



MIAMI-DADE EXPRESSWAY AUTHORITY

3790 NW 21 St. // Miami, FL 33142

www.mdxway.com

INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.:

XXX-XX-XX

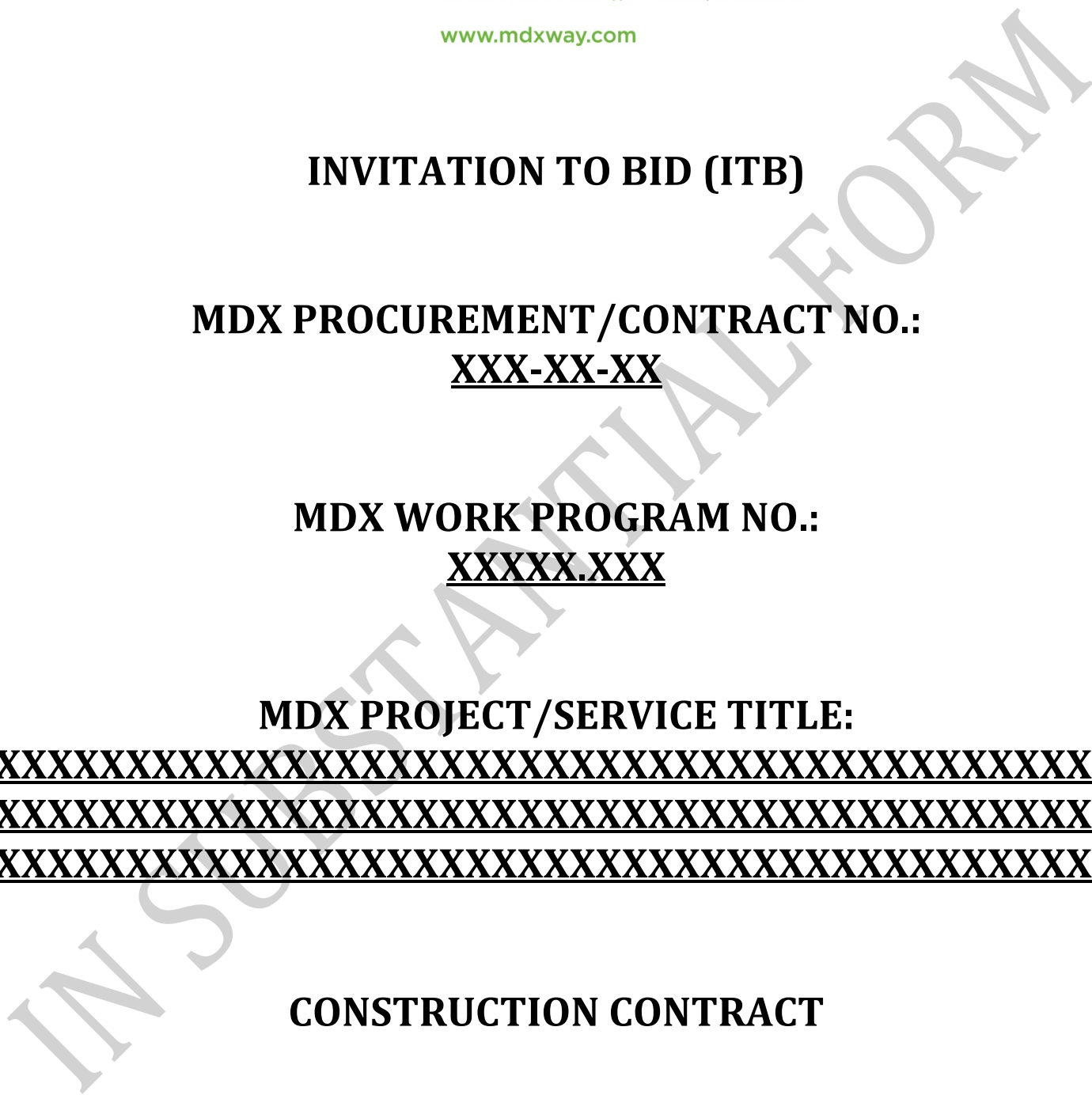
MDX WORK PROGRAM NO.:

