\$6,000,000) for second tier CBE’s in the case of landscape architectural services; and
 - b. who is certified as a CBE, either first tier or second tier, under the CBE Program and is considered in good standing under this program.
2. With regard to Construction firms, a construction related firm, including a Design-Build Firm:
 - a. whose average annual gross revenues for the last three (3) years do not exceed: two million dollars (\$2,000,000.00) for SIC 15 - Building Construction, General Contractors and Operative Builders; two million dollars (\$2,000,000.00) for SIC 16 - Heavy Construction, other than Building Construction; or, one million dollars (\$1,000,000.00) for SIC 17 - Specialty Trade Contractors. Small Business construction firms shall be categorized by the type of construction they perform in accordance with the two-digit Standard Industrial Classification (SIC) code, or the six-digit North American Industry Classification System (NAICS), of the Census applicable to such type of construction; and
 - b. who is certified as a CSBE under the CSBE Program and is considered in good standing under this program.
3. *A Micro Enterprise*, meaning a business entity certified by Miami Dade County

Department of Business Development (“DBD”), providing goods or Services, which has an actual place of business in Miami-Dade County and whose three (3) year average gross revenues does not exceed \$2 million, or a manufacturer with fifty (50) employees or less, wholesaler with fifteen (15) employees or less.

4. A *Small Business Enterprise (SBE)* meaning a business entity certified by DBD, providing goods or Services, which has an actual place of business in Miami-Dade County and whose three (3) year average gross revenues does not exceed \$5 million. The term Small Business Enterprise shall also include a manufacturer with one hundred (100) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues. Representations as to a business entity's average gross revenues and payroll shall be subject to audit.

“*Small Business Policy*” means the MDX requirement of having not less than ten (10) percent of an MDX Procurement award to Prime Consultant/Contractor(s) for Services dedicated to Small Businesses within that award, unless specifically exempted by the MDX Board.

“*Small Business Requirement*” means the Contract-specific requirement established for Small Business participation on a particular Contract.

“*Solicitation Documents*” has the meaning ascribed to it in the MDX Procurement Policy.

Section II *Program Components*

1. Application

Except where applicable laws or regulations mandate to the contrary, the provisions of this Policy shall require review of all Contracts to determine the appropriateness of applying Contract measures as set forth in this section.

2. Process.

Bidders and Proposers shall be required to satisfy the Small Business Requirement or receive at least the minimum score for Good Faith Efforts on MDX Projects. Bidders and Proposers failing to do so shall be deemed nonresponsive. Bidders and Proposers may also receive a Program Incentive for participation in the Mentor-Protégé or Worker Training Programs.

Proposers may also receive bonus points for exceeding the Small Business Requirement for a project. Bonus points shall be added to a proposer's final evaluation score and the proposer with the highest score shall be the apparent successful proposer, except for Design-Build projects where the bonus points shall be added to the Technical Score.

Bidders may also receive a percentage reduction of their bid for purposes of evaluation, only, based upon exceedance of the Small Business Requirement. If the application of the percentage reduction results in any amended bid(s) (“Amended SBE Bids”) that are lower than the lowest bid provided by a responsive and responsible bidder (“Low Bid”), then the bidder with the lowest Amended SBE Bid (“SBE Lowest Bidder”) shall be given the opportunity to (a) perform the work at the Low Bid, using the corresponding bid sheet or (b) perform the work at the Low

Bid using an amended bid sheet approved by MDX. If MDX rejects the amended bid sheet submitted by the SBE Lowest Bidder, then the only remaining option is for the SBE Lowest Bidder to agree to perform the work under the conditions stated in (a). If the SBE Lowest Bidder declines to perform the work under these conditions, the bidder with the next lowest Amended SBE Bid (if one exists) shall be provided the same opportunity and so on until all bidders with Amended SBE Bids lower than the Low Bid have been given the opportunity to perform the work at the Low Bid under the conditions stated herein. If none of these bidders accept, then the contract shall be awarded to the responsible and responsive bidder with the Low Bid.

3. Mentor-Protégé Program

MDX may establish a Mentor-Protégé Program which is defined as a community based effort involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The program is an effort to overcome difficulties that typically inhibit or restrict the success of Small Businesses and is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Protégé Program, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans, as well as long range stability. The program will provide a community benefit by strengthening emerging businesses and providing them with opportunities for growth, expansion and increased participation in economic development. In the event such a program is established, to be eligible for incentives under the Mentor-Protégé Program, the Mentors and Protégé must provide evidence indicating they are registered by the Miami-Dade County Department of Business Development in the County's Mentor-Protégé Program.

MDX expressly reserves the right to institute a Mentor-Protégé Program of its own in the future and to determine whether to include this program or Miami-Dade County's in its procurements.

4. Worker Training Programs

This refers to any qualified training program or technical school or other such Construction industry or Professional Services industry-related training program, as approved by MDX prior to receipt of any proposal or bid for a project in which credit for such programs is sought.

5. Educational Program

MDX may implement and administer an educational program providing seminars, training, classes, etc. to provide Small Businesses with the tools and information necessary to assist them in obtaining financing, bonds, completing bid documents and otherwise competing with larger firms in their respective industries.

