

# Lee County Port Authority Procurement Manual





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## SECTION 1: PROCUREMENT POLICY

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### 1.1 Purpose

For the Port Authority to function effectively and efficiently, it is necessary that commodities and contractual services that conform to suitable standards and are available in sufficient quantities be purchased at the best prices available, consistent with established standards of service and quality. When purchasing commodities and contractual services, the Port Authority will follow sound and prudent business practices, and will also seek to promote the full and equitable economic participation of all segments of the community. It is the purpose of the Procurement Office to provide for the fair and equitable treatment of all persons involved in public purchasing at the Port Authority, to maximize the purchasing value in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

### 1.2 Code of Ethics

The Port Authority desires to avoid any real or perceived conflict of interest related to the procurement process. All LCPA employees are required to adhere to the Code of Ethics set forth in Part 104 of the Authority's Personnel Policies & Procedures Manual, as may be amended by the Board of Port Commissioners in the exercise of performance of duties to ensure the Best Interest of the Authority.

In addition to the provisions set forth in Part 104 of the Authority's Personnel Policies & Procedures Manual, any Port Authority employee transacting business on behalf of the Port Authority through the Procurement Office must not engage in any activity that undermines fair competition, such as collusion or bid rigging. Utilizing information for personal gain or to give unfair advantage, or otherwise showing favoritism to any supplier is prohibited.

Procurement staff must maintain the confidentiality of information obtained during the procurement process.

To further ensure ethical conduct and promote public trust in the procurement process, this policy also applies to contractors and their subcontractors involved in the procurement activities on behalf of the Port Authority.

### 1.3 Values and Guiding Principles of Public Procurement

The Procurement Office is committed to ensuring ethical professional conduct which includes the adoption of the following Values and Guiding Principles of Public Procurement as adopted by NIGP – The Institute for Public Procurement.

- Accountability-Taking ownership and being responsible to all stakeholders for our actions. This value is essential to preserve the public trust and protect the public interest.
- Ethics-Doing the right thing. This value is essential to deserve the public's trust.
- Impartiality-Unbiased decision making and actions. This value is essential to ensure fairness for the public good.
- Professionalism-Upholding high standards of job performance and ethical behavior. This value is essential to balance diverse public interests.
- Service-Obligation to assist stakeholders. This value is essential to support the public good.
- Transparency-Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.

#### 1.4 Implementation

The Executive Director or authorized designee, through the Procurement Office, will be responsible for the distribution and implementation of the following policies to Port Authority Directors and all Port Authority staff. No purchase will be made that circumvents the procedures established in this Manual. Any purchase made by a department without Procurement's knowledge or approval will be considered an unauthorized purchase, unless otherwise exempted in this Manual. Unless a specific waiver provision applies, only the Board of Port Commissioners will have the authority, and then only in specific cases, to waive or override the policies in this Manual.

#### 1.5 Mission Statement

The Procurement Office's mission is to serve, in a customer-focused environment, its operating departments and vendors by procuring goods and services in conformance with established specifications and quality requirements at the lowest reasonable cost. The goods and services are to be procured in a timely and efficient manner taking advantage of the latest technologies afforded to the procurement profession. In all procurements the Authority will use its best efforts to ensure that disadvantaged business enterprises have an equitable opportunity to participate in the procurement process. Procurement processes will be highly ethical, consistently applied, professional and in compliance with applicable codes and statutes. Operational procedures and guidelines will be maintained in the Procurement Office and kept up to date by the Senior Procurement Manager, subject to approval by the Executive Director and based on best practices consistent with legal requirements.

## SECTION 2: DEFINITIONS

### 2.1 Definitions

The following words, terms and phrases, when used in this Manual, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Addendum - an addition or change in the specifications after issuance of an informal or a formal competitive solicitation.

Best Interest of the Port Authority - a judgmental assessment of what will result in a maximum benefit being conferred upon the Port Authority.

Bid Guaranty - a written agreement, letter of credit, bid bond or check made payable to the Port Authority, by which a third-party guarantees that a bidder will accept and execute a contract as bid, if it is awarded.

Bid Protest - any formal written complaint about an action or decision of the Lee County Port Authority from a potential bidder with the intention of receiving a remedial result.

Bid Waiver - a request and/or approval to purchase goods or services through methods other than the standard competitive procedures.

Board - the Board of Port Commissioners of the Lee County Port Authority.

Board Level Authorization - purchases exceeding \$100,000.00, either for the fiscal year or cumulatively for the term of the contract, unless otherwise exempted in this Manual or approved by the Board.

Brand Name or Equal Specification - specification limited to one (1) or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the Authority's requirements and providing for the submission of equivalent products.

Centralized Purchasing - the point at which all purchases for an agency are made by a department enabling quantity purchasing and the standardization of frequently used items.

Change Orders (to a Purchase Order) - document required if an invoice is over twenty percent (20%) higher (up to a maximum of \$1,000.00) than the Purchase Order amount.

Commodities - any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property purchased, leased or otherwise contracted for by the Authority.

Competitive Negotiations - negotiations for certain professional services needed by a Port Authority department with qualifications and experience, not cost, being the primary selection factors.



Contractual Services – rendering by a contractor of its time and effort rather than the furnishing of specific commodities and as otherwise defined in section 287.012(8), Florida Statutes, as amended.

Contract - a formal, written agreement between the Board of Port Commissioners and a selected vendor for a particular commodity or service.

Emergency Purchase - an unforeseen situation in which there is a breakdown or restriction of Port Authority service and an urgent or immediate need to restore such service, in order to avoid serious and adverse consequences affecting the life, health, welfare, or property of, or effective service delivery to, the citizens of Lee County and airport users or the safe and efficient operation of the Airports.

Encumbrance - a commitment related to an unperformed contract for goods or services. An encumbrance is a budgetary control used by the Finance Department to assist in monitoring the budget and facilitating cash management. An encumbrance is not an actual expenditure nor is it a liability. An encumbrance represents funds reserved for an approved purchase order for the procurement of goods and services.

Executive Director Level Authorization - purchases less than or equal to \$100,000, either for the fiscal year or cumulative for the term of the contract, unless otherwise exempted in this Manual or approved by the Board.

Exempt Purchase - the purchase of goods or services that are not typically competed or do not precipitate the need for added control of a competitive process.

Informal Hearing - a meeting called, attended and presided over by the members of the Bid Dispute Committee to hear a bid protest.

Letters of Interest (LOI) - letters received in response to a Request for Letters of Interest, a non-competitive method of solicitation whereby all vendors are invited to submit a summary of their qualifications, interest and particulars in leasing airport property or performing a specific job or service.

Letters of Qualifications (LOQ) - letters received in response to a Request for Letters of Qualifications, a competitive method of solicitation used to solicit requests for Professional Services.

Lost or Abandoned Property - means all tangible personal property which does not have an identifiable owner that has been mislaid or disposed on airport property.

Minor Purchases - acquisition of goods or services costing less than three hundred dollars (\$300.00) such as recording fees, documentary stamps, summons, subpoenas and witness fees, tag and title fees or sales taxes incurred in a petty cash purchase.

Miscellaneous Obligations - certain transactions that are unique in nature, and therefore, cannot be handled through competitive bidding and negotiations. Pre-purchases will be considered a Miscellaneous Obligation.





Operational Procedures - day to day procedures and guidelines developed by the Procurement Office that implement Board-approved purchasing policies and that departments are expected to follow.

Organizational Membership - an approved involvement in various professional groups paid from Port Authority funds.

Other Professional Services - professional services not covered under section 287.055(2)(a), Florida Statutes, as amended, but requiring specialized education, skill, licensing or certification including, but not limited to construction management, planning, environmental services, real estate appraisal services (not used in litigation), financial services, legal services, lobbyists, other professionals designated by the Procurement Office or other services of a professional or technical nature, which may be required to accomplish the program or policy objectives of the Port Authority.

Performance Guaranty - a contract of guarantee, executed subsequent to contract award by a successful bidder to protect the Port Authority from loss due to the vendor's inability or unwillingness to perform the contract as agreed.

Pre-LOQ, Pre-Proposal or Pre-Bid Conference - a meeting of all interested parties prior to the submittal date of the written quotations/advertised sealed bids, sealed proposals, or Letters of Qualifications at which all project requirements and any questions or abnormalities concerning the project are discussed.

Pre-purchase - any goods or services delivered or received without Procurement's approval and prior to the issuance of a Purchase Order.

Price Estimate - a price given by a vendor for an item or service meeting specifications provided to them. This is not necessarily a firm quote.

Senior Procurement Manager - also referred to herein as Procurement Manager. The individual duly authorized to enter into contracts and make written determinations with respect thereto. The term also includes an authorized designee acting within the limits of authority as established by the Senior Procurement Manager.

Professional Services - as defined by section 287.055(2)(a), Florida Statutes, as amended, referring to 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, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

Purchase - acquisition of goods or services to fulfill a singular or non-routine need or acquisition of goods or services to fulfill foreseeable routine or repetitive needs, not including payment.

Purchase Order (PO) - the actual document ordering goods or services. The point at which funds are encumbered on the Authority's financial records. An official purchase of a good or service.



Request for Bids (RFB) - a formal competitive method used to solicit sealed bids for purchases of commodities or contractual services.

Request for Proposals (RFP) - a formal competitive purchasing method established around general guidelines or a description of need for a service rather than a firm specification written in detail, and used when no fixed criteria exist.

Request for Qualifications (RFQ) - a formal competitive procurement process whereby a firm or firms are selected based on their demonstrated experience and qualifications to perform the requested services.

Request for Quotations (electronic or written) - an informal competitive method used for the purchase of goods, services, or capital construction.

Request for Requisition (RPO) - a request to purchase goods or services, not an authorization to purchase.

Responsible Bidder or Proposer - a person or firm that has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance of the contract.

Responsive Bidder or Proposer - a person or firm that has submitted a bid or proposal conforming in all material respects to the requirements of the invitation or request.

