

**Business Administration Committee  
Proposed Amendments to  
Contracting Manual for  
2-Step Design-Build Procurements**

**February 2012**



## Requested Action

The Committee is requested to approve and recommend to the Board amendments to the Contracting Manual incorporating the 2-step process recommended for the Phase 2 Rail Procurement.

The proposed Manual Amendments support the 2-step design-build procurement process described in the Phase 2 “Package A” pre-solicitation paper.

- Step 1: RFQ – Evaluate Statements of Qualifications; rank score evaluations; develop short list
- Step 2: Issue RFP to short listed firms – evaluate technical proposals for pass/fail, and subsequently score price proposals received for the acceptable technical proposals: lowest price

## The Amendments:

- expressly authorize the 2-step process
- provide that evaluation criteria and the evaluation process will be described in the solicitation documents for each step
- authorize the provision of stipends to short-listed teams participating in the 2<sup>nd</sup> (RFP) step
- authorize a performance bond that is less than 100 percent of the design-build contract price

- provide that the procedures for protesting Airports Authority decisions in the RFQ and RFP steps will be described in the solicitation documents

Request the Business Administration Committee approve and recommend to the Board for its approval amendments to the Contracting Manual incorporating the 2-step process recommended for the Phase 2 Rail Procurement.

## **RECOMMENDATION PAPER TO THE BUSINESS ADMINISTRATION COMMITTEE**

### **PROPOSED CONTRACTING MANUAL CHANGES TO SUPPORT PHASE 2 DESIGN-BUILD PROCUREMENTS**

**FEBRUARY 2012**

#### **ACTION REQUESTED**

That the Committee recommend to the Board of Directors that it approve a set of amendments to the Airports Authority's Contracting Manual (2<sup>nd</sup> Ed.) that support the process that is proposed to be used in procuring Phase 2 design-build construction services. That process is described in the pre-solicitation paper, "Dulles Corridor Metrorail Project – Phase 2 Design-Build Package A" (Package A Pre-Solicitation Paper), that was presented to the Dulles Corridor Committee on January 18, 2011. The set of proposed Contracting Manual amendments is attached as Attachment A.<sup>1</sup>

#### **DISCUSSION**

The Package A Pre-Solicitation Paper describes a two-step process for procuring services to design and construct the Phase 2 "Package A" improvements.<sup>2</sup>

The first step consists of a request for qualifications (RFQ) which invites interested design-build teams to describe their qualifications to perform the design and construction services required by Package A. Teams responding to this request will be evaluated

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<sup>1</sup> Another set of Contracting Manual changes is being prepared in response to the rail project Phase 1 procurement review conducted last year by the Federal Transit Administration (FTA). Once the FTA's review of these Manual changes has been completed, they will be brought to the Committee and Board for adoption and inclusion in the Contracting Manual. None of these changes will be inconsistent with the Manual amendments addressed in this paper.

<sup>2</sup> The Phase 2 "Package A" consists of the following: rail tracks and related at-grade infrastructure within the right-of-way of the Dulles Airport Access Highway, Dulles Toll Road and Dulles Greenway and within Dulles Airport; six rail stations and associated pedestrian bridges, entry pavilions, access roadways and bus facilities; and various rail-related systems, including traction power substations and communications and train control equipment.

based upon the qualifications criteria described in the RFQ document, and will be ranked scored based on the over-all evaluation they have been given by an evaluation committee. Up to five of the highest-ranked teams will be short-listed at the end of the RFQ step, and will be eligible to participate in the second step of the process.

Step two of the process will begin with the issuance of a request for proposals (RFP) to the short-listed teams. The RFP will initially request the submission of technical proposals that address a set of detailed technical requirements described in the RFP relating, for example, to project design, management, performance and schedule. These technical proposals will be the subject of discussions involving team members and the evaluation committee which are expected to result in the teams having the opportunity to supplement their proposals to meet the RFP's technical requirements. The teams' final technical proposals will be evaluated on a pass/fail basis. Thereafter, the teams with "passing" technical proposals will be requested to submit price proposals. The team submitting the lowest price will be the apparent successful offeror that will be eligible for award of the Package A design-build contract.

The proposed amendments to the Contracting Manual, which are set out in Attachment A<sup>3</sup>, are designed to expressly authorize and otherwise support this two-step design-build procurement process. While the Manual currently supports elements of the process, it does not, in one location, squarely address or authorize it. Providing this authorization is accomplished by an amendment to paragraph 2.7.5 of the Manual, "Design-Build Contracts" (see Attachment A, pp. 15-16); the amendment expressly describes and approves use of the two-step process outlined above (including the use of stipends).

Two additional amendments related to the two-step process are proposed. One is an amendment to paragraph 2.2.11, "Evaluation Criteria for Two-Step Design-Build Procurement Processes" (see Attachment A, p. 6), to make clear that the criteria used in evaluating submissions during the two-step process, along with the manner or method of evaluation, will be described in the solicitation documents issued in connection with each step of process. The other amendment is to paragraph 2.2.7.1, "Establishment of Criteria" (see Attachment A, p. 4), to provide that the scoring of evaluation criteria may be by numbers, adjectives or colors, as described in the solicitation documents.

The proposed amendments to the Manual also address the subjects of bonds and protests arising from the two-step process.

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<sup>3</sup> Attachment A contains all of chapters 2 ("Solicitation Process") and 7 ("Protests") of the Manual in order that the proposed amendments to these chapters can be read in context. It also contains paragraph 3.11.7, and its proposed amendment. New material being added by the amendments is shown by underlining; material being deleted is shown by strike-throughs.

As to bonds, paragraph 3.11.7, “Performance, Payment and Bid Bonds” (see Attachment A, pp. 23-24), is amended to make it clear that, in connection with capital projects over \$200 million and with design-build projects, the Airports Authority may, in its discretion, reduce the amount of performance and payment bonds from the paragraph’s normal requirement of 100 percent bonding. In this regard, the Package A Pre-Solicitation Paper proposes that the performance bond required for the Phase 2 Package A design-build procurement be less than 100 percent of the design-build contract value. FTA approval of this reduced bonding level will be required.

As to protests, a new paragraph 7.5 is added to the Manual’s Chapter 7, “Protests.” The new paragraph (see Attachment A, p. 26), provides that the procedures applicable to protests arising within the two-step design-build procurement process outlined above, and in the proposed amendment to paragraph 2.7.5, will be described in the solicitation documents for each step.

## **CONCLUSION**

It is requested the Committee recommend that the Board of Directors approve the amendments to the Contracting Manual that are set out in Attachment A.

Prepared by

Office of General Counsel and  
Office of Business Administration

February 2012

Attachment

## Proposed Resolution

### Amendments to the Contracting Policy

WHEREAS, The scope and magnitude of the upcoming design-build procurement actions required for Phase 2 of the Dulles Corridor Metrorail Project have led the Board to approve the use of a two-step competitive procurement process not fully addressed in the Contracting Manual;

WHEREAS, The staff has proposed amendments to the Contracting Manual that, among other things, will:

- a. Expressly authorize the two-step process,
- b. Provide that the evaluation criteria and process are included in the solicitation documents for each step,
- c. Authorize the payment of stipends to firms for participation in the second step of the process,
- d. Authorize performance and payment bonds less than 100 percent of the Phase 2 design-build contract price, and
- e. Provide that the solicitation documents for each step of the two-step process include a description of the procedures for protesting Airports Authority decisions made during that step;

WHEREAS, The Business Administration has fully reviewed the amendments and is satisfied with their content; now, therefore, be it

RESOLVED, That the Amendments to the Contracting Manual, as presented to the Business Administration at its February 15, 2012 meeting, are hereby adopted.

*For consideration by the Business Administration Committee  
and Board of Directors on February 15, 2012*



## **2 SOLICITATION PROCESS**

This chapter describes types of solicitations utilized by the Airports Authority for procurement with emphasis on Requests for Proposals and the methods used to evaluate contractors' proposals. Other solicitation methods are covered including architect/engineer (A/E) selection procedures, sole source negotiations, requests for quotations and Purchase Orders. Funding considerations, competition guidelines, and guidance for preparation of solicitations are also provided.

### **2.1 PROPOSALS AND BIDDING COMPARED**

Procurement by advertised sealed bids entails the solicitation of bids by the Airports Authority in an Invitation for Bids (IFB), the submission of sealed bids by qualified offerors, the public opening at a set hour, the recording of bids, and the awarding of a contract to the responsive and responsible bidder whose bid will be the most advantageous to the Airports Authority, price and price related factors considered. More subjective criteria such as quality of past performance and business reputation are not evaluated by the Contracting Officer, and there cannot be any changes to the wording of contract provisions. Using sealed bids, each solicitation is processed to a contract without negotiating the contract specifications or the particular terms of the contract. These are set in the solicitation documents.

When the Airports Authority requests competitive proposals (negotiation), the rules for procurement by advertised sealed bids are for the most part not applicable. The negotiation procedure is initiated when the Airports Authority issues a Request for Proposals (RFP) or a Request for Quotations (RFQ) rather than an Invitation for Bids (IFB). Both sealed bids and negotiation procedures require full and open competition to the maximum extent practicable. As implemented by the Airports Authority, both advertised sealed bids and competitive proposals require offerors to submit sealed offers and both are advertised procurement actions. Unlike sealed bids, competitive proposals require no public opening. In sealed bids, for an offeror to be considered for award, that offeror must have submitted a bid which was fully responsive to the solicitation at the time of the submission. In competitive proposal procurements there is more flexibility in determining which proposals are acceptable to the Airports Authority. In addition, when using an RFP, the Airports Authority may consider technical criteria in addition to price when choosing an offeror for award. Finally, the two

processes differ because IFB offerors cannot change their bids after the closing date and must keep their bid effective for a certain period of time; whereas in competitive proposals, if discussions are held, offerors will be encouraged to modify their proposals which may be withdrawn any time prior to award. The Airports Authority uses both competitive proposals and advertised sealed bidding; however, most often, competitive proposals are used.

#### **2.1.1 Competition Guidelines**

The Airports Authority's policy is to achieve, to the maximum extent practicable, full and open competition. Solicitations will include requirements for the goods, services or construction to be provided which will satisfy the Airports Authority's needs and encourage competition.

### **2.2 COMPETITIVE PROPOSALS (RFP)**

Request for Proposal (RFP) procedures are used when-

- (1) There is a potential need to enter into negotiations after receipt of offers, or to request best and final offers because of budget or other limitations, prior to contract award;
- (2) There may be criteria other than, or in addition to, price that are important when choosing an offeror for award;
- (3) There are potentially significant qualitative differences among contractors' products or services;
- (4) There are two or more qualified sources;
- (5) Lead times are adequate.