6. Solicitation Documents

Solicitation Documents shall state the Small Business Requirement and provide:

- a. that only expenditures to Small Businesses for performing a commercially useful function shall be counted toward meeting the Small Business Requirement;

- b. that expenditures to Small Businesses for acting essentially as a conduit to transfer funds to a non-Small Businesses shall not be counted toward meeting a Small Business Requirement unless such conduct receives prior approval from MDX as consistent with normal industry practice; and
- c. that expenditures to Small Businesses who subcontract work further to non-Small Businesses shall not be counted toward meeting the Small Business Requirement unless such subcontracting receives prior approval from MDX as consistent with normal industry practice.
- d. that Contracts in excess of twenty-five million dollars (\$25,000,000.00) which have Small Business Requirements shall require the Prime Consultant/Contractor during the term of the Contract to make a quarterly report to the MDX Operations Committee on its performance/compliance in meeting such goal.
- e. For Contracts for a Construction Manager, that the Construction Manager shall be responsible for administering and implementing the requirements of this policy and the Contract documents. The Construction Manager shall be required to provide a certified statement indicating it shall satisfy the Small Business Requirement applicable to its Contract. Should such goal not be met, and the Construction Manager cannot substantiate its good faith efforts to meet this goal, the Contract between MDX and the Construction Manager shall be terminable at the option of MDX.
- f. notice that bidders or proposers may challenge or protest a Small Business Requirement established under this section by submitting, no later than ten (10) business days prior to the scheduled Bid or Proposal submittal date, the reasons for such challenge or protest in writing to the Chief Purchasing Officer. Challenges or protests to a Small Business Requirement by bidders or proposers after the time specified in the preceding sentence shall not be considered by MDX.
- g. For Professional Services Contracts of a continuing nature or other such contracts, that proposers shall be required to state they shall comply with the Small Business Requirement for the term of the agreement and provide the requested documentation relating to any subconsultants and/or subcontractors in the proposal and also during the project (as it is recognized that the subconsultants and/or subcontractors may not all be known at the time of proposal submittal).
- h. as determined by the Awards Committee, a bonus point structure for exceeding the Small Business Requirement for a project or a procedure for reducing a bid for purposes of evaluation, only, based upon such exceedance.

With the exception of Contracts for a Construction Manager as noted below, where a Small Business Requirement has been imposed, in order to assure at the time of Bid submission that agreements have been reached between the Prime Consultant/Contractor and the Small Business(es) it intends to utilize to meet the Small Business Requirement, Bid Documents shall require Bidders to submit the following at the time of Bid submission:

- (i) a Schedule of Participation Form (to be provided) identifying all Small

Businesses to be utilized to meet the Small Business Requirement, what tier the Small Business is in (if applicable), the trade designation of work each will perform, and the dollar value of such work;

(ii) a Commitment Letter, signed by an officer or other authorized representative of a Bidder for a Contract, which specifically commits the Bidder to meet the Small Business Requirement of the Contract;

(iii) a Letter of Intent signed by the Small Business(es) identified on the Schedule of Participation Form; and

(iv) evidence that the Small Business(es) identified on the Schedule of Participation Form is currently certified as defined herein.

For Professional Services Contracts and other such contracts, the Commitment Letter may, at MDX's discretion, be submitted with proposals. If that is the case, the Schedule of Participation, Letter of Intent and evidence of certification by Small Business shall be submitted for each subconsultant or subcontractor by the selected firm for MDX's approval prior to the start of any work on a project by the subconsultant and/or subcontractor. Failure to do so by the selected Firm shall be considered a breach of contract.

Failure to submit any of the above at the time of Bid submission shall render the Bid non-responsive. Submission of a defective Schedule of Participation Form shall render the Bid voidable.

For Contracts for a Construction Manager, the Primary Trade Contractors shall submit the Schedule of Participation Form, Commitment Letter, Letter of Intent and Evidence of Certification at the time of Bid submission to the Construction Manager. Failure to submit the required documents may render the Bid non-responsive, or be subject to sanctions or penalties as outlined in the Contract.

For Contracts for a Construction Manager, the Construction Manager shall be responsible for administering and implementing the requirements of this program and ensuring the goals are met and providing MDX with supporting documentation evidencing compliance on a monthly basis.

Bidders and Proposers whose Bids and Proposals fail to meet the Small Business Requirement, in order to remain eligible for award of the Contract, must submit evidence, at the time of Bid or Proposal submission, proving the lack of available Small Businesses to afford effective competition therefor and substantiate their good faith efforts to acquire Small Business participation as detailed in Section III.

7. Contract Measures

a. Contract Set-asides: The MDX Board may determine it is in its best interest to waive any competitive bidding or selection requirement and set-aside a Contract for Small Businesses when determined, prior to Bid advertisement, that there are at least three (3) Small Businesses available with the required expertise for the project. Contracts with estimated project construction cost less than or equal to three million dollars

(\$3,000,000.00) may be set-aside for competition by Small Businesses.

With respect to Construction Contracts, determination of availability will be based upon the Standard Industrial Classification (SIC) category the Small Business is in, as well as in the Contracting Participation Level that the Contract is classified in (based on the estimated project construction cost). Such Contracts will be placed into one (1) of three (3) Contracting Participation Levels based on the estimated project construction cost, and will be classified by Standard Industrial Classification (SIC) code. The three (3) Contracting Participation Levels are:

Level I..... \$0--\$500,000.00

Level II..... \$500,001.00--\$1,000,000.00

Level III..... Greater than \$1,000,000.00

Small Businesses will also be categorized by Contracting Participation Level, which will be determined by the Contract participation level the Small Business is qualified for under Miami-Dade County's CSBE Program.

MDX may allow all Contract Participation Levels to compete in a solicitation if it is determined that greater Small Business participation may result.