XXXXX.XXX

MDX PROJECT/SERVICE TITLE:

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XX
XX

CONSTRUCTION CONTRACT





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INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
 MDX WORK PROGRAM NO.: XXXXX.XXX
 MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

TABLE OF CONTENTS

| | | |
|-----|---|----|
| 1. | RECITALS..... | 4 |
| 2. | SCOPE OF WORK..... | 4 |
| 3. | CONTRACT AMOUNT | 4 |
| 4. | CONTRACT TERM..... | 5 |
| 5. | SMALL BUSINESS PARTICIPATION REQUIREMENT | 5 |
| 6. | LOCAL BUSINESS PARTICIPATION REQUIREMENT..... | 5 |
| 7. | TERMS AND CONDITIONS | 5 |
| 8. | CONTRACT BOND..... | 5 |
| 9. | INSURANCE REQUIREMENTS AND INDEMNIFICATION REQUIREMENTS | 6 |
| 10. | CONFLICTS OF INTEREST:..... | 6 |
| 11. | FORCE MAJEURE..... | 9 |
| 12. | CONTRACT PERFORMANCE EVALUATION AND MDX POLICIES | 9 |
| 13. | ORDER OF PRECEDENCE..... | 9 |
| 14. | SOVEREIGN IMMUNITY | 10 |
| 15. | INDEPENDENT CONTRACTOR..... | 10 |
| | 15.1 Acting as an Independent Contractor..... | 10 |
| | 15.2 Full and Complete Payment..... | 10 |
| | 15.3 No Authority to Act on MDX's Behalf..... | 10 |
| 16. | EMERGENCY PREPAREDNESS | 11 |
| 17. | CONVICTED VENDORS LIST | 11 |
| 18. | SCRUTINIZED COMPANIES LISTS..... | 11 |
| 19. | PROOF OF VEHICLE REGISTRATION | 12 |



MIAMI-DADE EXPRESSWAY AUTHORITY
 3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
 MDX WORK PROGRAM NO.: XXXXX.XXX
 MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

20. CONFIDENTIALITY12

21. CONSTRUCTION OF LANGUAGE.....12

22. EXECUTION OF THE CONTRACT12

23. CHOICE OF LAW.....12

24. WAIVER OF TRIAL BY JURY:13

25. ENTIRE CONTRACT13

26. THIRD-PARTY BENEFICIARY13

27. E-VERIFY REQUIREMENTS.....13

28. NOTICES.....13

29. CAPITALIZED TERMS.....14

30. SECTION HEADINGS14

31. SEVERABILITY14

32. ADDITIONAL TERMS.....14

33. COOPERATIVE PURCHASING (PIGGY-BACKING).....14

34. ACKNOWLEDGEMENT & REPRESENTATION14

35. CERTIFICATION.....15

IN SUBSTANTIAL FORM



MIAMI-DADE EXPRESSWAY AUTHORITY
 3790 NW 21 St. // Miami, FL 33142
 www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXX
XX

THIS CONTRACT (the "Contract" or "Agreement"), is made and entered into as of this _____ day of _____ 20____ (the "Effective Date"), by and between the **Miami-Dade County Expressway Authority d/b/a as Miami-Dade Expressway Authority** (the "Authority" or "MDX"), a body politic and corporate, a public instrumentality created by the Board of County Commissioners of Miami-Dade-County as amended, acting by and through its Governing Board, and _____ (the "Contractor"), a corporation duly organized and existing under the laws of the state of _____ with its principal place of business located at _____ and duly authorized to conduct business in the State of Florida, Federal I.D. No. _____ (collectively, referred to herein as the "Parties" to this Contract).

WITNESSETH:

WHEREAS, pursuant to **MDX Procurement/Contract No.:** _____ MDX competitively procured for all Work necessary to complete its _____ and _____

WHEREAS, MDX now desires to enter into a Contract with the aforementioned Contractor.

