

SUP-BP #06-23
Concession Agreement – Business Plan Packet
Concession Operation at Hugh Taylor Birch State Park
Fort Lauderdale, Florida

INTRODUCTION

The Florida Department of Environmental Protection (“Department”) is seeking one or more business partners to provide visitor services at Hugh Taylor Birch State Park (“Park”). Award of a Concession Agreement (“Agreement”) by the Department for a concession operation at the Park will be based on the following criteria and subject to the terms and conditions listed below.

For the purpose of this document, the term “Respondent” is used in reference to a company or individual submitting a Business Plan Proposal (“Proposal”). The term “Concessionaire” is used in reference to a company or individual awarded an Agreement as a result of this Call for Business Plans (“CFBP”) process.

1. SCOPE OF WORK:

Respondents to this CFBP should include in their Proposal a response to each of the following operational requirements and opportunities.

The following opportunities are core to the operations at the Park, however additional services may be proposed.
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Essential Operations:

- a. Minimum operational requirements and procedures
 - 1) The minimum operating hours will be:
 - a. 8:00 a.m. to 5:00 p.m. Eastern daily at the Concession Building (BL#039011);
 - b. 8:00 a.m. to 5:00 p.m. Eastern daily at the Marina Building (BL#039019);
 - c. 8:00 a.m. to 5:00 p.m. Eastern daily at the Garden Club Building (BL#039012);
 - d. 8:00 a.m. to 5:00 p.m. Eastern daily along the beach.
 - 2) Any deviation in operating hours will be pre-approved, in writing, by the Department.
 - 3) Concessionaire will maintain a telephone as a public and vendor contact point, which will be staffed during operating hours. If an answering device is used, calls must be returned within 24 hours.
 - 4) Hours of operation will be posted near the main entrance of the business.
 - 5) The Concessionaire’s advertising, including online, brochures, signs and other forms of advertisement will be consistent with the Florida Park Service mission. The Department will have the right to require removal of all or part of any advertising the Department deems inappropriate or reflects poorly on the Department.
 - 6) Concessionaire will provide adequate staffing and oversight to operate the Services authorized in the Concession Agreement.
 - 7) All paper products will contain post-consumer recycled content.
 - 8) For visitor safety and recognition purposes, the Concessionaire’s employees will be required to wear a name tag and a visitor service uniform which will be pre-approved, in writing, by the Department.
 - 9) Concessionaire will provide services in conformance with the Division’s Operations Manual, which is available upon request from the Park Manager.

b. Food and Beverage Service

- 1) Concessionaire will operate a food and beverage service offering pre-packaged and prepared food which may include, but not be limited to the preparation and sale of hot meals, non-alcoholic beverages, alcoholic beverages, snacks, ice cream, etc.
- 2) Locations for Food and Beverage Services will be pre-approved, in writing, by the Department.
- 3) Respondent will include their suggested menu items in their proposal.
- 4) All paper products and serving containers should contain post-consumer recycled content. Styrofoam serving containers and straws are prohibited.
- 5) Please consider offering alternative menu items, if viable, such as vegetarian and gluten-free options.
- 6) A concession agreement will not preclude Park personnel or visitors from using alternate sources of food, such as bringing their own or having events catered, should they so desire.
- 7) The Concessionaire will meet all applicable Health Codes and Standards for Concession Food Service (Rule 7C-4.019, Florida Administrative Code). For more information, please visit the website: www.flrules.org.
- 8) The Concessionaire will meet inspection standards set by the Florida Department of Business and Professional Regulation Routine Food Inspections, and the Fire Marshal. If there is a report of a violation, the Concessionaire will correct the violation in a timely manner and prior to the next routine inspection. For more information, please visit the website: www.myfloridalicense.com/dbpr.
- 9) Alcoholic Beverages Requirements:
 - a. The Concessionaire will obtain an alcoholic beverage license from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco prior to selling any alcoholic beverage at the Park;
 - b. The Concessionaire will be responsible for complying with Chapters 561, 562, 563 and 564, Florida Statutes, and Rule 61A-3, Florida Administrative Code, the Division's Operations Manual, and Broward County Ordinances that regulate the alcoholic beverage licenses; and
 - c. Prior to implementation of the serving of alcoholic beverages, Concessionaire will submit a plan of action including hours of service and control methods, in writing, to the Park Manager for approval.

c. Merchandise Resale

The Concessionaire will operate within the Concession Building to provide the following merchandise items for resale including, but not limited to: ice, snacks, T- shirts, hats, sunglasses, sunscreen, bug repellants, souvenirs, sundries, charcoal, FPS promotional items, children's toys, books and other similar items. Inventory levels will be to the standards acceptable to the Department. Additional locations for Merchandise Resale will be pre-approved, in writing, by the Department. All merchandise will be of high quality, environmentally friendly, and reflective of the Florida Park Service mission.

d. Recreational Equipment Rental Operation

- 1) The Concessionaire will provide rental of beach chairs and umbrellas, bicycles, canoes, kayaks, and paddleboards. Additional recreation equipment rental items may be proposed. The minimum and maximum number of equipment for rent will be pre-approved, in writing, by the Park Manager.