Small Businesses certified pursuant to Miami-Dade County's CSBE Program in one (1) bonding capacity (e.g. those in bonding capacity Level III) may not bid on a lower level Contract set-aside for Small Businesses (e.g., a three hundred thousand dollar (\$300,000.00) project which falls into Level I). However, a Small Business in a lower level may bid on Contracts whose estimated cost falls within a higher level (e.g., a Level I Small Business may bid on a Level II or III Contract).

Transferring to a non-Small Business through subcontracting or otherwise all or part of the actual work of a Set-aside Contract is prohibited unless such transfer receives prior approval from MDX as consistent with normal industry practice.

A Small Business may compete for any Set-aside Construction Contract in the SIC code for which the Small Business is certified.

- b. Selection factor: A Prime Consultant/Contractor responding to an RSOQ, RFP or RFQ for a Contract which is not set-aside for competition solely amongst Small Businesses shall be entitled to a Program Incentive of up to ten (10) percent of the total evaluation points for participation in the Worker Training Program or the Mentor-Protégé Program. The MDX Board shall establish a sliding scale which provides the extent of preference given a Prime Consultant/Contractor hereunder. In no event shall the cumulative effect of the selection factor hereunder, exceed ten (10) percent of the total evaluation points on any one (1) RSOQ, RFP or RFQ.
- c. Bid Preference: A Prime Consultant/Contractor bidding on a competitively bid Contract which is not set-aside for competition solely amongst Small Businesses shall be entitled

to a Program Incentive of up to two percent (2%) of such Prime Consultant/Contractor's bid price (for Bid evaluation purposes only) for participation in the Worker Training Program or the Mentor-Protégé Program. The MDX Board shall establish a sliding scale which provides the extent of preference given a Prime Consultant/Contractor hereunder. In no event shall the cumulative effect of the Bid Preference hereunder, exceed two percent (2%) of such Prime Consultant/Contractor's Bid price.

- d. If a Small Business firm is graduated from that program, it shall likewise become ineligible to participate as a Small Business on MDX Contracts. These firms shall be allowed to complete any currently awarded Contract. However, for Professional Services Contracts, or other contracts of a similar nature, the Small Business may, at MDX's discretion, continue to work on the project and be counted towards satisfaction of the prime consultant's annual Small Business Requirement for a period equal to the lesser of the term of the agreement or two (2) years after graduation. However, the graduated firm will not be eligible to receive any new Contracts under the Small Business program.
- e. If a Small Business is debarred from that program, it shall likewise become ineligible to participate as a Small Business on MDX Contracts.

8. Sanctions for Contractual Violations

Solicitation Documents and Contracts shall provide that, notwithstanding any other penalties or sanctions provided by law, a Bidder's violation of or failure to comply with this Policy may result in the imposition of one (1) or more of the following sanctions:

- a. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- b. Work stoppage;
- c. Termination, suspension, or cancellation of the Contract in whole or part;
- d. In the event a Bidder, Proposer or Small Business attempts to comply with the provisions of this Policy through fraud, misrepresentation, or material misstatement, MDX shall, whenever practicable, terminate the Contract. In addition, and as a further sanction, MDX may impose any of the above-stated sanctions on any other Contracts the Bidder, Proposer or Small Business has on MDX projects. In each instance, the Bidder, Proposer or Small Business shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs.
- e. The foregoing notwithstanding, MDX shall include language in all prospective Contracts containing a Small Business provision which provides that, in addition to any other sanction for failure to fulfill the Small Business Requirement requirements, the Prime Consultant/Contractor's eligibility to receive any future Contracts from MDX may be conditioned upon the Prime Consultant/Contractor making up the deficit in Small Business Requirement in such future Contracts by having Small Business(es) perform equal to double the dollar value of the

deficiency in the Small Business Requirement in the prior Contract. The foregoing obligation shall be in addition to any Small Business Requirement otherwise applicable to the future Contract.

- f. Some of the contractual violations that may result in the imposition of the sanctions listed in herein include, but are not limited to, the following:
- (i) A Small Business serving as a conduit for work awarded to a firm as a Small Business but which is being performed by a non-Small Business firm;
 - (ii) A Prime Consultant/Contractor not meeting Small Business Requirement on its contract;
 - (iii) Not obtaining or retaining Small Business certification while performing work designated for Small Business firms.
 - (iv) Failure to submit monthly utilization reports;
 - (v) Deviation from the Schedule of Participation without prior approval from MDX;
 - (vi) Termination of the Small Business's Contract without prior approval from MDX;
 - (vii) Reduction of the scope of work of a Small Business subcontract without prior approval from MDX;
 - (viii) Modifications to the terms and/or prices of payment to a Small Business without prior approval from MDX;
 - (ix) Unjustified failure to enter into a written subcontract with a Small Business after listing the firm on a Schedule of Participation.

9. Prompt Payment

- a. The MDX Board shall establish procedures requiring that billings from Prime Consultants/Contractors under contract with MDX shall be promptly reviewed and payment made to the Prime Consultant/Contractor by MDX on those amounts not in dispute within the legally required number of days after receipt of such billing by MDX.

MDX shall notify the Prime Consultant/Contractor, in writing, of those billings submitted by the Prime Consultant/Contractor which are in dispute, pursuant to Section 10-104 of this Policy. This provision is applicable regardless of whether the disputed billing pertains to the work performed and/or billing of Small Businesses.

- b. A Prime Consultant/Contractor shall include in its billing to MDX copies of those billings from Small Businesses utilized to meet the Small Business Requirement

applicable to the Contract which the Prime Consultant/Contractor approves and whose cost is included in the payment requested from MDX.