NOW, THEREFORE in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

2. SCOPE OF WORK

The Contractor shall, for the consideration herein mentioned and at its cost and expense, do all the Work and furnish all the Materials, Equipment, supplies and labor necessary to perform this Contract and the associated Work, in the manner and to the full extent as set forth in the Contract Documents and under security as set forth in the attached Contract Bond, all of which are hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed to the satisfaction of the duly authorized representatives of MDX, who shall have at all times full opportunity to inspect the Materials furnished and the Work performed pursuant to the Contract Documents.

3. CONTRACT AMOUNT

The Contractor agrees to perform the Work for a total not to exceed Contract Amount of _____ (\$ _____).

The Contract Amount includes a Contingency Amount of _____ (\$ _____). Disbursement of the Contingency Amount requires written authorization from MDX through the issuance of Work Orders.

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
**MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXX
 XX**

9. INSURANCE REQUIREMENTS AND INDEMNIFICATION REQUIREMENTS

(1) Insurance

The Contractor shall furnish to MDX prior to the commencement of any Work under this Contract, certificate(s) of insurance as required by the Solicitation Documents. Required insurance types and limits are contained in the Solicitation Documents and attached hereto and incorporated herein.

If insurance coverage is scheduled to expire during the Term of the Contract, the Contractor shall be responsible for submitting insurance certificates to MDX before such expiration that evidence of renewal or replacement of the expiring coverage(s). In the event that expired coverage(s) are not replaced with new or renewed coverage(s) that cover the Term of the Contract, MDX shall suspend this Contract and all Work associated with this Contract until certificates evidencing the replacement or renewed coverage(s) are received by MDX; provided however, that this suspension period shall not exceed ten (10) Calendar Days, as determined solely by MDX (the "Suspension Period"). At the end of the Suspension Period, MDX may, at its sole discretion, terminate the Contract for cause, as described in the Section of the MDX General Specification for Construction, entitled, ***Default and Termination of Contract.***

(2) Indemnification

The Contractor agrees to meet the Indemnification Requirements as detailed in the Contract Documents.

10. CONFLICTS OF INTEREST:

In addition to the Conflict of Interest provisions in the Invitation to Bid (ITB) the following shall apply to the Construction Contract:

The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual conflict of interest, including but not limited to, an Organizational Conflict of Interest, as defined herein, or a Personal Conflict of Interest, as defined herein, (hereinafter collectively referred to as "Conflict of Interest", "Conflicts of Interest" or "COI"), or that the Contractor has disclosed in writing to MDX all such relevant information relating to the Contractor, its employees, its agents or any of its Subcontractors.

(1) The term *Organizational Conflict of Interest* as used herein means:

- (a) Because of other activities or relationships with other persons or contractors, the Contractor, its employees, agents or Subcontractors or their respective employees, is/are unable or potentially unable to render impartial assistance or advice to MDX;
- (b) The Contractor's, or any of its employees, agents, Subcontractors or their respective employees, objectivity in performing the Work is or might otherwise be impaired; and



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3790 NW 21 St. // Miami, FL 33142

www.mdxway.com

INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX

MDX WORK PROGRAM NO.: XXXXX.XXX

MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXX

XX

(c) The Contractor, its employees, agents, Subcontractors or their respective employees, has/have an unfair competitive advantage.

(2) The term *Personal Conflict of Interest* as used herein means a relationship of an employee, Subcontractor, or the employees of a Subcontractor with an entity that will or may impair the objectivity of the employee, Subcontractor employee, or Subcontractor in performing the Work.

Prior to commencement of any Work, or immediately after becoming aware of a Conflict of Interest, whichever is sooner, the Contractor agrees to notify MDX's Executive Director or his or her delegate either:

- (1) That, to the best of its knowledge and belief, no Conflict of Interest exists, or
- (2) To identify to MDX any Conflict of Interest the Contractor or its agents, employees, or Subcontractors may have. In emergency situations, however, Work may begin, but notification of Conflicts of Interest shall be made in writing to MDX's Executive Director or his or her delegate within five (5) Business Days.