Sole or Single Source Vendor - a vendor providing a product or service that is not obtainable from any other source because:

- ◆ The vendor is the sole or single provider of the product or service, or is the designated provider/vendor as determined by the originating manufacturer/provider;
- ◆ Use of a specific product or service is required to preserve the Port Authority's pre-existing warranty or contractual rights; or
- ◆ The product is proprietary and a trade secret under Section 812.081, Florida Statutes, or as amended, renumbered, or replaced, and is required to maintain compatibility with existing or proposed Port Authority equipment, facilities, systems, services or software; or
- ◆ It is essential to maintain consistency with the inventory of existing parts; or
- ◆ Port Authority employees have specialized training; or
- ◆ It is determined the commodities or services should be provided by a unique source based on particular specialized skill or experience.

Specifications - minimum guidelines or limitations required for goods or services to be purchased.

Surplus Property - consists of surplus, obsolete, or scrap supplies. "Surplus supplies" means supplies which are capable of being used but are in excess of the normal



operating requirements of the Port Authority. "Obsolete supplies" means those which may no longer be used for their intended purpose because their use has become economically impractical. "Scrap supplies" are those that can no longer be used either safely or economically for any purpose except for their possible salvage value.

Tabulation - a complete list of all sealed bids/sealed proposals/sealed Letters of Qualifications received for a project.

Travel Advance - a sum of money paid to a Port Authority employee in anticipation of their estimated travel expenses incurred during his or her travel.

## SECTION 3: CENTRAL PROCUREMENT OFFICE

### 3.1 Central Procurement Office; Senior Procurement Manager

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- A. Establishment. The Executive Director will establish a centralized Procurement Office to perform the Port Authority's purchasing functions and to carry out the provisions thereof. This organizational unit will be headed by a Senior Procurement Manager, also referred to as Procurement Manager).
- B. Authority Duties. Authority and duties of the Procurement Manager include, but are not limited to, actions necessary to enforce day to day operational procedures of the Procurement Office, as well as the following:
1. To purchase or supervise the purchasing of all goods and services needed by the Airports.
  2. To adopt operational procedures covering the internal function of the Procurement Office and delegated rights, powers, and authority vested in him/her to subordinate procurement agents and other employees.
  3. To establish procedures for obtaining fair and competitive offers from sources of supply for those purchases within established guidelines.
  4. To establish procedures and supervise the transfer, disposal or sale of surplus and lost abandoned property in accordance with the laws of Florida, subject to approval of the Executive Director.
  5. To execute purchase agreements and amendments up to Board Level Authorization. The total amount of an amendment or amendments to a contract executed under this paragraph will not exceed Board Level Authorization.
  6. Exercise the discretion to reject any and all competitive responses to a procurement solicitation after any vendor offer is opened, including those solicitations in which there is only one (1) responsive vendor.
  7. Exercise the discretion to determine whether quotations may not be necessary or beneficial to a particular procurement.
  8. To have the authority to declare vendors or suppliers who default on their quotations or contracts as irresponsible vendors or suppliers and to disqualify them from receiving any business from the Authority for a stated period of time, subject to approval of the Executive Director.
  9. Administer the use of Purchasing Cards.
  10. To have the authority to join with other units of government in cooperative purchasing plans when the best interest of the Authority would be served thereby.
  11. To have the authority to execute a cooperative procurement strategy that provides value to the Authority through reduction in administrative costs,



accelerated service delivery, lower pricing and to promote increased standardization.

- C. Duties of Port Authority Attorney. The Port Authority Attorney or his or her authorized designee will serve as legal counsel and provide legal services to the Procurement Manager as necessary.



## SECTION 4: GENERAL PROVISIONS

### 4.1 Unauthorized Purchases

Except as provided in this Manual, it will be unlawful for any Port Authority employee to order the purchase of any materials or supplies or make any contract for materials, supplies or services other than through the Procurement Office, and the Authority will not be bound by any purchase order or contract made contrary to the provisions of this Manual.

### 4.2 Encumbrance of Funds

1. **Requisition.** Except in cases of emergency, no requisition (RPO) for any order will be made if there are insufficient unencumbered funds in the appropriate account to be charged.
2. **Purchase orders.** The Procurement Office will not, except in cases of emergency, issue any purchase order if it has been determined by the Port Authority's Finance Department that there is insufficient unencumbered funds in the appropriate account to be charged.

### 4.3 Conflict of Interest

1. **Purchases.** Any purchase order or contract within the purview of the Procurement Office in which any officer or employee of the Authority is financially interested, directly or indirectly, will be void.
2. **Gifts.** No officer or employee of the Authority or his/her family member will, at any time, accept any compensation, payment, or thing of value when such officer or employee knows or, with the exercise of reasonable care, should know that it was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.

### 4.4 Lobbying Restrictions

To maintain integrity and place trust in the public procurement process, the Lee County Port Authority places lobbying restrictions on potential vendors during active procurements from the time a competitive solicitation is released or during negotiation of any corresponding agreement. The lobbying prohibition remains in effect until there is an executed agreement or the active procurement is canceled. All vendors are placed on notice that the Lee County Port Authority Board of Port Commissioners, Members of the Airports Special Management Committee and all Authority employees (with the exception of the Procurement Office personnel designated to receive questions, requests for interpretations or corrections) are not to be lobbied, either individually or collectively, regarding any active solicitation. During the entire procurement process, no potential vendor or their subcontractors, subconsultants, or agents may contact or communicate with, or discuss any matter relating in any way to an active procurement with any of the persons above, including such purposes as holding meetings of introduction, dinners, etc.

This includes requesting support or objection for a future Board agenda item related to the procurement. Prohibited contact includes copying persons on written communications including email correspondence. All vendors and their subcontractors, subconsultants, and any agents must submit individual affidavits with their submissions stating that they have not engaged in lobbying activities or prohibited contacts in order to be considered for an active solicitation.

Any vendor contacting individuals mentioned herein in violation of this warning will be automatically disqualified from further consideration for any solicitation.

#### 4.5 Cancellation of Request for Bids or Request for Proposals

A Request for Bids, 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, by the Executive Director or designee when it is in the best interests of the Port Authority in accordance with regulations. The reasons therefore will be made part of the contract file.

#### 4.6 Responsibility of Bidders and Offerors

1. Determination of Non-responsibility. The Procurement Manager will make a written determination of non-responsibility of a bidder or offeror in accordance with regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.
2. Public Records. Section 119.01, Florida Statutes et. seq., the Florida Public Records Law, provides that Port Authority records will at all times be open for personal inspection and copying by any person. Information and materials received by the Port Authority will be deemed to be public records subject to public inspection upon the issuance of a notice to award, recommendation for award, or thirty (30) days after bid or proposal opening, whichever occurs first. However, certain exemptions to the public records laws are statutorily provided for in section 119.071.

Under Florida law, designation of an entire bid or proposal submission as 'trade secret', 'proprietary' or 'confidential' is not permitted and may result in a determination that the submission is nonresponsive and therefore will not be evaluated or considered.

Except for materials that are considered 'trade secrets' as defined by section 688.002, Florida Statutes, ownership of all documents, materials and data submitted to the Port Authority belongs exclusively to the Port Authority. To the extent a vendor desires to maintain the confidentiality of any materials that it believes constitute trade secrets pursuant to Florida law, the vendor must cite, for each trade secret claimed, the Florida Statute number that supports the designation of the information as a trade secret and include a brief explanation as to why the cited statute is applicable to the information claimed as trade secret. Additionally, the vendor must provide a copy of its submission



that redacts all information designated as trade secret. The Port Authority reserves the right to clarify the vendor's request for a trade secret at any time. In conjunction with any trade secret designation, vendor acknowledges and agrees that:

Trade secret requests made after a public bid or proposal opening will not be considered.

By submitting, the vendor grants to the Authority, its officials, employees, agents and representatives full rights to access, view, consider, and discuss the information designated as trade secret;

Any trade secrets provided by a vendor to the Port Authority are subject to the provisions of section 119.0715, Florida Statutes, and the Authority may disclose a trade secret to its officers or employees whose use of the trade secret is within the scope of his or her lawful duties and responsibilities; and

After notice from the Authority that a public records request has been made to inspect or copy all or any portion of a vendor's submission, the vendor at its sole expense will be responsible for defending its determination that the submitted material (or portions thereof) constitutes a trade secret and is not subject to disclosure. Once the Authority notifies the vendor that it has received a request to inspect or copy information that the vendor has designated a trade secret, the vendor will take action to respond to the request promptly, but no later than ten (10) calendar days from the date of notification by the Authority or the vendor will be deemed to have waived the trade secret designation of the materials.

The vendor will indemnify and hold harmless the Authority and its officials, employees, agents and representatives from any losses, claims, actions, damages (including attorney's fees and costs) and amounts arising or incurred by the Port Authority from or related to the designation of trade secrets, including but not limited to actions or claims arising from the Port Authority's nondisclosure of the trade secret materials.

#### 4.7 Substantiation of Offered Prices.

The Procurement Manager may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost of goods or services offered, or some portion of it, is reasonable, if:

- a) The price is not:
  - 1. based on adequate price competition;
  - 2. based on established catalog or market prices; or
  - 3. set by law or regulation; and
- b) The price or cost exceeds an amount established by regulations.



#### 4.8 Policy Administration

The provisions of this Section will be liberally construed in order to effectively carry out the purposes hereof in the interest of public health, welfare, and safety of the citizens and residents of Lee County, the interests of the Port Authority and the traveling public, and the State of Florida.

#### 4.9 Performance and Payment Bonds/Insurance

A Performance and Payment Bond with a surety company authorized to do business in the state may be required. The Executive Director or designee will have authority to require a performance bond for any contract not to exceed \$200,000.00 or to waive in writing, the requirement to provide a performance bond as to any contract. Any public works contract estimated to cost \$200,000.00 or more requires a bond in accordance with section 255.05, Florida Statutes, as amended, or other governmental regulatory requirement, or as amended, renumbered or replaced. A bond rider is required in the event a contract change or amendment increases construction costs by five percent or more.