- 2) The Concessionaire will provide a safety plan for the rental of recreational equipment. Include all required safety equipment, such as personal floatation devices and other similar items.
- 3) The Concessionaire will provide a small service boat or motorized watercraft, which will be pre-approved, in writing, by the Park Manager, to aid in the location and in the recovery of overdue vessel rentals and emergency situations.
- 4) The Concessionaire will provide an employee to work at the recreational equipment rental operation until all visitors have returned or have been accounted for. The employee will work at the recreational equipment rental operation facility until all visitors are located and either all cars have left the parking lot or all cars remaining in the parking lot have been positively identified, owner confirmed, and Park Management notified.

e. Event Management Services

The Concessionaire will provide special event services for appropriate events that will be operated according to the following:

- 1) Identify, evaluate, recommend, and recruit special events to be held in the Park including weddings, receptions, family reunions, business meetings and conferences, consumer shows and other park-friendly events or activities as pre-approved, in writing, by the Department ("Events").
- 2) Obtain pre-approval, in writing, from the Department for the type of event, location, date, time, and duration for all Events.
- 3) Coordinate all Events through the Department to ensure availability of adequate Facilities including event space and parking.
- 4) Manage all aspects of the Event planning process including booking and scheduling of Events; establishing appropriate fees for Event-related services, cleaning of Facilities and space used for Events (such fee schedule will be pre-approved by the Department); arranging for external vendors; and arranging for adequate parking.
- 5) Manage all aspects of conducting Events, including set up and removal of all tables, chairs, and other equipment to be used for the Events; coordinating external vendors, security, and safety; ensure compliance with the Americans with Disabilities Act; obtain additional temporary facilities as needed; and clean up after the Events have concluded.
- 6) Ensure all Facilities and spaces are cleaned and returned to their original condition within four hours of the completion of each Event, unless otherwise pre-approved, in writing, by the Department.
- 7) Manage and adequately document third party vendors, including, but not limited to catering, entertainment, and rental equipment vendors.
- 8) Provide and manage marketing and promotion efforts for all Events booked by the Concessionaire. The Concessionaire will submit to the Department all proposed advertising, brochures, and signs for pre-approval, in writing, by the Department.
- 9) Provide proper signage for each Event to ensure proper identification of the Event, and appropriate traffic flow for the Event guests and general Park visitors. Event signage must be pre-approved by the Department. Concessionaire will maintain all signage to standards acceptable to the Department.
- 10) Ensure each Event has adequate staffing for proper management, security, and access to Facilities.
- 11) Department will be able to access Facilities when not in use for Special Events.
- 12) This Agreement will not preclude Department personnel, the Park's Citizen Support Organization ("CSO"), or visitors from hosting their own Special Events within the

Park, should they so desire, so long as there is no conflict with Special Events previously booked by Concessionaire.

- 13) The Concessionaire agrees that when the Facilities are not in use by the Concessionaire, the Department and/or the CSO may use the Facilities for Park related functions at no cost. In addition, the Department and CSO are exempt from mandatory use of Concessionaire's Services.

f. Wi-Fi Service

The Concessionaire will provide High Speed Wi-Fi services, free of charge to guests at the Concession Building (BL#039019). The Concessionaire may provide Wi-Fi services to visitors in other areas of the Park, as pre-approved, in writing, by the Department.

g. Utilities. The Concessionaire will be responsible for all utilities associated with its operations, including, but not limited to:

- 1) Electricity – The Concessionaire will contract with and make payment directly to the provider.
- 2) Water – The Concessionaire will contract with and make payment directly to the provider.
- 3) Garbage – The Concessionaire will contract directly with the service provider to procure a dumpster with adequate capacity to be placed next to the existing dumpster at the entrance of the Elks Group Camp site. Concessionaire will provide recycle bins for plastics and paper.
- 4) Propane – The Concessionaire will contract with and make payment directly to the provider.
- 5) Telephone/Internet – The Concessionaire will contract with and make payment directly to the provider.