The Contractor agrees that if a Conflict of Interest is identified during performance, the Contractor will immediately make a full disclosure in writing to MDX's Executive Director or his or her delegate. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with MDX, to avoid, mitigate, or neutralize the Conflict of Interest. The Contractor shall discontinue any relevant performance until notified by MDX's Executive Director or his or her delegate of any contrary action to be taken.

MDX may, at its sole discretion, withhold payments due or which may become due, suspend the Work, terminate this Contract for convenience, in whole or in part, if it deems such termination necessary to avoid a Conflict of Interest, or pursue such other remedies as may be permitted by law or this Contract. If the Contractor was aware of a Conflict of Interest prior to award or discovered a Conflict of Interest after award and did not disclose it, or misrepresented relevant information to MDX, or MDX becomes aware of a Conflict of Interest that was not disclosed by the Contractor, MDX may at its sole discretion, withhold payments due or which may become due, suspend the Work, terminate the Contract in whole or in part for default, or pursue such other remedies as may be permitted by law or this Contract.

The Contractor's obligations with regard to providing notice of Conflict of Interest situations shall apply until the expiration date of this Contract. The Contractor agrees to:

- (1) Immediately notify MDX's Executive Director or his or her delegate when the Contractor becomes aware of any Conflicts of Interest.
- (2) Immediately notify MDX's Executive Director or his or her delegate prior to incurring costs for any Work when a Conflict of Interest situation may or does exist.

In the event that the Conflict of Interest does not become known until after performance of the Contract begins, the Contractor shall immediately notify MDX's Executive Director or his or her delegate of the Conflict of Interest. The Contractor shall cease performance of this Contract until notified by MDX's Executive Director or his or her delegate of the appropriate action to be taken.



MIAMI-DADE EXPRESSWAY AUTHORITY
 3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXX
XX

The parties to this Contract agree that the Contractor will be restricted in its future contracting in the manner described below.

- (1) The Contractor may be ineligible to participate in any MDX solicitations and ensuing MDX contracts, either as a prime Contractor or Subcontractor or Subconsultant.
- (2) The Contractor, during the life of this Contract, shall be ineligible to enter into any contract with individuals or firms to perform work on projects related to the Work performed under this Contract unless otherwise authorized in writing by MDX's Executive Director or his or her delegate.
- (3) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of MDX prior to entering into another contract subject to the restrictions of this section, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against MDX to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the other contract is denied or approved.

A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to MDX's Executive Director or his or her delegate and a request for review submitted to MDX's Operations Committee. An adverse determination resulting from a request for reconsideration by the MDX Executive Director or his or her delegate will not preclude the Contractor from requesting a review by MDX's Operations Committee.

Either a request for review or a request for reconsideration must be submitted to the appropriate level within thirty (30) Calendar Days after receipt of the initial adverse determination.

The Contractor agrees to insert in each Subcontractor contract hereunder, provisions which shall conform substantially to the language of the subsection entitled Conflicts of Interest, including this paragraph. The Contractor may request in writing that MDX's Executive Director or his or her delegate exempt from this Conflicts of Interest subsection a particular Subcontractor contract for certain technical or contractor work. MDX will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

The Contractor agrees to insert in each Subcontractor contract hereunder the requirement that any Subcontractor who performs Work as a Subcontractor pursuant to this Contract and wishes to submit a proposal or bid, either as a prime Contractor or as a Subcontractor on any MDX procurement, shall request in writing a determination from MDX that they may participate in the specific MDX procurement prior to the proposal or bid submittal date. Such written request shall include justification as to why there is no Conflict of Interest in this situation. Failure to do so may result in the Subcontractor's proposal being deemed non-responsive.