Undisputed portions of billings from Small Businesses that are submitted to the Prime Consultant/Contractor at least five (5) days or more before the date of the Prime Consultant/Contractor's next scheduled draw must be submitted by the Prime Consultant/Contractor to MDX in the Prime Consultant/Contractor's next scheduled draw, according to the Contract's payment schedule. For example: if MDX's billing cycle on the specific Contract allows the Prime Consultant/Contractor to submit its draw on the 30th of each month, a Small Business that submits its billing to the Prime Consultant/Contractor on or before the 25th of the month shall have its billing included in the Prime Consultant/Contractor's next scheduled draw submitted to MDX on the 30th.

Undisputed portions of billings from Small Businesses that are submitted to the Prime Consultant/Contractor less than five (5) days before the Prime Consultant/Contractor's next scheduled draw, may be submitted in the next draw; however, said billings shall be submitted no later than in the Prime Consultant/Contractor's next subsequent scheduled draw. For example, if MDX's billing cycle on the specific Contract allows the Prime Consultant/Contractor to submit its draw on the 30th of each month, a Small Business that submits its billing to the Prime Consultant/Contractor after the 25th of the month but before the 30th of the month shall, at the latest, have its billing included in the Prime Consultant/Contractor's subsequent scheduled draw submitted to MDX on the 30th of the following month.

- c. Failure by the Prime Consultant/Contractor to include or submit the Small Business' billing(s) in its next scheduled draw or subsequent scheduled draw to MDX as outlined above, and absent notification of disputes, as set forth herein, shall result in the Prime Consultant/Contractor making full payment directly to the Small Business for the full amount of the submitted billing(s). Full payment to the Small Business for the particular billing(s) shall be made by the Prime Consultant/Contractor within the same number of days that MDX has mandated as the billing cycle for said Contract in operation, or within forty (40) calendar days of submittal of such billing(s) by the Small Business to the Prime Consultant/Contractor, whichever is less, regardless of whether the Prime Consultant/Contractor has received its payment from MDX.
- d. Contracts to which a Small Business Requirement has been applied shall require that billings from Small Businesses shall be promptly reviewed and payment made to such Small Businesses on those amounts not in dispute within two (2) business days of receipt of payment therefor. The foregoing obligation to promptly review and pay Small Businesses billings shall apply to Prime Consultant/Contractors who are in direct privity with the Small Business. The two (2) day payment provision shall equally apply to retainage payments received by Prime Consultant/Contractors from MDX, and subsequently passed on to Small Businesses.
- e. The Prime Consultant/Contractor agrees to the Contract requirements contained within the Contract Documents for each MDX project and/or MDX's General Specifications. If the Contract Documents are silent on payment of SBEs, this Policy shall control. The

requirements found therein are hereby fully incorporated into this Small Business Prompt Payment Subsection and non-compliance, by failing to pay Small Business and failing to provide the requisite Small Business affidavit and/or consent of surety to requisition payment, shall be enforceable through this Subsection.

- f. The Prime Consultant/Contractor on a Contract to which a Small Business Requirement has been applied shall inform the Chief Purchasing Officer and the Small Business, in writing, of those amounts billed by the Small Business which are in dispute, and the specific reasons why they are in dispute, within five (5) calendar days of submittal of such billing by the Small Business to the Prime Consultant/Contractor.

Failure of the Prime Consultant/Contractor to comply with the applicable requirements of this Subsection shall result in the Prime Consultant/Contractor's forfeiture of the right to use the dispute as justification for not paying the Small Business and payment shall be forthcoming from the Prime Consultant/Contractor.

- g. None of the provisions of this section requiring the Prime Consultant/Contractor to make full payment on any billing by a Small Business due to failure to comply with this section shall be construed as also requiring MDX to make a similar full payment of that billing to the Prime Consultant/Contractor. MDX shall not be precluded from disputing billings submitted by Prime Consultant/Contractors in accordance with Section 10-104 of this Policy.
- h. Failure of the Prime Consultant/Contractor to comply with any of this Policy's requirements shall result in the imposition of one (1) or more of the following sanctions:
 - (i) The suspension of any payment or part thereof until such time as the issues concerning compliance have been resolved;
 - (ii) Work stoppage;
 - (iii) Termination, suspension, or cancellation of the Contract in whole or part;

Section III *Good Faith Efforts*

A. Prime Contractors/Consultants who fail to meet the Small Business Requirement are required to submit with their Bid all efforts that would demonstrate a "Good Faith Effort" in the solicitation of sub-consultants/sub-suppliers or subcontractors to meet the Small Business Requirement on the project.

The documentation will be judged on a matrix system with 100 points maximum. Bidders must receive a minimum of 80 points to qualify as having made a Good Faith Effort. Each item is evaluated on a pass/fail basis with either full or zero points received for compliance with each item.

1. Advertisements – 20 Points

Effort: The Bidder shall advertise in the general circulation media, and trade association

publications. The advertisement shall appear at least 10 days prior to the bid date. If the solicitation period is shortened and does not allow a 10-day notice then a shorter publication period may be acceptable as determined by MDX.

Evidence: Include a list of publications where the advertisement was placed; include a copy of the advertisement and a rate sheet. Advertisement shall include, at a minimum, project location; indication of MDX as owner; location where plans and specifications may be obtained or viewed; sub-bid due date; trade or scopes of work for which subcontracts are being solicited; statement that Bidder intends to conduct itself in good faith with Small Business firms for participation on the project.

2. Attendance At Pre-Bid Conference - 5 Points

Effort: Attendance by the Bidder at any pre-bid conference scheduled by MDX. Although attendance may be optional, this will remain one of the criteria for meeting good faith efforts.