Additional Opportunities:

- 1) Food Truck Onsite
- 2) Beach Service (delivering food to beachgoers)
- 3) Food and Beverage Vending
- 4) Personal Watercraft (Jet Ski) Rentals, Tours
- 5) Paddle Boat Rentals
- 6) Guided Eco Tours
- 7) Concerts
- 8) ATM Service
- 9) Locker Rental
- 10) Scuba/Snorkel Rental, Tours
- 11) Glamping

2. FACILITIES, SPACE, AND EQUIPMENT

The Department anticipates granting the Concessionaire use of the following facilities, space and equipment:

- a. The Concession Building (BL#039011);
- b. The Marina Building (BL#039019);
- c. The Garden Club Building (BL#039012);
- d. Space for kayak racks at the Marina Building;
- e. Space in the Park for a storage unit; and
- f. Space on the beach for rental of recreation equipment 100 feet from the waterline up to the dune, and an additional 100 feet for beach chairs and umbrellas. The remaining 250

feet of beach is set aside for Park visitors.

Respondents should include in their Proposal any additional facilities, space and equipment they're seeking to use for the visitor service operation.

3. FACILITY MAINTENANCE AND REPAIR

The maintenance and repair schedule of the above listed facilities, space and equipment and for any facilities and equipment provided by the Concessionaire will be in compliance with the Americans with Disabilities Act, the Florida Department of State, Division of Historical Resources guidelines for historic buildings, made to the Park Manager's specifications, and according to the following:

- a. The Concessionaire accepts the previously identified list of physical facilities, space and equipment "as is" and with no warranties or suitability for the Concessionaire's intended use.
- b. The Concessionaire will provide ongoing routine maintenance and repair to the above listed facilities, space and equipment at the Concessionaire's sole cost and expense.
- c. All facilities, space and equipment will be presentable at all times and cleaned regularly.
- d. All cleaning, maintenance and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides will be approved by the Park Manager prior to use by the Concessionaire.
- e. All spray bottles used will have labels identifying their contents. Material Safety and Data Sheets (MSDS) and proper training will be provided to all employees using spray bottles.
- f. The Concessionaire will provide visitor service signage that has been pre-approved, in writing, by the Park Manager and will perform maintenance and repair on the visitor service signage.
- g. The Concessionaire will maintain the daily upkeep and litter removal of the facilities and space as identified above and the surrounding area. Specific perimeter to be determined by the Park Manager based on the location.
- h. Any waste created due to the concession operation is the responsibility of the concessionaire to clean and remove. The concession is required to establish and maintain a recycling program.
- i. The Concessionaire will be responsible for leaving the Park and all facilities, space and equipment in the same, or better, condition as received.
- j. The Concessionaire will maintain records of all repairs. The Department reserves the right to inspect the maintenance records at any time during operating hours.
- k. Department will be responsible for repair and/or replacement of external structures and systems such as the roof.

4. CAPITAL IMPROVEMENTS

The Department has identified the following possible opportunities for Capital Improvements:

1. Repairs/Improvements to the Garden Club Building (BL#039012).
2. Replacement of the dock at the Marina launch.

If capital improvements are proposed, please follow the guidelines below.

If applicable, the proposed capital improvement project scope, layout, costs and timeline, including any specifications and plans, will be included in the Proposal.

The Respondent will adhere to the Florida Department of State, Division of Historical Resources guidelines for archeological review of any ground disturbance activities. The

costs incurred as a result of such requirement will be the sole responsibility of the Respondent.

Any demolition or construction performed under the Agreement will comply with all applicable federal, state, county, and local laws and codes including the most current Florida Accessibility Building Code, Florida Building Code and Florida Fire Prevention Code. The Concessionaire is responsible for applying for, obtaining and paying all costs of any and all required permits which may include the Department's Beaches & Coastal Systems ("CCCL") permit, water management permit, endangered species permit(s), local building permit, etc. This does not necessarily represent a comprehensive list.

Any construction project proposed under this Call for Business Plan, or subsequent Agreement, will be reviewed and pre-approved, in writing, by the Department's Bureau of Design and Construction prior to a construction bid solicitation and construction commencement.

5. ADDITIONAL QUESTIONS

The Department will accept additional questions after the mandatory meeting, which will be submitted in writing, via email, to Noah Harrison at FPS.Concessions@FloridaDEP.gov no later than 5:00 p.m. October 18, 2023. The Department will not respond to additional or follow up questions after this date and time.