#### **2.2.1 Certificate of Current Cost or Pricing Data**

When cost or pricing data are required, the Contracting Officer should require the contractor to execute a Certificate of Current Cost or Pricing Data, using the

format in this paragraph and should include the executed certificate in the contract file.

***"CERTIFICATE OF CURRENT COST  
OR PRICING DATA***

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted either actually or by specific identification in writing, to the Contracting Officer in support of contract \_\_\_\_\_ are accurate, complete, and current as of \_\_\_\_\_. This certification includes the cost or pricing data supporting advance agreements and forward pricing rate agreements between the offeror and the Airports Authority that are part of the proposal.

Firm \_\_\_\_\_  
Signature/Name/Title \_\_\_\_\_  
Date of Execution \_\_\_\_\_"

## **2.2.2 RFP Content**

### **2.2.2.1 RFP Formats**

An RFP is issued to describe that which is to be procured and the terms and conditions of the procurement. Procurement and Contracts Department maintains standard RFP formats for several different types of procurements such as goods, services, construction, design-build, etc. Selection of architectural/engineering firms is covered in Paragraph 2.6.

### **2.2.2.2 RFP Preparation**

The RFP is designed so that a proposal completed and submitted by an offeror becomes an enforceable contract after being executed by the Contracting Officer and conveyed back to the offeror. The RFP is prepared as carefully and accurately as possible to minimize the amount of negotiations required. Upon receipt of an adequate proposal no further negotiation may be needed.

### **2.2.2.3 RFP Information Sources**

In addition to the sub-headings under this Paragraph 2.2, the following is a partial list of additional paragraph references that contain information pertaining to RFPs:

<u>Subject Matter</u>	<u>Ref</u>
Information furnished by requestor	C.3
Preparation of specifications	C.5
Establishing performance period	3.11.22
Pre-proposal conferences and site visits	2.13.4
Establishing solicitation response time	E.1
Determination of responsibility	2.4.6
Contract award	2.4.5

## **2.2.3 Opening Proposals**

Public openings of proposals are not required. Proposals received will be recorded on an Abstract of Offers form. If the Contracting Officer determines there is a compelling reason for a public opening, the only information read aloud and available to the offerors and general public is the names of those who have submitted offers in a timely manner.

## **2.2.4 Clarifications**

Clarifications may be requested from an offeror for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Such clarifications relate to a conformity determination as discussed in Paragraph 2.2.6. Clarifications may also be requested during proposal evaluation process. Clarification is achieved by explanation or substantiation, either in response (written or oral) to the Contracting Officer's inquiry or as initiated by the offeror. Uncertainties as to the pricing or technical aspects of proposals, unless significant, may be resolved through clarification. Unlike discussion (see Paragraph 2.4.1), clarification does not give the offeror an opportunity to revise or modify its proposal, except for correction of apparent clerical mistakes or eliminating minor irregularities. Clarifications need not be requested from all offerors.

## **2.2.5 Single Response to a Solicitation**

Even though multiple sources exist and are solicited by full and open competition methods, there are occasions when only one response is received for a solicitation. This shall not be treated as a sole source. However, in such cases, the Contracting Officer will investigate to determine why other offerors did not respond and make a determination whether to award or to reject the offer and re-solicit. The Contracting Officer may negotiate with the single offeror with the written approval of the Manager, Procurement and Contracts. Prior to award, the Contracting Officer shall make a

written determination that the price is fair and reasonable.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.9 of this Manual for additional guidance on special requirements and restrictions.

## 2.2.6 Review of Proposals – Conformity Determination

In the RFP process, the conformity determination begins after opening of the offers and it continues until bonds, if applicable, have been received immediately prior to award.

The general rule is that substantial deviations from the requirements of the solicitation cannot be waived or corrected after opening. A substantial deviation is one that goes to the substance of the offer when it alters the price, quantity, quality, delivery or performance. If the defect amounts to only a minor informality or irregularity, then the Contracting Officer may request clarification as described in Paragraph 2.2.4.

The conformity determination shall include verifying compliance with the following requirements:

- (1) Offer submitted to Procurement and Contracts Department by the deadline date and time. See Paragraph 2.13.8 for treatment of late offers.
- (2) Submitted a hand-signed Solicitation Offer and Award form.
- (3) Offer included no material conditions, limitations or other qualifying statements. See Paragraph 2.13.10 for exceptions.
- (4) Acknowledged receipt of all amendments. The acknowledgement may take several forms. The preferred method is for the amendment to be listed by number and date on the Solicitation, Offer and Award form. Alternatively, the amendment form itself may be signed and returned with the offer submittal or on an earlier date to the Contracting Officer. In addition, receipt of an amendment may be acknowledged by fax transmittal of the signed amendment to the Contracting Officer prior to the required submittal date and time. There may also be a constructive acknowledgement of receipt of an

amendment determined by the Contracting Officer from the circumstances surrounding the submittal of the offer, e.g. submittal of the offer using a schedule that was distributed with an amendment. The Contracting Officer must be able to conclude from the circumstances that the offeror has bound itself to the terms of the amendment. In addition, failure to acknowledge an amendment that involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality or delivery of the offered item will not be considered non-conformance.

- (5) Submitted pricing data in Section III, Schedule, for all mandatory line items.
- (6) Submitted completed Section IV, "Representations and Certifications."
- (7) Submitted commitment to LDBE or DBE participation (signed Exhibit D and waiver if applicable) as required by the solicitation and which, for the apparent successful offeror, is acceptable to Equal Opportunity Programs Department. See Paragraph 4.7.
- (8) Submitted any technical, qualifications, or experience information if that was required by the solicitation.
- (9) Upon request, verified the offered price, and submitted clarifying or supporting data if applicable as well as information needed for a determination of responsibility.
- (10) Upon request, submitted acceptable insurance certifications and enrolled in the Airports Authority's Owner Controlled Wrap-Up Insurance Program (OCWIP) if applicable.
- (11) Upon request, submitted acceptable performance and payment bonds.

Any proposals determined by the Contracting Officer to be in material non-conformance with the solicitation must be eliminated from the competition and a certified letter with specific comments concerning the reason for non-conformance should be sent to the offeror within five business days from the date eliminated from competition.

## 2.2.7 RFP Evaluation Criteria

### 2.2.7.1 Establishment of Criteria

Evaluation criteria as described in Paragraph C.3 should be submitted with the Procurement Request by the requestor. The solicitation and the Airports Authority's Internet website announcement shall clearly state the evaluation criteria the Airports Authority will use in awarding the contract. These criteria will be listed in descending order of relative importance, with each criterion having the same or less weight than the one preceding it.

The specific value or weight of each criterion need not be published in the RFP.

Each separate evaluation criterion shall be worded in such a way that the criterion should encompass the necessary and relevant elements which must then be evaluated collectively to determine the score for the criterion. If necessary, the description of a criterion may require several sentences, but the scoring must be done only on a collective basis; there shall be no breakdown of scoring for the various elements of a criterion.

The scoring for the evaluation criteria may be numeric, adjectival (e.g., excellent, very good, etc.) or color-coded, and will be described in the RFP.

### 2.2.7.2 Sub-Criteria Not Recommended

The use of sub-criteria to further break-down a criterion is not recommended unless its use has been approved of the Manager, Procurement and Contracts Department. If sub-criteria are authorized, they shall be given equal weight with respect to each other unless the RFP states that certain sub-criteria will be given greater weight than other sub-criteria.

### 2.2.7.3 Price Formula

The price formula for evaluating pricing can be found at Paragraph 2.3.3.

### 2.2.7.4 Net Present Value (NPV) Analysis

Price evaluations for multi-year contracts may include net present value (NPV) analysis if deemed appropriate by the Manager, Procurement and Contracts Department. In that case, the RFP evaluation criteria shall state that price offers will be subjected to net present value analysis, and shall include the discount

rate to be used as well as a description of the net present value analysis methodology.

### 2.2.7.5 Changes to Evaluation Criteria

Any changes to the published evaluation criteria or the published weighting shall be made prior to submission of proposals and shall be issued in an amendment to the solicitation. Prior to the opening of proposals, the Contracting Officer and the evaluation committee shall prepare the specific value or weight to be given each evaluation criterion. The criteria and weights assigned must be consistent with the published RFP.

Only the evaluation criteria listed in the solicitation and public announcement and the pre-assigned weights shall be used by the Evaluation Committee.

## 2.2.8 Evaluation Criteria – Price Only

When no additional criteria are recommended by the requestor, and the Contracting Officer agrees that none are needed, the RFP will be structured so that the evaluation will be based only on price and price related criteria.

The Abstract of Offers form should be used for an overall perspective of how the Airports Authority's estimate compares to the offers received. If all of the offers exceed the Airports Authority's estimate by more than 10 percent, the reason(s) will be explored by the requester/Contracting Officer to identify the cause. The estimate may have to be reviewed to see if adjustments are warranted. It is also possible the specifications or drawings did not accurately reflect the Airports Authority's requirements or the solicitation was otherwise deficient. In that case an amendment and best and final offers may be needed. If the technical deficiencies of the RFP are of such significance that some potential offerors may have been discouraged from submitting a proposal, then the Contracting Officer must determine if it is appropriate to cancel the solicitation and re-solicit after any necessary changes are made to the solicitation.

When the low offer is more than 10 percent below the second low offer and more than 10% below the Airports Authority's estimate, the low offeror will be informed when asked to verify its price that "you were substantially lower" or other words to that effect. It may be of no benefit to the Airports Authority to award to an offeror who has submitted an exceptionally low

price; it may result in many changes, poor quality work, delays or perhaps all of these.

The end result of the price evaluation is to ensure that the Contracting Officer and COTR are satisfied that the low offeror's price represents a fair and reasonable price for the work involved. As with any contract, a determination of responsibility is required prior to award – see Paragraph 2.4.6.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.10 of this Manual for additional guidance on special requirements and restrictions.

## **2.2.9 Evaluation Criteria– Both Price and Technical**

If the requestor recommends that technical evaluation criteria be used in addition to price, they shall be reviewed for reasonableness by the Contracting Officer who shall ensure that the criteria are appropriate and that they will help the Airports Authority determine which is the best proposal; criteria must not be chosen to benefit one firm over other competitors.

Examples of technical information that Contractors may be requested to submit for evaluation under the technical evaluation criteria include: i) recent experience with contracts of similar dollar value, ii) evidence that they have the required specific technical capability and experience, iii) technical proposal that describes how they will satisfy the Airports Authority's requirements as described in the Statement of Work, iv) schedule of their current contracts, v) breakdown of their available equipment and workforce resources, vi) the firm's latest financial statement, and vii) evidence such as a letter from an acceptable surety showing that the firm will be able to obtain bonds in the required amounts.

Evaluation and scoring will be in accordance with any published evaluation criteria ~~and assigned weights~~. See also Paragraph 2.3.2 for evaluation steps.