The Port Authority's Risk Manager will establish individual insurance requirements for construction specifications and contracts and applicable services Airport-wide.

#### 4.10 Negotiations

1. When only one (1) bid is received in response to a competitive solicitation, or the purchase is deemed to be proprietary/sole source, negotiation is permitted in order to obtain a fair and reasonable price. For solicitations that result in a price at Board Level Authorization or higher, the final negotiated price will be recommended to the Board for approval.
2. The Executive Director or authorized designee may negotiate to purchase used equipment when deemed to be in the best interests of the Authority. If the cost exceeds Board Level Authorization, the approval of the Board will be obtained unless time does not permit. In this instance, the Board will be informed of the circumstances and the purchase approved after the fact at the next scheduled Board meeting.

#### 4.11 Local Vendor Preference

It is the intent of the Board of Port Commissioners to establish an optional preference for local vendors offering to provide goods and services to the Port Authority when facts and circumstances warrant that the Port Authority may grant such a preference. It is, however, not the intent of the Board of Port Commissioners to prohibit, exclude, discourage or place at a disadvantage persons, firms, businesses or corporations that are nonlocal from providing goods and services to the Port Authority as part of a competitive selection process. All potential respondents to a competitive solicitation, Port Authority staff and the Airports Special Management Committee should be advised that the Board of Port Commissioners encourages award of contracts to local firms, consultants, contractors and providers when possible to foster the economic growth of the local community.



For any competitive solicitation for construction services paid for with any state-appropriated funds, section 255.0991, Florida Statutes, as amended, prohibits a county or political subdivision from using a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based upon:

- (a) Maintaining an office or place of business within a particular local jurisdiction;
- (b) Hiring employees or subcontractors from within a particular local jurisdiction; or
- (c) Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

For any competitive solicitation for construction services paid for with any state-appropriated funds, a county or other political subdivision must disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by Section 255.0991, as amended.

Except as provided above, this section does not prevent a county or other political subdivision from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

Pursuant to 49 CFR Part 18, requests for bids or proposals on projects and contracts that involve or may involve the use of federal dollars (e.g., Airport Improvement Program funds, American Recovery and Reinvestment Act funds, etc.) will not include a local vendor preference. However, procurements for projects funded by other sources may consider local vendors in the evaluation of responses to requests for qualifications, requests for proposals and requests for bids as allowed pursuant to the regulations and restrictions on the planned or potential funding source. Language should be included in each competitive solicitation indicating if a local preference may be considered during the evaluation process. Nothing in this section obligates Port Authority staff, the Airports Special Management Committee or the Board of Port Commissioners to select a local vendor if the need for airport specialty services, conditions and/or circumstances warrant selection of a non-local vendor.

1. For purposes of this policy, "Local Vendor" and "Local Preference" will have the same meaning as defined in Lee County Ordinance 18-22, as amended by Lee County Ordinance 22-06, as amended.
2. Construction Bids: In an effort to achieve the goals set by the Board of Port Commissioners outlined above, Port Authority staff, the Airports Special Management Committee, and the Board may give preference to local contractors and vendors that submit pricing within three percent (3%) of the lowest responsive, responsible competitive bid or quote total price (base bid plus Port Authority selected alternates). This section does not apply to the solicitation of contracts whereby any federal dollars have the potential to be used to fund a portion of the project or 50% or more of the project cost will be paid by state-appropriated funds.





3. Professional Services and Other Professional Services: In an effort to achieve the goals set by the Board of Port Commissioners outlined above, the Port Authority Staff Qualifications Committee, the Airports Special Management Committee, and the Board may give preference during the evaluation of any competitive solicitation to a local vendor due to the local firm's ability to be more responsive, its knowledge of local conditions, experience with local regulatory permitting, commitment to the local economy, etc. This section will not apply if prohibited by state or federal funding regulations or requirements.
4. Other Procurement Methods (i.e., Design/Build, Requests for Proposals, etc.): As these types of solicitation involve the evaluation of both qualifications and price, both Sections 2 and 3 above may apply. This section does not apply to the solicitation of contracts where any federal dollars may be used to fund a portion of the project.

## SECTION 5: COMPETITIVE SELECTION METHODS

Unless otherwise authorized by law or exempted in this manual, all Port Authority purchases are subject to the terms and conditions of this section and will comply with the established and published administrative procedural standards.

The following procurement categories are established for the purpose of identifying procurement methods available for use in accordance with approved thresholds to acquire goods, contractual services and construction.

Category 1: purchases up to and including \$25,000.00

Category 2: purchases between \$25,000.01 and \$250,000.00

Category 3: purchases exceeding \$250,000.00

All purchases valued at \$100,000 or more require approval of the Board of Port Commissioners to authorize the purchase regardless of procurement method used, unless otherwise exempted in this manual or by law. The Executive Director is authorized to approve purchases of goods or services which do not exceed Board Level Authorization. Purchases may not be intentionally separated, split or otherwise divided to come within a particular procurement category.

### 5.1 Formal Competitive Selection Methods

#### A. Formal Competitive Sealed Bidding.

Capital construction projects projected to cost in excess of thresholds identified in Chapter 255, Florida Statutes, as amended, will be acquired through formal sealed bids except as otherwise provided in this Manual.

1. **Notice Inviting Bids.** Request for Bids will be subject to the following:
  - a) **Request for Bids.** A Request for Bids will be issued and will include a purchase description, and all contractual terms and conditions applicable to the procurement. No criteria may be used in bid evaluations that are not set forth in the Request for Bids.
  - b) **Public Notice.** Adequate public notice of the Request for Bids will be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations. For construction projects valued at more than \$200,000.00, notice thereof will be advertised at least one (1) time in a newspaper of general circulation, calling for sealed bids upon the work to be done under the proposed contract, to be received no earlier than twenty-one (21) days from the first publication of notice as may be required by governing regulations.



Construction projects valued at more than \$500,000.00 will be advertised in the same manner, but at least thirty (30) days prior to the bid opening.

Notice for all other Requests for Bids will be advertised in the most cost-efficient and effective manner.

- c) **Bidders List.** Notice of sealed bids may also be solicited from responsible prospective suppliers, who have requested the opportunity to bid on Port Authority projects, via whatever method is determined by the Procurement Manager to be most effective and efficient while allowing sufficient time for the prospective bidder to submit a response.
- d) **Bid Opening.** Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the Request for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder will be recorded in a Register of Receipt prepared at the Bid Opening; the record of each bid will be open to public inspection in accordance with applicable public records laws.
- e) **Bid Bond.** When deemed necessary by the Procurement Office in consultation with the requesting department, bid bonds will be required in the Request for Bids. Criteria to consider in determining whether a bond will apply may include, but is not limited to, federal, state or local grant requirements, contract risk, project specific concerns, and past track record. Unsuccessful bidders will be entitled to a return of their bid bond where the Authority has required such following the issuance of a notice of award or a decision to reject all bids. A successful bidder will forfeit any required surety upon failure on his part to enter into a contract after Authority approval or to meet other requirements as set forth in the Request for Bids.
- f) **Correction or Withdrawal of Bids.** Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes will be permitted in accordance with regulations. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Port Authority or fair competition will be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, will be supported by written determination made by the Procurement Manager.

- g) **Award.** After review of submitted bids by Port Authority staff, the Procurement Manager will provide a "Notice of Intended Decision" to all bidders. The contract, if required, will then be scheduled for consideration and approval and awarded with reasonable promptness, subject to funding availability and legal requirements to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Request for Bids.

## **B. Formal Competitive Sealed Proposals.**

### **1. Conditions for Use.**

- a) Competitive sealed proposals is a competitive method used to acquire goods or services which due to their uniqueness are established around general guidelines or a description of a need for a service or a performance expectation of a particular service, rather than a firm specification written in detail and is used when limited to no fixed criteria exists. Competitive proposals are used only when it is not appropriate to use the sealed bid method. Goods or services may be solicited by competitive sealed proposals as determined by the Procurement Manager in consultation with the requesting department.
  - b) Regulations may provide that it is either not practical or not advantageous to the Port Authority to procure specified types of supplies, services, or construction by competitive sealed bidding.
  - c) Contracts for auditing services are subject to the auditor selection procedures and procurement requirements outlined in section 218.391, Florida Statutes, as amended.
- 2. **Public Notice.** Public notice for Requests for Proposals for construction projects will be advertised in the same manner as Requests for Bids for construction projects of the same value. Adequate public notice for all other Requests for Proposals will be given in the same manner as provided for other Requests for Bids.
  - 3. **Proposal Opening.** Proposals will be opened publicly and a Register of Proposals will be prepared in accordance with regulations. All proposals will be open for public inspection in accord with public record requirements.
  - 4. **Evaluation Factors.** The Request for Proposals will state the relative importance of price and other factors and subfactors, if any. Judgmental factors may be used to determine not only if items offered meet the certain criteria but also to evaluate competing proposals.
  - 5. **Proposed Fees.** The Authority may also require interested persons to submit their proposed fees or prices for the performance or delivery of their proposed services or goods, unless such pricing from interested persons is prohibited by law. Following the conclusion of the evaluation and prior to

the contract award, such fees may be negotiated as set forth in the original Request for Proposals.

### **C. Competitive Requests for Qualifications (CCNA)**

Competitive Requests for Qualifications is a competitive method with qualifications and experience, not cost, being the primary selection factor. The procedures outlined below will be used for the acquisition of Professional Services as defined under the Consultants' Competitive Negotiations Act ("C.C.N.A.") section 287.055, Florida Statutes, or as otherwise required under Florida law.