Questions and answers will be posted online at <https://www.floridastateparks.org/call-business-plans-hugh-taylor-birch-state-park> no later than 5:00 p.m. October 19, 2023.

6. SUBMISSION OF PROPOSALS

Proposals will be submitted to the attention of Noah Harrison at FPS.Concessions@FloridaDEP.gov no later than 5:00 p.m. October 25, 2023. If the time stamp shows the proposal was sent later than 5:00 p.m. on October 25, 2023, the Department will consider the proposal non-responsive.

7. NOTIFICATION OF RESULTS

- a. Respondents will be notified of the results of the evaluations via email. Notification will be sent to the email address from which the proposal was received.
- b. Upon completion of the evaluation process, the Department may initiate negotiations.
- c. The Department reserves the right to negotiate all terms and conditions of the Agreement, including those stipulated within this Call for Business Plans.
- d. Negotiations for this concession operation may be conducted with multiple Respondents simultaneously.
- e. In the event the Department is unable to reach agreement with a Respondent, the Department reserves the right to terminate negotiations at any time.
- f. Terms and conditions outlined in the Call for Business Plans, or included in the Proposals, may not represent the final terms and conditions for an Agreement.

Award may be made to the Respondent whose Proposal is of greatest benefit to Park visitors, the Department and the State of Florida. Final award will depend on the Department's ability to negotiate a satisfactory Agreement with the Respondent. Negotiations resulting from evaluations of Proposals will not bind the Department to award an Agreement. In the event the Department finds the Proposals or negotiations are

not acceptable, no Agreement will be awarded. The Department reserves the right to limit the award to any or all elements of this Call for Business Plans.

8. PROPOSAL REQUIREMENTS

Proposals will be submitted in a Portable Document Format (“PDF”) file.
Proposals will include the items below.

Responses to items a. and b. are awarded 0 or 2 points.

a. Cover Letter

The Cover Letter should include a brief introduction of your company, including contact information and a description of the operations and services you propose to provide. Please include the following information in your cover letter:

- 1) The Cover Letter will be addressed to: Noah Harrison.
- 2) Include the Call for Business Plans number, SUP–BP #06-23.
- 3) Include the name of the Park: Hugh Taylor Birch State Park.
- 4) Include the name of the company submitting the Proposal.
- 5) Include the company representative’s contact information: business telephone number, mobile telephone number (if applicable), email address and mailing address.
- 6) If the company is currently doing business, please provide a brief description of its business operations. If not, please provide a brief description of past business operations.

b. Business Plan Summary Sheet

The purpose of the Business Plan Summary Sheet is to provide the Department with an overview of your proposed operations. Please include a completed, signed and dated “Business Plan Summary Sheet”, which is available online at:

https://www.floridastateparks.org/sites/default/files/media/file/BusinessPlanSummarySheet_SUP-BP%2306-23.pdf.

The following items are ranked based on submissions, and points allocated dependent on the number of proposals received. The highest rankings will garner the most points. Each item within the Business Plan section is individually ranked. Points will vary depending on number of proposals received.

c. Resume of Related Business Experience

Provide related and accurate business experience, including a chronological list, with dates, of the Respondent’s business experience. Provide a description of goods and services operated for each listed business experience.

d. Business Plan

Proposals should include a detailed business plan including, but not limited to, the following components:

- 1) Use of facilities, space and equipment
- 2) Maintenance and repair schedule
- 3) Staffing Information
- 4) Scope of operations
- 5) Operation schedules
- 6) Fee schedule and menu

- 7) Marketing Plan
- 8) Interpretive Plan
- 9) Safety Plan
- 10) ADA/Accessibility Plan
- 11) Equipment provided by Concessionaire for operations
- 12) Start-up inventory
- 13) Plan, timeline and schedule for setting up operations within the Park
- 14) Plan for increasing visitation and revenue

e. Internal Controls

Provide a policy with procedures concerning internal controls over money, personnel, payment card industry data and financial records.

f. Financial Information

The Respondent will provide financial statements according to the below guidelines, for the Respondent and all intended subcontractors, sufficient to demonstrate the capability to perform the concession operation described in the Respondent's Proposal submitted in response to this Call for Business Plans.