In addition to all other requirements of the Contract Documents related to avoidance and disclosures of Conflict of Interest, the Contractor is also required to annually submit to the MDX Ethics Officer the **MDX Annual Disclosure Form**, incorporated herein by reference and found in the MDX website, and provide the following information:

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

- (1) Any relationship that the Contractor has that will afford a current or future financial benefit to the Contractor, or to a relative or business associate of the Contractor, and which a reasonable person would conclude has the potential to create a prohibited Conflict of Interest.
- (2) Whether a relative of the Contractor is registered to lobby the Executive Branch of the State of Florida or the Florida Constitution Review Committee and, if so, the names of such lobbyist's clients must be provided in writing to the MDX Ethics Officer.
- (3) Any and all interest in real property held by the Contractor or the immediate family member of the Contractor, if such real property is located in or within a ½ mile radius of any actual or prospective MDX project. Prior to the execution of the Contract, the Contractor has been provided a corridor map and a related property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners.

The **MDX Annual Disclosure Form** must be submitted by the Contractor on the Effective Date of the Contract and updated every year on the same date.

It is the Contractor's responsibility to obtain from MDX an updated corridor map and a property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners in order to properly complete the **MDX Annual Disclosure Form**.

Failure by the Contractor to timely submit the **MDX Annual Disclosure Form** is a default under the Contract and MDX, at its sole discretion, may enforce all applicable provisions under the Contract, including and up to termination of the Contract.

11. FORCE MAJEURE

The failure of either MDX or the Contractor to comply with any provision of this Contract due to an act of God, hurricane, war, fire, riot, earthquake, flood, strikes, act of public enemies, or actions of governmental authorities outside of the control of either MDX or the Contractor (excepting compliance with applicable codes and regulations) will not be considered a breach of this Contract. In this event, the time for the performance of the obligations under this Contract will be extended for a period commensurate with the delay but the Contractor will receive no additional compensation.

12. CONTRACT PERFORMANCE EVALUATION AND MDX POLICIES

The Contractor performance will be evaluated using the MDX Contract Performance Evaluation procedures described in the MDX Procurement Policy.

13. ORDER OF PRECEDENCE

The order of precedence of the Contract Documents shall be applied pursuant to the **MDX General Specifications for Construction**.



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www.mdxway.com

INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

14. SOVEREIGN IMMUNITY

No provision of the Contract Documents, including this Contract, shall be construed as a waiver of sovereign immunity by MDX.

15. INDEPENDENT CONTRACTOR

15.1 Acting as an Independent Contractor

The Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Contract it shall act as an independent Contractor and not as an employee of MDX. The Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of the Contractor assisting in its performance hereunder.

The Contractor shall be fully responsible for Work performed under this Contract, and all matters relating to payment of its employees including compliance with Social Security, withholding tax, workers' compensation, immigration law compliance and all other laws and regulations governing such matters.

The Contractor shall be responsible for its own acts and those of its agents, independent contractors, and employees during the term of this Contract. Except as otherwise specifically provided, as an independent Contractor, the Contractor will be solely responsible for determining means and methods for performing the Work described in the Contract Documents.

15.2 Full and Complete Payment

The payment made to the Contractor pursuant to the requirements of the Contract Amount, shall be the full and complete compensation to which the Contractor is entitled. MDX shall not make any federal or state tax withholdings on behalf of the Contractor. MDX shall not be required to pay any workers' compensation insurance on behalf of the Contractor.

The Contractor agrees to indemnify MDX for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which MDX may be required to make on behalf of the Contractor or any employee, or independent contractor of the Contractor for Work performed under this Contract.

15.3 No Authority to Act on MDX's Behalf

Except as MDX may specify in writing, the Contractor shall have no authority, express or implied, to act on behalf of MDX in any capacity whatsoever, as an agent or otherwise. The Contractor shall have no authority, express or implied, to bind MDX or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Contract.



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 3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXX
XX

16. EMERGENCY PREPAREDNESS

As may be applicable to the Work, in the event of an emergency, the Contractor shall coordinate with MDX to identify and prepare to assume the necessary responsibilities of the Emergency Preparedness and Response Plan developed for MDX.