#### **1. Conditions for Use.**

- a) A contract may be solicited by competitive request for qualifications when the Procurement Manager in consultation with the requesting department determines, pursuant to regulations, that the use of competitive sealed bidding or proposals is either not practical or not advantageous to the Port Authority. Such determination is not required when in accord with governing laws.
- b) Professional Services required to be procured in accordance with section 287.055, Florida Statutes, as amended, will be acquired by Competitive Requests for Qualifications.
- c) Public Notice. Adequate public notice of the Request for Qualifications will be given in the manner required by law.
- d) Receipt of Qualifications. A Register of Receipt will be prepared and will be open for public inspection in accord with public record requirements.
- e) Evaluation Factors. Judgmental factors and the evaluation criteria set out in Section 9 of this Manual will be used to determine not only if responding firms meet the certain criteria but also to evaluate competing qualifications.

### **D. Competitive Request for Qualifications (NON-CCNA)**

Other Professional Services as defined herein and not covered under the CCNA and above the Board Level Authorization will follow procedures outlined in each individual Request for Qualifications solicited. Other professional services procured which solicit subcontracts for construction projects will be required to comply with sections 255.0525 and 255.20, Florida Statutes, as amended, and 49 Code of Federal Regulations Part 18, if federal funds are involved.

### **E. Invitation to Negotiate**

The invitation to negotiate is a type of competitive solicitation used by the Port Authority as authorized by section 287.057(1)(c), Florida Statutes, as amended, which is intended to determine the best method for achieving a specific goal or



solving a particular problem and identifies one or more responsive vendors with which the Port Authority may negotiate in order to receive the best value.

1. Before issuing an invitation to negotiate, the Executive Director or designee must determine and specify in writing the reasons that procurement by an invitation to bid or a request for proposal is not practicable.
2. The invitation to negotiate must describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation.
3. The criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the Port Authority will negotiate must be specified. The evaluation criteria must include consideration of prior relevant experience of the vendor.
4. The Port Authority shall evaluate replies against all evaluation criteria set forth in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The Port Authority may select one or more vendors within the competitive range with which to commence negotiations. After negotiations are conducted, the Port Authority shall award the contract to the responsible and responsive vendor that the Port Authority determines will provide the best value to the state, based on the selection criteria.
5. The contract file for a vendor selected through an invitation to negotiate must contain a short plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the Port Authority.

## 5.2 Informal Competitive Procurement

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- A. **Written or Electronic Quotes.** An informal process for obtaining written offers or electronic quotes whenever material, equipment and supplies are needed in connection with the usual and customary operation of the Authority.
- B. Purchases equal to or under Category 2 will require responses be solicited for each group of goods required. Either a contract or purchase order contract may be completed for these items at the discretion of Procurement. Procurement will coordinate with the appropriate department to determine the lowest, most responsive and responsible bidder. Purchases of commodities or services estimated to be below Category 3 do not require advertising and responses are not required to be opened in public. However, purchases valued at \$100,000.00 or more will be broadcast publicly to make competitive procurement opportunities visible to the public. Approval may be requested to target specific

vendors, such as local vendors or minority businesses; however in the event approval is made, it is conditioned upon the requirement that competitive opportunities be rotated to the greatest extent possible and that any vendor asking for an opportunity to provide a quote must be given the opportunity. Additionally, Board approval of the award is required for purchases exceeding Board Level Authorization; however, the Bid Protest Procedure outlined in this Manual does not apply to Category 1 or 2 purchases. Procurement Administrative Standards set forth established procedures.

Purchases that are paid for using local, state or federal Grant funds must be procured in accordance with grantor requirements.

When deemed necessary by the Procurement Office in conjunction with the requesting department, a bond payable to the Authority will be required in the request for written or electronic quotes to guarantee the successful quoter will accept the purchase order or enter into an agreement, as applicable. Criteria to consider in determining whether a bond will apply may include, but is not limited to, federal, state or local grant requirements, contract risk, project specific concerns, and past track record.

- C. **Request for Offers.** Request for Offers is an informal, qualifications-based process for obtaining competitive written offers, generally used for services. This method of procurement may be used for Category 2 purchase. The Procurement Office reviews offers received for responsiveness in response to a Request for Offers and facilitates the evaluation of the responsive offers. Evaluation is made in accordance with criteria set forth in the solicitation document. Negotiation of the pricing, terms and conditions is facilitated by the Procurement Office on behalf of the client department to reach final agreement. Award is based on the offer that best meets the requirements of the Port Authority.

### 5.3 Utilization of Other Competitively Procured Contracts

It has been determined that it may be to the Port Authority's best interest to utilize other competitively procured contracts to take advantage of efficiencies in the procurement process. Cooperative procurement occurs when two or more entities combine requirements and manage a competitive procurement process that results in an agreement that can be used by authorized entities. A contract may be awarded for a commodity or service when the Procurement Manager determines that utilizing the contract is authorized and in the Port Authority's best interest under the following circumstances:

- A. Utilization of State of Florida Contracts in which the Port Authority has direct authority under section 287.042(15), Florida Statutes, as amended.
- B. Joint Solicitation in which the Port Authority aggregates its needs with other entities in one single solicitation process that binds the entities to the contract that results from this effort, giving prospective suppliers a clear understanding of

the volume and service level requirements necessary to support the involved entities.

- C. General Service Administration (GSA) Agreements established by the federal government which provides current vendor pricing.
- D. Piggybacking. When goods and services have gone through a competitive solicitation process led by another governmental entity (i.e., municipal or county governments, or other qualified agencies), even though the Authority was not a part of the original solicitation. The Port Authority may "piggyback" the awarded contract and take advantage of the specified level of service, contract terms, and pricing received. Such current agreement must be maintained in the Procurement Office and remain on file in accord with public records laws.

## 5.4 Sole and Single Source Procurement

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Single source purchases involve the acquisition of Commodities or Contractual Services from a specific vendor based upon standardization, warranty, compatibility, safety considerations and other similar factors where other competitive sources may be available. Sole Source purchases involve the acquisition of Commodities or Contractual Services where there is only one authorized source for the required good, service, system, software or construction item.

A contract may be awarded for a supply, service, system, software or construction good or service without competition when the Senior Procurement Manager determines in writing that there is adequate written justification explaining the basis for use of the single or sole source procurement type. Such recommendation must accompany the Board approval request if the value of the purchase is over the Board Level Authorization.

Single and sole source purchase limitations are not applicable for purchases below \$25,000.00. Project specifications that identify at least three (3) specific vendors/products or identify one (1) vendor/product but allow for an equal vendor/product alternative will not be considered Single or Sole Source.

The Procurement Manager will be authorized to enter into direct negotiations pertaining to the costs and products determined to be sole or single source.

## 5.5 Emergency Purchases

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In the event of, or in anticipation of, a natural or manmade disaster, including but not limited to, a hurricane, tornado, flood, fire, aircraft incident, riot or other act of God, or an act of domestic terrorism, the Executive Director is authorized to declare an emergency event or a state of emergency for purchasing purposes. Nothing in this section will be construed to limit the authority of the Board to declare or terminate a state of emergency and take any action authorized by law when sitting in a regular or special meeting. During the declared emergency period, all normal purchasing

procedures and requirements will be suspended and the following procedures will apply:

- A. The Executive Director will be empowered to authorize the Procurement Manager to secure any needed emergency supplies, materials, equipment or services using the most efficient and effective procurement methods, as determined by the Procurement Manager. If the cost of any purchase exceeds Board Level Authorization, a full report of such purchase will be made to the Board at the earliest available regular or special Board meeting.
- B. By Department Head. With the approval of the Executive Director, or Procurement Manager if so designated by the Executive Director, the head of any department may purchase any needed emergency supplies, materials, equipment or services, using the most effective procurement methods, as determined by the department head. If the cost of any purchase exceeds the current Board Level Authorization, a full report of such purchase will be made to the Board at the earliest available regular or special Board meeting.
- C. Other municipalities. The Executive Director, or Procurement Manager if so designated by the Executive Director, may request another municipality to purchase for the Authority any needed emergency supplies, materials, or equipment or the Authority may purchase from another municipality any needed emergency supplies, materials or equipment such municipality has available. If the cost of any purchase exceeds the current Board Level Authorization, a full report of such purchase will be made to the Board at the earliest available regular or special Board meeting.

Notwithstanding any other provision of this policy, the Executive Director or Procurement Manager or a designee of either may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions described herein; provided that such emergency procurements will be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular vendor will be included in the contract file.

## 5.6 Special Procurements

Notwithstanding any other provision contained herein, the Procurement Manager may initiate a procurement above Category 2 where the Executive Director determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals or qualification contrary to the public interest. Any special procurement under the section will be made with such competition as is practical under the circumstances. A written determination of the basis for the procurement and for the selection of a particular vendor will be included as backup to the recommendation to the Board for approval.

## SECTION 6: EXEMPTIONS FROM COMPETITIVE SOLICITATION PROCESS

If the purchase of commodities or contractual services exceeds the threshold amount provided in section 287.017 for CATEGORY FIVE, the purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless an exception consistent with an exception as provided in section 287.057(3) or an immediate danger to the public health, safety, or welfare or other substantial loss to the commercial service airport requires emergency action. Authorization by the Board of Port Commissioners is not required to purchase commodities or contractual services which are exempt from the competitive solicitation process.