Evidence: Attendance will be verified by conference sign-in sheet.

3. Written Notification - 20 Points

Effort: Written notification sent by the Bidder to Small Businesses certified pursuant to Miami-Dade County's CBE or CSBE Program.

Evidence: Name, address, contact person and date of written notice, the letters should outline the type of work, material, equipment, or services sought to be subcontracted. Copies of these letters to each Small Business should be well documented. Notification must be dated at least ten (10) working days before the Bid date. Firms must be certified pursuant to Miami-Dade County's CSBE or CBE Program and an adequate number of Small Businesses contacted in each SIC code category must be contacted (5 or less – contact all; 6 to 10 – contact at least 5; 11 to 50 – contact 50%, 51 or more – contact at least 25).

4. Follow Up – 15 Points

Effort: Bidder followed up initial sub-consultant/sub-supplier or subcontractor Bid solicitation.

Evidence: Include a list of sub-suppliers/sub-consultants or subcontractors who were followed up by phone call or revisited after negotiations, and results of that contact, list contact names of Small Businesses, dates and letters.

5. Feasible Portions Of Work – 15 Points

Effort: To break the project up into economically feasible portions of work. Identified and selected specific work categories that may be subcontracted to Small Businesses.

Evidence: Include steps taken to segment elements of the work into economically feasible units to meet Small Business availability. Identify sub-consultants/sub-suppliers subcontractors

and scope of work involved in segmenting; show dates negotiations took place.

6. Efforts Made To Negotiate – 15 Points

Effort: Written statements of the Bidder’s effort made to negotiate with Small Businesses certified pursuant to Miami-Dade County’s CSBE or CBE Program.

Evidence: Names, addresses and telephone numbers of Small Businesses certified pursuant to Miami-Dade County’s CBE or CSBE Program contacted by the Bidder offering to negotiate prices or services, outline steps taken. Give dates negotiations took place with each subcontractor, explain the offers made to Small Businesses. Document quotes/proposals received for work category solicited to sub-consultant/sub-supplier and/or subcontractors. Barring lack of qualifications, only significant price differences (7% or more) will be considered cause for rejecting Small Business proposals, and evidence of this price differential must be made available.

7. Outreach Efforts – 10 Points

Effort: Document outreach efforts to locate Small Businesses certified pursuant to Miami-Dade County’s CBE or CSBE Program by utilizing local, state and federal business assistance offices.

Evidence: Provide copies of letters, faxes, telephone logs, etc. used to contact organizations. Include the names of organizations/groups, dates persons contacted, and telephone numbers. Provide copies of correspondence received from any of the organizations/groups acknowledging contact by the Bidder. Must notify at least five Small Business organizations.

B. MDX may waive or reduce the Small Business Requirement on a particular contracting opportunity when good faith efforts are demonstrated by the Bidder. MDX shall make the determination of whether a Bidder has made good faith efforts. The Bidder may appeal such determination. This appeal must be filed with MDX within five (5) days from the date of the decision. The MDX Board shall conduct a hearing regarding the determination. MDX shall have the authority to request attendance of any witnesses and production of any documents. The Bidder's failure to comply with these requests promptly may be grounds for a denial of the appeal.

NOTE: MDX shall investigate and verify information submitted in making decisions awarding Good Faith Effort points.

Article 12

CONTRACT PERFORMANCE EVALUATION POLICY

12.101 PURPOSE

To set forth an internal procedure for evaluating the performance of MDX Consultants and Contractors, to further set out policies for using performance evaluations to monitor and ensure satisfactory compliance by Consultants and Contractors with their contractual scopes of services, and for use of the evaluations in the procurement process.

12.201 SCOPE

This procedure applies to all contracts administered by the Authority, in excess of \$25,000.00.

12.301 GENERAL POLICY STATEMENT

Pursuant to the direction of the MDX Board the Authority herein sets out a comprehensive policy for evaluating Consultants' and Contractors' performance. MDX's use of outside Consultants and Contractors to perform core functions makes it essential to evaluate the performance of outside Consultants and Contractors to ensure that MDX is achieving its mission. A further related purpose of these evaluations is to ensure that staff and the Consultants and Contractors are aware of performance expectations and to provide a standard set of criteria for judging the Consultants and Contractors work and performance.

As a secondary but equally important goal the MDX Board wants to ensure that MDX selects Consultants and Contractors that are best able to perform the Authority's work. To that end, the Authority shall solicit offers from, award contracts to, and consent to subcontract only with responsible Firms. The evaluation process shall also be used to determine whether MDX's current Consultants/Contractors can seek additional MDX work, based on their past performance with MDX. MDX also considers the past performance evaluations of Miami-Dade County and FDOT in evaluating Proposers' qualifications in response to solicitations for MDX's work.

12.401 DEFINITIONS

Completion - When the Certificate of Final Acceptance is signed by the Authority's Project Manager and/or the final payment or invoice is processed by the Finance Department.

Consultant, Prime Consultant, Contractor, or Prime Contractor means any firm or other legal entity permitted by law to perform the Services in the State of Florida. Such legal entity shall be the entity that enters into a written Contract with MDX to perform the Services for the Project described in the Solicitation Documents and Contract Documents. In the context of the

Solicitation Documents, the Consultant is the Proposer, Prime Consultant or Contractor. The Contractor is the Bidder or Contractor, as applicable.

Contract Performance Evaluation (CPE) – means the performance evaluation completed by the Project Manager utilizing the referenced forms herein, either annually or at contract or project completion and/or as stipulated in the contract.