- 1) If Respondent (or subcontractor) is an individual: Submit, at a minimum, a current detailed statement of net worth along with a detailed personal balance sheet and income statement for the last three years. At a minimum, these statements will be accompanied by a letter of certification attesting to their accuracy.
- 2) If Respondent (or subcontractor) is a corporation or partnership: Submit, at a minimum, a balance sheet and related statements of income, retained earnings and changes in financial positions for the last three years. Statements may also include a summary of significant accounting policies, notes to financial statements, and auditor's reports.
- 3) If Respondent (or subcontractor) is a new venture: Submit statements as indicated above, as appropriate, for the principle parties of the proposed venture. Prior individual or corporate/partnership statements are necessary to provide evidence of the principle parties' financial history. If the Respondent is, or will be, a new entity, such as a limited liability company ("LLC"), and consequently has no financial history or statements, the Department reserves the right to require additional financial assurances the Respondent can perform the contract requirements. Such financial assurances will be in addition to the required security, and may include proof of adequate capitalization of the LLC, new entity, or individual; verification of grants; or other assurances deemed sufficient by the Department.

Business references are ranked based on reference responses. Scoring is detailed on the Business Reference Sheet. 0-31 points.

g. Business References

The Respondent will provide three separate and verifiable business references able to verify the Respondent's business performance for a previous, or current, business. Only one of the three selected business references may be a Department contact for a Department Agreement. The limit to one Department contact applies to a Department Agreement expired or currently active.

The Department will not consider more than one Department business reference provided by the Respondent.

References that are subcontractors for the Respondent may not be used. Personal references will not be considered.

To submit a business reference, make additional copies of the blank form, which is available from the Call for Business Plans website, and complete one form per business reference.

Please notify the business references you have submitted their name and contact information in your Proposal, and that they will be contacted by the Department for verification.

The Department will make no more than three (3) attempts to contact each business reference within the one-week period following proposal submission. This will include an initial phone call from a Department representative, a follow up email if the phone call is not answered, and a second phone call. If the Department is not able to reach the business reference, or the Department representative's calls are not returned within the one-week period, the reference will be considered non-responsive and will not be scored.

Verification will be handled through a telephone interview conducted by the Department. The Department representative will use the "Performance Evaluation Questionnaire" form, which is available for review at the Call for Business Plans website, for the telephone interview.

After the telephone interview is conducted, the Department representative will fax or email the telephone interview document to the business reference. The business reference will be required to sign the questionnaire used for the telephone interview, and will be asked to fax or email the signed questionnaire back to the Department.

The Department reserves the right to review the performance of Respondent and/or Respondent's principles under current or expired Department Agreements. When the Department determines, in their sole discretion, they lack reasonable assurances that an Agreement entered into with Respondent and/or its principles will be adhered to, either due to documented past unsatisfactory performance or prior breach of the Department's Agreement requirements, the Department reserves the right to elect not to enter into an Agreement with said Respondent or principles.

Term, Capital Improvements, Commission Rate, Pro Forma and Industry Related Licenses are given a raw score based on how the response meets or exceeds the expectation. 0-4 points for h through k, and 2 points per license, up to 5 licenses (must provide proof of each license.)

- h. Term Specify the proposed length of the Concession Agreement in the Proposal.
- i. Capital Improvements Specify in the Proposal, the following details for any proposed capital improvements:
 - 1) Scope of Work;
 - 2) Costs – total dollars and detail, if applicable;
 - 3) Schedule of when improvements will be started and completed; and
 - 4) Plans – submit any concepts, plans, drawings, etc.

- j. Commission Rate Most Concession Agreements include a compensation structure which is a monthly commission fee based on a specified percentage of Total Gross Sales. Other models include flat fee per month and a combination (flat fee plus a percentage). Specify the compensation model in the Proposal.
- k. Pro Forma
Provide a detailed five year pro forma, including projections for revenues and expenses.
- l. Industry Related Licenses, etc.
List and provide proof of any industry related licenses, certifications and/or memberships you possess, if applicable.

9. PARK INFORMATION

Visit <https://www.floridastateparks.org/HughTaylorBirch> for more information about the Park.

The Park's Unit Management Plan is available online at: https://floridadep.gov/sites/default/files/HTBSP_08.21.2020%20ARC%20Approved%20UMP.pdf Unit Management Plans are basic statements of policy and direction for the management of lands. Unit Management Plans identify objectives, criteria and standards that guide each aspect of the unit's administration and sets forth specific measures that will be implemented to meet management objectives.

Park attendance records are available at: https://www.floridastateparks.org/sites/default/files/media/file/AttendanceReport_HughTaylorBirch.pdf

10. TERMS AND CONDITIONS

General Concession Agreement terms and conditions are available for review in the Sample Concession Agreement located online at: https://www.floridastateparks.org/sites/default/files/media/file/SampleConcessionAgreement_2.pdf.