In addition, the following purchases are exempt from competitive solicitation requirements:

- A. Purchases from a non-profit agency;
- B. Professional memberships, licenses, subscriptions, or certifications for Port Authority employees where such is a requirement of the employee's job classification or duties or of direct benefit to the Port Authority;
- C. Purchase of items for resale at Page Field;
- D. Airport sponsored events at hotels, motels, restaurants, travel, and entertainment, that fall under the provisions of Section 331.20, Florida Statutes, or as amended, renumbered or replaced;
- E. Payment for cellular telephone service, including voice, text, and data service;
- F. All advertising for billboard, magazine, television, etc., as approved by Communications and Marketing; advertising for employment listings, as approved by Human Resources; advertising for the purchase of goods and services as approved by Purchasing; and lost and found notices;
- G. 700 or 800 MHz Radio System equipment fixed-end, maintenance and repairs including air time;
- H. TSA Mandated Security Background Checks;
- I. Applicant and Employee Drug Testing, and pre-employment and employee physicals including psychiatric services;
- O. Aircraft maintenance and repair, including parts and accessories, for aircraft owned or operated by the Port Authority;
- P. Purchase of annual liability, property and casualty, and other lines of insurance as required to protect Port Authority assets at the recommendation of an Insurance Broker/Agent of record retained by the Authority to negotiate the most favorable rates for such coverage;
- Q. Miscellaneous Obligations/Disbursements (i.e., land, purchases, etc.);
- R. Land appraisals obtained utilizing Lee County contractual agreements or another competitive solicitation method;





- S. Airport concession and ground or space leases solicited under the Port Authority Concession Leases and Concession Agreements Policy, Section 700 of the Lee County Port Authority Policy Manual, or as amended, renumbered, or replaced;
- T. Permit fees and special assessments; and
- U. Reimbursement of Qualifying Airline marketing activities to promote New or Additional Nonstop Airline Passenger Service under the terms of the Port Authority's Air Service Incentive Program.



## SECTION 7: CONTRACTS

### 7.1 Contracts

#### A. Contracts

The Executive Director or designee will have the authority to sign for the Port Authority in executing commodity purchases and service agreements up to the current Board Level Authorization.

The Executive Director or designee is authorized to approve, execute and authorize all individual contract changes on projects in dollar amounts less than the project budget approved by the Board.

Any contract changes, which require an increase or decrease to the project budget or a substantial change to the project scope of work must be approved by the Board.

All agreements, excluding purchase order agreements, require approval of the Port Authority Attorney's Office.

Extensions or contract renewals that equal or exceed Board Level Authorization must be authorized by the Board, unless otherwise permitted by the Board. The extension of contract time associated with individual tasks, projects or assignments may be extended as long as within the Board-approved overall contract term.

Purchases of Other Professional Services that do not exceed Board Level Authorization may be made without competition. Dividing purchases to stay within this threshold is not permitted. The Executive Director/designee is authorized to execute such agreements up to the current Board Level Authorization.

Successive annual purchases of commodities or services that are not Other Professional Services, from the same vendor where each annual purchase totals a Category 2 or 3 purchase level requires use of a competitive procurement method.

#### B. Capital Construction Project Development Policy

The Development Division may prepare a Total Project Budget for all Port Authority Capital Construction projects. The Total Project Budget will include all items necessary to successfully complete the project including, without limitation, design, permitting, mitigation, land acquisition, construction management, construction and all contingencies.

Contingencies must be presented to the Board as part of the Total Project Budget. Contingencies may vary depending upon the total dollar value and the complexity of the project and may be applied to any project contract within that

Total Project Budget. If a Total Project Budget is approved by the Board, each time a project contract is approved by the Board in accordance with the provisions outlined in this Manual, the Total Project Budget will also be presented and/or updated for Board approval. All project costs will not exceed the Board-approved Total Project Budget. Any increases or decreases to the Total Project Budget beyond the initial approval amount; any project contract changes that require an increase or decrease to the Total Project Budget; and any substantial changes to the project scope of work will be subject to the Board's approval.

The Executive Director or authorized designee is authorized to approve, execute and authorize all individual contract changes in dollar amounts less than the Total Project Budget approved by the Board.

If no Total Project Budget has been approved for a project, the Executive Director or authorized designee may approve individual contract changes up to the Board Level Authorization and up to a cumulative annual cap of \$1,000,000.00 per contract. Contract changes that exceed the cumulative annual cap are subject to approval by the Board.

#### C. Vendor Name Changes

When a vendor who is a party to an agreement to provide goods or services to the Authority requests to change the name in which it holds the agreement, the Procurement Office will request documentation that substantiates the name change due to a merger, acquisition, etc. Upon review of the documents, the Procurement Office will verify the name change and the new vendor's willingness to provide the goods or services under the same terms and conditions. Once verification is complete, the Procurement Office will request review by the Attorney's Office, who will initiate an amendment to the agreement or reassignment of the agreement.

The amendment or assignment agreement will be provided by the Procurement Office to any affected departments so that proper measures can be taken to change all affected records.

The Senior Procurement Manager is further authorized to accept and validate a vendor name change on purchase order agreement without further administrative approval.

This section may not be used to allow a vendor to assign a contract, where such assignment is prohibited in the quote, bid, proposal, and contract or purchase order.

## SECTION 8: WOMAN-OWNED, MINORITY-OWNED AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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The Lee County Port Authority is dedicated to promoting the full participation of Disadvantaged Business Enterprises (DBEs), Airport Concession Disadvantaged Business Enterprises (ACDBEs), and Woman and Minority-Owned Business Enterprises (W/MBEs) in the economic activities and capital improvement projects at the Southwest Florida International Airport and Page Field airports. Therefore, any individual or firm that enters into an agreement with the Port Authority will make every possible effort to include DBEs, ACDBEs, and/or W/MBEs in their operational plan, as appropriate. This includes, but is not limited to, subcontracting, joint ventures, management agreements, and the acquisition of services, materials and supplies. The Port Authority will establish and maintain programs to support and comply with DBE, ACDBE, and W/MBE policies and regulations as follows:

### 8.1 Disadvantaged Business Enterprise Policy (DBE)

U.S. Department of Transportation (USDOT) Title 49 Code of Federal Regulations (49 CFR Part 26) requires that the Port Authority administer a Disadvantaged Business Enterprise (DBE) program for all capital projects and contracts whereby the Port Authority may receive federal financial assistance from the USDOT for projects which cost in excess of \$250,000.00. As a condition of receiving this grant assistance, the Port Authority submits its DBE achievements to the Federal Aviation Administration (FAA) in compliance with 49 CFR Part 26. Administrative procedures implementing the Port Authority DBE Policy will be maintained and amended to ensure compliance with the federal DBE program for all federally funded capital projects and contracts.

### 8.2 Airport Concession Disadvantaged Business Enterprise Policy (ACDBE)

U.S. Department of Transportation (USDOT) Title 49 Code of Federal Regulations (49 CFR Part 23) encourages the participation of Airport Concession Disadvantaged Business Enterprises (ACDBEs) in Port Authority concession related contracting opportunities. It is, therefore, the policy of the Port Authority that ACDBEs have the maximum opportunity to compete for and participate fairly in concession-related contracting opportunities for airport concessions. The Port Authority submits its ACDBE achievements to the Federal Aviation Administration (FAA) for approval in compliance with 49 CFR Part 23. Administrative procedures implementing the Port Authority ACDBE Policy will be maintained and amended as necessary to ensure compliance with the federal ACDBE program for all airport concession contracts.

### 8.3 Woman and Minority-Owned Business Enterprise Policy (W/MBE)

Although there is no federal requirement for airports to implement additional disadvantaged business programs other than the DBE and ACDBE programs listed above, the Port Authority hereby voluntarily enacts a policy that Woman and Minority-Owned Business Enterprises (W/MBEs) will have full and fair opportunities to compete for and participate in the performance of contracts on non-federally funded Port Authority



projects and project-related contracts. The Port Authority will encourage all current and prospective contractors, consultants, and lessees, to assist in implementing this policy by taking the necessary measures to ensure meaningful and equitable participation by W/MBEs and to encourage the development of existing and new W/MBEs. The Lee County Port Authority has determined that DBE certified companies meet the W/MBE certification requirements and are eligible to participate on projects with W/MBE goals.

Administrative procedures implementing the Port Authority W/MBE Policy will be maintained and amended as necessary for all airport projects and contracts.

## SECTION 9: REVIEW OF QUALIFICATIONS AND PROPOSALS

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### 9.1 Review of Submittals Received in Response to Requests for Qualifications and Proposals

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#### A. Staff Evaluation Committee Responsibility and Function

1. All Qualifications and Proposals will be reviewed by a Staff Evaluation Committee consisting of the Procurement Manager, or designee, and such other staff members as the Procurement Manager and the requesting department designate. A representative of the Office of Grants and Governmental Affairs will serve on the Committee for all projects requesting DBE, W/MBE or ACDBE participation and such other projects as the Procurement Manager may request. The Procurement Manager or designee will serve as the facilitator for all Staff Evaluation Committee meetings.
2. The Staff Evaluation Committee will be responsible for evaluating the qualifications and capabilities of firms who have submitted information in response to the request for proposals/qualifications. Committee evaluations will be conducted at a publicly noticed meeting and minutes of the meeting will be taken. Evaluations may include such activity as is deemed appropriate by the Committee to verify the qualifications and capabilities of the firms submitting qualifications or proposals and their ability to furnish the required goods or services.

The Staff Evaluation Committee, at its discretion, may request oral, written or visual presentations from; conduct interviews with; or conduct visits to the office, facilities or projects of the proposers it selects from among those submitting letters of qualifications or proposals.

After completing a review of all submitted proposals, the Staff Evaluation Committee will forward all responsible and responsive submittals to the Airports Special Management Committee, along with a recommendation that includes a suggested order of preference of the firms the Staff Evaluation Committee finds most qualified or have submitted the best proposal.

#### B. Airports Special Management Committee Evaluation

At a public meeting, the Airports Special Management Committee will consider the Staff Evaluation Committee's recommendations and review all submitted letters of qualifications or proposals. The Airports Special Management Committee, at its discretion, may request oral, written or visual presentations from; conduct interviews with; or conduct visits to the office, facilities or projects of the firms it selects from among those submitting qualifications or proposals. The Airports Special Management Committee may waive oral presentations or interviews. If no oral presentations or interviews are requested, the Airports Special Management





Committee will make its selections based on its review of the submitted materials and the staff evaluation of qualified firms at its initial public meeting.

The Executive Director or authorized designee, the Authority staff, and members of outside agencies (i.e., FAA and FDOT) may participate in the oral presentations or interviews as appropriate.