Contract Start Date – means the later of either the contract effective date or the date a Notice to Proceed (“NTP”) is issued by MDX.

Consultant/Contractor Contract Performance Evaluation Effective Date - The Effective Date for the contract performance evaluations shall be as follows:

- a. For Overall Performance Ratings of “Outstanding” to a “Satisfactory”, the Effective Date shall be the Reviewer’s signature date, or the date an “Unsatisfactory” evaluation is changed to Satisfactory or higher by the Performance Evaluation Committee.
- b. For Overall Performance Ratings of “Unsatisfactory”, the Effective Date shall be the Executive Director’s signature date.

Corrective Action- A written plan of action to be submitted to MDX and implemented by any Consultant/Contractor receiving an Unsatisfactory Contract Performance Evaluation.

Final Contract Performance Evaluation - The Contract Performance Evaluation given at contract or project completion that is inclusive of all relevant interim performance evaluations. If there are no interim performance evaluations, then the final contract performance evaluation rating the performance of the Consultant/Contractor shall be for the contract term or applicable project.

Interim Contract Performance Evaluation – means an evaluation of the work performed for the Authority by a Consultant/Contractor during its contract term. This evaluation is based on documented information developed during the performance of a project administered by Authority staff using an approved evaluation form for the category of Consultant/Contractor and the work being performed.

Performance Review Committee – shall mean the “Awards Committee” applicable for the specific contract scope of services in accordance with the MDX By-laws.

Professional Services - *Professional Services* means those services, the value of which are substantially measured by the professional competence of the Firm performing them and which are not susceptible to realistic evaluation/assessment by cost of Services alone. Professional Services may include, but are not limited to, Services customarily rendered by professions governed by CCNA, attorneys, certified public accountants, insurance, financial, personnel, public relations consultants, legislative consultants, information systems, and planning and management consultants.

Project Manager - means an individual who has been assigned project/contract management responsibility for successful completion of a project(s) from inception to final acceptance.

Rater – means the Project Manager completing the Contract Performance Evaluation.

Reviewer – means the Department Director/Manager that reviews and approves the Rater's assessment of the Consultant/Contractor Contract Performance Evaluation.

Responsible Bidder/Proposer - means a Firm that has the business judgment, experience, facilities and capability in all respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance. For Firms that are providing or have provided services to MDX, said Firm is deemed to be a responsible Bidder/Proposer where said Firm has performed or is performing Services for the Authority with a Satisfactory or better Final or Interim Contract Performance Evaluation demonstrating the capacity in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. A Firm that has no work history with the Authority is deemed to be a responsible Firm

Watch Status - means a Consultant/Contractor that received an Unsatisfactory performance evaluation, and where a corrective plan has been put into effect. A Consultant/Contractor on Watch Status will be scheduled for more frequent performance evaluations based on a schedule to be determined between the Consultant/Contractor and the Project Manager. Placement on a Watch Status is designed to ensure the Consultant/Contractor's performance improves. Failure to improve may result in being suspended from performing work for the Authority and may trigger default proceedings pursuant to the terms of the Consultant/Contractor's contract.

PART A CONTRACT PERFORMANCE EVALUATION PROCEDURE FOR CONTRACT MANAGEMENT

12.501 Performance of Evaluation

The Project Manager will be responsible for completing a Contract Performance Evaluation (CPE) that best indicates the Consultant/Contractor's work performance since the last performance evaluation for the appropriate contract. The Project Manager shall discuss the evaluation with the Consultant/Contractor before formal submittal to give the Firm an opportunity to address any issues raised by the evaluation. Upon completing the evaluation the Department Director/Manager with responsibility for the Contract shall execute the completed CPE. The completed CPE shall be retained for 3 years.

12.502 Consultant/Contractor Right to Respond to Evaluation

The Consultant/Contractor shall have the ability to file a written response or rebuttal to an evaluation performed under the authority of this Policy. Any Consultant/Contractor’s response shall be filed along with the CPE in the Consultant/Contractor’s Contract file.

12.503 Evaluation Scale and Forms

The MDX Project Manager shall rate Consultants/Contractors using the following scale:

- Outstanding Performance = 90 and Above
- Above Satisfactory Performance = 80 - 89
- Satisfactory performance = 70 -79
- Unsatisfactory performance = 69 and below.

Approved CPE Forms containing instructions for completion are attached hereto as Exhibits. The Rater shall use the appropriate CPE Form to evaluate the Consultant/Contractor’s performance.

12.504 When to Evaluate/Frequency

Generally, the Rater shall conduct a performance evaluation on an annual basis and at the completion of the contract/project, which ever comes first, within thirty (30) calendar days of said timeframe for all Authority Consultants/Contractors unless otherwise stated herein. At the discretion of the Department Director/Manager more frequent evaluations may be conducted if warranted by circumstances, including but not limited to any Consultant/Contractor on Watch Status as part of a Corrective Action Plan.

An overall rating of less than “Satisfactory” shall include an explanation in the comments section of the evaluation form as well as supporting documentation. An individual item rating of less than Satisfactory shall include supporting documentation as deemed appropriate by the Department Director/Manager as well. The Department Director/Manager shall notify the Executive Director of all Final CPEs and the results of all Unsatisfactory Interim CPEs. Copies of all completed construction Contract Performance Evaluation forms shall be sent to the Contractor’s surety within fourteen (14) calendar days of execution by all required parties and the expiration of any appeal filed by the Consultant/Contractor.