17. CONVICTED VENDORS LIST

The Contractor represents that it is not currently on the convicted vendor list, as described in the Solicitation Documents and that it shall notify MDX immediately if, during this Contract, it is placed on said list. The Contractor agrees that placement on said list constitutes grounds for immediate termination of this Contract by MDX.

By execution of this Contract, the Contractor further certifies that the information provided in the executed Sworn Statement on Public Entity Crimes and Debarment form(s) for both the Contractor and the Subcontractors is true and correct.

The Contractor agrees to indemnify MDX for any costs and expenses, including but not limited to reasonable audit costs, attorneys' fees and expert witness fees that MDX incurs due to any fraudulent statements made by the Contractor in regards to this certification.

18. SCRUTINIZED COMPANIES LISTS

Pursuant to the prohibitions of section 287.135, Florida Statutes and Section 215.473, Florida Statutes, by execution and submittal of a Bid, the Contractor has certified to MDX that it is not on any of the following lists:

- Scrutinized Companies that Boycott Israel List;
- Scrutinized Companies with Activities in Sudan List;
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The Contractor further certified that:

- It is not engaged in a boycott of Israel;
- It has not been engaged in business operations in Cuba & Syria.

Alternatively, if the Contractor was unable to provide such certification, the Contractor provided to MDX a duly executed written explanation of the facts supporting the applicable exception to the requirement for certification in compliance with section 287.135, Florida Statutes.

The Contractor shall provide written notification to MDX of any changes to the certification or exception provided, as described above, immediately upon becoming aware of any such changes. MDX shall have the right to terminate for default the Contract if the Contractor is found to have submitted a false certificate or to have been placed on any of the above listed lists.



MIAMI-DADE EXPRESSWAY AUTHORITY
3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

The Contractor shall not engage any Firm to perform Work under the Contract that does not meet the requirements pursuant to this provision.

19. PROOF OF VEHICLE REGISTRATION

The Contractor shall register all vehicles used in the course of performing the Work as required by Chapter 320, Florida Statutes. If the Contractor fails to register any motor vehicle that it operates in Florida, pursuant to Chapter 320, Florida Statutes, MDX may disqualify the Contractor from proposing on future MDX procurements, or MDX may suspend the Contractor from this and/or other MDX contracts.

20. CONFIDENTIALITY

To the extent that the Work under this Contract requires access to proprietary or trade secrets or business or financial data of MDX or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure in accordance with the provisions of Chapter 119, Florida Statutes.

21. CONSTRUCTION OF LANGUAGE

All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

22. EXECUTION OF THE CONTRACT

If the Contractor is a firm or company owned by an individual, this Contract shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor. If the firm is a Partnership, this Contract shall be executed in the name of the partnership by the manual signature of the general partner. If a corporation, the Contract shall be executed in the name of the Corporation and shall bear the corporate seal and be signed by the President or the Vice-President, or a representative of the Contractor who is authorized either by position or by corporate resolution to contractually bind the Contractor in all aspects of the Contract. If a joint venture, the Contract shall be executed in the name of the joint venture and be signed by a person authorized to sign on behalf of the joint venture.

23. CHOICE OF LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Florida.

Venue of any litigation arising out of this Contract shall be in Miami-Dade County, Florida.

In the event of any litigation arising out of this Contract, the Contractor agrees that service of process on the Contractor may be made on its registered agent as designated in the corporate records of the Florida Division of Corporations. The Contractor shall notify MDX in writing within thirty (30) Calendar Days of a change and the name of the successor registered agent. These provisions are in addition to any methods of service of process allowed by the Florida Statutes.



MIAMI-DADE EXPRESSWAY AUTHORITY
 3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXX
XX

24. WAIVER OF TRIAL BY JURY:

The Contractor and MDX hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Contract, and any contract contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, or actions of either Party.

25. ENTIRE CONTRACT

This Contract embodies the whole agreement between the Parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either MDX or the Contractor other than contained herein. This Contract shall inure to the benefit of, and be binding on, the parties or the successor(s).

26. THIRD-PARTY BENEFICIARY

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Contract.