For proposals to provide goods and services, the Airports Special Management Committee evaluation may include, but is not limited to, such factors as: quality of the product or service; price; past performance; willingness and ability to meet time and budget requirements; ability to furnish the required services or product; and such other factors as may be determined by the Committee to be applicable to the particular requirements of the solicitation and in the best interest of the Lee County Port Authority.

Consideration will be given to Disadvantaged Business Enterprise, Minority Business Enterprise and Women Business Enterprise firms in accordance with applicable governmental laws, policies or regulations.

At the conclusion of its evaluations, the Airports Special Management Committee will vote to establish a list of at least three (3) firms in order of preference, most qualified and capable to provide the product or perform the services required. If the vote results in a tie between the most qualified firms, a second vote will be taken between the tied firms to break the tie. If the vote results in a second tie, then the Staff Evaluation Committee's evaluation of the Qualifications or proposals will serve to break the tie. The Airports Special Management Committee will report its recommendations and order of preference to the Board of Port Commissioners. Should the Airports Special Management Committee determine from its evaluations that there are less than three (3) qualified firms submitting letters of qualifications or proposals, it will provide the Board of Port Commissioners with such recommendation(s) as it deems appropriate under the circumstances.

Following the conclusion of the Airports Special Management Committee meeting, Purchasing will send notice of the Committee's proposed ranking and recommendations to each submitting firm or consultant.

#### C. Evaluation Criteria for Requests for Qualifications

Pursuant to section 287.055 (4)(b), Florida Statutes, as amended, in determining whether a firm is qualified, the Port Authority will consider a number of factors, including the "recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the Port Authority, 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." It is the intent of the Board of Port Commissioners to provide opportunities to all qualified firms to gain airport experience and to

broaden the number of qualified firms available to provide services to the Port Authority as a diversified resource that promotes competition. Therefore, all respondents to competitive solicitations are advised that Port Authority staff, the Airports Special Management Committee, and the Board of Port Commissioners will place emphasis on reviewing current workload when being considered for Port Authority projects/assignments. Firms with a significant amount of current ongoing Port Authority work may be ranked lower to offer opportunities to other qualified firms.

D. Action by the Board of Port Commissioners

The Board of Port Commissioners, after consideration of the recommendation(s) and order of preference reported by the Airports Special Management Committee, will take such action as it deems appropriate to approve, in order of preference, the firms that it deems qualified and capable to provide the product or perform the services required. Subsequent to the ranking of firms by the Board of Port Commissioners, Procurement will send written Notice of Ranking to the highest-ranking firm and will notify all firms that submitted Letters of Qualifications or Proposals of the ranking.

E. Contract Negotiations

Once the Board completes its ranking, staff will commence to negotiate a professional services agreement with the top ranked firm(s) that meets the requirements of the Port Authority. If staff is unable to negotiate such an agreement, staff will formally terminate negotiations with the highest ranked firm in writing and open negotiations with the next highest ranked firm. If necessary, staff will formally terminate negotiations with the next highest ranked firm and continue negotiations with subsequently ranked firms until it obtains an agreement that can be presented to the Board of Port Commissioners for review. The decision to formally terminate negotiations and commence negotiations with a subsequently ranked firm may be made by the Director of the project sponsoring department.

The Board of Port Commissioners retains the sole authority to approve, reject or modify all contracts for commodity purchases and services for \$100,000 or more.

## SECTION 10: BID PROTEST PROCEDURES

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### 10.1 Bid Protest Procedures

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- A. This Bid Protest Procedure applies to Requests for Bid only. Any bidder that has submitted a bid and is affected adversely by an intended decision with respect to the award of any bid that allows the filing of a protest, will file with the Senior Procurement Manager a written "Notice of Intent to File a Protest" no later than forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) after receipt of the "Notice of Intended Decision" from the Port Authority with respect to the award of the bid. This procedure does not apply to letters of qualifications, requests for proposals, requests for information or quotes.
- B. For the purpose of computation, the Notice of Intent to File a Protest must be received by the Procurement Manager no later than four o'clock (4:00) p.m. on the second working day following the day of written or electronic receipt of the Notice of Intended Decision regarding award of the bid.
- C. The initial Notice of Intent to File a Protest will state the basis of the protest and clearly indicate that its purpose is to serve as the initial notice of intent to file a bid protest. The basis of any protest is limited to violations of the Port Authority Procurement Policy or state or federal law. Failure to clearly indicate that intent will constitute a waiver of the right to seek any remedy provided under this bid protest procedure.
- D. After timely filing of a Notice of Intent to File a Bid Protest, a protester must file a formal written protest within five (5) Port Authority workdays after the date of filing of the Notice of Intent to File a Protest to perfect the protest. Failure to timely file a formal written protest will invalidate the Notice of Intent to File a Protest and constitutes a waiver of the protest and any claims.
- E. Except as provided in the paragraph below, upon filing a formal written protest the protester will post a bond, payable to the Port Authority, in an amount equal to five percent (5%) of the total of the bid, or ten thousand dollars (\$10,000.00) whichever is less. Said bond will be conditioned upon the payment of all costs which may be adjudged by the Board against the protester in the event of an adverse determination of the protest. The surety issuing the bond must be authorized to do business in the State of Florida. In lieu of a bond, a clean, Irrevocable Letter of Credit or other form of approved security, payable to the Port Authority, will be accepted. Failure to submit a bond or acceptable Letter of Credit simultaneously with the formal written protest will invalidate the bid protest, at which time the Port Authority may continue its procurement process as if the bid protest had never been filed.



- F. If circumstances are presented in writing to the Executive Director or designee demonstrating that a delay incident to suspending the bid award process would be detrimental to the best interests of the Port Authority or the public's health, safety or welfare, the Executive Director or designee may authorize an expedited bid protest hearing procedure. The expedited hearing will be scheduled and heard as soon as the Port Authority deems practical. If an expedited hearing process is used, the Notice of Intent to File a Protest will serve as grounds for the protest hearing and the filing of a formal written protest and the requirement to post a bond (unless previously posted) will be waived.
- G. Any amendment to the formal written protest must be in writing and received by the Senior Procurement Manager within five (5) Port Authority workdays of the date of filing of the Notice of Intent to File a Protest. No amendments will be allowed after the five (5) Port Authority workday period has expired.
- H. The formal written protest must contain the following:
  - 1. Port Authority bid identification number and title.
  - 2. Name and address of the proposed recipient of the bid award (the affected party).
  - 3. The name and address of the protester, and the title or position of the person submitting the bid protest.
  - 4. A statement of disputed issues of material fact. If there are no disputed material facts, the written protest must so indicate.
  - 5. A statement indicating the relief to which the protester deems him/herself entitled.
  - 6. A concise statement of the facts alleged and of the rules, regulations, statutes, and constitutional provisions entitling the protester to relief.
  - 7. Such other information as the protester deems to be material to the issue.

Failure to include all required information will result in dismissal of the protest and the Protester will not be entitled to further appeals.

- I. The formal written protest must be in writing and transmitted via email with read receipt to the Senior Procurement Manager with the subject being "Bid Protest" or hand delivered to Lee County Port Authority Procurement Office in an envelope labeled "Bid Protest". A protest is considered filed when received by the Senior Procurement Manager.
- J. Upon receipt of a formal written protest, timely filed, the Senior Procurement Manager will abate the bid solicitation process or award of contract until the protest is resolved pursuant to fundamental principles of due process, except and unless the Executive Director makes a written determination that it is in the best interest of the public to continue the bid solicitation or the contract award

process for the purpose of avoiding immediate and serious danger to the public health, safety, and welfare, or the potential loss of funds for the project.

- K. All bid solicitations and notices of decisions or intended decisions, with respect to bid awards, will set forth the following statement:

**"Failure to Follow the Bid Protest Procedure set out in the Lee County Port Authority Procurement Manual Will Constitute a Waiver of Your Protest and Resulting Claims."**

- L. Upon receipt of a formal written protest that complies with the requirements above, the Port Authority will provide any affected parties a copy of the protest and allow the affected party to file a concise written response to the formal written protest. Any response must be filed no later than five (5) Port Authority workdays after the affected party receives the formal written protest. A copy of the response will be provided to the party that filed the original bid protest. After filing of the formal written protest and any response by an affected party, no additional filings from either party will be allowed. Failure of the protestor or the affected party to submit information within the timeframes identified herein shall waive their rights for supplying information to be considered.

## 10.2 Bid Protest Review

- A. Any formal written protest to an intended bid award and any response filed in compliance with these procedures will be referred to the Port Authority's Bid Dispute Committee for review. The Bid Dispute Committee will be responsible for reviewing all bid protests at an informal hearing and making recommendations to the Board of Port Commissioners regarding such bid protests.
- B. The Bid Dispute Committee will be comprised of the members of the Airports Special Management Committee. A quorum will consist of three Regular Members of the Airports Special Management Committee. The Senior Procurement Manager will be available to facilitate the conduct of the informal hearing. Staff and other experts and professionals involved with the solicitation will also attend to provide professional and technical advice and recommendations to the Committee.
- C. The Port Authority Attorney (or designee) will attend the bid protest hearings to provide legal counsel, but will not be a voting member of the Bid Dispute Committee.
- D. The Bid Dispute Committee will conduct a publicly advertised informal hearing with the protestor and any affected party at the next publicly scheduled Airports Special Management Committee meeting following receipt of the formal written protest. At the discretion of the Executive Director, a special publicly advertised Bid Dispute Committee meeting may be scheduled as long as a quorum is available. The Bid Dispute Committee Chairman will provide an opportunity to all affected parties to make presentations and rebuttals, subject to reasonable time limitations. The purpose of the hearing is to review the basis of the protest;

evaluate the facts and the merits of the protest; and prepare a recommendation to the Board of Port Commissioners whether to accept or reject the protest and for the resolution of the protest. The Bid Dispute Committee's recommendation will be final. No requests to rehear the formal written protest or consider additional information or issues not raised during the informal hearing will be accepted or entertained.