The specific Evaluation schedule for each type of Authority contract is as follows:

a. Professional Services:

If the contract is Task Authorization (“TA”) driven, an evaluation will be performed within thirty (30) days of the completion of each TA. If any TA is authorized for a period of time exceeding one year, an annual CPE will be completed within 30 days of the anniversary date of the TA execution unless otherwise recommended during the solicitation process or determined by contract. If the contract is not TA driven annual CPE’s shall be performed within 30 days of the contract’s anniversary date.

b. Construction Services:

Construction services contracts with a term longer than four (4) months shall be evaluated on a monthly basis by the appropriate CEI as assigned by MDX in accordance with CPAM with copies of the resulting CPPR provided to the MDX Rater monthly for review. MDX shall perform a CPE every six (6) months and at the Final Acceptance of all construction Projects. An interim CPE shall be performed sooner than the schedule set out herein if the monthly CPPR indicates poor performance. If the Contract is Work Order driven, a Construction CPE will be completed by MDX within thirty (30) days after the completion of each Work Order or within 30 days after construction is complete and Final Acceptance has been approved by MDX. For Projects shorter than 4 months a Final CPE shall be performed.

c. Contract Extension or Termination:

Any contract extension or termination presented to the MDX Board, or Executive Director for approval shall be presented with the most recent CPE of the Consultant that is less than six (6) months old. A CPE shall be performed if the most recent CPE is greater than 6 months old.

If none of the above is applicable, an annual Construction CPE will be completed within thirty (30) days of the anniversary date of Contract execution unless otherwise stated in the Contract Documents.

12.505 Unsatisfactory Performance Evaluation

A rating of Unsatisfactory on an Interim CPE shall place the Consultant/Contractor on notice that there are serious problems in their performance. A Consultant/Contractor that receives an Unsatisfactory rating shall be placed on a Watch Status. If a Consultant/Contractor’s performance is Unsatisfactory the Project Manager and the Department Director/Manager shall meet with the Consultant/Contractor to review and approve of their Corrective Action Plan. This Corrective Action Plan shall set out objective steps needed for the Consultant/Contractor to improve to a rating of Satisfactory or above. The Corrective Action Plan shall also include a more frequent evaluation schedule to monitor the progress and improvement of the Consultant/Contractor.

12.506 Performance Evaluation Execution Procedure

The following signature steps shall be included in the Contract Performance Evaluation process:

- a. The Rater, Reviewer and Consultant/Contractor shall each sign the CPE. If the Consultant/Contractor refuses to sign the completed evaluation the date of such refusal shall be noted.
- b. The Executive Director shall sign all CPEs with an Overall Performance Rating of Unsatisfactory in the manner set out in sections c(2) and c(3) below.
- c. Upon concurrence between the Rater and Reviewer that a contract performance evaluation has an Overall Performance Rating of Unsatisfactory, the following steps shall apply:
 - 1) The Department Director/Manager shall review the CPE with the Firm and obtain a signature from an authorized representative of the Consultant/Contractor. Signature by the Consultant/Contractor only acknowledges receipt of the Contract Performance Evaluation. The Consultant/Contractor may submit a response and documentation to be attached to the CPE. If the Consultant/Contractor refuses to sign the contract performance evaluation, the refusal date shall be documented.
 - 2) Upon signature by the Firm or date of the Firm's refusal to sign, the Department Director/Manager shall submit the CPE to the Executive Director for review. The Firm shall have a maximum of fifteen (15) calendar days to challenge the Unsatisfactory review with the Executive Director and file any written rebuttals or relevant documents with the Executive Director for review of the Unsatisfactory CPE.
 - 3) Upon receipt of the Unsatisfactory CPE, the Executive Director shall have a maximum of thirty (30) calendar days to exercise any one of the following options:
 - a) Concur with the Overall Performance Rating of "Unsatisfactory" and sign the CPE.
 - b) Based on the reasons provided for the Overall Performance Rating of Unsatisfactory, and any rebuttals/evidence provided by the Firm, return the CPE to the Department Director/Manager for re-consideration and/or with recommended modifications.

12.507 Appeal Procedure

Consultants/Contractors shall have the right to appeal an evaluation performed by an MDX Project Manager pursuant to this policy. The appeals process consists of two steps:

- a. For Overall Performance Ratings of “Satisfactory” or above, a Firm may appeal to the Executive Director within ten (10) days of execution of the evaluation by the Reviewer. The finding of the Executive Director shall be rendered within 30 days thereof and is final.
- b. For Overall Performance Ratings of Unsatisfactory, a Firm may appeal to the Performance Review Committee within ten (10) days of the Executive Director’s execution of the CPE containing the Unsatisfactory evaluation by serving the appeal request upon the Secretary of the MDX Board. The Performance Review Committee shall hear appeals by Consultants/Contractors of Unsatisfactory CPEs. Meetings shall be open to the public and announced in a manner consistent with public meetings. Once an appeal is filed by a Consultant/Contractor stemming from the evaluation process, a copy of the evaluation, all pertinent documentation, and the summary of events will be compiled by the Contract Compliance Officer, and placed on the applicable Committee’s Agenda for discussion. The Performance Review Committee shall hear the matter within thirty (30) days of the filing of the appeal or at the next regularly scheduled Committee meeting thereafter. The decision of the Committee shall be final.

12.508 Final Evaluation

Upon the Completion of any project or the termination of any Contract subject to this Policy, the Project Manager shall complete a Final CPE of the Consultant/Contractor taking into account the interim CPEs of the Consultant/Contractor’s during the term of the project or Contract. All Contractors or Consultants subject to this Policy during the terms of any contract shall remain subject to this Policy upon the expiration of any contract term for the purpose of completing this Final CPE.