27. E-VERIFY REQUIREMENTS

U.S. law requires companies to employ only individuals who may legally work in the United States, either U.S. citizens, or foreign citizens who have the necessary authorization.

Any Contractor providing work to MDX must verify the employment eligibility of employees through the U.S. Department of Homeland Security's E-Verify system. In addition, the Contractor shall verify that Subcontractors performing Work on the Contract utilize the E-Verify system to verify the employment eligibility of employees hired by the Subcontractor during the Contract Term.

MDX will consider the employment by any Contractor or Subcontractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Contract by MDX, if it is determined that the Contractor or Subcontractor knowingly employs unauthorized aliens.

28. NOTICES

All Notices required under this Contract shall be in writing. Notices shall be mailed or delivered as follows, unless a Party directs in writing that notices shall be provided to it at another location:

To the Authority: Jacqueline Buitrago, CPPB
 Procurement Manager
 Miami-Dade County Expressway Authority (MDX)
 3790 N.W. 21st Street
 Miami, Florida 33142



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INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

With a copy to: Carlos M. Zaldivar, Esq.
 MDX General Counsel
 Miami-Dade County Expressway Authority (MDX)
 3790 N.W. 21st Street
 , Florida 33142

To the Contractor: _____

29. CAPITALIZED TERMS

The capitalized terms used herein shall have the meaning ascribed to them in the Contract Documents.

30. SECTION HEADINGS

Any headings preceding the texts of the sections in this Contract and any table of contents shall be solely for the convenience of reference and shall neither constitute a part of this Contract nor affect its meaning, construction or effect.

31. SEVERABILITY

If any one or more of the covenants, agreements or provisions of this Contract shall be held invalid, it is the intent of the parties that such covenants, agreements or provisions shall be deemed severable and that the remaining provisions remain in full force and effect.

32. ADDITIONAL TERMS

All Exhibits attached hereto contain additional terms of this Contract and are incorporated as if actually set forth herein.

33. COOPERATIVE PURCHASING (PIGGY-BACKING)

As may be applicable, pursuant to the MDX Procurement Policy, other governmental agencies may utilized MDX contracts if the Contractor agrees to enter into a separate contract with such governmental agency(ies) incorporating the MDX contract terms and conditions.

34. ACKNOWLEDGEMENT & REPRESENTATION

The parties to this Contract individually represent, warrant, and agree that:

- (1) They have been represented by legal counsel of their choice in connection with the Contract;



MIAMI-DADE EXPRESSWAY AUTHORITY
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www.mdxway.com

INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX

- (2) They are fully aware and clearly understand all of the terms and provisions contained in this Contract;
- (3) They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Contract;
- (4) They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Contract; and
- (5) The consideration received by them to enter into this Contract and the settlement contemplated by this Contract has been actual and adequate.

35. CERTIFICATION

This document is an MDX form maintained in an electronic format and no changes may be made to this document without approval from MDX. The Contractor must submit any requested changes or revisions to MDX for approval prior to the Contractor executing this Agreement. By signing this document, the Contractor hereby represents that no change has been made to the text of this document.

You MUST certify by checking the box below:

- No changes have been made to this Construction Contract.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]



MIAMI-DADE EXPRESSWAY AUTHORITY
 3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

INVITATION TO BID (ITB)
MDX PROCUREMENT/CONTRACT NO.: XXX-XX-XX
MDX WORK PROGRAM NO.: XXXXX.XXX
MDX PROJECT/SERVICE TITLE: XXXXXXXXXXXXXXXXXXXXXXXXXX
XX

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the Parties on the date aforesaid mentioned.

MIAMI-DADE COUNTY EXPRESSWAY AUTHORITY

[CONTRACTOR]

By: _____
 Darlene M. Fernandez, P.E.
 Executive Director

By: _____
 Signature of Authorized Officer

 Print Name of Authorized Officer

 Title of Authorized Officer

ATTEST _____
 Secretary Signature

Approved by MDX Board: _____

IN SUBSTANTIAL FORM