Specific Agreement terms and conditions will be determined through the negotiation process.

11. GENERAL

The Department reserves the right to accept or reject any or all Proposals received, and reserves the right to make an award without further discussion of the Proposals submitted. Therefore, Proposals should be submitted initially in the most favorable manner.

A non-responsive Proposal will include, but not be limited to, those that: a) are irregular or are not in conformance with the requirements and instructions contained herein; b) fail to utilize or complete prescribed forms; or c) have improper or undated signatures. A non-responsive Proposal may not be considered.

The Department may waive minor informalities or irregularities in the Proposals received

where such are merely a matter of form and not substance, and the corrections of which are not prejudicial to other Respondents.

12. PUBLIC RECORDS

This Call for Business Plans and any proposal submitted in response are subject to the State of Florida's Public Records Act, Chapter 119, Florida Statutes. Pursuant to Chapter 119, Florida Statutes, all documents, papers, letters, or other printed, written, or recorded material prepared in conjunction with or as a result of this Call for Business Plans is a public record, except for such records that are exempt under Chapter 119, Florida Statutes, or other statutory provision and Article I, section 24(a) of the Florida Constitution.

CAUTION: If the Respondent considers any portion of the documents, data or records submitted in response to this CFBP to be confidential, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority ("Florida Public Records Law"), note the following:

Respondent will not mark the entire Proposal as confidential, trade secret or otherwise not subject to Florida Public Records Law. Any Proposal with more than fifty percent (50%) of the documents, data or records so marked will be deemed non-responsive and will not be considered.

If the Respondent asserts that any portion of the Proposal is exempt from disclosure under the Florida Public Records law, the Respondent must submit a redacted version of the Proposal along with the un-redacted version, per paragraph 6 of the Business Plan Packet, Submission of Proposals. The redacted copy will be clearly titled "Redacted Copy."

IF THE RESPONDENT CLAIMS CONFIDENTIALITY AS TO ANY PORTION OF THE PROPOSAL AND DOES NOT PROVIDE AN ACCOMPANYING "REDACTED COPY," SUCH PROPOSAL MAY BE CONSIDERED NON-RESPONSIVE AND REJECTED PRIOR TO ITS CONSIDERATION.

a. Assertion of Confidentiality Regarding Submitted Materials.

- 1) Proposals should contain only information that is responsive to the CFBP. Any relevant and responsive information submitted which is asserted by the Respondent to be proprietary, trade secret, intellectual property, or otherwise confidential ("Confidential Information") and which the Respondent claims as privileged from disclosure despite any applicable Florida Public Records Law, must be clearly marked as such in the un-redacted version of the Proposal, and either removed from or obliterated in the Redacted Copy.
- 2) If Respondent fails to submit a Redacted Copy, the Department is authorized to produce the entire un-redacted document submitted to the Department in response to a public records request encompassing the Proposal.
- 3) The Redacted Copy should redact all, but only, those portions of material that Respondent asserts are Confidential Information. Respondent must identify the statutory citation supporting its claim of confidentiality for each and every redaction.

- 4) Failure to identify asserted Confidential Information in Proposals, and/or to redact such information in the Redacted Copy, will constitute a waiver of any claim of confidentiality or exemption to such information, document or Proposal.
- b. Public Requests for Proposals.
- 1) If a public records request is made for the Proposal, the Department will provide the requestor access to the Redacted Copy, bearing the Respondent's assertion of exemption from disclosure. If a public records request is made for the un-redacted Proposal challenging the assertion of exemption, the Department will notify the Respondent that the requested records contain asserted Confidential Information. The Respondent will be solely responsible for taking whatever action it deems appropriate to legally defend its claim of exemption from disclosure under the Public Records Law.
 - 2) The Respondent will obtain either an agreement with the requestor withdrawing its request, or commence an action in a court of competent jurisdiction requesting an injunction prohibiting its disclosure within seventy-two (72) hours (excluding weekends and state and federal holidays) of the Respondent's receipt of notice of the public records request.
 - 3) By submitting its Proposal, the Respondent agrees that no right or remedy for damages against the Department will arise from disclosure by the Department of the alleged Confidential Information following the Respondent's failure to promptly protect its claim of exemption.
 - 4) By submitting a Proposal to this Solicitation, the Respondent agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Respondent's assertion that the redacted portions of its Proposal are Confidential Information not subject to disclosure.