Technical evaluations will normally be made without the technical evaluator(s) having access to the pricing data. Further, under certain circumstances even though offerors have been requested to submit both price and technical information, the technical criteria alone may be used to establish a competitive range of proposals. This process will be used only when the development

of the pricing proposal would not be burdensome for the offerors and where project time constraints necessitate that both technical and pricing information be included in the original submittal. The solicitation document will clearly advise potential offerors if the establishment of a competitive range will be based on technical merits exclusive of price consideration. The Airports Authority will not use pre-set threshold scores to determine which firms are within the competitive range.

When technical factors only are to be used to determine a competitive range, and pricing the proposals is deemed burdensome for the offerors, the solicitation will be structured so that pricing is requested from only those firms in the competitive range.

When evaluating certain labor-intensive services contracts, including, but not limited to custodial services, grounds maintenance, unarmed guards, and window cleaning, EC Members should be aware that the living wage provision at Paragraph 3.11.25 may apply.

## **2.2.10 Evaluation Criteria– Technical Only**

Proposals for (i) architect - engineer services, (ii) legal, financial, audit, or legislative representation professional services or, (iii) if approved by the Manager, Procurement and Contracts Department, proposals for unusual or technically demanding projects may be evaluated based solely upon technical criteria, without consideration of price. The solicitation document will clearly advise potential offerors when contractor selection will be made on technical merits exclusive of price or to establish the competitive range.

The technical criteria shall be reviewed for reasonableness by the Contracting Officer who shall ensure that the criteria are appropriate and that they will help the Airports Authority determine which is the best proposal; criteria must not be chosen to benefit one firm over other competitors.

Examples of technical information that Contractors may be requested to submit include: i) recent experience with contracts of similar dollar value, ii) evidence that they have the required specific technical capability and experience, iii) evidence such as a letter from an acceptable surety showing that the firm will be

able to obtain bonds in the required amounts, iv) schedule of their current contracts, v) breakdown of their available equipment and workforce resources, and vi) the firm's latest financial statement.

Evaluation and scoring will be in accordance with any published evaluation criteria and assigned weights. See also Paragraph 2.3.2 for evaluation steps.

Based on the technical evaluation, the Airports Authority may establish a competitive range or shortlist of firms for further technical review. The Airports Authority will not use pre-set threshold scores to determine which firms are within the competitive range.

Even though a firm is selected based solely upon technical criteria, the Airports Authority retains the ability to negotiate price with that firm. The Airports Authority also retains the ability to negotiate a contract with the next highest technically rated firm in the event that price negotiations are unsuccessful with the highest technically rated firm. The final agreed-to price must be fair and reasonable.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.11 of this Manual for additional guidance on special requirements and restrictions.

### **2.2.11 Evaluation Criteria for Two-Step Design-Build Procurement Processes**

The two-step design-build procurement process described in Paragraph 2.7.5 is a custom-designed solicitation, and the establishment of evaluation criterion and the evaluation of such criterion will be specifically described within the solicitation documents for each step of the process. Guidance for the development and evaluation of these solicitation documents shall be derived from the principles set forth in this Chapter 2.

## **2.3 EVALUATION COMMITTEE (EC)**

### **2.3.1 Composition of EC**

The user Vice President is responsible for establishing an Evaluation Committee when required to evaluate technical evaluation criteria. The size and composition of the EC shall be tailored to each individual

procurement action. The EC should have a minimum of 3 voting members with a broad base of experience. For larger or complex procurements, non-voting representation from the Office of General Counsel and Equal Opportunity Programs Department may be included. The EC should include members from outside the Airports Authority office that is conducting the procurement. In addition, consultant contractors and other professionals may be requested to provide EC members. The EC may also include members of the Board of Directors.

When possible, in order to ensure independent evaluations, no two voting EC members should work for the same first-level supervisor, nor should a supervisor and a subordinate serve as EC voting members. All EC members shall be unbiased and be capable of objectively assessing the merits of the various proposals. All members of the EC shall each have one vote. The EC chairperson may request other personnel to attend an EC meeting in an advisory capacity.

Both the COTR and the Contracting Officer shall be sensitive to potential conflicts of interest. Prior to the start of the evaluation, EC members and non-voting advisors are required to sign a written statement concerning conflicts of interest. The Authority's Code of Ethics for Employees, Directive GC-001, shall be consulted when reviewing an actual or apparent conflict of interest

### **2.3.2 Evaluation Steps**

The following evaluation steps are written in language which applies to an EC doing the technical evaluation; however, if no EC is being used, the Contracting Officer or COTR doing the evaluation shall comply with the intent of these steps:

- (1) The Contracting Officer furnishes the Chair of the EC (usually the requestor/COTR) copies of the technical proposals, (the Contracting Officer retains the originals) for distribution to EC members. The Chair distributes the proposals along with the evaluation criteria and assigned points.
- (2) Adjectival descriptions shall be developed and used for the scoring range for each evaluation criterion. For example, if the range for a criterion has 100 points available, a score of 90 to 100 points could be labeled "Outstanding" and

the range of 80 to 89 could be labeled "Very Good," etc.

- (3) Unless specifically authorized by the Procurement and Contracts Department Manager, the Contracting Officer shall withhold the price information from the EC until the technical evaluations are completed.
  - (4) EC members shall evaluate each proposal against the evaluation criteria. The Chair of the EC and the Contracting Officer shall assure that scoring approaches used are consistent for all proposals. Although the scoring is a matter of subjectivity, the EC member's judgment must be based on fact as presented in the proposal. In addition, consideration will be given to any presentations made by the offerors to the EC. An offeror shall not be penalized due to lack of experience with the Airports Authority itself, but may be judged, among other considerations, on the relevancy of its experience and expertise wherever it occurred. Likewise, an offeror shall not be given an unfair advantage or disadvantage of points simply because of a previous contract relationship with the Airports Authority. However, the relevancy of such experience and its quality in terms of the RFP's scope of work may be judged.
  - (5) Prior to the start of evaluation, the Contracting Officer shall ensure that the EC members have a common understanding of how the proposals are to be evaluated and scored. Only the evaluation criteria shown in the solicitation shall be used for the evaluation. Also, the relative order of importance of the evaluation criteria cannot be changed from that in the solicitation.
  - (6) Working alone, the EC Members review the proposals, make notes concerning the strengths and weaknesses of each proposal, and assign tentative scores in as impartial and objective a manner as possible to each criterion. EC Members should carefully document any areas of noncompliance with the specific requirements stated in the RFP. After each member has completed evaluation of all proposals, the EC will hold an organized discussion of the strengths and weaknesses of each proposal in terms of the evaluation criteria. In the event of vague or conflicting language in a proposal, an evaluator may request the Contracting Officer to secure clarification from the offeror (see Paragraph 2.2.4). Minor technicalities pertaining to noncompliance may be waived.
  - (7) References are checked by the Chair, Contracting Officer, or other individuals as designated by the Chair. The individual who makes the checks then reports the results to other EC members. On-site inspections of offerors' facilities or equipment being offered is permissible for the purpose of verifying information presented in proposals.
  - (8) Those proposals determined to be in material noncompliance with the requirements of the RFP may be eliminated from further consideration. When appropriate, the Contracting Officer will make a determination of non-conformance (Paragraph 2.2.6) or determine that the offeror is not responsible (Paragraph 2.4.6).
  - (9) If determined by the EC Chair and the Contracting Officer to be in the best interest of the Airports Authority, the EC may establish a shortlist of offerors based upon its initial evaluation of the technical proposals and at subsequent points during the evaluation process. The EC may conduct oral interviews with only the shortlisted offerors and include the results of the interviews in its evaluation and consider only these firms for contract award. Once the technical evaluation is complete, those price proposals of offerors on the final shortlist will be combined with the technical score in making the final selection of contract award.
  - (10) The EC may conduct oral interviews with offerors within the shortlist or competitive range, for the purpose of collecting additional information, enhancing Airports Authority understanding of proposals, and obtaining minor clarification of proposals. EC members may adjust their evaluation scores to reflect information obtained at the oral interview, provided the information is appropriately considered under the evaluation criteria stated in the RFP. If an offeror provides information during the oral presentation that the Airports Authority intends to include in the final contract, such information must be provided to the Airports Authority in writing.
- Discussions, as explained in Paragraph 2.4.1, may be held with offerors on the short list or

within the competitive range, in addition to or in lieu of oral interviews.

- (11) After the EC concludes its technical deliberations including the clarification process, and taking into account the results of the reference checks, the EC Members shall revise their scoring, if necessary, and sign and date their individual scoring sheets. A summary evaluation form will be prepared, signed and dated by the EC Chairperson. The summary sheet should show at a minimum (a) names of the EC members, (b) names of all offerors including those that submitted non-conforming proposals, (c) evaluation criteria and maximum point values for each, and (d) points awarded to each offeror. The signed and dated summary sheet and the signed and dated individual scoring sheets will be given to the Contracting Officer for inclusion in the contract file.
- (12) Proposals provided to the EC members should be returned to the Contracting Officer.

### 2.3.3 Price Formula for Assigning Points

When price is a factor, the following approach will be used by the Contracting Officer for assigning points to the price criteria unless a different methodology is approved by the Manager, Procurement and Contracts Department. The lowest price proposal that conforms to the solicitation is awarded the maximum number of evaluation points for price. All other conforming proposals are prorated points by determining the percentage differential between the low proposal total price and each of the other proposals' total price. This is determined by dividing the low offeror's price by each of the higher offerors' price to arrive at a percentage factor for each and then multiplying those percentage factors times the points assigned for price to compute the evaluation points to be assigned to each higher price proposal (LOW PRICE/HIGHER PRICE = % FACTOR X PRICE EVALUATION POINTS = POINTS TO BE ASSIGNED).

### 2.3.4 Net Present Value (NPV) Analysis

If Net Present Value (NPV) Analysis (Paragraph 2.2.7.4) is applicable for a solicitation, the NPV prices should be used in the calculations described in paragraph 2.3.3.

## 2.4 PRE-AWARD

### 2.4.1 Discussions/Negotiations

A contractor may be selected and award made with or without discussions, depending on the circumstances of the procurement, such as the complexity of the requirement, the extent of competition, and the quality of proposals received. Discussion in this context means negotiating with the offerors. Any communication between the Airports Authority and an offeror other than communications conducted for the purpose of clarification (Paragraph 2.2.4) or correction of mistakes (Paragraph 2.4.2), will be considered in the discussion.

#### 2.4.1.1 Initial Offer Should be Most Favorable to the Airports Authority

Award may be made without discussion or contact with any offerors. Therefore, initial offers should represent the most favorable terms offerors can submit to the Airports Authority.