- E. An agenda item with the recommendation of the Bid Dispute Committee will be scheduled before the Board of Port Commissioners for final consideration of the bid protest. Each party will be allowed three (3) minutes to summarize the arguments presented to the Bid Dispute Committee. Following presentations by the protestor(s) and any affected party, the Board will render its decision on the merits of the protest.
- F. If the Board upholds the recommendation of the Bid Dispute Committee and further finds that the protest was frivolous and/or lacked merit, the Board, in its discretion, may assess costs, charges, or damages associated with any delay of the award or any costs incurred with regard to the bid protest procedure. These costs, charges, or damages may be deducted from the security provided by the protester pursuant to this procedure. Any costs, charges or damages assessed by the Board in excess of the bond security will be paid by the protester within thirty (30) calendar days of the Board's determination thereof.





## SECTION 11: PURCHASING CARD

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### 11.1 Purchasing Card Program

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The Lee County Port Authority Purchasing Card Program is designed to provide an effective and efficient means to pay for small dollar goods and services by delegating the authority to cardholders to acquire such items with a P-Card from vendors who accept the program's credit card (P-Card).

This P-Card Program sets forth the process for requesting a P-Card, spending controls, card account management, security and storage, roles and responsibilities, sales tax, statement reconciliation and provides for remedy in the event of program violation. The program establishes the minimum standards. Each Department and Procurement may establish additional controls.

The purchasing card is to be used for Port Authority authorized purchases only. The purchasing card cannot be used for any personal use and any such use will require immediate reimbursement and result in disciplinary action, up to and including termination.

During Hurricanes or other declared emergencies, selected Authority cardholders will have their accounts activated to serve as Emergency cards to be able to respond to emergency situations which threaten life, health, safety or the protection or preservation of Authority property.

Procedures for use of Purchasing Cards are set out in the Procurement Administrative Standards. If there is a conflict between the Procurement Administrative Standards and the provisions of this Manual, the latter will control.

## SECTION 12: DISPOSAL OF SURPLUS, LOST OR ABANDONED PROPERTY

### 12.1 Disposal of Surplus Tangible Personal Property

Under Chapter 274, Florida Statutes, the Board has delegated authority to dispose of tangible personal property owned by the Port Authority to the Executive Director or his or her authorized designee. There are two statutory procedures for disposing of surplus personal property.

- A. In accordance with section 274.05, Florida Statutes, as amended, the Executive Director or designee will have discretion to classify as surplus any Port Authority property, that is not otherwise lawfully disposed of, that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function. Within the reasonable exercise of that discretion, and having consideration for the best interests of the Authority, the value and condition of property classified as surplus, and the probability of such property's being desired by the prospective bidder or donee to whom offered, the Executive Director or designee may offer surplus property to other governmental units in the county or district for sale or donation or may offer the property to private nonprofit agencies as defined in section 273.01(3), Florida Statutes, as amended, by sale or donation. If the surplus property is offered for sale and no acceptable bid is received within a reasonable time, the Authority will offer such property to such other governmental units or private nonprofit agencies as determined by the Authority on the basis of the foregoing criteria. Such an offer will disclose the value and condition of the property. The best bid will be accepted by the Authority. The cost of transferring the property will be paid by the governmental unit or the private nonprofit agency purchasing or receiving the donation of the surplus property.
- B. Alternative procedure - Having consideration for the best interests of the Authority, any of the Authority's property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, which property is not otherwise lawfully disposed of, may be disposed of for value to any person, or may be disposed of for value without bids to the state, to any governmental unit, or to any political subdivision as defined in section 1.01, Florida Statutes, as amended, or if the property is without commercial value it may be donated, destroyed, or abandoned. The determination of property to be disposed of by the Authority pursuant to this section instead of pursuant to other provisions of law will be at the election of the Authority in the reasonable exercise of its discretion. Property, the value of which the Authority estimates to be under \$5,000.00, may be disposed of in the most efficient and cost-effective means as determined by the Authority. Any sale of property the value of which



the Authority estimates to be \$5,000.00 or more will be sold only to the highest responsible bidder, or by public auction, after publication of notice not less than one (1) week nor more than two (2) weeks in a newspaper having a general circulation in Lee County in accordance with section 274.06, Florida Statutes, as amended.

- C. Any equipment purchased with federal grant dollars that has a salvage value over \$5,000.00 should be sold for whatever profit can be received, but not less than the salvage value, and the proceeds used on an FAA eligible project. If the value is less than \$5,000.00, the equipment can be donated.

## 12.2 Disposal of Personal Property Lost or Abandoned in Port Authority Airports

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Per section 705.182, Florida Statutes, as amended, whenever any lost or abandoned personal property (except for aircraft or motor vehicles) is found on premises owned or controlled by the operator of a public-use airport, the Executive Director or designee will take charge thereof and make a record of the date such property was found. If, within thirty (30) days after such property is found, or a longer period of time as may be deemed appropriate by the Executive Director or the director's designee, the property is not claimed by the owner, the director or designee will:

- A. Retain the property for airport use;
- B. Trade the property to a state agency or another local government;
- C. Donate the property to charitable organization;
- D. Dispose of the property through a refuse removal company; or
- E. Order it sold at a public auction after giving notice of the time and place of sale in a publication of general circulation and after written notice to the owner if known. The rightful owner of such property may reclaim same at any time prior to sale.

All monies realized from such sale by an airport, less its costs of storage, transportation, and publication of notice, will, unless another use is required by federal law, be retained by the airport for use by the airport in any lawfully authorized manner.

## 12.3 Surplus Real Property

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Disposal of surplus airport lands must meet the requirements of all federal and state regulations, grant assurances and compliance agreements, and all regulations related to the determination of fair market value.

## SECTION 13: DESIGN-BUILD CONTRACTS

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The Board of Port Commissioners hereby delegates to the Executive Director authority to designate certain Port Authority construction projects as design-build projects. All such projects will be designed and the construction contract awarded in accord with the requirements of section 287.055(9), Florida Statutes, and the design-build contracting provisions of this Manual.

### 13.1 Definitions - for purposes of this section:

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- A. "Design Criteria Professional" will have the meaning set out in section 287.055(k), Florida Statutes, as amended.
- B. "Design Criteria Package" will have the meaning set out in section 287.055(j), Florida Statutes, as amended.
- C. "Design-Build Firm" will have the meaning set out in section 287.055(h), Florida Statutes, as amended.
- D. "Design-Build Contract" will have the meaning set out in section 287.055(i), Florida Statutes, as amended.

### 13.2 Project Announcement and Legal Qualifications

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#### A. Public Announcement

When the Executive Director or authorized designee determines that a project will be constructed as a design-build contract under this Section, and except in the case of a valid public emergency declared by the Board, the Authority will publicly advertise in a uniform and consistent manner on each occasion when design-build services are required.

Procurement will maintain a bidders list to include design-build firms. Adequate public notice of the project will be given in the same manner as provided for in Competitive Sealed Bids.

#### B. Legal Qualification

Any firm or individual desiring to provide design-build services to the Port Authority must first be determined legally qualified.

Legal qualifications include:

1. Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
2. Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture; and

3. The firm must be duly qualified to perform its proposed service under any other applicable law.

### 13.3 Selection Process

Pursuant to section 287.055(9) Florida Statutes, as amended, the Authority will award design-build contracts using either a competitive proposal selection process as described in this subsection or a qualifications-based selection process pursuant to subsections (3), (4), and (5) of section 287.055, Florida Statutes, as amended, to enter into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date for the project.

- A. Competitive Proposals - If the Authority elects to use the competitive proposals to award a design-build contract, it will use the following process.

1. Design Criteria Package

- a) All design-build projects initiated using the competitive proposal process require a design criteria package to define the project parameters that are to be used to evaluate and govern the proposal. This design criteria package consists of concise performance-oriented drawings or specifications, or both, for the project. The criteria will include as a minimum the following, as applicable to the project:
  - (1) Legal description of the site.
  - (2) Survey information concerning the site.
  - (3) Interior space requirements.
  - (4) Material quality standards.
  - (5) Schematic layouts and conceptual design criteria of the project.
  - (6) Cost or budget estimates.
  - (7) Design and construction schedules.
  - (8) Site development requirements.
  - (9) Provisions for utilities, storm water retention and disposal.
  - (10) Parking requirements.
  - (11) Available land, easements, and rights-of-way to be utilized.
  - (12) Processes, standards, or specific requirements to meet Port Authority needs.
  - (13) Performance requirements and milestones.

- b) The design criteria package will be prepared and sealed by a design criteria professional employed by or retained by the Authority under the provisions of the Consultants Competitive Negotiations Act and the procedures set out in this Manual.
- c) A design criteria professional who has been selected to prepare the design criteria package will not be eligible to render services under a design-build contract executed pursuant to the design criteria package.
- d) The design criteria professional will develop criteria using the general or specific guidelines of the Authority and will utilize the following methods (or combinations thereof) as directed and supervised by the Authority.
  - (1) Developing a written criteria defining the requirements of the design-build project.
  - (2) Developing schematic plans or guide specifications, or both, for use by the prospective design-build firm in preparing, proposal documents.
  - (3) Utilizing previously completed or partially completed designs (prepared for the Authority by others) with written criteria to define the specific requirements of the project.
- e) The Director of the department will consult with the design criteria professional concerning its duties, which may include, but are not limited to:
  - (1) Evaluation of the responses or bids submitted by design-build firms;
  - (2) Supervision or approval of the detailed working drawings and review of the design-build firm's design for the project; and
  - (3) Evaluation of the compliance of the project construction with the design criteria package.
- f) The Authority may elect to have any of the services referenced in sub-paragraph (1.a) above performed by Authority personnel or another qualified firm or entity.