12.509 Contract Performance Evaluation Monitoring

The Contract Compliance Officer will: (a) monitor the submittal of CPEs to ensure completion per the requirements of this Policy and (b) maintain the files for CPEs, all attachments, and rebuttals in the Contract files.

The Contract Compliance Officer shall advise the appropriate Department Director/Manager on a monthly basis of any missing evaluations.

The Contract Compliance Officer will process requests from Project Managers, Department Directors/Managers, the Executive Director or members of the Board of Directors for the performance records of Consultants/Contractors that are on file with the Authority.

12.510 Performance Evaluation Statement

The following statement shall appear in the Solicitation Documents that fall within the Scope as specified in Section 12.201. The statement may be modified to delete any inappropriate text as it applies to Consultants/Contractors in a specific solicitation.

Consultant/Contractor performance will be evaluated by the Project Manager until completion or termination of the contract. The quality of the Consultant/Contractor performance in a number of areas will be rated as Outstanding, Above Satisfactory, Satisfactory, or Unsatisfactory. Consultants/Contractors will be provided copies of all CPEs for review and signature. The CPEs shall identify deficient areas in contract performance and afford the Consultant/Contractor the opportunity to correct or present its position concerning items that were reported to be deficient. Each CPE on file with the Authority will be checked (and, upon request, made available to the Public and other governmental or affiliated Agencies).

PART B PERFORMANCE EVALUATION PROCEDURE FOR USE IN PROCUREMENT

12.601 General

To ensure that MDX procures only competent Consultants and Contractors to perform Services, past performance evaluations shall be considered in the procurement process. Consultants and Contractors that performed Services for MDX with Satisfactory or higher evaluation scores are deemed to be responsible Bidders/Proposers. Only Responsible Bidders/Proposers as defined herein may be considered upon proposal submittal for MDX procurements. Only those proposals submitted by Consultants/Contractors that are deemed responsible Bidders/Proposers will be considered to perform work for MDX. Consultants/Contractors that have not performed Services for MDX in the past are exempt from this criterion. Past performance evaluations completed by MDX, FDOT and Miami Dade County for Responsible Proposers including their team members (prime and subs) shall be used in evaluating their qualifications for qualification based procurements.

12.602 Low Bid Contracts

Only Responsible Bidders may be considered for contract award for MDX procurements. The most recent Interim CPE on an existing Contract or the most recent Final CPE received within the last three (3) years completed by MDX shall be used to consider if a Bidder is "Responsible". A Bidder will be deemed Not-responsible and not awarded an MDX contract if either of these CPEs are rated Unsatisfactory.

12.603 Qualification Based Contracts

Only those proposals submitted by Responsible Proposers may be considered for contract award of future MDX procurements. The most recent Interim CPE on an existing contract or a Final CPE received within the last three (3) years completed by MDX shall be used to consider if a Proposer is "Responsible". Proposers will be deemed Non-responsible and not considered for contract award by MDX if the Proposer has received from MDX either a recent Interim or a Final CPE within the past three (3) years, that was rated Unsatisfactory from MDX.

Past performance evaluations completed by MDX, FDOT and Miami Dade County shall be used by the Technical Evaluation Committee members in evaluating the qualifications of the Proposers including their team members (Primes and Subs) for those Proposers that are deemed to be “Responsible”.

12.604 Non-responsible Bidders/Proposers - Former MDX Consultants/Contractors

A Non-responsible Bidder/Proposer is a Firm that has received an Unsatisfactory Final CPE within the past two (2) years of the procurement submittal date. The Bidder/Proposer is therefore considered a poor performer and is ineligible to be considered for contract award by MDX. More specifically, a “Poor Performer” is a Firm that while under direct contract with MDX, inclusive of all types of contracts (Professional and Construction Services), received a rating of Unsatisfactory for its Final CPE. An Unsatisfactory performance rating is a score of 69 points or less. “Poor Performers” would be deemed “Non-Responsible” and not considered for Contract Award for future procurements of substantially similar scope of services for both construction and/or professional services, for a period of two (2) years from the effective date of only a Final “Unsatisfactory” CPE.

12.605 Non-responsible Bidder/Proposer - Current MDX Consultants/Contractors

If a Consultant/Contractor has an existing contract with MDX and submits a proposal for a new MDX procurement the most recent interim CPE shall be considered in determining if the Bidder/Proposer is “Responsible”. Additionally, all Final CPEs received from MDX within the last three (3) years shall be considered as well to determine if “Responsible”. Either CPE shall be rated “Satisfactory” or above to be considered “Responsible”.

If a Firm has an on-going contract and receives an Overall Performance Rating of “Unsatisfactory” in its most recent interim CPE, the Firm shall be deemed “Not-Responsible” as set out above, and an action plan shall be implemented in accordance with applicable policy. A current Contractor may remedy its “Unsatisfactory” Performance Rating by receiving a “Satisfactory” or above Performance Rating through subsequent contract performance evaluations pursuant to their action plan. For example, a follow-up CPE may be required monthly or within three (3) months from receipt of an Overall Performance Rating of “Unsatisfactory”. A Consultant/ Contractor with an Unsatisfactory evaluation at the time a procurement submission is due shall be deemed “Not-Responsible” and therefore would be ineligible to be awarded an MDX contract.

All procurements shall proceed on their specific schedules and are independent from the contract performance evaluation process and any Corrective Action Plan related thereto.

12.701 CONFLICTS

It is the intent of MDX that this section shall be interpreted in conformity with the MDX Procurement Policy generally. In any conflict between this section and the MDX Procurement Policy, the Procurement Policy shall be binding.