#### 2.4.1.2 Award Without Discussions

Award may be made without discussion of proposals whenever the existence of adequate competition makes it clear that acceptance of the most favorable proposal will result in a reasonable price and is in the best interests of the Airports Authority.

Whenever there is uncertainty as to the pricing or technical aspects of the most favorable proposal, award shall not be made without discussions, unless the uncertainty is minor and can be resolved by clarification. Clarifications (see Paragraph 2.2.4) or correction of mistakes (see Paragraph 2.4.2) are not considered discussions and may be sought by the Contracting Officer at any time prior to award.

If the proposal most advantageous to the Airports Authority involves a significant departure from the solicitation requirements, all offerors must be given an opportunity to submit new or revised proposals on a comparable basis, but only if that can be done without disclosing confidential information.

#### 2.4.1.3 Award with Discussions

Written or oral discussions (also referred to as negotiations) may be held with offerors to enable the Airports Authority to gain a better understanding of the proposal, to resolve uncertainties in proposals, and to



give them an opportunity to revise their proposals. The contracting officer is not required to discuss every area where the proposal could be improved, however. The scope and extent of discussions are a matter of contracting officer judgment.

Discussions may cover all areas of the proposal including price. Even for procurements where an EC does not have access to price data, when appropriate, the Contracting Officer may conduct price discussions taking care not to divulge price to the EC. In situations where the Contracting Officer believes that prices are too high, that should be pointed out during discussions prior to requesting Best and Final Offers. Care will be taken to assure that information contained in one offeror's proposal is not divulged to a competing offeror.

If a determination is made that it is necessary to hold discussions with one offeror, discussions will be held with all offerors in the competitive range unless it is determined that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. Such a circumstance would constitute a competitive range of one and with the approval of the Manager, Procurement and Contracts Department, Contracting Officers may conduct discussions with only the one firm.

Revisions to offers as a result of discussions are requested by issuing Best and Final Offers per Paragraph 2.4.4.

#### **2.4.2 Correction of Mistakes Prior to Award**

If an offeror requests permission to correct a mistake in its proposal, the Contracting Officer shall request evidence from the offeror to show both the existence of the mistake and the proposal actually intended. The offeror must submit its original work sheets and other data used in preparing the proposal, subcontractors' and suppliers' quotations, and other evidence that could serve to establish the mistake, the manner in which the mistake occurred, and the proposal actually intended. The Contracting Officer will evaluate the evidence submitted, and if it is found to be clear and convincing, and with approval of the Manager, Procurement and Contracts Department, the correction may be permitted. If a correction is permitted, the offer will then be evaluated or reevaluated after the correction is

made. If the request for correction is rejected, the offeror will be informed that it may withdraw its offer from consideration. Mistakes that are discovered or reported after contract award are addressed in Paragraph 5.3.

#### **2.4.3 Competitive Range**

The Contracting Officer shall determine, based on the results of the evaluation, which proposals are in the competitive range for the purpose of conducting written or oral discussions (negotiations). The competitive range may be determined on the basis of price only (Paragraph 2.2.8), technical criteria only (Paragraph 2.2.10) or price and technical criteria (Paragraph 2.2.9). The most highly rated proposals will be included in the competitive range. Pre-set thresholds will not be used for determination of competitive range.

During discussions, if it is determined that a proposal is no longer one of the most highly rated proposals, it is by definition no longer in the competitive range and will no longer be considered for selection.

If the Contracting Officer initially solicits un-priced technical proposals, or pricing was received but a decision was made to initially evaluate based on technical content only, proposals shall be evaluated to determine which are acceptable or could, after discussion, be made acceptable; but this process is only acceptable if the solicitation stated that a competitive range could be established based on technical criteria only. After necessary discussion of these technical proposals is completed, the Contracting Officer shall (1) solicit price proposals, or open price proposals if already received for the acceptable technical proposals that offer the greatest benefit in terms of performance and other criteria, and (2) make award to the responsible offeror whose offer is in the best interests of the Airports Authority price and technical criteria considered, either without or following discussions, or cancel the solicitation.

#### **2.4.4 Best and Final Offers**

The Contracting Officer will determine if it is appropriate to call for best and final offers. This decision shall be based on the substance of discussions, if any, that took place and a judgment by the Contracting Officer of the impact of the discussions on the offerors' proposals. Also, if the statement of work

needs to be clarified or changed that should be done along with a call for best and final offerors. If best and final offers are desired, the Contracting Officer will issue to all offerors still within the competitive range a request for best and final offers. The request will include (1) notice that discussions are concluded; (2) notice that this is the opportunity to submit a best and final offer; (3) a cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and (4) notice that if any proposal revision is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals provisions of the solicitation.

After receipt of best and final offers, the Contracting Officer may reopen discussions only if it is clearly in the Airports Authority's best interest to do so (e.g., information available is inadequate to reasonably justify contractor selection and award based on the best and final offers received). If discussions are reopened, the Contracting Officer may issue an additional request for best and final offers if appropriate.

## 2.4.5 Final Contract Processing

When an apparent successful offeror is identified, the Contracting Officer will contact that offeror and request a written verification of the proposed price along with references and other information pertaining to a determination of responsibility. Following receipt and verification of the information from the apparent successful offeror, including making the reference checks with satisfactory results, and after having resolved any LDBE/DBE or legal issues, the Contracting Officer will request payment and performance bonds and certificate of insurance if applicable.

To be effective, the award must be properly executed and be furnished to the successful offeror within the acceptance period. The Contracting Officer must be aware of the acceptance period and if necessary request an extension from the offeror.

Contracting Officers must ensure that all arrangements, understandings and agreements which they have verbally reached with the contractor are committed to paper and made a part of the contract provisions, the Statement of Work, specifications, or drawings as applicable. Answers to questions could be made a new attachment to Section X. Consistent with the

negotiations and a BAFO, if one was issued, the contractor's final technical and price proposals shall be incorporated as part of the contract.

## 2.4.6 Determination of Responsibility

Contracts are awarded only to responsible contractors. The award of a contract based on price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance. To qualify for award a prospective contractor must affirmatively demonstrate general standards of responsibility, including, when necessary, the responsibility of its proposed subcontractors. For joint ventures, each party to the venture must demonstrate its responsibility. To be determined responsible, a prospective contractor must-

- (1) Be a regular dealer or supplier of the goods or services offered.
- (2) Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments.
- (3) Have a satisfactory record of performance.
- (4) Have a sound record of integrity and business ethics.
- (5) Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

### 2.4.6.1 Commitment to DBE or LDBE Participation

The offeror's commitment to the DBE goal and submission of the good faith efforts waiver form with the proposal are issues of conformity as discussed in Paragraph 4.7. All other matters relating to the DBE or LDBE participation proposed by an offeror will be treated as matters relating to the offeror's responsibility.

### 2.4.6.2 Special Standards of Responsibility

Special standards of responsibility may be used when the nature of the acquisition is such that contractors must have unusual expertise or specialized facilities to assure satisfactory contract performance. When considered necessary for a particular contract, the COTR should include this information in the PR submittal. For example, a demolition contractor may be required to have asbestos removal experience. The special responsibility standards shall be set forth in the solicitation and must apply to all offerors. As an alternative to developing special standards of

responsibility, consideration should be given to using technical evaluation criteria along with price to evaluate proposals. See Paragraphs 2.2.7 and 2.3 for a discussion of evaluation criteria and Evaluation Committee procedures.

#### **2.4.6.3 Licensing Requirements**

Contractors are responsible to comply with all applicable licensing requirements for themselves and their subcontractors (see Paragraph 3.11.5) and to ensure availability of appropriate permits.

#### **2.4.6.4 Subcontractor Responsibility**

Prospective contractors must determine the responsibility of their prospective subcontractors. However, because matters of subcontractor responsibility may affect the determination of the prime contractor's responsibility, a prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

#### **2.4.6.5 Sources for Determining Responsibility**

The Contracting Officer can use a variety of sources to collect "responsibility" information: the prospective contractor, sources within the Airports Authority, the GSA "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" (formerly referred to as debarred or suspended contractors), Dunn and Bradstreet and other rating services, personal knowledge, and by doing a pre-award survey.

If available information does not provide an adequate basis for determining the responsibility or non-responsibility of a prospective contractor, the Contracting Officer may perform a pre-award survey, obtaining the assistance and participation of specialists as needed. The Contracting Officer may discuss pre-award survey information with the prospective contractor being surveyed. The extent of the survey must be consistent with the dollar value and complexity of the purchase, and may include examination of financial statements and records and on-site inspection of plant and facilities to be used for contract performance.

#### **2.4.6.6 Responsibility Findings**

Contracting Officers must document in the contract file their responsibility findings on a Determination of Prospective Contractor Responsibility Form (see Appendix F) for contracts over \$25,000.

Communication with a prospective offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not "discussion" or negotiation and does not require that discussions be held with all those in the competitive range.

A letter of notification with specific reasons for a finding that a prospective contractor is not responsible will be sent by certified mail within 5 business days to any offeror found to be non-responsible. The notification letter will be coordinated with Office of General Counsel. The offeror has the right to respond if desired.

### **2.4.7 Contract Format**

The contract as assembled and distributed by the Contracting Officer, consists of the following sections:

- (1) Section I - Solicitation Offer and Award form; with the contractor's signature.
- (2) Section II - Table of Contents; annotated to reflect Amendments and other items applicable to Section X - Attachments.
- (3) Section III - Schedule; as submitted by the contractor.
- (4) Section IV - Representations and Certifications; as submitted by the contractor.
- (5) Sections V - IX. The exhibit formats from Sections VIII and IX may be retained as a permanent part of the Airports Authority's file.
- (6) Section X - Attachments; including Amendments.

### **2.4.8 Pre-Award Conference**

Pre-award Conferences are an effective management tool for construction and other complex contracts or for contracts where there are outstanding issues which need to be discussed and/or resolved prior to contract award. The Contracting Officer in coordination with the COTR will determine whether to hold such a conference, identify who should attend, set the agenda, and make the necessary arrangements.

### **2.4.9 Contract Award**

The Contracting Officer will ensure that all significant procurement actions are taken before award. This shall include securing required Board approval (see Paragraph 1); Office of General Counsel coordination,

when appropriate; verifying that bonds and insurance are in place; that sufficient funds are available; and that the award amount does not exceed the authority in the Contracting Officer's appointment letter. After required approvals and when all else is in order, the Contracting Officer will make award to the responsible contractor who submitted an offer conforming with the requirements of the solicitation and who submitted the offer which is in the best interests of the Airports Authority. The award will be made by completing the "award" portion of the Solicitation, Offer and Award form. See Paragraph 1.6.2 for notification of unsuccessful offerors.