## 2. Selection Procedure

### a) Solicitation

The department will develop the scope of work for the design-build project. Procurement will then develop a Request for Proposals (RFP) to solicit proposals from interested, legally qualified design-build firms. The RFP will contain as a minimum the following:

- (1) The design criteria package.





- (2) Submittal requirements.
- (3) Performance criteria.
- (4) Basis for selection (i.e., price, points, or a combination of the two).
- (5) Method of selection (one of the following) will be determined at the reasonable discretion of the Director of the department.
  - (a) Single Step. Selection of no less than three (3) design-build firms, and acceptance of a lump sum proposal, based on the evaluation criteria outlined in the RFP. These criteria will include price, technical and design aspects of the project.
  - (b) Two Step. Selection of no less than three (3) design-build firms by qualifications based on the requirements outlined in the RFP including technical and design aspects of the project, and then a review of the price proposals for final selection. The design-build firms will be ranked on the basis of both qualifications and price.
  - (c) Two Phase. Selection of no less than three (3) qualified design-build firms with a recommendation that two firms be awarded a contract to provide 30% design for a fixed price. Upon completion of the 30% design, the two (2) design-build firms will provide a fixed price for completion of their design and construction of the project. Award will be made on a cost per point basis where the points are determined by evaluation of the submitted design as provided in the RFP.
- (6) Requirements for determining qualification.
- (7) Terms and conditions of proposed agreement.
- (8) Other items as required by procedures, laws, ordinances, or prevailing circumstances.

### 3. Recommendation for Selection

After due consideration, the Staff Evaluation Committee will evaluate the qualifications of all firms submitting proposals based on the criteria set forth in the RFP.

The RFP requirements may include, but will not be limited to, the following:

- a) Approach to the project and the management ability.

- b) Ability of design and construction entity.
- c) Financial capability of the design-build firm.
- d) Successful experience with similar work and with design build projects.
- e) Availability and ability to meet schedules and budget requirements.
- f) Past performance on Lee County or Port Authority projects.
- g) Location where design work is to be performed.
- h) Recent, current and projected workload.
- i) Qualifications of the design-build firm, the design-build firm partners, members or key personnel.
- j) Disadvantaged Business Enterprise (DBE) Participation.
- k) Qualifications-Based Selections - If the Authority elects to use a qualifications-based selection process to award a design-build contract, during the selection of the design-build firm it will employ or retain a licensed design professional appropriate to the project to serve as the Authority's representative in the selection process. The qualifications based selection process will be conducted following the requirements of subsections (3), (4) and (5) of section 287.055, Florida Statutes, as amended, as supplemented by the procedures set out in this Manual.

### 13.4 Evaluation Process

- A. The Airports Special Management Committee, at its discretion, may request oral, written or visual presentations from; conduct interviews with; or conduct visits to the office, facilities or projects of the firms it selects from among those recommended by the Staff Evaluation Committee.
- B. At the conclusion of its evaluations, the Airports Special Management Committee will establish by consensus the three (3) firms most qualified and capable to perform the required services. If less than three (3) qualified firms are available, the committee will rank only those qualified. The Airports Special Management Committee will report its recommendations and order of preference in the "green sheet" to the Board of Port Commissioners

### 13.5 Action by the Board of Port Commissioners on the Recommendation(s) of the Airports Special Management Committee

- A. The Board of Port Commissioners, after consideration of the recommendation(s) and order of preference reported by the Airports Special Management Committee, will take such action as they deem appropriate to approve, in order of

preference, the firms [not to exceed three (3)] that they deem qualified and capable to perform the required services.

- B. Subsequent to the approval of the ranking of firms by the Board of Port Commissioners, Procurement will notify all firms which submitted Letters of Qualifications of the ranking established by the Board of Port Commissioners action.

### 13.6 Evaluation of the Performance of the Design-Build Firm

The design-build firm to whom the design-build contract is awarded will be responsible for creation of the project design based upon the criteria in the design criteria package.

The department will maintain and administer professional services review procedures as approved by the Executive Director or authorized designee. These procedures will be used to evaluate ongoing and past performances of firms providing design-build services to the Port Authority including their partners and members. The following procedures will be used:

- A. The department and/or other departments involved in the contract will evaluate the services performed by the firm.
  - 1. At least once during design at the 30% or 60% review.
  - 2. Upon completion of design.
  - 3. Every six months during construction, but not less than once.
  - 4. Upon final completion of construction.
  - 5. At other times to be determined in Port Authority's discretion.
- B. Criteria to be used in the evaluation process will include, but not be limited to, design, quality of design and construction, ability to meet budget and schedule, constructability, operation and maintenance and overall performance of the project, and such other factors as may be determined to be applicable.
- C. Results of the evaluation process will be used in competitive selection of design-build firms for subsequent work.
- D. Design-build firms will have the right to review their evaluations and request clarifications as appropriate.

### 13.7 Emergency

- A. When there exists a concern regarding the public health, safety or welfare, or a concern regarding other substantive loss to the Port Authority requiring emergency action for a proposed design-build project, the Board may declare an emergency and authorize the Staff Evaluation Committee to negotiate with the



best qualified firm available at the time, at a compensation determined to be fair, competitive, and reasonable, subject to the requirements of the existing emergency. In making the determination, the Staff Evaluation Committee will analyze the cost of the design-build services required, giving full consideration of the scope and complexity of the project and the requirements of the existing emergency.

- B. The negotiated contract will be presented to the Board for approval.
- C. The provision of this subsection will supersede any provisions to the contrary contained elsewhere herein.

### 13.8 Construction

The provisions of this Section will be liberally construed in order to effectively carry out the purposes hereof in the interest of public health, welfare, and safety of the citizens and residents of Lee County, the interests of the Authority and the traveling public, and the State of Florida.

## SECTION 14: PAYMENT DISPUTE RESOLUTION PROCEDURE

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### 14.0 General

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If a dispute arises between a vendor and the Port Authority concerning payment of a payment request or invoice, the dispute shall be resolved by the Authority pursuant to the dispute resolution procedure described in this section, consistent with section 218.76, Florida Statutes, as amended. This procedure will apply to any payment dispute between the Port Authority and a contractor or vendor (both referred to as "vendors" in this section) over the Port Authority's nonpayment of a payment request or invoice when there is no specific dispute resolution procedure prescribed in the contract. The Port Authority's decision resolving the dispute will be final.

### 14.1 Dispute Resolution Procedure

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- A. The Port Authority will notify the vendor in writing within ten (10) days after receipt of an improper invoice, that the invoice is improper. The notice should indicate the steps the vendor should take to correct the invoice and resubmit a Proper Invoice to the Port Authority. The vendor's first step must be to contact the project sponsoring department to validate their payment request or invoice and receive a sign off from that entity indicating that the payment request or invoice in question is in keeping with the terms and conditions of their contract. Once the project sponsoring department's sign off is obtained, the vendor should then resubmit the payment request or invoice as a "Corrected Invoice" to the project sponsoring department which will initiate the payment timeline.
  - "Project Sponsoring Department" for purposes of this Section is defined as the Port Authority department for whom the work is performed.
  - "Proper Invoice" for purposes of this Section is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of the Port Authority.
- B. Should a dispute arise between the vendor and the Port Authority over payment of a payment request or invoice, the vendor may submit its dissatisfaction in writing to the project-sponsoring department. The Deputy Executive Director overseeing the project-sponsoring department will designate a representative to act as a "Dispute Manager" to resolve the dispute at the departmental level.
- C. The Dispute Manager will investigate the dispute and document the steps taken to resolve the dispute in accord with section 218.76, Florida Statutes, as amended. Such investigation will be commenced no later than forty-five (45) days after the date on which the payment request or invoice was received by the Port Authority, and will be finally determined by the Port Authority no more than



sixty (60) days after the date on which the payment request or invoice was received.

- D. The Dispute Manager will investigate and ascertain whether the work for which the payment request or invoice has been submitted was performed to the Port Authority's satisfaction and duly accepted by the Proper Authority. For purposes of this Section, "Proper Authority" is defined as the Port Authority representative who is designated as the approving authority for the work performed in the contract. The Dispute Manager will complete the investigation and furnish a written determination resolving the dispute within the sixty (60) day time frame for resolution of the dispute.
- E. If the vendor is not satisfied with the Dispute Manager's resolution of the dispute, the Executive Director or designee will be the final arbiter in resolving the issue. The Executive Director or designee will issue a decision in writing within the sixty (60) day time frame for resolution of the dispute.
- F. This dispute resolution procedure is not subject to Chapter 120, Florida Statutes.
- G. Should the dispute be resolved in the Port Authority's favor, interest charges begin to accrue fifteen (15) days after the final decision made by the Port Authority. Should the dispute be resolved in the vendor's favor, the Port Authority will pay interest as of the original date the payment was due.





## SECTION 15: PORT AUTHORITY-SPONSORED FUNCTIONS

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### 15.0 General

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Section 331.20, Florida Statutes, as amended, allows the Board of Port Commissioners, as operators of the County airports, to publicize, advertise and promote the activities of its airports. To that end, the Board is authorized to approve expenditures for these purposes, including meals, hospitality, and entertainment of persons in the interest of promoting goodwill toward the airports.

Likewise, the Board of County Commissioners has adopted Lee County Ordinance No. 90-18, declaring that the expenditure of funds for County-sponsored seminars, workshops, meetings and receptions, including the furnishing of snacks and refreshments, for the purpose of creating a favorable opinion toward the County, serves a public purpose, and by adoption of this policy, the Board of Port Commissioners has determined that the provisions of the ordinance may logically apply to similar Authority-sponsored activities.

Port Authority-sponsored functions covered by this section include but are not limited to meetings, receptions or similar functions whose purpose is to recognize employees' exceptional performance, or for other similar reasons involving Authority operations and activities.

### 15.1 Quarterly Report of Expenditures

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The Executive Director will prepare a quarterly report for information and filing with the Board of Port Commissioners in conjunction with the Port Authority's Fiscal Year that contains an accounting of expenditures for Authority-sponsored employee functions.