## **2.5 BEST VALUE PROCEDURE**

Best value is a competitive negotiated procurement. Award will be made to that responsible offeror whose proposal provides the best overall value to the Airports Authority. In the determination of the best value, other factors and price will be separately ranked. The solicitation shall identify the relative importance of each of the other factors and whether all evaluation factors, other than price, when combined, are more important than the price.

Therefore, the Airports Authority may select other than the lowest priced, technically acceptable offer if it is determined that the additional technical merit offered is worth the additional cost in relation to other proposals received. For evaluation purposes, if proposals become more technically equivalent, then price becomes more important.

When utilizing a best value procedure, the Airports Authority is more concerned with obtaining excellent technical features than with making an award at the lowest overall price to the Airports Authority. However, the Airports Authority will not make an award at a significantly higher overall price to achieve only slightly superior technical features.

Award may be made without discussion or contact with any offerors. Therefore, initial offers should represent the most favorable terms offerors can submit to the Airports Authority.

The rationale for the selection and for technical - cost tradeoffs shall be documented in the contract file.

## **2.6 A/E SOURCE SELECTION**

The selection of Architectural/Engineering (A/E) firms for design and consultant services shall be accomplished in accordance with the following selection procedures. In addition to design services, these procedures may also be used to select A/Es for special studies, analyses, reports, surveys, investigations, and other forms of inquiry where solicitation of competitively priced proposals is impracticable or considered not to be in the best interest of the Airports Authority.

A formally constituted Evaluation Committee shall accomplish the selection of design firms for all A/E projects including those using Federal Airport Improvement Program (AIP) funds. For a description of the appointment and qualifications of the EC see Paragraph 2.3.

### **2.6.1 A/E Announcement and Responses.**

Upon receipt of a Procurement Request for a proposed A/E contract, the designated Contracting Officer will coordinate an announcement for publication and posting to the Airports Authority's website with the Equal Opportunity Programs Department and the project manager. This coordination will be accomplished prior to submitting the announcement to the Procurement and Contracts Department Manager for approval to release the information to the public. The purpose of this announcement is to alert the A/E community to the impending work and to solicit their responses. A/E firms responding to the announcement are required to submit a completed Standard Form (SF) 330, Architect-Engineer Qualifications (see Appendix G), describing in Part I its qualifications for a specific contract and in Part II its general professional qualifications. This new Standard Form 330 Parts I and II replace the previous Forms 255 and 254 respectively.

The announcement on the Airports Authority's Internet website announcement shall clearly state the evaluation criteria the Airports Authority will use in awarding the contract. These criteria will be listed in descending order of relative importance, with each criterion having the same or less weight than the one preceding it.

### 2.6.2 A/E Evaluation Criteria

The EC shall consider the evaluation criteria listed below and any other, as appropriate, in developing project-specific criteria:

- (1) Professional qualifications necessary for satisfactory performance of required services;
- (2) Past contract performance with emphasis on cost control, quality of work, flexibility in accommodating changes, and compliance with performance schedules;
- (3) Specialized experience and technical competence in the type of work required, including where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;
- (4) Capacity to accomplish the work in the required time; taking into consideration current and projected workload.

Each separate evaluation criterion shall be worded in such a way that the criterion should encompass the necessary and relevant elements which must then be evaluated collectively to determine the score for the criterion. If necessary, the description of a basic criterion may require several sentences, but the scoring must be done only on a collective basis; there shall be no breakdown of scoring for the various elements of a criterion.

The use of sub-criteria to further break-down a criterion is not recommended without approval of the Manager, Procurement and Contracts Department.

Any changes to the published evaluation criteria shall be made prior to submission of Standard Form 330 and shall be issued in an amendment to the public announcement. Prior to the opening of SF 330, the Contracting Officer and the evaluation committee shall prepare the specific value or weight to be given each evaluation criterion consistent with the published criteria. Only the evaluation criteria listed in the public announcement and the pre-assigned weights shall be used by the EC.

### 2.6.3 A/E Evaluation Committee Procedures

Copies of the qualifications (SF 330) will be provided to each of the EC members, who shall keep the qualifications and the EC proceedings confidential. EC voting members will review the qualifications and data for each firm and perform an evaluation based on the criteria stated in the public announcement. The EC may request the Contracting Officer to obtain additional information from firms under consideration to facilitate their evaluations.

After the EC has completed the evaluations and rankings, the EC chairperson shall prepare a "short list" of the highest ranked firms. The short list of firms ranked in descending order of qualifications will be reviewed by the Contracting Officer to ensure that it accurately reflects the deliberations and final rankings of the EC. The Contracting Officer shall then notify the short-listed firms of their selection, promptly notify firms who were not short-listed, schedule oral interviews, and furnish copies of evaluation criteria and statements of work to the short-listed firms for their preparation for the interviews. A list of questions should be prepared prior to the interview session but should not be revealed to the firms being interviewed. Members of the EC should present the questions pertaining to their area of expertise. Each firm will be given approximately equal amounts of time for its presentation and question and answer session. Scoring of the interview sessions by EC members will be done by adjusting either upward or downward the scores they assigned during the SF 330 evaluations of the short-listed firms.

After the interviews, EC discussions, and scoring have been concluded, the chairperson shall consolidate the point scores and prepare the formal EC report. The purpose of the report is to obtain approval from the Contracting Officer to begin contract negotiations with the highest rated firm. The report shall list those A/E firms considered best qualified in descending order of qualification. It will include sufficient narrative detail to establish the extent of the review and evaluation and the considerations upon which the recommendations are made. Voting members will, by their signature, concur or non-concur with the report. The report, as well as signed and dated originals of EC voting member score sheets, will be given to the Contracting Officer for inclusion in the contract file. See Paragraph 1.6.2 for information concerning debriefing

unsuccessful firms. Copies of qualifications provided to EC members should be returned to the Contracting Officer.

#### **2.6.4 Negotiating With Top-Ranked A/E Firm**

The Contracting Officer shall prepare an RFP, using applicable portions of Paragraph 2.2, to solicit a price proposal from the top-ranked A/E firm and analyze and negotiate the A/E's proposal. The Contracting Officer's goal is to reach a contractual agreement with the highest ranking offeror. However, if in the judgment of the Contracting Officer, a fair and reasonable price or other contract terms and conditions cannot successfully be negotiated with the top-ranked offeror, the Contracting Officer shall, with the consent of the Manager, Procurement and Contracts Department, terminate negotiations and proceed to issue an RFP to the next highest-ranked firm.

Upon successful negotiation of the contract, approval to award may be required by the delegation of authority as stated in Paragraph 1.

### **2.7 CONTRACTING FOR CONSTRUCTION**

As used in this paragraph, construction includes the building, alteration, or repairs of buildings, structures or other real property and also the dismantling, demolition, or removal of improvements. Construction contracts are subject to the requirements in other parts of this Manual, which shall be followed when applicable. When a requirement in this paragraph is inconsistent with a requirement in another part of the Contracting Manual, this paragraph shall prevail for construction contracts.

If a contract involves both construction and supplies or services, it will include provisions pertinent to the predominant part of the work as well as any specific provisions that the Contracting Officer determines are necessary to accommodate the minor part of the work. Care must be taken to ensure in combining various provisions in one contract, that internal conflicts are not created between different provisions.

#### **2.7.1 Construction Contracting Approach**

Construction contracts are normally solicited using RFP procedures with award to the offeror who

submitted a conforming proposal, was determined to be a responsible offeror and who submitted the lowest price. Use of an RFP preserves the Contracting Officer's ability to enter into discussions if necessary, to negotiate a better price, to make last minute adjustments because of budgetary constraints, or to request best and final offers.

Regardless of the method of solicitation, Contracting Officers shall use firm-fixed-price contracts for construction unless there is a compelling reason to use another type of contract.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraphs 10.4.6.3, 10.4.6.5, 10.4.6.7 and 10.4.6.8 of this Manual for additional guidance or special requirements and restrictions.

#### **2.7.2 Construction Contractor Responsibility**

As noted in Paragraph 2.7.1, the Airports Authority generally awards construction contracts on the basis of price alone (after having verified compliance and responsibility) even when an RFP is used. For high cost contracts or in cases where unusual expertise or specialized facilities are needed, requestors should identify the need for qualification data as part of their PR submittal. The use of an RFP process enables the Airports Authority, on a limited case-by-case basis, to consider technical criteria besides lowest price when choosing an offeror for award. Depending upon the nature of the solicitation, offerors may be required to submit specific qualification data that is then determined to be acceptable or not, along with price, to determine the successful offeror. The approach would be to develop responsibility standards for a specific solicitation that would require a firm to have certain qualifications or experience in order to be considered a responsible contractor.

Construction contractors are responsible to comply with all applicable licensing requirements for themselves and their subcontractors (see Paragraph 3.11.5) and to ensure that appropriate construction permits have been issued by the Airports Authority.

#### **2.7.3 Construction Specifications**

Contracting Officers through their COTRs must ensure adherence to the specification guidelines in Appendix C.5. If the specification lists various brand names, it

must be clear in each instance whether contractors have the right to substitute an Airports Authority approved "or equal" or whether they must furnish one of several specified makes and models.

The specifications must also be closely checked to identify any areas that conflict or overlap with the Contract or Special Conditions. Such problems may deal with warranties, liquidated damages, bonds, notice-to-proceed or almost any other subject. Contracting Officers and COTRs should work to eliminate conflicts and overlapping subject matter in the interest of reducing confusion and to create a unified, cohesive contract. A/E firms are generally furnished copies of the Airports Authority's construction contract format so that they can avoid creating specifications and drawings that contain conflicts.

## **2.7.4 Minimum Work by General Contractor**

When submitting Procurement Requests for construction contracts, requestors shall indicate on the PR whether they recommend establishing a minimum percentage of the contract direct labor costs that must be performed by the prime contractor's own work force. Use of this provision will help assure that the prime contractor has sufficient presence on the job site to identify and correct problems as they develop.

## **2.7.5 Design-Build Contracts**

Under appropriate circumstances, design-build provides an effective way to have a project designed and constructed. Frequently, time constraints are the driving factor although that is not the only reason to utilize design-build. Under this type of contract, the A/E provisions and the construction provisions are combined so that one prime contractor is responsible for the two disciplines which historically have been the responsibility of separate primes. From a management standpoint, it can be desirable for the Airports Authority to have one party fully responsible for both the design and construction aspects of a project.

Contracting Officers will consult with the Manager, Procurement and Contracts Department, before embarking on a design-build contract. Design-build is used by both governmental and private/corporate entities in a variety of ways using many different procedures and techniques dependent on the nature of

the solicitation. The Airports Authority's objective is to develop the specific methodology that will best serve the needs of each particular procurement action.

One such methodology is the two-step design-build procurement procedure authorized for use in design-build procurements undertaken by the federal government. This two-step design-build procurement procedure is a selection method in which a limited number of offerors are selected at the conclusion of the first step to submit detailed technical and price proposals as part of the second step. See 48 C.F.R. 36.300 et seq.

The two steps are as follows:

(1) Review of Technical Qualifications and Approach. The first step consists of the issuance of a "Request for Qualifications" seeking, and a subsequent review of, each offeror's technical qualifications to perform the scope of work. Qualification factors shall include the past performance of the offeror's team and qualifications of key personnel of the offeror's team, and may include any other factors that the Airports Authority determines are relevant. The solicitation shall establish a maximum number of offerors that, at the conclusion of the first step, will be shortlisted and invited to participate in the second step. The maximum number of short-listed offerors shall not exceed five offerors, unless the Airports Authority determines, for the particular solicitation, that a greater number is in its interests and consistent with the purposes of the two-step procurement process. The first step solicitation shall not seek or evaluate cost- or price-related information, or detailed designs or technical information.

(2) Review of Proposals from Short-listed Offerors. The second step consists of: (i) the issuance of an RFP solicitation for proposals from each short-listed offeror, which RFP will solicit a price proposal (including financing costs, if applicable) and a technical proposal that will include whatever technical information the Airports Authority determines is relevant, including but not limited to detailed designs; and (ii) a review of the proposals submitted by the short-listed offerors. The price and technical proposals from each short-listed offeror shall be submitted in separate packages, with the technical proposal being evaluated before the price proposal is opened and

evaluated. The method and/or criteria for the evaluation of these proposals shall be set out in the RFP, and may include weighted criteria, adjusted low bid, price-technical trade offs and/or technically acceptable lowest price.

The statements of qualifications received by the Airports Authority during the first step, and the proposals received by the Airports Authority from the short-listed offerors during the second step, shall each be evaluated and scored in accordance with the criteria and processes identified, respectively, in the Request for Qualifications and the RFP.

Because of the potential cost to the short-listed offerors in developing a price and a technical proposal for a design-build solicitation, the Airports Authority shall have the discretion to give a monetary stipend to those short-listed offerors who are not awarded the design-build contract if the Airports Authority determines that such a stipend will benefit competition, create an incentive for obtaining better proposals, or otherwise be in the best interests of the Airports Authority. The conditions associated with a short-listed offeror receiving a stipend shall be set forth in the RFP.

Because design-build solicitations are custom-designed, and must be described for the potential offerors in the solicitation documents, they require approval of a Determination and Findings form by the Manager, Procurement and Contracts with coordination by the Office of General Counsel, prior to the solicitation being distributed to the public.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.4.6.5 and 10.4.6.8 of this Manual for additional guidance on special requirements and restrictions.

## **2.8 ADVERTISED SEALED BIDS**

The advertised sealed bid or Invitation for Bid (IFB) procedures may be used when:

- (1) There is no anticipated need to enter negotiations.
- (2) Price is the only evaluation criterion.
- (3) Products or performance are expected to be relatively uniform.
- (4) There are many qualified sources.
- (5) Lead times are adequate.
- (6) Clear, detailed specifications or requirements are available.

### **2.8.1 Basis for Solicitation of Bids**

Bids are solicited on the basis of an accurate description of items desired, that is, specifications that state the needs of the Airports Authority clearly and fairly, to permit bidders to compete on a common basis without restricting competition. Specifications will not be adopted so as to favor the product of one contractor over another. Detailed information on specification preparation can be found in Appendix C.5.

### **2.8.2 Preparation of Invitation for Bids**

An IFB requires that careful attention be given to its preparation because it is difficult to change the contract terms after bids are opened. For example, deficiencies in item descriptions, specifications, or special provisions of the proposed contract should be corrected prior to bid opening in order to avoid the costly and time-consuming process of re-advertising. Careful preparation of the IFB is the key to preventing many of the problems that are encountered in advertised sealed bid procurements.

### **2.8.3 Opening of Bids/Pre-Award**

Unlike the RFP process, when using an IFB, the Airports Authority will publicly open the bids. The Contracting Officer will verify the time from the Procurement and Contracts Department date/time clock. When the time for opening has arrived, the Contracting Officer personally and publicly opens all bids received prior to that time and reads them aloud to all bidders present. The following information will be read aloud: (1) bidder's name; (2) unit price or lot price as applicable; and (3) brand name and model number, if requested by attendees. The Contracting Officer shall prepare an Abstract of Offers that includes verification of bid bond receipt and acknowledgment of receipt of amendments. Neither responsiveness nor responsibility determinations are made at the public bid opening.

### **2.8.4 IFB Determination of Responsiveness**

After the bid opening, the Contracting Officer is required to evaluate each bid to verify that it is responsive to the solicitation. The general rule is that deviations that go to the substance of the bid may not be waived or corrected after opening unless the deviation is only a minor irregularity or informality. A



deviation goes to the substance of the bid when it alters the price, quantity, quality or delivery of the items offered. If the defects amount to only a minor informality or irregularity, then the Contracting Officer may allow the bidder the opportunity to cure or merely waive the informality or irregularity where it is to the advantage of the Airports Authority to do so. A minor irregularity is one that is merely a matter of form or is some immaterial variation from the exact requirements of the IFB, having no effect or merely a trivial or negligible effect on price, quality, quantity or delivery of the goods or performance of the services or construction being procured, and the correction or waiver of that would not affect the relative standing of, or be otherwise prejudicial to other bidders. Prejudice will not be found from the mere fact that correction or waiver will allow the offeror to remain in the competition. Examples of minor informalities or irregularities that may be cured include the failure of the bidder to return the requested number of copies of the signed bid, or a bidder's failure to furnish a statement concerning work force organization.

In contrast to the above examples wherein the irregularity could be waived, any bid that fails to conform to the essential requirements of the IFB must be rejected. Likewise, any bid that does not conform to the specifications shall be rejected. Substitution or addition of the bidder's own contractual terms, taking exception to any of the terms and conditions, failure to submit a valid and acceptable bid bond if required in the IFB, failure to sign the bid, submission of sample goods that do not meet the specification, or failure to acknowledge receipt of an amendment (see Paragraph 2.2.6 for additional information about acknowledgements), may make a bid non-responsive.

Although performance and payment bonds are not submitted with the contractor's bid, when they are received from the apparent low bidder, they shall be verified as acceptable in form and substance by the Contracting Officer. Any problem must be immediately resolved or the bid will be rejected.

### **2.8.5 Two-Step Advertised Sealed Bids**

The classic two-step procurement process may be used when there is a need to solicit un-priced technical proposals in step one followed by submittal of sealed priced bids from those who submitted acceptable technical proposals. The step one technical proposals are evaluated by the Airports Authority based on

evaluation criteria that are listed in descending order of importance in the solicitation. Only offerors who submitted acceptable technical proposals will be invited to submit pricing in step two based on their technical proposals. The step two priced bids are processed in accordance with Paragraph 2.8. The Airports Authority does not normally use the two step procedure.

## **2.9 LIMITED COMPETITIVE PROPOSALS**

Limited competition is one of the categorical exceptions to full and open competition (see Paragraph 1.2). It is a form of competition in which the solicitation is distributed to a limited number of offerors. Limited competition is implemented by using RFP procedures in accordance with Paragraph 2.2 or A/E Source Selection as described in Paragraph 2.6.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.14 of this Manual for additional guidance on special requirements and restrictions.

### **2.9.1 Controlled Distribution RFP**

Controlled distribution is one of the categorical exceptions to full and open competition (see Paragraph 1.2.2). This category provides a means to ensure that when necessary and justified for security reasons, only Airports Authority approved firms will be issued the solicitation. Dependent upon the situation, there may be no announcement of the solicitation or the award and competition may be restricted.

## **2.10 SOLE SOURCE NEGOTIATION**

This type of procurement occurs when there is only one known or acceptable source for the item. The RFP process described in Paragraph 2.2 is used for sole source procurements except for aspects that do not apply such as advertisement and distribution of the solicitation. Examples of items would be unique goods or services available from only one source.

An advertised solicitation that results in only one conforming proposal when it is known to the Contracting Officer, after a reasonable inquiry, that there are others who could respond is not a sole source (see Paragraph 2.2.5).

For sole source PRs in excess of \$2,500, the requestor should include a sole source justification with the PR. The justification should include, as applicable, a description of (a) the supplies or services required; (b) efforts made to provide for competition (e.g. advertising); (c) the market research conducted; and (d) if it is a recurring need, actions taken to produce a future competitive package. Advertising and market research are effective methods of locating new sources and creating a competitive environment.

Sole source justifications must be signed by the requestor's Department Manager and be approved by the Procurement and Contracts Department Manager with a copy maintained in the contract file. In addition, every procurement action over \$200,000 that does not utilize full and open competition or that is not in one of the categorical exceptions (Paragraph 1.2) must be approved by the Airports Authority's Board of Directors.

In making a sole source procurement, it is the Contracting Officer's responsibility to negotiate a contract that is in the best interests of the Airports Authority. The Contracting Officer should carefully research the product or services and determine a fair and reasonable price. This can be done by (1) comparing the price paid on a previous purchase of the product or service, (2) by obtaining costs on similar purchases by the Airports Authority or others, or (3) by performing a cost analysis of data submitted by the offeror. The user or COTR will furnish this information by completing the pricing block on the Airports Authority's Procurement Justification form Appendix D.

Negotiations can be conducted on adding terms and conditions favorable to the Airports Authority and deleting or changing terms that are one-sided in favor of the contractor. It is important to be well prepared and to know the marketplace.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.15 of this Manual for additional guidance on special requirements and restrictions.

## **2.11 COOPERATIVE/GOVERNMENT PURCHASING AGREEMENTS**

This method is one of the categorical exceptions to full and open competition (Paragraph 1.2). Procurements

under cooperative/government purchasing agreements are handled on Purchase Orders or Blanket Purchase Orders since there is no solicitation process involved. See Paragraph 2.12.1 for additional information.

## **2.12 RFQ/PURCHASE ORDERS**

Requests for Quotations (RFQ) should be used when the Airports Authority has a need to invite contractors to submit quotations rather than proposals or bids. RFQs shall be used only for solicitations under \$200,000. When an RFQ is issued with the intent of possibly issuing a purchase order or blanket purchase order, a statement to that effect shall be included in the RFQ. To create a contract after issuing an RFQ and receiving quotations, the Airports Authority must issue either a purchase order or blanket purchase order (offer) which the contractor may choose to accept by completing and returning the acceptance copy of the purchase order to the Contracting Officer.

An RFQ may also be used to seek pricing or technical information from contractors when, because of a lack of funding or incomplete requirement data or other reasons, it is not desirable to request firm offers. Detailed RFQ procedures can be found in the *Airport Purchasing Policies and Procedures Manual*.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.16 of this Manual for additional guidance on special requirements and restrictions.

### **2.12.1 Purchase Order/Blanket Purchase Order**

Certain procurement actions may be more efficiently handled by using a purchase order or blanket purchase order as the contractual instrument rather than a standard solicitation/offer/award contract document. In such instances, the Contracting Officer should refer to the basic purchase order/blanket purchase order procedures as set forth in the *Airport Purchasing Policies and Procedures Manual* as required. With approval of the Manager, Procurement and Contracts Department, these procedures may be used for dollar values up to the Contracting Officer's delegation of authority. Contracting Officers should ensure that the Airports Authority's interests are adequately protected when using a purchase order or blanket purchase order rather than a standard contract.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.17 of this Manual for additional guidance on special requirements and restrictions.

## **2.13 GENERAL SOLICITATION CONSIDERATIONS**

### **2.13.1 Combined/Modified Solicitations**

It is the Airports Authority's intent that the solicitation methods described in this chapter are used in the manner in which they are described herein. However, if there is a particular situation wherein none of the solicitation processes described herein reasonably satisfy the need, then with the approval of the Procurement and Contracts Department Manager and in coordination with the Office of General Counsel, necessary adaptations may be made for an individual case. In such an instance, both the solicitation announcement and the solicitation itself must describe the variance from the standard process as described in this Manual.

### **2.13.2 Legal, Financial, Audit & Legislative Representation Services**

Legal, financial, audit and legislative representation services are categorical exceptions to full and open competition in accordance with Paragraph 1.2. Solicitations should be prepared using RFP procedures (Paragraph 2.2), or limited competitive proposals (Paragraph 2.9) as is most appropriate to fit the specific requirement.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.18 of this Manual for additional guidance on special requirements and restrictions.

### **2.13.3 Solicitation Distribution**

Advertisement of solicitations is covered in Paragraph 1.5. Distribution is determined by whether the solicitation is or is not available for download from the Airports Authority's website, [www.mwaa.com](http://www.mwaa.com). The Airports Authority's objective is to simplify the distribution process by having as many solicitations as possible be available for download from the Internet. However, printed copies of all solicitations are available from the Procurement and Contracts Department (see Appendix B for contact information).

The Airports Authority's website shows the cost for printed copies of solicitations. Construction related solicitations are furnished to the construction reporting services identified in Paragraph 1.5- those organizations may be contacted directly to make arrangements to view the solicitations.

### **2.13.4 Preproposal Conference/Site Visit**

For some solicitations, it may be beneficial to hold a conference and/or site visit early in the solicitation cycle. This provides an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate ambiguities or misunderstandings, allow the potential offerors to become familiar with the work site, and permit contractors to submit written questions. When deemed necessary and appropriate, the Airports Authority may tape record pre-proposal proceedings.

#### **2.13.4.1 Additional site visits**

Requests by late entrants into the competition or by a firm unable to attend the scheduled site visit (perhaps an out-of-state firm), shall be accommodated when practicable.

#### **2.13.4.2 Mandatory site visits**

Mandatory site visits are not permitted on federally funded projects and their use on other Airports Authority procurements shall be limited to special situations which require approval of the requestor's manager and the Manager, Procurement and Contracts Department. Examples of projects that would be candidates for mandatory site visits might include asbestos removal and removal of contaminated soil. When mandatory attendance is stipulated, only offers from those attending firms shall be considered for award unless waived by the Manager, Procurement and Contracts Department.

#### **2.13.4.3 Post Conference Amendment**

The Contracting Officer will review the notes or recording and 1) determine the need to issue an amendment to the solicitation including any necessary addenda to the Statement of Work, 2) coordinate with appropriate Airports Authority staff to secure responsive answers to written contractor questions for inclusion in any amendment, and 3) include a summary of the conference including attendance sheet and agenda in the contract file.

### 2.13.5 Planholders List

A List of Planholders for each solicitation is provided on the Airports Authority's website ([www.mwaa.com](http://www.mwaa.com)). The List is provided for information purposes only with the understanding that the Metropolitan Washington Airports Authority does not endorse any of the firms listed. The Planholders List includes firms to whom solicitations have been furnished in hardcopy by the Airports Authority in addition to firms who have registered on-line as having downloaded the solicitation. The list is current as of the date shown on the document. It is important for firms interested in a particular solicitation to ensure they are included on the Planholders List because that list is used to distribute amendments that may be issued to the solicitation. Failure to receive and acknowledge receipt of an amendment may result in an offer being found in non-conformance (See Paragraph 2.2.6).

### 2.13.6 Public Release of Proposal Information

This guidance is provided in an effort to minimize the dissemination of information considered to be confidential in nature and which upon its improper release could compromise the integrity of the contracting process.

Neither the proposals nor the Abstract of Offers form upon which proposals are recorded will be made available to the public, nor will any information from them be made public prior to contract award. The Airports Authority will presume that offers are submitted in confidence. Unless an offeror agrees, the only proposal information made available to the public after award will be name and address of the firm to which the contract was awarded, the dollar amount of award, and the date of award.

Knowledge regarding the number of short listed firms or identification of firms on "short lists" may compromise the Airports Authority's negotiating position. Therefore, such information should not be made available to the firms involved in the competition or to the public unless the release is approved by the Manager, Procurement and Contracts Department.

### 2.13.7 Amendments

Between the time a solicitation is issued and the offers are due, the solicitation terms may be changed. Such

changes can affect the specifications, quantities, delivery schedule, or other requirements. Changes also may correct or clarify ambiguities, errors, or omissions from the solicitation. The effect of the amendment on the closing date will be considered to ensure that offerors will have enough time to revise their submittals before the closing date – if not, a new closing date will be included in the amendment.

Amendments are posted to the Airports Authority's website and are distributed to all firms on the Planholders List of prospective offerors. If proposals have been received at the time the amendment is issued, distribution of the amendment shall be made to the offerors that submitted proposals or are within the competitive range.

Receipt of amendments must be acknowledged by the closing date and time for submission of offers. Failure to acknowledge receipt of an amendment may result in an offer being found in non-conformance (see Paragraph 2.2.6). Because distribution of amendments will be made to all firms on the Planholders List, potential offerors should refer to Paragraph 2.13.5 for additional information.

### 2.13.8 Timely Submission of Proposals

The solicitation will prescribe the manner in which offerors are to prepare and submit their proposals. Offerors are responsible for proposal preparation and timely submission. If a proposal, or response to a BAFO, is received after the time set for opening, it is considered late and shall not be considered by the Contracting Officer, unless it arrives before the award is made and one of the following conditions exist:

- (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers;
- (2) It was sent by overnight express delivery service in time to have arrived prior to the date and time specified for receipt of offers;
- (3) It was sent by mail or by overnight express delivery service (or fax if authorized) and it is determined that the late receipt was due solely to mishandling by the Airports Authority after receipt;

- (4) It was received on the day proposals were due but after the appointed time, but proposals were not yet opened and the Manager, Procurement and Contracts Department determines it is needed to promote adequate competition and that no impropriety occurred; and that acceptance of the proposal could not reasonably be prejudicial to the process.
- (5) It is the only proposal received; or
- (6) Other circumstances exist to warrant a decision by the Manager, Procurement and Contracts Department to include the proposal with those being evaluated for possible contract award.

The only acceptable evidence to establish date of mailing of a late offer is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service or positive proof of when it was turned-over to an overnight express mail service. If the postmarks are not legible, the offer is deemed to have been mailed late, if it arrives late.

The Procurement and Contracts Department date/time clock in the Plans Room shall be maintained to reflect the correct date and time for proposal receipt purposes. Proposals shall be stamped-in and initialed by the person accepting them upon receipt. The date and time printed by the time clock shall determine the official time of receipt. Proposals received prior to the time of opening shall be kept unopened in a secure place.

Proposals that are determined unacceptable because they are late will be returned unopened to the offeror. These rules concerning timeliness of receipt of proposals are established to protect the integrity of the competitive system.

### **2.13.9 Electronically Transmitted Offers**

Electronic transmission such as facsimile (fax), e-mail, or telegram is not acceptable for proposals or bids or modifications thereof unless specifically authorized in the solicitation. The use of such transmissions can result in prices being exposed prior to the deadline set for receipt. However, the Contracting Officer may determine that receipt of such transmittals is appropriate and in the best interest of the Airports Authority and document the contract file accordingly. The time of receipt of a fax shall be that printed on the

fax by the Procurement and Contracts Department fax machine.

### **2.13.10 Alternate or Qualified Offers**

An alternate offer is submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the offeror. Frequently, alternate offers incorporate the latest in technology and can result in substantial savings, not only in monetary terms, but in system-wide operational efficiencies. Such an offer which deviates from the specifications shall not be considered if it interferes with the competitive process. However, if in the best interests of the Airports Authority and with prior coordination by the Manager, Procurement and Contracts Department, and Office of General Counsel, it may be possible to accept an alternate, or if in the best interests of the Airports Authority to reject all offers and re-solicit based upon revised specifications. Offerors are permitted to submit more than one offer as long as they clearly mark the primary offer that is to be evaluated and identify the alternate offers.

### **2.13.11 Qualified Proposals**

Qualified proposals are those responses to an RFP in which the offeror has inserted language that places limits or exceptions concerning their offer. These qualifications may be acceptable if it is considered to be in the best interests of the Airports Authority, unless the Contracting Officer determines that the nature of the qualification is such that the offer is essentially in non-conformance with the RFP. Qualified bids are not allowed for an IFB because they would not be responsive.

### **2.13.12 Revisions/Withdrawals of Proposals**

Offerors may revise their proposal in writing provided that the original proposal was timely and further provided that the request is received prior to the time set for receipt of proposals. If the revision, including a revision submitted as a response to a BAFO, is received after the deadline, it may be accepted only in accordance with rules similar to those established for the acceptance of late offers; however, a late revision of the otherwise successful offer may be accepted if it makes the terms of the offer more favorable to the Airports Authority. For purposes of the above, the successful low offeror is determined after the Airports

Authority has completed evaluation of each proposal. Proposals may be withdrawn at any time prior to award.

### **2.13.13 Right to Cancel a Solicitation**

A Contracting Officer may cancel a solicitation or otherwise reject all offers at any time prior to award. This should only occur when such action is clearly in the Airports Authority's best interest. Some of the circumstances that may justify the rejection of all offers are (1) inadequate or ambiguous specifications were used; (2) specifications need to be significantly revised; (3) the supplies or services being procured are no longer required; (4) offers received indicate that the needs of the Airports Authority can be satisfied by a less expensive article differing from that on which the offers were invited; (5) all otherwise acceptable offers received are at unreasonable prices; (6) the offers were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or (7) budget/funding considerations dictate that the solicitation should be canceled. The reason for the determination to cancel the solicitation shall be documented and made a part of the file.

### 3.11.4 Provisions for On-Site Work

Contracting Officers must ensure that all contracts for services and construction, where the work is being done on Airports Authority premises, incorporate provisions pertaining to safety, security, insurance/OCWIP, licensing and permitting requirements, EEO, site clean-up, and others to protect the Airports Authority's interests.

### 3.11.5 Contractor License Requirements

Virginia statutes and regulations and local ordinances may require that some contractors must be properly registered, licensed or hold a permit. The Virginia regulatory agencies include the following; however, there may be others dependent upon the nature of the work being done:

<u>Service</u>	<u>Regulatory Agency</u>
Construction	VA. Dept. of Professional and Occupational Regulation
Pesticide application	VA. Dept. of Agriculture & consumer services
Security service	VA. Dept. of Commerce
Treatment, storage, transportation of hazardous waste or radioactive material	VA. Dept. of Waste Management

It is the responsibility of the prime contractor to ensure that it and all of its subcontractors comply with the rules and regulations issued by regulatory agencies. Contracting Officers must ensure that the Solicitation Provision for Virginia License Certification is included in solicitations for the services listed above.

If a procurement of \$1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the Commonwealth of Virginia for the type of work involved:

- (1) Class A Contractor (If the contract is \$120,000 or more, or if the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is \$750,000 or more.)

- (2) Class B Contractor (If the contract is \$7,500 or more, but less than \$120,000, or if the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is \$150,000 or more, but less than \$750,000.)
- (3) Class C Contractor (If the contract is over \$1,000 but no more than \$7,500 or if the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is no more than \$150,000.)

If a contractor does not submit the license number with the solicitation response, the response may still be considered if the contractor submits the license upon the request of the Contracting Officer. In any case, the contractor must demonstrate that it has the required license prior to a determination of responsibility and subsequent contract award. Prime contractors are responsible for ensuring that only properly licensed subcontractors who have the appropriate specialty classification are permitted to work on the Airports Authority jobsite. Questions as to whether a licensed contractor is required for a specific type of work should be referred to the Virginia State Board of Contractors in Richmond, VA, (804) 367-8511. Information about when and where the tests for licensing are administered is available at (800) 733-9267.

### 3.11.6 Nondiscrimination

In the solicitation, award or administration of contracts, the Airports Authority shall not discriminate because of race, religion, color, sex, or national origin of the offeror/contractor.

### 3.11.7 Performance, Payment and Bid Bonds

Upon the award of any construction contract exceeding \$100,000 to any prime contractor, such contractor shall furnish to the Airports Authority the performance and payment bonds as listed below from an approved surety. Upon achieving substantial completion of the construction contract, the Contracting Officer may consider reducing the bond requirement from 100 percent to 50 percent. If the construction contract includes some period of operation and maintenance (O & M) service, the Contracting Officer may consider an appropriate reduction in the bond amount after construction is complete and the period of O & M coverage is commenced.

A performance bond shall be in the sum of the contract amount and conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

A payment bond shall be in the sum of the contract amount and conditioned upon the prompt payment for material furnished or labor supplied or performed in the prosecution of the work. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract. The bond shall cover utility services and reasonable rentals of equipment but only for periods when the equipment rented is actually used at the site.

Nothing herein is intended to preclude a contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

By definition, bid bonds apply only to Invitation for Bids (IFB). The Airports Authority does not require similar bonding to be furnished with proposals that are submitted in response to RFPs.

Upon receipt, bonds must be validated by the Contracting Officer.

The Airports Authority has the right to reduce the penal sum of the performance and payment bond in cases involving large capital projects (excess of \$200 million) or design-build projects.

### **3.11.8 Bonds for Non-construction**

Contracting Officers may require bid, payment, or performance bonds for contracts for goods or services if there is an appropriate need. The requirement must be stated in the Request for Proposal or Invitation to Bid.

### **3.11.9 Litigation Bonds**

At the Authority's option, and with approval of the Manager, Procurement and Contracts Department, a requirement for litigation bonds may be included in an Authority solicitation. The purpose of a litigation bond is to discourage law suits pertaining to award of a

contract resulting from a specific solicitation. Secondly, the bond provides a mechanism for the Authority, its officers, employees, or agents to recover damages, including (but not limited to) attorney fees, loss of revenue, loss of grants or portions thereof which may result from any such litigation. Failure to submit an appropriate bond with the offer at the time and place the offers are due may result in disqualification by virtue of the offer being in non-conformance with the solicitation. Upon receipt, bonds must be validated by the Contracting Officer.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.23 of this Manual for additional guidance on special requirements and restrictions.

### **3.11.10 Insurance**

If a contractor is required to work on Airports Authority-owned or Airports Authority-leased property, consideration must be given to require and ensure that the successful offeror has proper coverage to protect the Airports Authority from claims resulting from the contractor's work or personnel. Most coverage for work performed at the airport jobsite will be available for construction contracts under the Airports Authority's Owner Controlled Wrap-Up Insurance Program (OCWIP), which is almost exclusively designed for the Capital Construction Program (CCP). The OCWIP covers subcontractors, who must also be enrolled in OCWIP, but normally does not cover professional architects, engineers, and surveyors, consultants, suppliers, vendors, materials dealers, haulers, nor any fabrication, manufacturing, or other operation conducted away from the airport jobsite or at the contractor's regular premises. The availability of OCWIP coverage and any required supplemental insurance will be stated in the solicitation documents. Specific OCWIP coverages are described in the Airports Authority's *Owner Controlled Wrap-Up Insurance Program Manual* which can be accessed through the Airports Authority's website at [www.mwaa.com](http://www.mwaa.com).

If OCWIP coverage is available, the Contracting Officer shall ensure that the contractor and subcontractors are formally enrolled in the program before a notice-to-proceed (NTP) with on-site work is issued. OCWIP enrollment of contractors and subcontractors requires submittal of contractor license for the work to be performed.

If OCWIP coverage is not offered, the Contracting Officer shall ensure that the contract includes the specific coverage required by Risk Management



Department. The contractor must provide such coverage during the contract period from an insurance company possessing a rating from the A. M. Best Company that meets the current standards established by Risk Management Department. The Metropolitan Washington Airports Authority shall be named as an additional insured on every policy except Workers' Compensation and Professional Liability. The policy must provide for 30 days' advance notice to the Airports Authority of cancellation of the coverage.

In accordance with contract provisions, contractors are required to submit certificates of insurance that Contracting Officers shall send to Risk Management Department for review and approval.

### **3.11.11 Contacts with Vendors**

Suppliers and manufacturers' representatives are valuable sources of information to help prepare a solicitation and should be contacted as necessary and appropriate. Contractors' visits should be arranged in a manner that will assure a full, courteous, and mutually beneficial exchange of information. Such assistance should be considered normal sales effort and does not entitle a contractor to any preference in a competitive program. No commitments may be made which would lead a supplier to believe they will subsequently receive an order and any such statements are not binding on the Airports Authority.

If the Airports Authority receives contractor assistance in preparing a specification, a written record to that effect must be in the contract file.

If an extraordinary amount of help is needed from one or more contractors, the Contracting Officer should consider paying the contractors as consultants for services rendered.

## 7 PROTESTS

The procedures for protesting a solicitation, a proposal or an actual award of a contract are presented in this chapter. These procedures, designated as Paragraphs 7 to 7.4 herein, have not been modified substantially in this second edition of the Contracting Manual.

### 7.1 **FORMAT**

Protests must be typewritten and hand-delivered or mailed to the Manager, Procurement and Contracts Department. If a protest is mailed, it shall be sent by registered or certified mail, return receipt requested. Protests sent by facsimile machine will not be considered to meet the applicable deadline unless the original is hand-delivered or mailed and received by the Manager, Procurement and Contracts Department prior to the applicable deadline.

### 7.2 **SCHEDULE FOR PROTESTS**

Regardless of which office within the Metropolitan Washington Airports Authority issued the solicitation, all protests shall be submitted to the Manager, Procurement and Contracts Department (see Appendix B for address) in accordance with this paragraph.

If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from a solicitation issued by the Airports Authority or an amendment to that solicitation, the potential offeror must file its protest with the Manager, Procurement and Contracts Department. The protest must be received by the Manager Procurement and Contracts Department by the earlier of the following two dates: (1) fourteen (14) calendar days after the issuance date of the solicitation or the date of the solicitation amendment containing the terms or conditions that are the subject of the protest, or (2) the due date for bids or proposals.

If an unsuccessful offeror on an Airports Authority solicitation believes it has grounds to protest the rejection of its bid or proposal, or the award of a contract (other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment), that offeror must file its protest with the Manager, Procurement and Contracts Department. The protest must be received by the Manager, Procurement and Contracts Department, within seven (7) calendar days after the date of the Airports Authority's letter notifying the offeror that its bid or proposal was unsuccessful or not accepted.

The Procurement and Contracts Department Manager will attempt to respond to a protest within seven (7)

calendar days from receipt of the protest. If the Manager determines that additional time will be required to respond to the protest, the Manager, Procurement and Contracts Department will, within seven (7) calendar days, notify the protestor of the time period within which a response will be made.

### 7.3 **REVIEW**

If a protestor is not satisfied with the Procurement and Contracts Department Manager's response, the protestor may ask the President and Chief Executive Officer (CEO) to review the matter. This request must be received by the President and Chief Executive Officer within seven (7) calendar days after the protestor's receipt of the Procurement and Contracts Department Manager's decision. If resolution cannot be achieved at that level and the contract is or was subject to approval of the Board of Directors or by a Standing Committee of the Board, then the protestor may request that the protest be reviewed by the Board of Directors or a Committee of the Board. Such request must be filed with the Secretary within seven (7) calendar days following the protestor's receipt of the President and Chief Executive Officer's decision. For contracts not requiring approval of the Board of Directors or a Committee of the Board, the decision of the President and Chief Executive Officer is final. Points of contact for requesting reviews can be found in Appendix B. The decision of the Board of Directors or the Committee of the Board designated to consider the protest will be final.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.31 of this Manual for additional guidance on special requirements and restrictions.

### 7.4 **AWARD OF CONTRACT AND NOTICE TO PROCEED**

The President and Chief Executive Officer may proceed with award of the contract and notice to proceed while a protest is pending if he determines it to be in the Airports Authority's best interest to do so.

## **7.5 PROTEST PROCEDURE FOR TWO-STEP DESIGN-BUILD PROCUREMENT PROCESS**

The two-step design-build procurement process described in Paragraph 2.7.5 is a custom-designed solicitation and the protest procedures for such process shall be specifically described within the solicitation documents for each step of the process. Guidance for the development of such protest procedures shall be derived from the principles set forth in this Chapter 7.

## **7.6 SOLICITATIONS FUNDED BY THE FEDERAL TRANSIT ADMINISTRATION**

For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.31 of this Manual for additional guidance on special requirements and restrictions.